

Melinda HENGL*

THE LEGAL STATUS OF DEFENDANTS WITH A MENTAL DISORDER IN HUNGARY AND SERBIA

This paper compares the legal status of mentally disordered defendants as a socially vulnerable group in Hungary and Serbia.

The paper discusses the major elements of the Hungarian regulatory environment (in particular, Act XC of 2017 on the Code of Criminal Procedure and Act CLIV of 1997 on Healthcare), regarding defendants with a mental disorder as patients suffering from an illness, and provides a comparison with the relevant Serbian regulatory background, drawing attention to the similarities and differences in the two regulatory environments.

The purpose of writing this paper is to provide an opportunity for the comparison of the Hungarian and Serbian regulation, thereby laying the foundation for a potential amendment to the current legislation.

Keywords: legal status, defendant with a mental disorder, Hungary, Serbia.

1. THE CONCEPTS OF SOLIDARITY AND LAW

The word ‘solidarity’ is originally of Latin origin, which is evidenced by the expression “obligatio in solidum,” which meant a joint commitment made by a group of debtors under Roman law. It was also in this meaning that the French term *solidarité* became incorporated into the French Encyclopaedia of 1765 and, later, into the Napoleonic Civil Code of 1804. The expression was adopted by the German and the English language in the 1840s, and at that time it also started to be associated with political meanings. Following this, it also appeared in social sciences: for instance, it formed part of Durkheim’s fundamental concepts. Over time, it has gradually acquired a broader meaning and also referred to the readiness rooted in morals and emotions to provide mutual assistance. The motto was introduced: “All for one, and one for all.” Having become well-spread, it was translated back from European languages into Latin and thus appeared as part of the official social ethics of the Catholic Church (Laitinen & Pessi, 2021, p. 5). According to the definition given in the Hungarian Catholic encyclopaedia,

* Assistant Professor, University of Pécs, Faculty of Law, Department of Criminal and Civil Procedure, Hungary, ORCID: <https://orcid.org/0000-0001-6366-9885>, e-mail: hengl.melinda@ajk.pte.hu

the term 'solidarity' is derived from the Latin expression *solidarietas* (having the original meaning: solid and well-founded), and it may be interpreted as taking responsibility for and sharing in the fate of others (Hungarian Catholic Encyclopaedia). According to Explanatory dictionary of the Hungarian language, solidarity may be defined as: identifying oneself and standing together with others (Arcanum). The semantic range of "solidarity" covers: identifying with, commitment to, taking responsibility for, providing assistance to and standing together with another person or others (Lexiq). According to the Collection of foreign words, 'solidarity' means: commitment to mutual assistance (Collection of foreign words). In turn, the Dictionary of foreign words and phrases explains that the term 'solidarity' denotes a concept that expresses belonging together and compassion, implying that individuals mutually commit themselves to each other and are ready to assist each other if necessary (Dictionary of foreign words and phrases).

The term 'solidarity' may be defined in a descriptive or a prescriptive sense as well. In a descriptive (normative) sense, it expresses a certain kind of connectedness with others, which is manifested, at the level of society, in actions, motivations, and attitudes. According to American social philosopher Richard Rorty, a proponent of the prescriptive interpretation, the scope of the concept of solidarity covers all forms of prosocial acts and ideas. Some approaches make a distinction between solidarity and the normative category of justice. In the interpretation of German social philosopher Jürgen Habermas, solidarity is the reverse side of justice, as solidarity always exists within a given community and is, therefore, partial, while justice requires the disregard of such social connections and is always impartial (Laitinen & Pessi, 2021, p. 6). In Habermas's view, another difference that may be revealed between solidarity and justice is that the principle of solidarity has regard to both the wellbeing of others and the wellbeing of the whole community at the same time, while the principle of justice may be formally validated without reference to the wellbeing of others or the common good. In his opinion, solidarity is founded on realizing that every human being has to take responsibility for all the others as, being members of the same society, they all have a shared interest in preserving the wholeness of their living environment; thus, it is necessary for justice to be complemented by solidarity (Laitinen & Pessi, 2021, p. 19).

