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At the Pinnacle of the Sanction System: Life Imprisonment in Light of the Objectives of Punishment*

ABSTRACT

This study focuses on life imprisonment particularly life imprisonment without the possibility of parole and examines its substantive and penal enforcement objectives. The study analyzes the position of life imprisonment within the system of sanctions through the lens of current Hungarian criminal law and its commentaries, with special attention to the feasibility of achieving special prevention objectives. The paper highlights legislative anomalies and reveals that the objectives and practical execution of life imprisonment without the possibility of parole in several respects contradict the principles declared in the Criminal Code and the Punishment Enforcement Act. The analysis addresses the principle of proportionality and the requirement of legal certainty. The central hypothesis suggests that life imprisonment without the possibility of parole, in its current form, does not fully comply with the stated substantive and penal enforcement objectives, thereby raising the need for legislative revision. The study applies descriptive, comparative, and empirical methods, aiming to assess the coherence of the sanction system and the enforcement of rule-of-law principles.

KEYWORDS: life imprisonment, LWOP, special prevention, penal objectives

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Introduction

There is a certain parallel between the title of this study and the concept of life imprisonment. Specifically, both titles are somewhat misleading in terms of their actual content. Just as life imprisonment does not necessarily entail perpetual confinement – „over time, the interpretation that has become widely accepted is that, contrary to the literal term, this form of punishment, as a general rule, does not mean incarceration for the entirety of the convict's life"[1] – neither does life imprisonment without the possibility of parole (hereinafter: LWOP) truly live up to its name. In fact, the sanction mentioned in the title of this study cannot fully cover the actual scope of the inquiry either.2 When analysing the position of life imprisonment within the system of sanctions, one must necessarily touch upon at least „two plus one" types of penalties: in addition to the punishment explicitly referred to in the title, both fixed-term imprisonment as a separate sanction, and LWOP as a specific form of life imprisonment merit consideration. In this regard, Mihály Tóth expresses linguistic concerns, stating that: „The terminology in use today is hypocritical, since in reality, only a single form of »life imprisonment« could exist. It is a legal absurdity to regard an institution as generally existent, but in certain cases as »actually existent«"[3] This study attempts to shed light – through the analysis of the abovementioned sanctions and the objectives of punishment and execution – on certain legislative anomalies that may call into question the full enforcement of the principle of legality in the current criminal law framework, with particular attention to recent legislative developments. Within this context, the study will provide an in-depth examination of special prevention, as one aspect of the broader objective of protecting society. Furthermore, by exploring the objectives of punishment and its execution, the study also seeks to contribute to answering the question of which punishment may – or may not – justifiably stand at the apex of the system of criminal sanctions. The analysis will naturally employ descriptive and comparative methodologies, and will also incorporate minimal quantitative empirical research in the form of statistical data.

Why can the question of which punishment should stand at the top of the system of sanctions become answerable through the examination of the objective of punishment and execution? Based on the ideas of István Bibó, the underlying assumption is that the organic development of criminal law corresponds with the advancement of a society's cultural level, the result of which may be the „softening" of the most severe forms of punishment. Just as the capital punishment has disappeared from the top of the system of sanctions in Hungary, it is conceivable that the days of life imprisonment are also numbered. According to Bibó, society's desire for retribution may diminish, while its demand for prevention may increase. This suggests that an attitude may gradually prevail in society which, in terms of the aims of punishment, indicates a shift away from the desire to retaliate against wrongdoing, and toward a stronger commitment to ensuring that criminal behaviour does not recur. As Bibó puts it: „The retributive character of the system of punishment can only be reduced where, and to the extent that, society's inclination toward indignation and retribution has also diminished. It is beyond doubt that, just as over the course of history society's readiness to take offence against the mentally ill and those suspected of witchcraft could be reduced to a minimum, so too is society's capacity for understanding capable of significant growth across the vast range of contemporary criminal offences."[4] The more advanced the cultural level of a society, the greater its need and demand for milder forms of punishment. The level of cultural development of a society correlates with the demand for alternative forms of punishment. „The greater the society's level of understanding and tolerance grows, the more the moral and legal system may require punishments that focus on prevention and the avoidance of further crimes,

[1]Own trans. Ferenc, Nagy: *A szabadságelvonással járó szankciókról az új Btk.-ban*. pp. 6. In Börtönügyi Szemle, Vol 33, No4, 2014. pp. 1 – 18.
[2]See: Gergely, Gönczi: *A tényleges életfogytig tartó szabadságvesztés alapjogi vonatkozásai – Alkotmányos büntetőjog és a strasbourgi joggyakorlat.* In Acta Humana, Vol. 3, No. 2, 2015. pp. 7 – 40. https://real.mtak.hu/122344/1/AH_2015_2_Gonczi_Gergely.pdf
[3]Own trans. Mihály, Tóth: Gondolatok az életfogytig tartó szabadságvesztés lehetséges jövőjéről. https://jog.tk.hun-ren.hu/blog/2014/09/eletfogytiglan
[4]Own trans. István, Bibó: *Válogatott tanulmányok*. Magvető Könyvkiadó, 1986. pp. 170.

rather than on retribution or satisfying society's demand for vengeance."[5] Indeed, criminal policy is primarily determined by the level of civilization of the society.[6] Further insights can be connected to Bibó's line of thought. On the one hand, Ferenc Nagy has stated that „the imposition of life imprisonment for the duration of a person's life is generally not encountered, or is not applied in practice, in more civilized countries with a more developed legal culture."[7] Referring further back, according to Plato „not that he is punished because he did wrong, for that which is done can never be undone, but in order that in future times, he, and those who see him corrected, may utterly hate injustice, or at any rate abate much of their evil-doing."[8] Finally, it is also worth presenting the words of Erzsébet Kadlót on this matter:

„The sanctioning tools of criminal law – aligned with humanitarian considerations – are limited. There may be variations depending on legal systems and societies, but there exists an accepted minimum within civilized communities below which a state recognizing human rights and the minimal requirements of Christian-Jewish culture must not fall. It is no longer in question today that the use of the capital punishment does not fit within this civilized minimum, just as mutilating, torturous, and degrading punishments have, fortunately, long been suppressed. An enlightened state cannot, on any grounds, take anyone's life – not even that of a criminal."[9]

Is it conceivable that the anomalies related to the objectives of punishment and execution in connection with imprisonment are in fact early signs of the „Bibó-style" trajectory of development outlined above? The development described by Bibó can in fact be observed in the current Hungarian criminal law as well: Section 79 of Act C of 2012 on the Criminal Code (a Büntető Törvénykönyvről szóló 2012. évi C. törvény, hereinafter: Criminal Code) and its justification, commentary, and explanatory notes place the greatest emphasis on the aim of prevention. The current objective of penal enforcement largely align with this approach. There is only one exception: LWOP. Precisely for this reason, the hypothesis of the present study may, in my view, be justifiably raised. At the same time, it should also be noted that the current Criminal Code is among the strictest in European Union. This severity is precisely what István László Gál attributes to the existence of LWOP: „Due to the application of LWOP, the Hungarian Criminal Code can be considered the strictest within the EU; Hungary is the only country where such a punishment is applied in practice."[10] Lastly, it is important to clarify that the aim of this study is not to argue against or refute the notion that, in certain cases, perpetrators of the most serious crimes may remain in penal institutions for the rest of their lives.

