

*Melinda HENGL\**  
Faculty of Law, University of Pécs, Hungary

## **THE IMPORTANCE OF (PRELIMINARY) COMPULSORY PSYCHIATRIC TREATMENT IN THE SUPPRESSION OF CRIMINALITY**

*The paper examines the regulation of (preliminary) compulsory psychiatric treatment in three countries (Hungary, Serbia and Slovakia), applying a legal comparative approach. It compares, along five aspects, the applicable three pieces of criminal law legislation most relevant to the subject in Hungary, Serbia and Slovakia respectively.*

*The paper intends to draw attention to the shared and different paths taken by the three countries under analysis in their examined pieces of legislation with a view to achieving an effective regulation of (preliminary) compulsory psychiatric treatment.*

*The analysis also endeavours to shed light, from the given aspects of comparison, on the detailed rules contained in the regulations of the examined countries relating to (preliminary) compulsory psychiatric treatment and how these rules may contribute to the reduction of crime.*

**Keywords:** compulsory psychiatric treatment, suppression of criminality, Hungary, Serbia, Slovakia.

### **1. INTRODUCTION**

The paper uses a legal comparative approach to analyse some of the main issues relating to (preliminary) compulsory psychiatric treatment – as listed under point 2 – by comparing the relevant regulatory backgrounds in *Hungary* – Act C of 2012 on the Criminal Code (hereinafter: Hungarian CC / HCC), Act XC of 2017 on the Code of Criminal Procedure (hereinafter: Hungarian CPC / HCPC) and Act CCXL of 2013 on the execution of punishments, measures, certain coercive measures and confinement for infractions (hereinafter: HE), *Serbia* – the Criminal Code of 2019 (hereinafter: Serbian CC / SCC), the Criminal Procedure Code of 2019 (hereinafter: Serbian CPC / SCPC) and the 2020 Law on Execution of Criminal Sanctions (hereinafter: SE), and *Slovakia*

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\* PhD, Assistant Professor, ORCID: 0000-0001-6366-9885, e-mail: [hengl.melinda@ajk.pte.hu](mailto:hengl.melinda@ajk.pte.hu)

– Act No. 300/2005 Coll. Criminal Code (hereinafter: Slovakian CC / SKCC), Act No. 301/2005 Coll. Code of Criminal Procedure (hereinafter: Slovakian CPC / SKCPC) and Act No. 368/2008 Coll. on the Execution of Imprisonment (hereinafter: SKE), in the (Latin) alphabetical order of the name of the countries (in English).

## **2. THE REGULATION OF (PRELIMINARY) COMPULSORY PSCYCHIATRIC TREATMENT IN HUNGARY, SERBIA AND SLOVAKIA**

Main points of analysis to be covered include: (2.1.) the effects of mental state on criminal responsibility, (2.2.) the effects of mental state on criminal proceedings, (2.3.) possible legal remedies, (2.4.) the main rules of executing (preliminary) compulsory psychiatric treatment and (2.5.) the need for reviewing (preliminary) compulsory psychiatric treatment.

### ***2.1. The Effects of Mental State on Criminal Responsibility***

The Hungarian CC discusses mental disorder among the reasons for excluding or limiting liability to punishment (besides infancy, coercion and threat, error, justifiable defence, necessity, permission by law and any other reason specified in an Act) (HCC, § 15). Pursuant to the HCC, a person is not liable to punishment if he commits a punishable act in a state of mental disorder that renders him unable to recognise the consequences of his act or to act according to such recognition (HCC, § 17 (1)). However, the measures of confiscation (HCC, § 72 (4) a)), forfeiture of assets (HCC, § 75 (2) a)) and rendering electronic data permanently inaccessible (HCC, § 77 (2)) must be ordered even against a perpetrator who is not liable to punishment due to his mental disorder. The punishment may be reduced without limitation if the perpetrator's mental disorder limits his ability to recognise the consequences of his act or to act according to such recognition (HCC, § 17 (2)). The HCC lays it down as an exception that non-punishability and reduction of the punishment without limitation cannot apply to a person who commits a criminal offence in a drunken or otherwise intoxicated state induced due to his own fault (HCC, § 18). On the other hand, if a person (perpetrator) fulfils the statutory elements of an intentional criminal offence by using a person who is not liable to punishment for this act due to mental disorder, that person is considered an indirect offender (HCC, §§ 12, 13 (2)).