In my view, it is essential to emphasize that the concepts of justice and truth also bear relevance to law. The term 'law' may be defined in several ways, with some definitions also including the term 'justice', such as: "Law is the will for justice." (Radbruch, 2004, p. 154). A single correct definition of the concept of law does not exist, thus 'law' may be defined as, for instance: 1) the art of the good and equitable; 2) according to the most common formulation: the totality of such norms of conduct that are also supported by state force; 3) a collection of norms that govern human behaviour to enable social coexistence; 4) a prediction of how the courts will act; 5) the entirety of social regulations that prescribe behaviour enforceable in court (Jakab, 2024, p. 5). The Fundamental Law of Hungary states, in Article 25 (1), that courts shall administer justice, and lays down, at the very beginning of the National Avowal, that the members of the Hungarian nation hold (among other things) that the common goal of citizens and the State is to achieve the highest possible measure of justice. Also, pursuant to Section 11 of the Criminal Procedure Act (Act XC of 2017 on the Code of Criminal Procedure, hereinafter: HCPC): the task of the court shall be to administer justice. The HCPC emphasizes, in its very first sentence, that in proceedings conducted in order to establish criminal liability, the requirement to establish the truth must be kept in view.

In my view, with regard to the vulnerable groups of society, the practical implementation of the concepts of truth, justice, and solidarity is of utmost importance.

2. MENTALLY DISORDERED PERSONS AS A VULNERABLE GROUP OF SOCIETY

The conceptual sphere of vulnerability is rather complex and wide-ranging. Anybody may get into a situation where the solution to their problem does not depend on them (or only on them) and therefore, with regard to the given case, they become vulnerable and exposed to the situation or another person. Right from the very beginnings, human communities have always had and, even today, still have members (groups) that are unable to take care of themselves on their own or manage certain areas of their lives independently (Bolyky, 2022).

Pursuant to the definition provided by the Explanatory dictionary of the Hungarian language, “vulnerability” refers to the state, fact, or situation when somebody or something is at the mercy of some other person or thing so that they are completely in the power of that other person or thing and have to helplessly tolerate that the other treats them as they please according to their will (Arcanum). Synonyms for “vulnerable” include: defenceless, downcast, sensitive, subordinated, subjugated, and dependent (Synonyms).

Providing a criminal law definition of vulnerability is rather complicated. Among international documents, mainly conventions and directives on the protection of human rights contain references to the concept of vulnerability (Bolyky, 2022). The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976 (COE, 2026). Hungary acceded to the Covenant on 17 January 1974 (Hungarian Helsinki Committee, 2026). The International Covenant on Civil and Political Rights (Law-Decree No. 8 of 1976 on the promulgation of the International Covenant on Civil and Political Rights, adopted by Session XXI of the United Nations General Assembly on 16 December 1966) states in its Preamble: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, (...)”. Serbia ratified the International Covenant on Civil and Political Rights on 12 March 2001 (OHCHR).

No definition is provided for ‘vulnerability’ or ‘vulnerable person’ in the Fundamental Law of Hungary, the Criminal Code of Hungary (Act C of 2012 on the Criminal Code, hereinafter: HCC) or the HCPC. Therefore, in the case of the Fundamental Law of Hungary, the criminal law concept of vulnerability may be deduced from the right to human dignity, namely: “Human dignity shall be inviolable. Every human being shall have the right to life and human dignity ...” (Fundamental Law of Hungary, Article II). In the case of the HCC, although the humiliation of a vulnerable person is regulated as a separate statutory offence (HCC § 225), this section does not provide a definition for the concepts of vulnerability or vulnerable person; moreover, a single reference to “vulnerable situation” is made in the provisions about the aggravated forms of two statutory offences (human trafficking and forced labour, HCC § 192 (2) a), and child pornography, HCC § 204 (2) b)). Vulnerable persons appear in the HCPC in the context of the provision of special treatment (Bolyky, 2022). Section 81 (1) of the HCPC states the following: “where the aggrieved party or the witness is a natural person, he shall be considered a person requiring special treatment, provided that, considering his personal characteristics or the nature and circumstances of the criminal offence serving as the basis for the proceeding,

he is restricted in his ability a) to understand others or have himself understood by others, b) to exercise his rights or perform his obligations specified in this Act, or c) to participate in the criminal proceeding efficiently.” Pursuant to Section 81 (2) of the HCPC: “(2) In particular, the following factors shall serve as grounds for providing special treatment: a) age of the person concerned, b) mental, physical and medical condition of the person concerned, c) the extremely violent nature of the act serving as the basis for the proceeding, and d) the relationship between the person concerned and another person participating in the criminal proceeding.”

