

THE ENHANCED PROTECTION OF THE ELDERLY IN HUNGARIAN CRIMINAL LAW*

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It has never been unusual for criminal law to provide enhanced protection for certain social groups based on their personal circumstances. In the case of such individuals, these characteristics serve as the basis for criminalising conduct against them or for determining the seriousness of the offence. A significant development in recent Hungarian criminal legislation is the introduction of new provisions by Act C of 2012 on the Criminal Code for several crimes, which were not previously included in Hungary's criminal law. The legal policy objective of regulating offences committed "against a person who is limited by old age or disability to recognise or avert a crime" is clear and indisputable. The protection of the elderly and disabled is also a priority objective of international conventions. The aim of this study is to present, alongside the aforementioned normative solution, the criminal law toolkit that the Criminal Code provides to law enforcers to take effective action against crimes committed against elderly persons and those in need of increased protection.

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Criminal law legislation has several tools at its disposal to achieve its legal policy objectives. This is reflected, among other things, in the differentiation made between individuals protected by criminal law and the bases for such differentiation. Criminal law has never been averse to providing enhanced protection to certain social groups in view of their personal circumstances, as recognised by the legislature. As times change, criminal law sometimes changes too. In circumstances relevant to our analysis, this is reflected in the shifts in emphasis that have shaped the directions taken by our criminal law regarding the special protection of elderly persons. Act C of 2012 – the current Hungarian Criminal Code – seeks to ensure greater criminal law protection for elderly persons in several respects. However, this protection is particularly evident in relation to certain crimes, namely those in which the victim is not only elderly, but also disadvantaged by this circumstance, which prevented (or possibly rendered them incapable of) recognizing or averting the crime.

There is no doubt that old age justifies increased protection under criminal law. The question is: who is considered elderly under Hungarian criminal law? Defining this stage of life is particularly important in criminal law, as criminal responsibility depends on it. International and domestic legal documents (e.g. United Nations 2002; WHO 2017; WHO 2002; European Union Agency for Fundamental Rights 2018) generally avoid precisely defining the onset of old age, but it is clear that the populations of the European Union and Hungary are aging (Eurostat 2025). Creating an economic and

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social environment that supports the safety and human dignity of aging and elderly people has become a significant requirement in light of this trend. It is fundamentally important to strengthen the environment and public safety that support the enforcement of human rights and the preservation of human dignity, enabling the personal and property safety of older people and ensuring that, if necessary, the most appropriate services, including justice, are available to them. It is essential to further develop large social care systems (including human services and personal protection systems) so that they can be adapted to the needs of older people in addition to existing possibilities. The aging of the population means that an increasingly larger segment of society will inevitably be exposed to becoming victims of crime, as not all perpetrators will refrain from committing a crime or seek another victim simply because the originally "targeted" victim is elderly.

1. Possible interpretations of old age

The term "old age" does not refer to rigid age categories in Hungarian criminal law (either). The reasons for this date back a long way: if we step back and look at the issue from a distance, we can see that there are currently several age categories used in the social sciences and in documents on old age. It is probably not unfounded to say that social conditions determine who is considered old. The older a society becomes, the more we can expect new (or newer) criteria to be used to define social groups by age (WHO 2015, 43–45). Gerontologists use the concepts of age and old age in at least four different ways. The category commonly used in everyday language is chronological age, which is determined by the number of years since birth. The second is biological age, which refers to physical changes. The third is psychological age, referring to the psychological processes – primarily changes in mental functioning and personality – that occur during our life cycle. Gerontologists emphasize that chronological age is not always equivalent to biological or psychological age. The fourth dimension of aging is social. Social aging refers to changes in an individual's role and relationships, both in their network of relatives and acquaintances and in formal organizations (such as the workplace). Although social aging can vary from person to person, it is fundamentally influenced by the perception of aging rooted in social culture (Barkan 2011, 434–435). The European Union Agency for Fundamental Rights correctly states that chronological and biological age are not entirely accurate expressions of old age, as it is a social construct closely related to the social reality observable at a given moment in time and to the constantly changing perceptions of old age in different societies (European Union Agency for Fundamental Rights 2018, 6). When discussing old age, it is also necessary to mention historical factors as important, since the course of one's life has a strong influence on the situation of the elderly, even if individuals' social situations vary.