The Serbian CC specifies, in its third chapter on "Criminal Offence," the cases in which there is no crime and the cases in which it is possible to reduce the punishment, these include: self-defence (SCC, Article 19), extreme necessity (SCC, Article 20), force and threat (SCC, Article 21), mistake of fact (SCC, Article 28), mistake of law (SCC, Article 29) and mental incompetence (SCC, Article 23). Pursuant to the SCC, a perpetrator is considered mentally incompetent if he was unable to understand the significance of his act or was unable to control his actions (due to mental illness, mental retardation, temporary mental disorder or other severe mental disorder), and in such cases the offender concerned may be given a mitigated sentence (SCC, Article 23). The SCC lays down in a separate article (Self-induced Incompetence) that a perpetrator may not receive mitigated punishment if he committed a crime in such a state of mind induced on himself

through his own fault by consumption of alcohol, drugs or otherwise that he could not understand the significance of his act or control his actions (SCC, Article 24). The SCPC states that confiscation (SCPC, Article 535) and forfeiture of assets (SCPC, Article 541) may be ordered against a mentally incompetent defendant as well.

**Table 1:** The effects of mental state on criminal liability  
(compiled by the author based on the relevant pieces of legislation)

<i>Hungarian CC</i>		<i>Serbian CC</i>		<i>Slovakian CC</i>	
reasons for excluding / limiting liability to punishment		in which cases it is possible to reduce the punishment / what does not constitute a criminal offence		circumstances excluding criminal liability / conditions excluding the punishability of an act	
mental disorder		mental incompetence		mental disorder	
↓	↓		↓	↓	↓
perpetrator is not liable to punishment, but confiscation, forfeiture of assets and rendering electronic data permanently inaccessible are possible	punishment may be reduced without limitation		punishment may be reduced	perpetrator is (generally) not liable to punishment	special reduction / waiver of punishment is possible
unless: he/she commits a criminal offence in a drunken / intoxicated state induced due to his/her own fault		unless: he/she committed a crime in a state of mind induced through his/her own fault by consumption of alcohol, drugs or otherwise			unless: in a state of diminished responsibility under the influence of an addictive substance (in case of waiver)
infancy				age	
coercion and threat		force and threat			
error		mistake of law mistake of fact			
justifiable defence		self-defence		self-defence	
necessity		extreme necessity		extreme emergency	
permission by law				exercising rights and obligations	
any other reason specified in an Act					
				authorized use of weapon	
				admissible risk	
				consent of victim	
				fulfilment of the role of secret agent	

The Slovakian CC deals with mental disorder (SKCC, § 23) and age (SKCC, § 22) among circumstances excluding criminal liability (SKCC, Subdivision Three), while it mentions extreme emergency (SKCC, § 24), self-defence (SKCC, § 25), authorised use of weapons (SKCC, § 26), admissible risk (SKCC, § 27), exercising rights and obligations (SKCC, § 28), consent of the victim (SKCC, § 29), fulfilment of the role of secret agent (SKCC, § 30) among conditions excluding the punishability of an act (SKCC, Subdivision Four). Pursuant to the SKCC, a person who, due to a mental disorder, could not identify the illegal nature of an act otherwise criminal at the time of its commission or control his conduct, is not criminally liable for such act (unless the SKCC provides otherwise) (SKCC, § 23). Special reduction of the punishment is possible (the court may reduce the punishment below the lower limit of the criminal penalty provided for by the SKCC), if the offender committed the offence in a state of diminished responsibility (SKCC, § 39 (2) c)). The punishment of the offender for an offence, if it did not cause death or grievous bodily harm, may be waived if he committed the offence in a state of diminished responsibility unless he caused the state of diminished responsibility under the influence of an addictive substance (SKCC, § 40 (1) c)). The SKCC also mentions the possibility of imposing confiscation even in the case of mental disorder (SKCC, § 83).

For better comparison, the information set out above has been summarized in Table 1.