The Constitution of the Republic of Serbia does not contain a definition for the concepts of vulnerability or vulnerable person either; however, in this case, too, they may be deduced from the right to human dignity, namely: “Human dignity is inviolable and everyone shall be obliged to respect and protect it.” (Constitution of the Republic of Serbia, Article 23) Neither does the Serbian Criminal Code contain such definitions (Criminal Code of 94/2024, hereinafter: SCC). The Serbian Criminal Procedure Code (Criminal Procedure Code of 62/2021, hereinafter: SCPC) contains provisions similar to the Hungarian rules on special treatment for the protection of vulnerable witnesses (SCPC, Articles 102-112).

With regard to vulnerable persons and groups, from a criminal law perspective (as is also evident from the above), emphasis is placed on those who appear in the role of victims. However, in my view, for a comprehensive discussion of the subject, it is also worth examining the other side, namely, the side of perpetrators. Section 81 (2) of the HCPC also lays down, among the grounds for providing special treatment, the mental condition of the person concerned, while Section 1 emphasizes the presumption of innocence, namely, that “[n]o one shall be considered guilty until the court finds him guilty by a final and binding conclusive decision.” In relation to mental state, Section 16 of the HCC specifies mental disorder among the reasons for excluding or limiting liability to punishment. On the other hand, Section 542 (4) b) of the HCPC states that if any mental disorder excludes the defendant’s liability to punishment, in his closing argument the prosecutor must motion for acquitting the defendant, and in the case of a decision acquitting the defendant, the court shall order compulsory psychiatric treatment of the defendant if the conditions for ordering compulsory psychiatric treatment of the defendant acquitted due to mental disorder are met (HCPC, § 566 (3)). Thus, in the case of a defendant suffering from a mental disorder, the court does not find the defendant guilty in a convicting judgment but basically regards the perpetrator as a “patient suffering from an illness” and in its acquitting judgment orders their (compulsory) psychiatric treatment. Patients constitute one of the most vulnerable groups of society, for example, because of the asymmetrical informational and legal situation occasioned by the operation of the institutional system of healthcare (Bedő, 2015, p. 48). In light of the foregoing, I propose an amendment to Section 81 (1) of the HCPC to extend the range of people requiring special treatment to also include defendants suffering from a mental disorder, with special regard to the possibility of applying certain measures in the scope of special treatment, for example, ensuring enhanced protection of their medical data (HCPC § 85 (1) d)).

In the following, I will address the legal status granted to defendants with a mental disorder and the rules laid down concerning perpetrators with a mental disorder in the relevant Hungarian and Serbian laws.

2.1. The legal status of defendants with a mental disorder in Hungary and Serbia

The legal status of defendants comprises both their rights and obligations. The regulation of their rights is usually more detailed and more dominant than that of their obligations,

because the defendant is “defenceless” against the authorities, and the system of appropriate procedural safeguards is intended to counterbalance this genuinely or apparently unjust situation (Bérces, 2024, p. 425).

The HCPC provides for the rights and obligations of the defendant in the same single section (§39).

The HCPC enumerates the rights of defendants in general, without specifically regulating the rights of defendants with a mental disorder. Pursuant to Section 39 (1), the defendant has the following rights: 1) to be informed of the subject of the suspicion or the charge, as well as any changes to them, 2) to be afforded adequate time and circumstances for preparing their defence, 3) to be informed about their rights and obligations in the criminal proceeding, 4) to authorise a defence counsel, or move for the official appointment of a defence counsel (for their defence), 5) to consult their defence counsel without supervision, 6) to give or refuse to give testimony, 7) to present pieces of evidence, file motions and observations, and address the court by exercising their right to the last word, 8) to attend the trial and the sessions held relating to coercive measures affecting personal freedom and subject to judicial permission, and to ask questions as provided for in the Act, 9) to seek legal remedy, 10) to inspect the case documents of the proceeding, and 11) to initiate that a plea agreement be concluded or a measure or decision by a prosecutor be offered. In addition, they may file a request for legal aid, and they have the right to use their mother tongue during the criminal proceedings (HCPC § 39 (4)).