I. Hypothesis

Concerns may arise, as there exists a line of reasoning – when developed thematically – that fails to provide a satisfactory answer regarding the fulfilment of the objectives of punishment and penal enforcement in the case of LWOP. Moreover, based on the analysis of the objectives of punishment and execution, the legitimacy of life imprisonment with the possibility of parole itself may also be called into question. As a result, this may raise concerns regarding the principle of legality that underpins the entire criminal law system, particularly the violation of the maxim *nullum crimen / nulla poena sine lege certa*. In a broader sense, the full enforcement of one of the most fundamental elements of the rule of law – legal certainty – may also be called into question.[11] Why is it essential to define the objectives of punishment and penal enforcement? In my opinion, the significance lies in the fact that, through the

[5]Ibid.
[6]István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21
[7]Own trans. Ferenc, Nagy: *A büntetőjogi szankciórendszer továbbfejlesztésének egyes elvi és gyakorlati kérdéseiről*. In Tóth Károly (Ed.): *Tanulmányok Dr. Veres József egyetemi tanár 70. születésnapjára.* Szegedi Tudományegyetem Állam- és Jogtudományi Kar, Szeged, 1999. pp. 209-226. pp. 216.
[8]Plato: *Laws.* (trans.: Benjamin Jowett) https://classics.mit.edu/Plato/laws.11.xi.html
[9]Own trans. Erzsébet, Kadlót: *A jogos védelem és a tényleges életfogytig tartó szabadságvesztés a Btk.-ban.* In Hack Péter (Ed.): *Az új Büntető Törvénykönyv. Hagyomány és megújulás a büntetőjogban.* ELTE Bibó István Szakkollégium. 2013. pp. 75 – 88.
[10]Own trans. István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21
[11]See: Decision 11/1992 (III.5) of the Hungarian Constitutional Court.

lens of the currently valid objectives of punishment and enforcement, the apex sanction of the penal system can be identified in a manner that is clear, precise, and intelligible, in accordance with the requirements set forth by criminal law. Indeed, only a punishment that can be deemed to fully and unquestionably conform to the prevailing – and, in my opinion, ideal – objectives of punishment and enforcement may justifiably serve as the most severe form of sanction. Should this not be the case, the criminal law system – whose core requirement is internal consistency – would be rendered flawed. „Punishment remains justified only insofar as its objectives are achieved."[12] Argumentum a simile, only a punishment that realizes concrete objectives – namely, the objectives currently in force – can be regarded as justified. This is also related to a passage from the concurring opinion of János Zlinszky in Constitutional Court Decision No. 23/1990, which states: „Punishment, therefore, [...] is acceptable only in this purposive sense, and it immediately loses its justification as soon as it becomes incapable of achieving its aims."[13]

II. Substantive law

The current regulation explicitly states in Section 79 of the Criminal Code that „the objective of punishment shall be, in the interest of the protection of society, to prevent the perpetrator or any other person from committing a criminal offence." This signifies that the principal objective is societal protection, realized through two subsidiary aims – namely, specific (special) and general prevention. Societal protection is the fundamental duty of the entire criminal legal framework, which, regarding punishment, is effectively synonymous with the prevention of crime. Special and general prevention constitute distinct yet interconnected dimensions of societal protection, whose joint realization is imperative for the effective attainment of punitive aims.[14] Furthermore, while not expressly articulated in the Criminal Code, a clear objective of punishment is retribution and compensation, meaning the restoration of the social order breached by the criminal act and the enforcement of justice principles with respect to the victims.[15] Special prevention, as a component of societal protection, may be implemented through a „two plus one" approach. On one hand, resocialization – understood as the reintegration of the offender into the social fabric – is pursued. This process essentially comprises the moral re-education of the offender, through which their personality undergoes positive development and they come to recognize the wrongfulness of their deeds, thus transforming into a law-abiding member of society. Secondly, by means of deterrence, whereby the offender is dissuaded from engaging in future criminal conduct due to the fear of sanctions. In such instances, the offender's moral framework remains unaltered and no positive transformation of values occurs. Thirdly, through the neutralization or incapacitation of the offender. In the case of LWOP, this may be achieved solely through isolation, meaning the offender's permanent segregation from society.[16] Out of the three possible modalities, the first – resocialization – is logically considered the most desirable, and thus may be treated as the principal objective.[17] Nevertheless, the goal of societal protection can also be fulfilled through the second approach, namely deterrence.[18] The commentaries and legislative justifications of the Criminal Code refer to special prevention solely in terms of the first two forms – resocialization and deterrence – recognizing these as integral to the objective of societal protection. In addition, Act CCXL of 2013 on the enforcement of penalties, measures, certain coercive measures and infraction confinement (a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról

[12]Own trans. Péter, Balázsy: *Kegyetlen kegyelem? – A tényleges életfogytig tartó szabadságvesztés, avagy egy roskadozó jogintézmény kritikája és jövője.* pp. 32. In Büntetőjogi Szemle, Vol. 7, No. 2, pp. 24 – 38.
[13]Own trans. Point 4 of the concurring opinion of János Zlinszky in Decision No. 23/1990. of the Hungarian Constitutional Court.
[14]Róza, Mészár In Kónya István (Ed.) *Magyar Büntetőjog, Kommentár a gyakorlat számára*, *4. kiadás, I. kötet*. Orac Kiadó Kft, 2024. pp. 314.
[15]Zoltán, Tóth J.: *Halálbüntetés: pro és kontra*. pp. 27. In Jogelméleti Szemle, 2003/2. https://epa.oszk.hu/05200/05288/00014/pdf/EPA05288_jogelmeleti_szemle_2003_2_14.pdf
[16]Ibid. pp. 28. and Péter, Balázsy: *Kegyetlen kegyelem? – A tényleges életfogytig tartó szabadságvesztés, avagy egy roskadozó jogintézmény kritikája és jövője.* In Büntetőjogi Szemle, Vol. 7, No. 2, pp. 24 – 38.
[17]Legal justification of the Criminal Code https://www.parlament.hu/irom39/06958/06958.pdf (2025.05.25.)
[18]Róza, Mészár In Kónya István (Ed.) *Magyar Büntetőjog, Kommentár a gyakorlat számára*, *4. kiadás, I. kötet*. Orac Kiadó Kft, 2024. pp. 314.

szóló 2013. évi CCXL. törvény, hereinafter: Punishment Enforcement Act) – explicitly highlights reintegration as a key objective and principle in the enforcement of custodial sanctions. The third form of implementation, that is, isolation in the context of LWOP, is identified in the legal literature as the least desirable method of realizing special prevention.[19] Nevertheless, the explanatory notes to the Punishment Enforcement Act refer to isolation as an „undesirable side effect" of the enforcement process.[20]

In addition to the regulation set out in Section 79 of the Criminal Code, punishment must also conform to the principles of proportionality and justice. The prevailing Hungarian criminal law rests on the principle of act-proportional liability. The commentary to the Criminal Code states that, for the aims articulated in Section 79 to be fulfilled, adherence to the principle of proportionality is of paramount importance.[21] The legal justification states that the punishment must be proportionate to the social danger posed by the criminal offense.[22] In the interpretation of the commentary, this complex concept primarily denotes proportionality in relation to the act itself; however, it may also encompass the perpetrator's personality, the social dangerousness of the conduct, and, in certain cases, the internal proportionality in a relationship between multiple offenders' actions.[23] The commentary further emphasizes that a just punishment can be achieved through a proportionate penalty – one that complies with substantive legal norms while also satisfying society's sense of justice. The cited commentary further appears to express a certain prioritization regarding the objectives of punishment, indicating that, in the service of proportionality and just retribution, the educative function can only receive a lesser emphasis.[24] Based on the regulatory framework, the term „education" can hardly be misunderstood as referring to special prevention – since its primary and most ideal form of implementation is reintegration through moral education. [25]

[19]See: Balázsy Péter: *Kegyetlen kegyelem? – A tényleges életfogytig tartó szabadságvesztés, avagy egy roskadozó jogintézmény kritikája és jövője.* In Büntetőjogi Szemle, Vol. 7, No. 2, pp. 24 – 38.
and Zoltán, Tóth J.: *Halálbüntetés: pro és kontra*. pp. 27. In Jogelméleti Szemle, 2003/2. https://epa.oszk.hu/05200/05288/00014/pdf/EPA05288_jogelmeleti_szemle_2003_2_14.pdf

[20]Ervin, Belovics – György, Vókó: *A büntetésvégrehajtási törvény magyarázata.* HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2014. https://jogkodex.hu/doc/2116706

[21]Róza, Mészár In Kónya István (Ed.) *Magyar Büntetőjog, Kommentár a gyakorlat számára*, *4. kiadás, I. kötet*. Orac Kiadó Kft, 2024. pp. 314.