The analysis provided in the Table 1 shows that mental state has an effect on liability to punishment in all three countries. The punishment of perpetrators with a mental disorder may be reduced in all three countries, moreover, such a perpetrator may not even be liable to punishment at all under the Hungarian and Slovakian regulation. In addition, all three regulations emphasize that: the punishment may not be reduced in the case of a perpetrator who inflicted the state of mental incompetence on himself through his own fault (under Hungarian law – the drunken or intoxicated state; under Serbian law – a mental state induced under the influence of alcohol or drugs or otherwise; under Slovakian law – a state of diminished responsibility under the influence of an addictive substance); and that confiscation, for example, may be applied.

## ***2.2. The Effects of Mental State on Criminal Proceedings***

The Hungarian CPC distinguishes between two groups of coercive measures: coercive measures affecting personal freedom (including preliminary compulsory psychiatric treatment besides custody, restraining order, criminal supervision, pre-trial detention) and coercive measures affecting assets (search, body search, seizure, sequestration, and rendering electronic data temporarily inaccessible) (HCPC, § 272). Preliminary compulsory psychiatric treatment may be ordered by the judge before a final and binding conclusive decision is adopted where it is necessary that the defendant affected by a mental disorder is deprived of his personal freedom (HCPC, § 301 (1)). Preliminary compulsory psychiatric treatment may be ordered (in a proceeding conducted for a criminal offence punishable by imprisonment) in order to eliminate the possibility of reoffending if it is reasonable to assume that the defendant should be subjected to compulsory psychiatric treatment (HCPC, §§ 276-277). No bail may be set if preliminary compulsory psychiatric treatment is ordered (HCPC, § 285 (6) a)).

The Hungarian CPC specifies, among the means of evidence, expert opinions (besides witness testimonies, defendant testimonies, opinions by a probation officer, means of physical evidence, including documents and deeds, and electronic data – HCPC, § 165) and regulates the expert opinion on the observation of the mental state of the defendant in a separate section (HCPC, § 195). The court may order the observation of the mental condition of the defendant if the expert opinion concludes that observing the mental condition of the defendant for an extended period by an expert is necessary. In such a case, the defendant must be referred to the forensic psychiatric and mental institution (if detained), or to a psychiatric in-patient institute specified by law (if at liberty). The observation period may last up to 1 month; this time limit may be extended by up to 1 month on the basis of the opinion of the institute (HCPC, § 195 (1)).

The Serbian CPC provides for compulsory psychiatric treatment as a security measure. With regard to a defendant committing a criminal offence in a state of mental incompetence, the public prosecutor may submit a motion to the court to impose on the defendant a security measure of compulsory psychiatric treatment and confinement in a medical institution or compulsory psychiatric treatment at liberty (SCPC Article 522). Detention (confinement in a secure mental institution) – before the conclusion of the proceedings of the first instance court – is justified if, should the defendant remain at liberty, there is a justifiable danger that he might commit a criminal offence as a result of his mental incompetence (SCPC Article 524).

The Serbian CPC also deals with expert examination among means of evidence (Chapter VII) and lays down several types of such examination. One of them is the psychiatric expert examination, which may be ordered, for example, when suspicion arises regarding the defendant's mental competency (SCPC Article 131).

The Slovakian CPC regulates compulsory psychiatric treatment under coercive measures (SKCPC, § 445). Such treatment may be ordered in the form of out-patient care or as confinement in a secure inpatient institution (even in the case of a convicted defendant serving his sentence of imprisonment, on the basis of a medical expert opinion) (SKCPC, § 446b).

The Slovakian CPC deals with experts in Chapter 6 on evidence and also lays down rules regarding the examination of the mental state of the defendant. The mental state of the defendant may be examined by a psychiatric expert in out-patient care or observed in a secure medical institution (SKCPC, § 148).

From the above, it may be concluded that (preliminary) compulsory psychiatric treatment is regulated as a coercive measure under the Hungarian CPC and Slovakian CPC, and as a security measure under the Serbian CPC. Moreover, all three CPCs provide for the expert examination of the defendant's mental state (in the parts on evidence/means of evidence).

As a further similarity one may mention that, in all three countries under analysis, the participation of a defence counsel in the criminal proceedings is compulsory: under the HCPC, if the defendant or the person reasonably suspected of having committed a criminal offence has a mental disorder or is subject to preliminary compulsory psychiatric treatment (HCPC, § 44 b c)); under the SCPC, if proceedings for compulsory

psychiatric treatment are being conducted against the defendant (SCPC Article 74. 7)); and under the SKCPC, if the defendant is under observation in a medical institution (SKCPC, § 37 a)).