The detained defendant is entitled (HCPC § 39 (2)): 1) to be informed of the reason for their detention and any change to this reason, 2) to have the authority inform one person selected by them about their detention, 3) to establish and keep contact in person, without control, via post or by electronic means with their defence counsel (the consular representative of their state, in the case of a foreign citizen defendant), 4) to establish and keep supervised contact in person or controlled contact via post, or by electronic means, with the person selected by them, and 5) to keep contact with the person or authority specified in an international treaty promulgated by an Act in accordance with that international treaty. In addition, if the defendant is in detention, the authority must inform the defendant about their rights also in writing, including their rights specifically related to their detention, for instance, their right to file a motion for the termination of their detention (HCPC § 39 (5)).

The HCPC also contains special provisions applicable to defendants with a mental disorder, laying down that in the case of a defendant with a mental disorder: 1) the participation of a defence counsel in the criminal proceeding is mandatory (HCPC § 44 c)) (furthermore, it should be emphasized that Section 42 (1) of the HCPC states that, regarding any defendant, the defence counsel may exercise all the rights of the defendant that are not, by their nature, related to the person of the defendant exclusively), 2) the attendance of a prosecutor at the trial is mandatory (HCPC § 435 (3) c)), 3) the spouse or cohabitant of the defendant shall also be entitled to file an appeal against ordering, extending, or maintaining preliminary compulsory psychiatric treatment or for its termination (HCPC § 301 (3-4)), 4) in the judgment acquitting the defendant, the court may order confiscation, forfeiture of assets, rendering electronic data permanently inaccessible, or termination of hosting service provision (HCPC § 566 (5)), 5) a substitute private prosecuting party may not proceed if the defendant’s liability is excluded due to their mental disorder (HCPC § 787 (3) b)), and 6) a motion for revision cannot be submitted where the criminal liability of the perpetrator is excluded due to their mental disorder (HCPC § 817/B (2) b)).

The HCPC provides for the obligations of the defendant only briefly, namely, the defendant is obliged to: 1) attend procedural acts, and 2) inform the proceeding court authority about their contact details (their home address, contact address, place of actual residence, service address, phone contact details and electronic mail address, or other electronic contact details) and any change in them within three working days following that change (HCPC § 39 (3)).

The SCPC deals with the rights and obligations of defendants in several articles. Pursuant to Article 68 of the SCPC, the defendant has the following rights: 1) to be informed about the charges against them (in the shortest possible time, in a language he/she understands), 2) not to say anything (or to refuse to answer certain questions) and to decide whether to admit or not to admit his guilt, 3) to defend himself (with the assistance of a defence counsel), 4) to have a defence counsel present during the interrogation, 5) to be tried in an impartial and fair manner and in a reasonable time, 6) to become acquainted with specific evidence before the interrogation, 7) to be given sufficient time and opportunity to prepare the defence, 8) to examine the documents contained in the case file, 9) to collect evidence, 10) to make a statement, to present evidence, and to question witnesses, 11) to apply for legal remedy, 12) to perform other actions under the Code, and 13) to be advised of their rights by the authority before their first interrogation.

Pursuant to Article 69 of the SCPC, a detained defendant has the following rights: 1) to be informed of the reason for their arrest (immediately and in a language they understand), 2) prior to being interrogated, to have a confidential conversation with his defence counsel (which can be supervised only visually), 3) to notify a person designated by them (a family member or some other person close to them) about the detention (in the case of a foreign citizen, to notify the consular representative), 4) the right to medical examination, and 5) the right to be interrogated within forty-eight (48) hours.

The SCPC also contains special rules applicable in the case of defendants with a mental disorder, such as, for example, mandatory defence by a defence counsel (Article 74 (7)).

Pursuant to Article 70 of the SCPC, the defendant is obliged to: 1) appear in court in response to a summons, and 2) inform the proceeding authority of their contact details (temporary or permanent residence) and any change in them or of their intention to change them.