[22]Legal justification of the Criminal Code https://www.parlament.hu/irom39/06958/06958.pdf (2025.05.25.)

[23]Róza, Mészár In Kónya István (Ed.) *Magyar Büntetőjog, Kommentár a gyakorlat számára*, *4. kiadás, I. kötet*. Orac Kiadó Kft, 2024. pp. 314.

[24]Ibid.

[25]Tóth J.: *Halálbüntetés: pro és kontra*. pp. 27. In Jogelméleti Szemle, 2003/2. pp 28. https://epa.oszk.hu/05200/05288/00014/pdf/EPA05288_jogelmeleti_szemle_2003_2_14.pdf

II.1. The Relationship of the LWOP to Substantive Legal Objectives

LWOP is not aligned with the punitive objectives established by the current legal framework. According to Section 79 of the Criminal Code, the objective of punishment is the protection of society, which can only be properly understood in conjunction with both special and general prevention. Thus, the objective of punishment – including societal protection – can only be fulfilled if the sanction effectively achieves both individual and collective prevention. According to the commentary, the legal justification, and the explanatory notes, special prevention is primarily aimed at resocialization, although it may also be achieved through deterrence. The third mode of implementation – incapacitation – is not reflected in the Criminal Code, the commentary, the legal justification, or the explanatory notes, but appears only in the legal literature, and represents the least ideal form of special prevention. Thus, in light of the current objectives of criminal law, incapacitation – which, in the case of LWOP, takes the form of isolation – does not figure among the modes of implementation of special prevention, which constitutes one aspect of societal protection. On this basis, a form of punishment that can achieve special prevention solely through incapacitation is, in theory, not compatible with the current legal framework. László Papp states that complete and permanent isolation renders the penal objectives set forth in the Criminal Code meaningless.[26] It is worth adding, however, that even if isolation were deemed an acceptable mode of realizing the current penal objectives, LWOP would still fail to meet this aim, as the existing legal framework neither guarantees nor can guarantee permanent isolation.[27]

III. Penal Enforcement Law

When narrowing the focus to the objectives of punishment, it remains necessary to examine the objectives of custodial sentences within the broader conceptual framework of criminal law. The Punishment Enforcement Act further elaborates the objectives of punishment with regard to the most severe form of sanction. The commentary to the Punishment Enforcement Act states, in the context of elaborating the principles of enforcement, that the objectives of punishment must not be violated during execution; in other words, the substantive penal objectives and the enforcement objectives must be aligned and must be realized concurrently. This is confirmed both by the law itself and its explanatory notes: „the task of enforcement is to realize the objectives of punishment."[28]

III.1. Section 83(1) of the Punishment Enforcement Act

Section 83(1) of the Punishment Enforcement Act states: „The objective of executing a custodial sentence is to enforce the legal disadvantage prescribed in the final adjudication and, as a result of reintegration activities during enforcement, to facilitate the successful reintegration of the convicted person into society upon release and their transformation into a law-abiding member of the community."[29] In a hardly ambiguous manner, the primary mode of special prevention – namely, resocialization – is articulated here. According to Popper, resocialization and reintegration (as well as rehabilitation) should be understood collectively.[30] Accordingly, in my view, it is not incorrect to treat these concepts as synonymous in the present context, emphasizing the connection between the objectives of enforcement and special prevention. It should be noted at this point that the Punishment Enforcement

[26]See: László, Papp: *Elhúzódó kivégzés. Marad-e a tényleges életfogytig tartó büntetés?* pp. 24. In De Jure. Jogászok magazinja. No.2, 2007.
[27]Decision No. 3/2003 of the Hungarian Supreme Court on the Uniformity of Criminal Law.
[28]Own trans. Punishment Enforcement Act 1. § (1).
[29]Own trans.
[30]See: Péter, Popper: *A kriminális személyiségzavar kialakulása*. Akadémia Kiadó, Budapest, 1970.

Act has expanded the concept of reintegration with a distinctive meaning.[31] Furthermore, it is noteworthy that the substantive and enforcement objectives of custodial sentences are nuanced by the shared prefix „re-" in these concepts, which refers to the restoration of a previously existing state.[32] However, this approach is not always applicable to offenders, as many have never been in a favorable psychological or social condition worth restoring. For those who have lived in severely disadvantaged circumstances from birth, grappling with numerous social and individual problems as well as various deficiencies in socialization, the ideal objective would not be the restoration of a former state, but rather the establishment of better living conditions.[33] Thus, according to Section 83(1) of the Punishment Enforcement Act, in the case of fixed-term imprisonment and life imprisonment with the possibility of parole, a conjunction of objectives is evident regarding the objective of the punishment. The aims are the enforcement of the legal disadvantage and reintegration, the latter being the most preferred mode of realization of special prevention. The Punishment Enforcement Act states expressis verbis that, in both fixed-term imprisonment and life imprisonment with the possibility of parole, the convicted person's release is anticipated. This calls into question the legitimacy of the term „life imprisonment" in light of the principle *nullum crimen, nulla poena sine lege certa*, as it clearly appears that, contrary to the name, the purpose is not for the sentence to last for life. The legal justification of the Punishment Enforcement Act reinforce the latter statement in relation to Section 83, clarifying that the objective of enforcement is identical for both fixed-term imprisonment and life imprisonment with the possibility of parole: „The conceptual definition of the purpose of imprisonment, in harmony with the provisions of the Criminal Code, distinguishes between fixed-term imprisonment and the so-called LWOP."[34] Argumentum a contrario: the conceptual definition of the purpose of imprisonment, in accordance with the provisions of the Criminal Code, does not distinguish between fixed-term imprisonment and the so-called life imprisonment with the possibility of parole. Neither the law, nor the commentary, nor the legal justification, nor the explanatory notes differentiate between these two sanctions with regard to the enforcement objectives of custodial sentences. However, such differentiation is made between fixed-term imprisonment and LWOP.

III.2. Section 83(2) of the Punishment Enforcement Act

The following paragraph of the same section refines the rule as follows: „The purpose of executing life imprisonment imposed without the possibility of parole is, in the interest of protecting society, to enforce the legal disadvantage prescribed in the final adjudication."[35] Thus, in the case of LWOP the objective of enforcement is reduced to the enforcement of the legal disadvantage. This second paragraph does not dispel the doubts surrounding the purpose of LWOP; rather, it declares them. For it clearly outlines an alarming tendency, namely that in this punishment, the purpose of detention is detention itself,[36] which is inconsistent with both the substantive and enforcement objectives.