We can identify three main directions for protecting older people in Hungary:

- in the absence of explicit provisions for elderly victims in the legislation, the judge may consider this circumstance when imposing a sentence.
- if old age also signifies an inability to defend oneself, the criminal law rules specific to this condition must be applied.

–if the victim's old age limited their ability to recognize or avert the crime, special rules must be applied to crimes where these circumstances are regulated.

2. Assessment of crimes committed against the elderly in the context of sentencing

As the Criminal Code does not specify rules relating to old age for all crimes, so it has been necessary to find a solution in the course of historical changes that can be relied upon by law enforcement, even if the personal circumstances in question are not relevant at the level of the text of the law. In such cases, the court has the option of assessing personal circumstances when imposing a sentence. If, as a result of the criminal proceedings, the court concludes that the defendant committed the crime, legal consequences are determined, which is referred to as sentencing. At this point, the court has the opportunity to consider all circumstances that do not violate the prohibition of double jeopardy (*ne bis in idem*).

Opinion No. 56 of the Criminal Division of the Curia (Supreme Court of Hungary), according to which *"it is an aggravating circumstance if the victim is defenseless, elderly, sick, unable to defend themselves or in need of protection, or a pregnant woman, provided that none of these circumstances results in a more serious classification..."*. In practice, this means that if the legislature has not taken into account the victim's old age in the context of the crime in question, the court may do so when imposing the sentence, which may result in more serious legal consequences (e.g., a longer prison sentence), depending on the severity and weight of all the circumstances. In this case, the text of the law itself does not expressis verbis stipulate the rule of increased criminal law protection in relation to the elderly, but the legislature provides the judge with discretionary power which the judge may exercise. The principles of sentencing in the Criminal Code include the legal authorization for the court to consider the victim's old age as an aggravating circumstance against the perpetrator.

3. Old age and inability to defend oneself

Another aspect of the increased criminal law protection for elderly persons is the case where an elderly person is also considered incapable of defending themselves due to their age. In the interpretative provisions of the Criminal Code (Section 459(1)(29)), the legislator stipulates that *"a person who, due to their situation or condition, is temporarily or permanently unable to resist, shall also be considered incapable of defending themselves."* It is clear from this definition that the criminal law limits of the state of being unable to defend oneself are quite broad, and the legislative definition encompasses many personal conditions, including old age, if it is accompanied by an inability to resist. Therefore, the legal definition does not solely pertain to the elderly; rather, it suggests that they may be included within the scope of the special criminal law protection that the legislature intended to achieve by incorporating this concept into law, depending on their current condition.

Focusing solely on the text of the norm, this implies a two-pronged approach: on the one hand, for certain types of acts, committing an offense against a person who is unable to defend themselves is a prerequisite for establishing the offense, but on the

other hand, the offense in question may be considered more serious (punishable by harsher penalty), if it is committed against a person who is unable to defend themselves. An example of the former – where the prerequisite for establishing a criminal offense is the inability to defend oneself – is the crime of robbery, while an example of the latter – where the inability to defend oneself constitutes a qualifying circumstance of the criminal offense – is homicide, causing bodily harm, or self-administered justice. It should be emphasized that the inability to defend oneself is only relevant in relation to old age if the difficulties arising from the person's age preclude their ability to defend themselves. The determination of such cases is left to the discretion of the court and may be based on the specific circumstances of the case and the available evidence. The question may arise as to what rules apply in cases where the victim's personal circumstances cannot be considered as an inability to defend oneself. In such cases, either the rules applicable to crimes committed against persons with limited ability to recognize or prevent crime are applied (if the law allows this), or the guidelines mentioned in connection with sentencing are decisive.

4. Old age and limited ability to recognize or avert a crime

Numerous questions arose during the drafting of the 2012 Criminal Code and the codification also reached the Special Part: new criminal offenses and new qualified cases were defined, some offenses were moved to other chapters, and some were decriminalized. Under the new circumstances, some have been added to only a single offense, while others appear in several offenses. The latter category includes *"offenses committed against persons with limited ability to recognize or prevent crime due to their age or disability"* (in the case of homicide and causing bodily harm) and *"against a person whose ability to recognize or prevent a crime is limited due to their age or disability"* (in the case of robbery, plundering, embezzlement, and fraud). The difference between the two phrases is that in the former, the condition adversely affects the *ability to avert the crime*, while in the latter, it adversely affects the *ability to recognize or avert the crime*.

