

The examination of the criminal courts' case-law on sentencing

1. In the Hungarian legal system, the task of sentencing is shared between the legislature and the judiciary, this is the so-called “relatively undetermined” model: while the Criminal Code gives a sentencing range with a minimum and maximum sentence for each criminal offense, the concrete punishment within such range is determined by the criminal court seized with the individual case. There are no criteria set forth in the Criminal Code to be taken into account in the determination of the concrete sentence by the court concerned, therefore it is mainly up to the judiciary to develop them. Currently, Departmental Opinion no. BK. 56 of the Criminal Department of the Curia of Hungary provides guidance for the courts in that regard.
2. The courts' sentencing practice may be examined from various aspects, however, the present investigation focuses on the territorial divergences between the case-laws of the different lower instance courts. The requirement of the uniform interpretation of the law and the principle of equality before the law necessitate that, throughout the country, the courts follow a consistent sentencing practice by imposing substantially similar penalties on those offenders who committed substantially similar criminal offences and pose a substantially similar threat to society. The importance of the consistency in sentencing is also stressed by Recommendation no. R (92) 17 of the Committee of Ministers of the Council of Europe.
3. The working group's analysis covers three types of criminal offenses (theft, robbery and grievous bodily harm) that have been committed by adult perpetrators and have been finally adjudicated by high courts acting as courts of second instance. This choice of subject of investigation is basically justified by the fact that the local courts' sentencing practice is formed and harmonised by the high courts. The determination of the length of imprisonments requires a preliminary assessment, as their duration is closely linked to the number of convicts. It is necessary to ensure that a sufficient number of cases be analysed, since generalised conclusions could not be drawn from a limited number of judgements. The working group aims at drafting the questions of the questionnaire in a way that they would be answerable merely on the basis of the first and second instance judgements, as a result, one person per high court, after due training, would be enough to complete the electronic questionnaire.
4. The working group comprises Curia justices, lower instance judges, a statistician from the National Office for the Judiciary and some experts from the Centre for Social Sciences of the Hungarian Academy of Sciences.

Dr. Sándor Katona
Head of the jurisprudence-analysing working group
Head of Panel at the Criminal Department of the Curia of Hungary