The commentary on the Punishment Enforcement Act addresses this troubling assertion with an elegant formulation: „The legislator also reflected on the perspectivelessness of enforcing LWOP from the standpoint of reintegration, by defining the purpose of enforcement solely as the enforcement of the legal disadvantage imposed in the final adjudication. In principle, the »minimization« of the objective of punishment significantly narrows the range of means that can be assigned to that purpose."[37] On this

[31]Legal justification of the Punishment Enforcement Act https://www.parlament.hu/irom39/13096/13096.pdf (2025.05.25.)
[32]Judit, Szabó: *Rehabilitálható-e a rehabilitáció?* pp. 36. In Börtönügyi Szemle, Vol. 33, No. 4, 2014. pp. 28 – 40.
[33]See: Robinson, Gwen. – Crow, Iain.: *Offender rehabilitation: Theory, research and practice.* Sage Publications Ltd. 2009.
[34]Own trans. Legal justification of the Punishment Enforcement Act https://www.parlament.hu/irom39/13096/13096.pdf (2025.05.25.)
[35]Own trans. Punishment Enforcement Act 83. § (2).
[36]Lajos, Garami: *Élő halottak? A tényleges életfogytiglani szabadságvesztés végrehajtásának fő problémái.* pp.56. In Börtönügyi Szemle, Vol. 18, No. 2, 1999. pp. 56 – 63.
[37]Own trans. József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539

basis, not only is the substantive law objective of punishment and the enforcement objective of custodial sentences significantly eroded, but it is also explicitly acknowledged that this „minimized" objective does not appear to be effectively realized due to a lack of adequate means. Regarding the enforcement of the legal disadvantage as the sole enforcement objective of LWOP, the explanatory notes to the Punishment Enforcement Act align this with the imperative that imprisonment must be carried out as a punishment. From this perspective, the regime of enforcement plays a crucial role in ensuring the realization of all disadvantages inherent to the nature of the punishment.[38] „Previously, the legal framework contained no provision concerning the purpose of LWOP; this gap was filled by the Punishment Enforcement Act, thus introducing this as a new element in the regulation."[39] Ergo, the legislator responded to the lacuna surrounding the purpose of LWOP, albeit, in my view, by creating a series of anomalies.

The commentary on the Punishment Enforcement Act also notes that, in the case of LWOP, the regulation focuses on the enforcement of the legal disadvantage and the protection of society.[40] Accordingly, the commentary attempts to link the purpose of LWOP, alongside the enforcement of the legal disadvantage, to societal protection as the primary substantive law objective. However, the determination of the true purpose of LWOP is complicated by the phrasing in the legal justification to the Punishment Enforcement Act, which emphasizes solely the protection of society: „A significant innovation is that the law defines an adequate purpose concept for life imprisonment without parole, which can be none other than the protection of society."[41] Thus, on the one hand, the Punishment Enforcement Act defines the purpose of LWOP as the enforcement of the legal disadvantage. On the other hand, according to the commentary, the regulation focuses on both the enforcement of the legal disadvantage and the protection of society in cases of LWOP. Thirdly, the legal justification to the Act designate the protection of society as the sole purpose in such cases.

III.3. Sections 83 (6) – (8) of the Punishment Enforcement Act

Proceeding further through the subsections of Section 83 of the Punishment Enforcement Act, it is expressly stated that: „During the execution of a custodial sentence, the convict may only be separated from society to the extent necessary to achieve the objectives of the punishment**.** The convict must be allowed to establish, maintain, and develop family, personal, and social relationships, provided that these do not conflict with the objective of the punishment or with the order and security of the institution."[42] In addition, the law also provides that *„during the execution of a custodial sentence, it must be ensured that the convict's self-esteem, personality, and sense of responsibility can develop, thereby preparing them for an independent life after release in accordance with societal expectations."*[43] Three key observations can be made with confidence regarding these two subsections. First, they reinforce the reintegrative objective of imprisonment. Second, they anticipate the eventual release of the convict. Third, they draw no distinction between fixed-term imprisonment, life imprisonment with the possibility of parole, and LWOP.[44] This interpretation is further reinforced by the explanatory notes to the Punishment Enforcement Act, which states: *„One of the primary tasks of the penitentiary system is to facilitate the reintegration of the convict into society. This means that upon release, the individual*

[38]Ervin, Belovics – György, Vókó: *A büntetésvégrehajtási törvény magyarázata.* HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2014. https://jogkodex.hu/doc/2116706

[39]Own trans. József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539

[40]Ibid.

[41]Own trans. Legal justification of the Punishment Enforcement Act https://www.parlament.hu/irom39/13096/13096.pdf (2025.05.25.)

[42]Own trans. Punishment Enforcement Act 83. § (6).

[43]Own trans. Punishment Enforcement Act 83. § (7).

[44]Kornélia, Hagymási: *Végtelen idő a rácsok mögött: avagy mennyiben van ma létjogosultsága Magyarországon a tényleges életfogytig tartó szabadságvesztésnek.* pp.68. In Börtönügyi Szemle, Vol.28, No.2, 2009. pp. 61 – 76.

should be in a position, and possess the necessary attitude, to be both capable of and internally motivated to become a useful member of society."[45] It must again be emphasized that uncertainty may arise in determining the true purpose and content of the aforementioned forms of punishment, as neither the Act nor its commentary makes any distinction at this point between fixed-term imprisonment, life imprisonment with the possibility of parole, and LWOP. In this context, a violation of the principle of legal certainty may also be raised, as the cited provisions of the Punishment Enforcement Act stand in contrast to the Criminal Code, which clearly differentiates between fixed-term imprisonment and life imprisonment. Accordingly, when the Punishment Enforcement Act refers *merely* to imprisonment, it should, in principle, be interpreted as encompassing all three forms. However, the content of the regulation clearly reveals the opposite: the provisions do not treat these forms uniformly. The commentary further affirms the reintegrative purpose of imprisonment – explicitly including long-term imprisonment – by stating that the execution of the sentence must not result in the release of individuals who are physically or mentally harmed. Such an outcome would be fundamentally at odds with the objective of the punishment and the interests of society. Therefore, in order to counterbalance or eliminate the aforementioned harmful effects of long-term imprisonment, the penitentiary system must employ appropriate measures and institutional tools.[46] At this point, the commentary begins to differentiate between types of imprisonment, but it does so by introducing a new term: *„long-term imprisonment."* However, neither the legal justification of the Punishment Enforcement Act, nor its explanatory notes or commentary, provides a definition of what constitutes long-term imprisonment. There is no consensus in this regard, but several points can be asserted. First, shortly after the turn of the millennium, Ferenc Nagy defined long-term imprisonment as a custodial sentence of five years or more.[47] Second, Recommendation Rec(2003)23 of the Committee of Ministers of the Council of Europe likewise identified, in the context of fixed-term imprisonment, sentences exceeding five years as constituting long-term imprisonment.[48] Third, based on a grammatical interpretation, it may also be inferred that only sentences exceeding ten years fall within this category under Section 186 (1) of the Punishment Enforcement Act which is entitled *„Preparation for release in the case of prisoners serving long-term imprisonment"*.[49] The provision under Section 186 (1) of the Punishment Enforcement Act states: *„A convict who has continuously served at least ten years of a custodial sentence in a penitentiary institution must be included in a reintegration programme, the rules of which the convict is obliged to follow."*[50] On this basis, the category of long-term imprisonment may encompass fixed-term imprisonment as well as life imprisonment with or without the possibility of parole. Fourth, the picture is further nuanced by the fact that, under the Punishment Enforcement Act, prisoners sentenced to at least fifteen years of imprisonment, in addition to those serving life sentences with the possibility of parole, may be placed in a special unit for long-term prisoners.[51]

[45]Own trans. Ervin, Belovics – György, Vókó: *A büntetésvégrehajtási törvény magyarázata.* HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2014. https://jogkodex.hu/doc/2116706

[46]József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539

[47]Ferenc, Nagy: *A hosszú tartamú szabadságvesztés büntetőjogi kérdéseiről: rövid hazai áttekintés és nemzetközi kitekintés alapján*. pp. 15. In Börtönügyi Szemle, Vol. 24, No.2, 2005. pp. 7 – 18.

[48]Ibid.

[49]Own trans.

[50]Own trans. Punishment Enforcement Act 186. § (1).

[51]See: Punishment Enforcement Act 105. § (1).