### ***2.3. Possible Legal Remedies***

Pursuant to the Hungarian CPC, the spouse or cohabitant of the defendant is entitled to file an appeal against ordering, extending, or maintaining preliminary compulsory psychiatric treatment (HCPC, § 301 (3), and they are entitled to file a motion to terminate such treatment (HCPC, § 301 (4)). Recompense may be provided for preliminary compulsory psychiatric treatment if certain conditions are met (HCPC, § 845).

Pursuant to the provisions of the Hungarian CPC, the spouse or cohabitant of the defendant may: file an appeal against a judgment of a court of first instance ordering compulsory psychiatric treatment (HCPC, § 581 e)), file a motion for retrial (HCPC, § 639 (2) e)) or submit a motion for review (HCPC, § 651 (2) e)) to the benefit of a defendant against the order of compulsory psychiatric treatment.

Pursuant to the HE, an order about the review of compulsory psychiatric treatment may be appealed by the spouse, cohabitant or lawful representative of the person subjected to compulsory psychiatric treatment (HE, 69/B (9)).

According to the Serbian CPC, the ruling pronouncing compulsory psychiatric treatment may be appealed (within 8 days after the date of receipt of the ruling) (SCPC, Article 528): by the spouse of the defendant, the person with whom he/she lives in a common law marriage or other permanent personal association, the lineal consanguine relations, the adopter, the adoptee, the sibling and foster parent, the legal representative, the defence counsel and the injured party (SCPC, Article 433).

Under the Slovakian CPC (SKCPC, § 186 (2)), a complaint may be filed against the decision imposing compulsory psychiatric treatment by persons entitled to file an appeal on behalf of the person concerned by the compulsory psychiatric treatment (the spouse, cohabitant, lineal relative, sibling, adopter, adoptee or defence counsel of the defendant – SK, § 308 (2)).

In the light of the foregoing, it may be stated that all three regulations emphasize the possibilities of the spouse and cohabitant of the defendant for legal remedy, in addition, the Serbian CPC and Slovakian CPC specify further persons who may file for legal remedy.

### ***2.4. The Main Rules of Executing (Preliminary) Compulsory Psychiatric Treatment***

The HE refers to the person under compulsory psychiatric treatment as “patient” (HE, § 325 (2)) and lays down that his rights relating to psychiatric treatment are mainly governed by the general provisions of the Healthcare Act and the rules applicable to the rights of psychiatric patients (HE, § 325 (3)). Compulsory psychiatric treatment must be executed in such a way so as to ensure that the patient is provided with proper treatment in view of the current state of medical science, the deterioration of his health is prevented and his health is restored to the extent possible within the shortest time (HE, § 325 (4)). The costs of compulsory psychiatric treatment are to be borne by the State (HE,

§ 325 (5)). The place of execution of compulsory psychiatric treatment is the Forensic Psychiatric and Mental Institution (IMEI) (HE, § 326 (1), HE, § 19 e), the execution of the treatment cannot be interrupted (HE, § 327 (3)), the patient may leave the institution only under supervision (HE, § 337) or exceptionally if he has been granted permission to be released on reintegration leave, accompanied by the person undertaking his care (HE, § 338). The patient is to be released from the IMEI on the day when the notification about the termination of the compulsory psychiatric treatment (issued by the penal enforcement judge) arrives at the IMEI (HE, § 341).

Pursuant to the HE, the rules relating to the execution of compulsory psychiatric treatment are applicable (with exceptions and derogations) also to the execution of preliminary compulsory psychiatric treatment, which is also to be executed in the IMEI (HE, § 424).

The Serbian CC distinguishes between 4 types of compulsory medical treatment: compulsory psychiatric treatment and confinement in a medical institution, compulsory psychiatric treatment at liberty, compulsory drug addiction treatment and compulsory alcohol addiction treatment (SCC Article 79 (1)). Out of them, 2 types of compulsory medical treatment may be ordered regarding mental disorder: (1) the compulsory psychiatric treatment and confinement in a medical institution is ordered by the court in the case of a perpetrator who committed a criminal offence in a state of substantially impaired mental capacity if there is a risk that the offender may commit a more serious criminal offence and that in order to eliminate this risk the offender requires medical treatment in such institution (SCC Article 81 (1)). (2) The compulsory psychiatric treatment at liberty is also ordered by the court in the case of an offender who has committed a criminal offence in a state of mental incapacity if there is a danger that the offender may again commit another criminal offence, but in order to prevent this there is no need for the offender's confinement (SCC Article 82 (1)). The SE lays down that professional supervision over the execution of compulsory psychiatric treatment is to be carried out by the Ministry in charge of health (SE Article 200). Pursuant to the SCC, the limitation period for enforcing decisions on compulsory psychiatric treatment is 5 years from the decision becoming binding (SCC, Article 106 (2)).