In the light of the above, with regard to the legal status of defendants under the HCPC and the SCPC, it may be established in summary that there are significant similarities between the Hungarian and Serbian regulations.

Both set forth the rights of defendants in detail, the majority of which are the same in both criminal procedure acts. It may be highlighted as a difference that the HCPC specifically informs the defendant about his/her right to submit an application for legal aid, while in this context the SCPC emphasizes the presence of a defence counsel during the interrogation of the defendant as well as his/her right to an impartial and fair hearing within a reasonable time. Both requirements can also be found in the HCPC, but they are not specified among the rights of defendants, namely, the possibility of the presence of a defence counsel is regulated under the rights of the defence counsel (§ 42) while the right to a fair trial is laid down in the preamble.

Also, in the case of a defendant kept in detention, the rights granted to them are basically the same (in the context of their right to notify and contact someone), but it may be highlighted as a difference that the HCPC permits the defendant to contact more people, while the SCPC emphasizes the right to medical examination and also regulates the time of starting the interrogation. The HCPC also provides for the latter, however, not under the rights of defendants

but in the context of the interrogation of suspects (§ 385 (2)) and specifies a shorter period (of twenty-four hours).

Similarities may also be perceived in the special provisions applicable to defendants with a mental disorder.

The obligations of defendants are regulated with basically the same content in both the Hungarian and Serbian criminal procedure codes.

The structural composition of the SPCP may be considered a good solution in that it lays down the rights and obligations of the defendants in separate articles, as opposed to the organization of the HCPC, which contains the rules relating to the legal status of defendants in a single section. In my view, in the specification of rights and obligations their separation in a visually conspicuous manner (in separate articles) gives a better expression to the dual nature of legal status, namely, to the importance of the existence of two opposing elements (rights and obligations). In view of this, I propose, based on the model of the SPCP, setting forth the rights and obligations of defendants in separate sections (that follow each other and are separated from each other).

2.2. The legal status of persons with a mental disorder during preliminary compulsory psychiatric treatment and compulsory psychiatric treatment in Hungary

As I have pointed out above with respect to the Hungarian regulation (HCPC § 566 (3)), it regards the defendant with a mental disorder as a “patient suffering from an illness” and the court orders their compulsory psychiatric treatment in its acquitting judgment. Moreover, in the case of a defendant with a mental disorder, the judge may deprive the person of his/her personal freedom already prior to the delivery of the binding and conclusive judgment by ordering his/her preliminary compulsory psychiatric treatment (HCPC § 301 (§)). Both preliminary compulsory psychiatric treatment and compulsory psychiatric treatment are to be executed in the Forensic Psychiatric and Mental Institution (hereinafter: IMEI), and in both cases the person concerned is regarded as a “patient suffering from an illness” (HCPC § 424 and § 326). This is also emphasized by the provisions of Act CCXL of 2013 (Act on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Offences, hereinafter: HE), pursuant to which: “In the course of compulsory psychiatric treatment the patient shall receive professional care in accordance with the state of the art of medicine, in order to prevent any further deterioration of his or her condition and to restore his or her health to the fullest extent possible as soon as possible.” (HE § 325 (4)) Moreover, it is also laid down under the duties and objectives of penal enforcement that the enforcement procedure must be established in such a way that “in addition to the protection of society, in the case of compulsory psychiatric treatment, it should provide appropriate treatment and care for the person subjected to the involuntary treatment.” (HE § 1) At the same time, the Act also stipulates that the rules for the enforcement of compulsory psychiatric treatment shall also apply to the implementation of preliminary compulsory psychiatric treatment (HE § 424).

The rights and obligations of patients are regulated by the Act on Healthcare in Hungary (Act CLIV of 1997 on Health Care, hereinafter: HH). Pursuant to the HH, patients have the following rights: 1) the right to healthcare (HH §§ 6-9/A), 2) the right to human dignity (HH § 10), 3) the right to maintain communication with other persons (HH § 11), 4) the right to leave the medical institution (HH § 12), 5) the right to information (HH §§ 13-14), 6) the right to

self-determination (HH §§ 15–19), 7) the right to refuse treatment (HH §§ 20–23), 8) the right of access to medical records (HH § 24), and 9) the right to medical confidentiality (HH § 25).