III.4. The Relationship of LWOP to the Objectives of Execution

First Proposition: The anomaly between substantive and execution objectives in LWOP. In the case of LWOP a notable anomaly emerges between the objectives set by substantive criminal law and those prescribed by the law governing sentence execution. Substantive law assigns LWOP the objectives of social protection, as well as specific and general prevention, whereas penal enforcement defines its purpose as the enforcement of the legal sanction. This stands in contrast to the principle, reiterated throughout the Punishment Enforcement Act, that the aim of enforcement is to realize the objectives of punishment. What, then, can the enforcement of the legal sanction mean under the Punishment Enforcement Act? The current Criminal Code and Act IV of 1978 demonstrate minimal divergence with regard to penal objectives, a difference that lies primarily in the terminology of „legal sanction." The current legislation refrains from defining „punishment" or explicitly stating its nature as a legal sanction; however, the legal justification clarifies: *„Punishment is a legal sanction imposed due to the commission of a criminal offense, proportionate to the danger the offense poses to society."*[52] Thus, under substantive law, the legal sanction is effectively synonymous with the punishment itself. As previously illustrated, according to the explanatory notes to the Punishment Enforcement Act, the enforcement of the legal sanction means that imprisonment must be executed as punishment, and it is the task of enforcement to impose the inherent burdens essential to its nature. The explanatory notes further emphasizes that *„imprisonment as a punishment must consist solely of the deprivation of liberty,"* and that *„the fundamental punitive element, the true punishment, is expressed in the deprivation of freedom, i.e., incarceration."*[53] Therefore, in the case of LWOP, the punishment – i.e., the legal sanction – is the incarceration itself; the sole objective is the enforcement of this sanction. However, the purpose of punishment cannot be simply the enforcement of the legal sanction, since the sanction's very nature is an inherent conceptual element of punishment, automatically realized in every instance. This suggests that the legislator has, in effect, removed the penal objective from the regulatory framework in the context of LWOP. Legal sanction equals punishment; in LWOP, the objective of punishment is the enforcement of the sanction. Put differently, the purpose of punishment in LWOP is punishment itself, consisting of the deprivation of liberty – incarceration. In other words, the objective of LWOP is incarceration. How does this relate to special prevention? The Punishment Enforcement Act stipulates that in the case of LWOP, the enforcement of the legal sanction is conducted in the interest of protecting society. Accordingly, LWOP protects society *through incarceration,* which amounts to isolation. As elaborated above, however, isolation cannot fully satisfy penal objectives. Once again, it must be stressed that the current regulation does not guarantee permanent incapacitation even in cases of LWOP.

Second Assertion**:** The Punishment Enforcement Act, along with its justification, commentary, and explanatory notes, presents a lack of clarity regarding the true purpose of LWOP. Furthermore, the terminology used in these sources is inconsistent, as it is not always clear when they refer to fixed-term imprisonment, life imprisonment with or without the possibility of parole. Additionally, the precise definition of long-term imprisonment remains uncertain.

Commentary on the Punishment Enforcement Act**:**

(1) The execution of imprisonment focuses on the enforcement of the legal sanction and the protection of society.[54]

(2) Regarding the reintegration objective of imprisonment, and specifically long-term imprisonment, the execution must not result in releasing physically or mentally impaired individuals into free life, as this would be fundamentally at odds with the purpose of punishment and the interests of society.[55]

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[52]Own trans. See: Anikó, Pallagi: *A tényleges életfogytig tartó szabadságvesztés a büntetőpolitika szemszögéből.* pp. 75. In Belügyi Szemle, Vol. 62, No. 12, 2014. pp. 75 – 98.

[53]Own trans. Ervin, Belovics – György, Vókó: *A büntetésvégrehajtási törvény magyarázata.* HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2014. https://jogkodex.hu/doc/2116706

[54]Own trans. József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539

[55]Own trans. Ibid.

The problematics of the (1) first excerpted passage from the commentary have been addressed earlier. The (2) second quoted passage from the commentary is irreconcilable with the concept of LWOP. It must be emphasized again that, in the case of LWOP, prisoners may potentially be released, despite reintegration not being an objective of their execution. Given the strict regime governing their detention, they must comply with the most stringent rules, which tend to reinforce personality traits that are distinctly counterproductive to social reintegration. The commentary mandates that the penal enforcement system employ adequate means to mitigate the harmful effects of imprisonment. Yet, it also stipulates that, in the context of LWOP, the „minimization" of the punishment's purpose significantly narrows the range of instruments available to achieve this goal.[56]Argumentum *a contrario:* it is fundamentally contrary to the objectives of punishment and societal interests if the penal enforcement system fails to provide instruments to counterbalance the detrimental effects of imprisonment (including long-term imprisonment). According to the execution objectives for LWOP, no such mitigating measures are envisaged, which stands in contradiction to the objectives of punishment. Furthermore, it is important to underscore that additional interpretative difficulties arise here, as the Punishment Enforcement Act – although it previously did not differentiate between various forms of imprisonment – introduces a new term at this point (long-term imprisonment), the exact scope of which remains unsettled even in scholarly discourse.

Justification of the Punishment Enforcement Act**:**
The sole objective of LWOP must be the protection of society.[57]
Punishment Enforcement Act**:**
The purpose of LWOP is the enforcement of the legal sanction in order to protect society.[58]

Regarding the Punishment Enforcement Act and its justification, following the same line of reasoning elaborated above, it can be concluded that, under current regulations, LWOP fails to effectively realize the protection of society.

IV. LWOP in the Context of the Principle of Proportionality in Punishment

In the realm of penal objectives, the relationship between LWOP and the principle of proportionality emerges as a distinctly relevant issue. This question arguably became particularly pressing following the abolition of the capital punishment. A widely held and by no means unfounded argument in favor of LWOP is that it constitutes the only genuine alternative to the capital punishment, which for a long time stood at the pinnacle of the sanctioning system. In Hungary, the organic connection between these two sanctions was already evident prior to the abolition of the capital punishment: „For example, the Presidential Council often commuted a portion of death sentences imposed to life imprisonment on grounds of clemency."[59] As Gergely Gönczi highlights, one of the Western world's greatest challenges for centuries has been to adequately fill the void left by the abolition of the capital punishment.[60] According to many, life imprisonment represents the only viable alternative to fill this

[56]József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539
[57]Own trans. Legal justification of the Punishment Enforcement Act https://www.parlament.hu/irom39/13096/13096.pdf (2025.05.25.)
[58]Own trans. Punishment Enforcement Act 83. § (2).
[59]Own trans. István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21
[60] See: Gergely, Gönczi: *A tényleges életfogytig tartó szabadságvesztés alapjogi vonatkozásai – Alkotmányos büntetőjog és a strasbourgi joggyakorlat.* pp. 11. In Acta Humana, Vol. 3, No. 2, 2015. pp. 7 – 40. https://real.mtak.hu/122344/1/AH_2015_2_Gonczi_Gergely.pdf

particular void.[61] However, some argue that following the abolition of the capital punishment, life imprisonment alone is insufficient to fulfill this role.[62] Dávid Vig characterized the post-abolition penal system as a „decapitated sanctioning system," whose fundamental problem lies in the fact that, in cases of life imprisonment, criminal law is powerless against offenders who have committed the most serious crimes[63] meaning it is incapable of delivering a punishment proportionate to the gravity of the offense. András Polgár elaborates that the aforementioned regulatory gap violated society's sense of justice, exerting a dysfunctional effect on voluntary law compliance. The problem manifested in the absence of proportional punishment. While, in the majority of cases, offenders of lesser serious crimes were sanctioned proportionately by law enforcement authorities, offenders of particularly grave offenses received disproportionately lenient punishments, resulting in the failure to achieve the penal objectives.[64] To support the preceding assertion: Between 1990 and 1998, the Criminal Division of the Supreme Court rendered numerous substantive decisions in concrete cases aimed at remedying the adverse nationwide phenomenon arising in sentencing practices following the Constitutional Court's abolition of the capital punishment. This phenomenon was characterized by the imposition of disproportionately lenient sentences inconsistent with a just system of proportional responsibility, as well as inconsistent and sometimes extreme disparities in sentencing. The Criminal Division's efforts sought to eliminate these issues and stabilize judicial practice.[65] The introduction of LWOP was the legislative solution to this situation, excluding the possibility of conditional release and thus serving as a gap-filling measure by the legislator. Its purpose was to protect society from offenders who have exhibited such grave conduct fundamentally opposed to social norms that their reintegration into society is effectively hopeless.[66] András Polgár states that „without this sanction in certain egregious cases, the punishment would not be proportionate to the offense."[67] Moreover, it is important to highlight the parallel opinion of András Szabó, a proponent of the absolute theory,[68] expressed in the Constitutional Court's decision 23/1990 AB, where he asserts that it is sufficient for punishment to be proportionate to the offense; it need not serve any other purpose: „The purpose of punishment exists in itself: retribution regardless of any other aim."[69]