The SKE distinguishes 5 types of compulsory medical treatment: compulsory psychiatric treatment, compulsory drug treatment, compulsory alcohol treatment, compulsory sexual addiction treatment and compulsory gambling addiction treatment (SKE, § 80 (3)). If several types of compulsory medical treatment have been ordered against the convict, then compulsory psychiatric treatment must be executed first (SKE, § 81 (3)). Pursuant to the SKE, compulsory psychiatric treatment may be executed in the form of out-patient care or in a secure inpatient institution as well, in a special section of the penal enforcement institution or the psychiatric department of a healthcare institution (SKE, § 80 (1)).

Based on the examples selected from the regulations of the 3 countries, it may be concluded that, although the execution of compulsory psychiatric treatment is regulated in all 3 countries, there is a difference in the depth and detailedness of the regulation. It is an essential difference that the Serbian and Slovakian regulations distinguish between several types of compulsory medical treatment, while the Hungarian regulation only provides for

compulsory psychiatric treatment for mental disorder as compulsory medical treatment. The Hungarian regulation also contains other types of medical treatments (that are different from the one for mental disorder), but they are not regulated as compulsory medical treatment. For example, it lays down: if a person is arrested for drug possession, the person may be granted the possibility to participate in medical treatment to cure his drug-addiction or to receive some other assistance to treat his drug use or preventive counselling service (HE, § 394 (2a)); it is to be ascertained whether, in the case of conditional suspension by the prosecutor, the suspect consents to undergoing the planned alcohol treatment (HCPC, § 418 (8b)); and the person arrested for committing an offence against sexual freedom and sexual morality must be offered the possibility of voluntary participation in proper psychotherapy or other programming aimed at reducing the likelihood of recidivism (HE, § 394 (2)).

### ***2.5. The Need for Reviewing (Preliminary) Compulsory Psychiatric Treatment***

The Hungarian CC lays down that compulsory psychiatric treatment is to be terminated if it is no longer necessary (HCC, § 78 (2)).

Under the regulation in the Hungarian CPC, preliminary compulsory psychiatric treatment (ordered prior to the indictment) is to remain in effect until a decision is adopted by the court of first instance during the preparation of a trial, but for no longer than 6 months; the court may extend the period of preliminary compulsory psychiatric treatment before the indictment, by up to 6 months each time (HCPC, § 301 (5–6)). If terminating the preliminary compulsory psychiatric treatment is justified, the institute enforcing preliminary compulsory psychiatric treatment is to inform the prosecution service, before the indictment, or the court, after the indictment, without delay (HCPC, § 301 (7)). In the case of military criminal proceedings, the commander must notify the prosecution service without delay if he considers it necessary to terminate the preliminary compulsory psychiatric treatment (HCPC, § 709 (1) b)).

The HE regulates the review of compulsory psychiatric treatment specifically in Section 69/B: Within 6 months from the commencement of the treatment, the judge is to review, ex officio, the necessity of such treatment, and do so repeatedly every 6 months (if he has not terminated the treatment). The conduct of the procedure may come within the competence of the penal enforcement judge of the Budapest Environs Regional Court (if the first-instance procedure was not conducted by a court seated in Budapest), or that of the Budapest-Capital Regional Court. The review may be initiated by the prosecution service or put forward by the head physician and general director of the IMEI or petitioned by the person undergoing compulsory psychiatric treatment, his spouse, cohabitant, lawful representative or defence counsel (but their application may be rejected without examination on the merits if filed repeatedly within 3 months without reference to a new circumstance). During review, at the hearing, the prosecutor, the defence counsel and the person under compulsory psychiatric treatment – if his condition renders it possible – are to be heard. Prior to the review, a forensic psychiatric expert opinion must be obtained (unless the person was subject to preliminary compulsory psychiatric treatment, as in that case the forensic psychiatric expert opinion made available during the criminal case may be used). The physician of the IMEI



may participate as one of the experts in the elaboration of the expert opinion. The detailed medical case report of the patient is to be forwarded by the head physician and general director of the IMEI during the 3<sup>rd</sup> month calculated from the patient's admission to the IMEI (and every 6 months until the patient's release) to the competent penal enforcement judge to conduct a review of the compulsory psychiatric treatment (HE, § 329 (1)).