Pursuant to Section 26 of the HH, the obligations of patients are the following: 1) when receiving healthcare services, the patient is required to abide by the relevant legislation and respect the operating procedure of the healthcare service provider, 2) the patient – his or her state of health permitting – is obliged to cooperate with the healthcare workers involved in his or her treatment, 3) the patient must pay the service fee prescribed by law. In addition, 4) the patient must respect the rights of other patients, and 5) the patient's exercise of their rights may not breach the legal rights of healthcare workers (HH § 27).

How are the rights of patients enforced during (preliminary) compulsory psychiatric treatment in Hungary? The HH lays down that healthcare service providers are required to inform patients in detail, both orally and in writing, about their rights at the time of their admission into the institution, and derogation from this rule is possible only in the case of the existence of a dangerous condition (and the information must be given upon its termination). As a main rule, general patients' rights laid down in the HH must also be respected during psychiatric treatments, but in the case of the existence of a dangerous condition every patients' right, with the exception of the right of access to medical records, may be restricted (to an extent and for the time necessary), with the proviso that the patient's right to human dignity may not be violated even in the case of the existence of a dangerous condition. Moreover, in the case of mental illnesses, it is also possible for the physician providing treatment not to inform the patient about some part of the data recorded during the treatment, for example, if becoming acquainted with those data might endanger their recovery. The HH allows the patient to be represented by an (authorized) patients' rights representative during judicial review, and if the patient has no representative, the court will appoint a guardian ad litem for him (Fridli, 2002, pp. 6–10). Compulsory psychiatric treatment is a form of mandatory psychiatric treatment that may only be carried out for a special reason in a special institution (exclusively in the IMEI). The IMEI forms part of the justice system, and the building itself is located on the premises of the penal institution of Budapest. It is led by the Director General and Chief Medical Officer, who is also a prison warden. The patients institutionalized here have committed a violent criminal act against a person or a criminal act endangering the public, but they lack mental capacity (due to their mental illness), therefore they are not punishable. As a general rule, the patients' rights granted by the HH and applicable to patients treated in a psychiatric institution also apply to patients institutionalized in the IMEI, but a derogation from these rights may be possible under other pieces of legislation; thus, in a given case, the life of those treated here may potentially be rather similar to the life of those serving their imprisonment and living under prison conditions (Fridli, 2002, pp. 30–35).

It is also worth briefly mentioning how the status of mentally disordered persons may develop after the verdict in Serbia. The Republic of Serbia's Law on Enforcement of Criminal Sanctions of 35/2019 (hereinafter: SE) regulates compulsory psychiatric treatment and confinement in a medical institution (SE, Articles 195–201) and compulsory outpatient psychiatric treatment (SE, Articles 202–204) among the security measures. In my opinion, of the two, compulsory psychiatric treatment and confinement in a medical institution is more similar to Hungarian compulsory psychiatric treatment (because in the latter, the person remains at large). Compulsory psychiatric treatment and confinement in a medical institution must be carried out in the Special Prison Hospital, and in exceptional cases in another healthcare institution (SE, Article 195). The medical institution is obliged to report at minimum once a

year to the court on the health status of the person under treatment and to notify the court of completed treatment (SE, Articles 198–199). The person under this measure has the same rights and obligations as a person serving a prison sentence, unless the needs of the treatment require otherwise (SE, Article 196).

3. CLOSING REMARKS

In the paper I have discussed the legal status (rights and obligations) of defendants with a mental disorder (as one of the vulnerable groups of society), approaching it from the aspect of the concepts of solidarity, law, justice, and vulnerability, based on the applicable Hungarian and Serbian legal regulations. Upon the analysis I have come to the conclusion that the Hungarian and Serbian regulations (besides minor differences) reveal significant similarities regarding the topic examined.

I have placed emphasis on presenting the legal status of persons with a mental disorder during their preliminary compulsory psychiatric treatment and their compulsory psychiatric treatment in Hungary so that it can serve as a basis for comparison for other countries in the future. I have also formulated proposals aimed at amending the HCPC: concerning the visual display of the rights and obligations of defendants and the extension of the circle of persons requiring special treatment to include defendants with a mental disorder.

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