As previously noted, the commentary on the current Criminal Code also addresses that, alongside the enumerated penal objectives in the statutory text, one of the most important requirements imposed on punishments is the principle of proportionality, since Hungarian criminal law is fundamentally based on the principle of proportional liability. Furthermore, it is established that through proportionality, a just punishment can be ensured – one that not only complies with substantive legal norms but also aligns with societal demands. In this regard, education – which inherently encompasses both special and general prevention in the commentary's terminology – can only be accorded a lesser emphasis.[70] In connection with this, the following observation may be made: according to the

[61] See: Johnson, Robert – McGonagall-Smith, Sandra: *Life Without Parole, America's Other Death Penalty*. In The Prison Journal. Vol. 88, No. 2, 2008. pp. 328–346.

[62]András, Polgár: *Ad dies vitae. Az életfogytig tartó szabadságvesztés szabályozása, gyakorlata és végrehajtása.* [Doktori disszertáció] Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2017. pp. 21. https://pea.lib.pte.hu/server/api/core/bitstreams/38a926c4-9e62-426b-8c91-f877dcc940da/content

[63]Dávid, Vig: Izoláció a társadalomvédelem bűvöletében. Határozatlan ideig tartó szabadságmegvonás Európában. In dr. Virág György (Ed.): *Kriminológiai Tanulmányok 46.* Országos Kriminológiai Intézet. pp. 38 – 51. pp.39.

[64]András, Polgár: *Ad dies vitae. Az életfogytig tartó szabadságvesztés szabályozása, gyakorlata és végrehajtása.* [Doktori disszertáció] Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2017. pp. 21. https://pea.lib.pte.hu/server/api/core/bitstreams/38a926c4-9e62-426b-8c91-f877dcc940da/content

[65]Own trans. István, Kónya: *Érzelmek és indulatok az életfogytig körül.* pp. 130. In Magyar Jog. Vol. 64, No. 3, 2017. pp. 129 – 140.

[66]Ádám, Békés: *Életfogytig tartó vita? - Tennivalók egy strasbourgi döntés kapcsán*. pp. 6. In Iustum. Aequum. Salutare. Vol. 10, No.2, 2014. pp. 5 – 12.

[67]Own trans. András, Polgár: *Ad dies vitae. Az életfogytig tartó szabadságvesztés szabályozása, gyakorlata és végrehajtása.* [Doktori disszertáció] Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2017. pp. 24. https://pea.lib.pte.hu/server/api/core/bitstreams/38a926c4-9e62-426b-8c91-f877dcc940da/content

[68]Zsuzsanna, Juhász In: Karsai Krisztina (Ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez.* Wolters Kluwer Hungary, Budapest, 2022. pp. 221.

[69]Own trans. Point 2 of the concurring opinion of András Szabó in Decision No. 23/1990 of the Hungarian Constitutional CourtDecision 23/1990 of the Hungarian Constitutional Court.

[70]Róza, Mészár In Kónya István (Ed.) *Magyar Büntetőjog, Kommentár a gyakorlat számára*, *4. kiadás, I. kötet*. Orac Kiadó Kft, 2024. pp. 314.

commentaries, the enforcement of the principle of proportionality enables the achievement of just punishment that satisfies both substantive legal requirements and society's sense of justice. Let us examine these two factors – compliance with substantive law and satisfaction of society's sense of justice – in the context of LWOP. The substantive legal rules here primarily relate to the penal objectives, which were previously detailed. According to these, a proportionate punishment complies with substantive law only if special prevention is realized through resocialization or deterrence. Based on the above, LWOP fails to meet the substantive legal requirements and thus does not fulfill the first „condition" of proportionate punishment. The second „component" is the satisfaction of society's sense of justice, which, in my view, is by no means irrelevant but should be treated at most as a subjective factor. Opinions vary in this regard. For instance, Mihály Tóth warns against conflating social justice sentiments and vengeance with societal protection – the current penal objective.[71] András Polgár, citing Zoltán Márki, argues that the sanction system must also meet social expectations.[72] From a „meta-criminal law" perspective, it is worth emphasizing that in an indirect democracy, society participates in legislation only indirectly. The legislative body is formed based on the votes of the electorate, and this elected body enacts laws – including criminal law norms – thereby representing society indirectly. From a constitutional law standpoint, compliance with social expectations need only be ensured every four years at most.[73] In this context, the role of penal policy is also critical. Penal policy is the branch of criminal policy that determines which human behaviors should be punishable and what the state's response to offenders should be. Criminal policy forms part of general policy; it shapes criminal legislation and sets criteria to be enforced during law application, albeit with only moderate influence over the latter.[74] Accordingly, criminal policy is tied not only to criminal law but also to politics, inevitably reflecting the interests of society and its various groups. The legislator plays a vital role in harmonizing the rule-of-law expectations regarding criminal laws with societal demands.[75] In my opinion, this latter harmony is absent in the case of LWOP, at least concerning its conformity with substantive law. The commentary's assertion that education should play only a minor role when proportional punishment is achieved appears somewhat problematic. As previously discussed, education clearly relates to prevention. Although the normative authority of the commentary may be questioned, it nevertheless risks undermining legal certainty by suggesting a hierarchy among penal objectives. This is done despite the fact that prevention as a penal objective expressis verbis appears in the Criminal Code. Moreover, the primary execution objective of imprisonment focus largely on achieving special prevention through resocialization. As argued above, the principle of proportionality can only be fulfilled if substantive legal norms are met. How could such norms be satisfied if proportionate punishment is subordinated to the normative preventive objective of the Criminal Code? It is undisputed that the requirement of proportionate punishment belongs to the current criminal law; however, it cannot override statutory penal objectives but must be realized together with them. Otherwise, it would be possible, for example, to legitimize the capital punishment since, for certain acts, it could be considered the only proportionate response – applying which, as the commentary put it, would allow the rule-of-law principles to have „only a minor role."

[71]Mihály, Tóth: Kiszámítható döntések a kiszámíthatlan jövőről. https://ujbtk.hu/toth-mihaly-kiszamithato-dontesek-a-kiszamithatatlan-jovorol/

[72]András, Polgár: *Ad dies vitae. Az életfogytig tartó szabadságvesztés szabályozása, gyakorlata és végrehajtása.* [Doktori disszertáció] Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2017. pp. 25. https://pea.lib.pte.hu/server/api/core/bitstreams/38a926c4-9e62-426b-8c91-f877dcc940da/content

[73]Ádám, Balássy et al.: *The normative questions of life imprisonment and capital punishment: Morality or legality.* In *De Iurisprudentia et Iure Publico: Jog- és Politikatudományi Folyóirat. Vol 14, No. 3, 2023.*

[74]István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21 and József, Földvári: *Kriminálpolitika*. Közgazdasági és Jogi Könyvkiadó. 1987. pp. 32-33.

[75]Pallagi: *A tényleges életfogytig tartó szabadságvesztés a büntetőpolitika szemszögéből.* pp. 76. In Belügyi Szemle, Vol. 62, No. 12, 2014. pp. 75 – 98.