The Serbian CC lays down that compulsory psychiatric treatment and confinement in a medical institution must be terminated by the court if it determines that the need for treatment and confinement of the offender in a medical institution no longer exists (SCC, Article 81 (3)), moreover, compulsory psychiatric treatment at liberty is to last until it is necessary, but for a maximum of 3 years (SCC, Article 82 (5)).

Pursuant to the Serbian CPC, the need for compulsory psychiatric treatment is to be reviewed by the court delivering the first-instance decision at the request of the medical institution or the person subjected to such treatment or ex officio within 9 months. The court will adopt its ruling on the basis of the medical expert opinion. If the proposal to discontinue the measure is rejected, it may be submitted again after the expiry of 6 months from the date of issuance of the ruling (SCPC, Article 531).

Pursuant to the Slovakian CC, compulsory psychiatric treatment must last as long as its purpose requires it (SKCC, § 74 (2)), and compulsory psychiatric treatment in a detention institution must continue until the protection of society against the offender can be ensured through more lenient means (SKCC, § 82 (2)).

According to the SKCC, the court is to review the need for further treatment in a detention institution at least once a year upon the petition of the detention institution. During this procedure, based on expert medical opinion, it may decide: on the further continuation of the detention or on the release of the offender from the detention institution if the reasons for the detention no longer exist. In the case of release from the detention institution, the court is also to decide on further execution of the punishment of imprisonment (SKCC, § 82 (3)).

Pursuant to the SKCPC, the competent court must review the need for continuing compulsory psychiatric treatment minimum once every year, and the procedure for review may also be initiated by the prosecution service, the person under treatment and the general director of the medical institution (SKCPC, § 448 (2–3)).

Based on the above, it may be stated that the laws of all three countries are similar in laying down that compulsory psychiatric treatment is to last until it is necessary, its continuance or termination is to be decided during a review procedure, and the medical expert opinion plays an important role in the adoption of such decision. The difference lies in the timing of ex officio review: it must be conducted every 6 months (in Hungary), after 9 months (in Serbia) or minimum once a year (in Slovakia).

I also share the view that it is essential to provide a well-defined and strict regulation concerning the review of the need to continue compulsory psychiatric treatment and the conditions for terminating such treatment, for example: to ensure the effectiveness of criminal law, the suppression of criminality, the effective medical treatment of the offender and the protection of society. In the effort to reduce crime and protect society, it may be significant to eliminate or decrease the possibility of the offender being released from compulsory

psychiatric treatment unjustifiably or too early and, thus, committing another criminal offence on release. Therefore, I also attribute great importance to the medical expert opinion, which is also provided for by the regulations, in the adoption of the ruling on the continuance or termination of compulsory psychiatric treatment. In the light of the foregoing, it may be stated that the precise and strict regulation of the review and termination of compulsory psychiatric treatment may also contribute to the reduction of crime by potentially decreasing recidivism. The scope of the article does not allow for the exhaustive examination of all the issues concerning the subject, so the analysis could not extend to examining the situation where the convicted offender does not comply with compulsory psychiatric treatment or does not cooperate, or to post-release supervision, which might also be relevant.

### 3. CLOSING REMARKS

Due to the constraints of limited scope, the paper could not undertake to provide an exhaustive and comprehensive comparison of all the details of the Hungarian, Serbian and Slovakian regulatory backgrounds relating to (preliminary) compulsory psychiatric treatment. Therefore, the purpose of writing this paper was: on the one hand, to raise several points of comparison and, concerning them, to draw attention to the main similarities and differences of the regulatory backgrounds, and on the other hand, to highlight how (preliminary) compulsory psychiatric treatment may contribute to the effectiveness of criminal law and what significance it has in the suppression of criminality.

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