We can see that the above two cases reflect not only the increased criminal law protection of the elderly at the legislative level, but also the inclusion of persons with disabilities. Thus, the text of the law establishes a parallel between the two groups and seeks to guarantee them the same criminal law protection. The original bill (T/6958) did not include the special personal circumstances provisions, which was submitted to the legislature in the form of an individual representative amendment on May 30, 2012 (T/6958/137). The amendment proposed to include the new circumstance in the facts of homicide, causing bodily harm, robbery, plundering, embezzlement, and fraud. The proponents of the amendment justified its necessity by stating that *"recently, there has not only been a numerical increase in crimes committed against the elderly, but the manner in which these crimes are committed has also become increasingly serious. Perpetrators take advantage of the fact that elderly people, who are generally single, are less able to defend themselves."* (Justification for amendment proposal T/6958/137). The justification for the amendment proposal shows that the increase in the number of crimes committed against the elderly is the main reason for the proposed and subsequently adopted amendments. In addition to the increase in numbers, the severity

of the crimes committed is another argument. Both reasons are often highlighted in the press, and the analysis of the relevant statistical data deserves separate research. However, separate criminological research would also be necessary to examine the reasons for the high number of such crimes. Does it paint a picture of an aging society, or does it indicate a change in the attitude of perpetrators, i.e., are/were perpetrators turning to the elderly in the hope of less resistance and greater success? We can agree with Kálmán Györgyi that the structure of crime is influenced by numerous factors, and it is no longer up to the legislator or the law enforcement authorities to determine which of the acts constituting the offense are more serious (Györgyi 1984, 278).

It is necessary to clarify the relationship between the aforementioned *inability to defend oneself* and the issue at hand, i.e., *crimes committed against persons who are limited in their ability to defend themselves due to their advanced age or disability*. For example, an elderly person who would otherwise (only) be limited in their ability to defend themselves against a crime due to their age is considered incapable of doing so while asleep. In this case, following a practical approach, the two circumstances cannot be established together. Old age and disability can only be recognized if there is no basis to declare a state of inability to defend oneself. Old age alone is not relevant to this rule, as increased protection under criminal law can only apply if the elderly person's age limits their ability to recognize and/or prevent a crime. This places a double burden on the justice system in its deliberations, as it must consider both the issue of age and whether age caused the limitation of the ability to recognize or avert the crime. If the answer to either question is negative, the present circumstance cannot be established. Hungarian judicial practice examines personal circumstances based on chronological age and assesses the biological, psychological, and social dimensions of age-related consequences, in close connection with whether chronological age could have resulted in a disadvantage in terms of recognition or avoidance.

In practice, old age is linked to the retirement age, and if an objective criterion for the lower limit of old age had to be specified, this would probably be the right choice. The problem, however, is that the retirement age is not clear-cut either. The old-age retirement age would perhaps be a slightly more accurate reference point, but even that is not an ideal indicator, as it currently varies by age group, since Section 18(1) of Act LXXXI of 1997 on Social Security Benefits relates the old-age pension age to the year of birth. The victim was clearly classified as "elderly" in practice, for example, if they were 72, 76, or 87 years old (Debrecen Court of Appeal, 2013, 6), or 70 or 71 years old (Budapest-Capital Regional Court, 2013, 6). There is also a ruling which states that old age "can no longer be questioned after reaching the age of 75" (Budapest Environs Regional Court 2014, 25). At the same time, the court did not consider a 65-year-old victim to be elderly (Debrecen Court of Appeal 2014, 2), while in another case it did consider a 64-year-old to be elderly (Miskolc Regional Court 2016, 7).

The practice has already encountered the problem of limited recognition and prevention abilities caused by old age. To assess this, it is necessary to examine, among other things, the nature of the attack and whether the victim's current personal circumstances limited their ability to recognize or defend against it. Determining the nature of the impact (physical, e.g., in the case of causing bodily harm, or mental, e.g., in the case of fraud) is essential. For example, an elderly person whose mobility is limited due to age but who is in perfect mental health, may be prevented from warding

off a physical attack, but this is not the case with fraud, as their mental state has not been negatively affected by their age. The reverse may also be true: a person suffering from mental decline but in good physical health may have limited cognitive abilities in relation to fraud due to their personal circumstances, but this is unlikely to be the case in relation to physical assault. If these circumstances arise in cases of crimes not specified by the legislator, they may be considered in sentencing.

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