V. Additional anomalies concerning the LWOP in light of recent legislative developments

The frequently cited commentary on the Punishment Enforcement Act states regarding the purpose of LWOP that „previously, the law did not contain any provision related to the purpose of life imprisonment without parole; this deficiency was remedied by the Punishment Enforcement Act, thus introducing this as a new element in the regulation."[76] Therefore, the definition of the purpose of LWOP in Section 83(2) of the Punishment Enforcement Act constituted a gap-filling measure by the legislator. Based on the above, it is a concerning trend that this long-overdue legislative measure by the legislator may result in multiple anomalies, threatening the consistency of criminal lawmaking and, consequently, the rule of law principle of nullum crimen / nulla poena sine lege certa. Moreover, recent legislation appears to reinforce this particular trend. On one hand, regulations concerning those sentenced to LWOP have become stricter, rendering them even more counterproductive from the perspective of reintegration:
Additional restrictive provisions apply to inmates serving LWOP, requiring their classification in category V, excluding any advancement to categories I or II. Furthermore, even if reclassification to categories III or IV occurs, they are not permitted visitation outside the institution, temporary leave, or furloughs, nor can they participate in external employment.[77] Additionally, a longstanding problem that adversely affects the enforcement of LWOP, independently of other anomalies, is that the Prison and Penitentiary of Szeged fundamentally serves as the executing institution for LWOP sentences in Hungary. However, due to increasing overcrowding challenges, the capacity of the „Csillag ward" has reached its professional tolerance limit. Consequently, inmates sentenced to LWOP are now serving their sentences in other correctional institutions as well, which further undermines the potential for successful reintegration.[78]

Secondly, Act XXX of 2024, by amending Section 104 of the Criminal Code, along with the thirteenth amendment to the Fundamental Law, abolished the President's power to grant pardons in cases concerning certain offences against sexual freedom and sexual morality. This may create further anomalies in relation to LWOP. In light of the case law of the European Court of Human Rights, particularly the case of Magyar László v. Hungary, the Hungarian legal system amended the Punishment Enforcement Act through Sections 93–162 of Act LXXII of 2014 and introduced the mandatory pardon procedure for LWOP cases, effective from January 1, 2015.[79] According to this regulation, the „final word" rests with the President of the Republic, who alone may grant pardon. Thus, this amendment gave rise to the contradiction previously identified in this study: LWOP is not truly „life" imprisonment, since after forty years a mandatory pardon procedure must be initiated ex officio. As a result, offenders may be released on parole – it must be emphasized again – even if reintegration was never an execution objective in their case. Moreover, the increasingly stringent rules governing execution that must be observed are explicitly counterproductive regarding their (re)integration into society. A brief systematic overview notes that pardon can be divided into general pardon and individual pardon. The former is exercised by the Parliament, while the latter is exercised by the President of the Republic. Pardon granted by the President of the Republic can be further categorized into three types: procedural pardon, executive pardon, and expungement by pardon.[80] At this point, contradictions can be identified among certain commentaries on the current regulations. The commentary on Section 25 of the Criminal Code states that the mandatory pardon procedure qualifies as executive pardon, as it may result in a reduction of the

[76]Own trans. József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539
[77]Own trans. Ágnes, Czine: *A büntetés-végrehajtási döntések alkotmányossági értékelése, megítélése, fi-gyelemmel a büntetés-végrehajtási kreditrendszer bevezetésére.* pp. 1875. In Belügyi Szemle, Vol. 72, No. 10, 2024. pp. 1859 – 1879.
[78]Pál, Kiszely: *Merre tovább, magyar életfogytiglan?* pp. 47. In Börtönügyi Szemle, Vol. 32, No. 1, pp. 47 – 64.
[79]Decision No. 3/2015 of the Curia on the Uniformity of Criminal Law.
[80]Zsuzsanna, Árva: Nagykommentár Magyarország Alaptörvényéhez. Wolters Kluwer Hungary. Budapest, 2025. https://uj.jogtar.hu/#doc/db/428/id/A20Y2225.KK/ts/20250301/lr/chain8790

punishment imposed by the judgment.[81] Furthermore, the same commentary on this section also notes in several places that executive pardon within the scope of individual pardon – including pardon granted in the mandatory pardon procedure – may also be exercised by the Pardon Committee as per the Punishment Enforcement Act.[82] In contrast, the Punishment Enforcement Act and other previously cited sources establish that only the President of the Republic can exercise individual pardon, and that the Pardon Committee is an ad hoc body assisting in the mandatory pardon procedure.[83]

Thus, through the thirteenth amendment to the Fundamental Law, Article 9 was supplemented with a new paragraph empowering a cardinal act to limit the President of the Republic's authority to grant individual pardons. Based on this authorization, Section 104 of the Criminal Code was amended, and the newly introduced rules in paragraphs (3)(a) and (3)(b) exclude the President's power to grant pardons in certain cases. Accordingly, Section 464 of the Criminal Code stipulates that Section 104 (3) is cardinal based on Article 9 (8) of the Fundamental Law – this being the only and first cardinal provision of the Criminal Code. This in itself represents a legal anomaly, as numerous legal and quasi-legal sources have affirmed the President's unrestricted and discretionary power to grant individual pardons. Decision No. 3/2003 of the Hungarian Supreme Court on the Uniformity of Criminal Law explicitly affirms that the President's power to grant pardons is unrestricted in nature. The 31/1997 Constitutional Court Decision further affirms that pardon is a discretionary power of the President, whereby the State waives its criminal claim upon its exercise. Equally important are the findings of the 144/2008 Constitutional Court Decision, which hold that „by the very nature of the President's decision-making authority, he/she may, in the exercise of discretion, decide in any case to mitigate or remit the imposed penalty, or to relieve the offender of the disadvantages associated with a criminal record."[84]

There are strong grounds to assume that Section 104 of the Criminal Code concerns expungement by pardon, which is one of the three forms of individual pardon. This interpretation is supported by both grammatical and systematic interpretation, as the provision is located under the title of „Expungement by pardon." Furthermore, the commentary on Section 104 of the Criminal Code confirms this: „In addition to procedural and executive pardon, the third form of pardon is expungement by pardon, which grants relief from the legal consequences associated with a criminal record."[85] However, the commentary to Section 25 of the Criminal Code presents the following statement concerning the types of pardon: „As of 1 July 2024, the provision of the Criminal Code adopted on the basis of a constitutional mandate enters into force, which excludes certain offenders – convicted of specific crimes – from the scope of executive pardon. See the commentary on Section 104 and the new Section 464 of the Criminal Code."[86] The quoted commentary unambiguously identifies the restriction laid down in Section 104 (3) a) and (3) b) of the Criminal Code as a limitation on executive pardon – despite the fact that, theoretically, Section 104 is intended to regulate the matter of expungement by pardon. Although Section 104 (3) states that „The President of the Republic may not exercise the right to grant individual pardons" – a wording which could arguably be interpreted as applying to all three forms of individual pardon – the grammatical and systematic interpretation indicates, with little room for ambiguity, that this provision can only pertain to expungement by pardon. If the new amendment to Section 104 does indeed restrict the executive pardon, a situation may arise in which the mandatory pardon procedure becomes entirely void of effect: the offender is sentenced to LWOP, yet there is no theoretical possibility of release. This would mean that neither a mandatory pardon procedure nor a general expungement by pardon – independent of the former – would be

[81]Krisztina, Karsai In Krisztina, Karsai (Ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez*. Wolters Kluwer Hungary. Budapest, 2024. https://uj.jogtar.hu/#doc/db/346/id/A13Y1369.KK/ts/20250301/lr/chain22041

[82]Ibid.

[83]Marianna, Végh In Juhász Zsuzsanna (Ed.) *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. Budapest, 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20240701/lr/chain9539

[84]Own trans. Decision No. 144/2008 of the Hungarian Constitutional Court.

[85]Own trans. Zsuzsanna, Juhász In Krisztina, Karsai (Ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez*. Wolters Kluwer Hungary. Budapest, 2024. https://uj.jogtar.hu/#doc/db/346/id/A13Y1369.KK/ts/20250301/lr/chain22041

[86]Own trans. Krisztina, Karsai In Krisztina, Karsai (Ed.): *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez*. Wolters Kluwer Hungary. Budapest, 2024. https://uj.jogtar.hu/#doc/db/346/id/A13Y1369.KK/ts/20250301/lr/chain22041

available. This is particularly problematic given that, under the previously applicable rules, an offender sentenced to LWOP could still submit a pardon request under the general provisions, regardless of the mandatory pardon procedure.

Decision No. 3/2020 of the Curia on the Uniformity of Criminal Law establishes that LWOP may only be imposed for offences listed in Section 44 (1) of the Criminal Code. Accordingly, where an offender is sentenced to LWOP and, pursuant to Section 104 (3) of the Criminal Code, is rendered ineligible for presidential pardon, an illustrative case would be the concurrence (real concurrence) of aggravated homicide and a sexual offence. Under current law, such sentencing is not excluded. For instance:

If the defendant commits the sexual act in connection with a homicide motivated by financial gain, the aggravating circumstance of acting out of a base motive can only be established if the sexual act was at least one of the motives behind the killing. In all other cases, the two offences are to be treated as a real concurrence.[87]

If the intent to commit the sexual offence arises independently of (or subsequent to) the homicide, the basic case of homicide – or another aggravated form thereof – exists in real concurrence with sexual assault.[88]

This is concerning for two main reasons: First, such a legislative approach may violate Hungary's previous legislative obligations, as pointed out by Gál. „If we categorically exclude any type of criminal offence from the scope of individual pardon, we once again fail to comply with the jurisprudence of the European Court of Human Rights in Strasbourg." [89] Second, this would render the President's individual, unlimited, and discretionary power of pardon void – contrary to the findings of the Constitutional Court in Decision 144/2008. Thus, this segment of the Hungarian legal system would not only regress to the state prior to the Magyar v. Hungary judgment, but would in fact represent a narrower framework. Notably, in Magyar v. Hungary judgment, one of Hungary's core arguments was that presidential pardon served as a legal institution capable of making release possible in any case. Following the present amendment, however, this mechanism is no longer available in certain cases.[90] An additional anomaly arises from the rule that if the President does not grant pardon during the mandatory pardon procedure, the procedure must be repeated ex officio every two years. According to the legal justification of the Punishment Enforcement Act this mirrors the rules on conditional release in the case of life imprisonment with parole. However, in such cases, if conditional release is not granted at the earliest possible date, the law requires annual review thereafter. No such rule exists with regard to the mandatory pardon procedure.[91]

Conclusion

The complex set of anomalies surrounding LWOP raises serious concerns, particularly in light of Section 79 of the Criminal Code (social protection, specific and general prevention), Section 83 (2) of the Punishment Enforcement Act (application of legal disadvantage), the commentary to the Criminal Code (primacy of proportionate punishment), and the contradictions found between the law, legal justification, commentary, and explanatory notes of the Punishment Enforcement Act. In addition, the relationship between LWOP, the objectives of punishment, and the principle of proportionality also appears problematic, and recent legislative developments do not seem to adequately address the underlying risks of codification-related inconsistencies.

The principle of legality – nullum crimen, nulla poena sine lege – is a constitutionally declared, systemic rule of the criminal law. One specific aspect of this is nullum crimen, nulla poena sine lege certa, that is, the requirement of clear and precise legal provisions and the prohibition of vague or indeterminate penal norms. Closely connected to this is another key rule-of-law principle: subsidiarity, from which the ultima ratio nature of criminal law is derived. All of this underlines the fundamental

[87]Own trans. Court decision No. BH 1995.194.
[88]Own trans. Court decision No. BH 1978.111.
[89]Own trans. István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21
[90]Decision No. 3/2015 of the Curia on the Uniformity of Criminal Law.
[91]Punishment Enforcement Act 57. § (8)

importance of legal certainty, a core element of the rule of law,[92] which can only be fully realised through the proper application of the principle of legality. Therefore, the objectives of punishment and enforcement, the relevant legal commentaries, and the legislative justifications must always be clear, unambiguous, and internally consistent – especially in the context of the harshest criminal sanction in a legal system that imposes the greatest restriction on individual fundamental rights. The fulfilment of these standards is the „zero point" of social protection.

The study briefly touched on the importance of criminal justice policy, which fundamentally determines criminal legislation and is inevitably influenced by broader political currents. Recent legislative changes have been driven by high-profile criminal cases that sparked public reaction. While such reactionary legislation may yield short-term satisfaction among the public, it poses the risk of triggering systemic anomalies, some of which this study has attempted to illustrate. As Gál aptly observes: „It is not necessarily a healthy trend for our criminal code – already sufficiently deterrent in nature – to be further tightened to satisfy actual political expectations or the real or perceived emotions and demands of society." It must also be acknowledged, however, that certain legislative changes are the necessary consequences of the extraordinarily rapid societal and economic transformations of our time. This helps explain why the current Criminal Code has already undergone numerous amendments.[93] Although LWOP affects a relatively small group of people – slightly more than fifty individuals are currently serving this sentence[94] – and there has been no significant increase in recent years (3 in 2023,[95] 4 in 2022,[96] 8 in 2021,[97] and 2 in 2020[98]) – the number of affected individuals should not determine the legal significance of the issue. Recent developments have also highlighted that even „minor details" can challenge the enforcement of rule-of-law criminal justice, proportionality, and fairness – for example, in connection with the limitation periods for the most serious offences committed by juveniles. It is conceivable that an isolated „minor detail," a regulatory anomaly, a legislative gap, or an extreme case may never actually affect the full enforcement of rule-of-law criminal justice; however, if it does – and empirical experience supports this – it can cause serious problems. For this reason, the elimination of the anomalies surrounding LWOP should, in my view, be considered a matter of urgent and high-priority legal reform.

[92]Lénárd, Himpli: *Jog és erkölcs a büntetőjog tükrében*. In Péter, Miskolczi-Bodnár – Éva, Jakab (Eds.): *XXV. Jogász Doktoranduszok Országos Konferenciája.* Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar. 2023. pp.137 – 146. pp. 141.

[93]Own trans. István László, Gál: A köztársasági elnöki kegyelem jogintézményének múltja és lehetséges jövője. https://ujbtk.hu/prof-dr-gal-istvan-laszlo-a-koztarsasagi-elnoki-kegyelem-jogintezmenyenek-multja-es-lehetseges-jovoje/#_ftn21

[94]József, Palló In Zsuzsanna, Juhász (Ed.): *Nagykommentár a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról szóló 2013. évi CCXL. törvényhez.* Wolters Kluwer Hungary. 2024. https://uj.jogtar.hu/#doc/db/375/id/A13Y0240.KK/ts/20250425/lr/chain9539

[95]B/8995 - The Prosecutor General's Report to the Parliamenton the Activities of the Prosecution Service in 2023. https://www.parlament.hu/irom42/08995/08995.pdf (2025.07.25.)

[96]B/5010 - The Prosecutor General's Report to the Parliamenton the Activities of the Prosecution Service in 2022. https://ugyeszseg.hu/wp-content/uploads/2023/09/vegleges-beszamolo-alairassal.pdf (2025.05.25.)

[97]B/950 - The Prosecutor General's Report to the Parliamenton the Activities of the Prosecution Service in 2021. https://ugyeszseg.hu/wp-content/uploads/2022/10/ogy_beszamolo_2021.pdf (2025.05.25.)

[98]B/16954 - The Prosecutor General's Report to the Parliamenton the Activities of the Prosecution Service in 2020. https://ugyeszseg.hu/wp-content/uploads/2022/10/ogy_beszamolo_2020.pdf (2025.05.25.)

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