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The Possibilities of Forfeiture of Illegally Obtained Profits in Hungary

1. PUNISHMENTS AND MEASURES REGARDING FORFEITURE

1.1. Forfeiture Penalties and Measures in General

According to the Hungarian Penal Code the penal sanctions to be imposed on perpetrators by the court are penalties and measures. These have been part of the penal regulations since the end of the last century. By enforcing general and special prevention punishments constitute the primary sanction, while measures serve the aims of special prevention.

Article 38 of the Penal Code differentiates between two categories of penalties: principal and supplementary.

1.2. Confiscation of Assets

The prerequisites for the confiscation of assets are regulated under Article 62 of the Penal Code. In this case, general prevention is the main purpose, although it also amounts to a severe pecuniary loss for the perpetrator. Its essence is the confiscation of the perpetrator’s entire assets or a part of them.

The confiscation of assets can be imposed in addition to an executory imprisonment (principal punishment), if the criminal act was committed with the purpose of gaining profit and the perpetrator is wealthy enough. In case of a destitute perpetrator, the confiscation of assets would only be symbolic. The assets may be confiscated, provided it does not endanger the sustenance of the perpetrator and his relatives entitled to alimony. The assets are identical with the assets described as enforceable in the act on judicial enforcement. In legal practice, the assets acquired with the money originating from crime may also be confiscated.

We can speak of commission with the purpose of gaining profit not only in the case of crimes against property, but also if the perpetrator commits some other sort of crime which is not directly aimed at acquiring suspect assets.

If the legal prerequisites are met, it is a matter of deliberation for the judge to impose the confiscation of assets.

Within the meaning of Article 63 of the Penal Code the confiscation of assets can cover

the whole property or part of it, or certain chattels, and since 1988 it can be imposed in the form of money as well. In this sense, it rivals the fine as a supplementary penalty. Confiscation of assets and a fine as a supplementary penalty, however, cannot be imposed at the same time. Confiscation of assets does not have an upper value limit.

According to Article 63 s. 2 of the Penal Code, the confiscation of assets can cover the asset that was conferred commutatively to a third person provided that this third person was aware of the aim of the conveyance. In case of a voluntary conveyance, the third person does not need to know about the aim of the conveyance.

By virtue of the validity of the sentence, the confiscated assets pass to the State. The accomplishment of the confiscation is the task of the bailiff.

1.3. The Fine as a Supplementary Penalty

The fine as a supplementary penalty according to Article 64 of the Penal Code achieves its purpose of punishment also by causing a pecuniary loss. Its application has two prerequisites. It can be imposed in case of a determinate imprisonment – even if it is suspended for a probationary period by the court – and the perpetrator has to dispose of suitable resources. According to legal practice, resources are suitable if the perpetrator is able to pay the fine as a supplementary penalty – even if in instalments – without endangering the sustenance of his own and his relatives entitled for alimony.

If the criminal act was committed with the purpose of acquiring profit, i.e., if the general prerequisites are fulfilled, the imposition of a fine as a supplementary penalty is obligatory. In this case we can best recognize that the imposition of a fine as a supplementary punishment serves a forfeiture purpose as well. However, the imposition of a fine as a supplementary punishment is dependent upon the discretion of the judge.

The fine as a supplementary punishment is fixed by the court – irrespective of the day fine system which is not applicable here – in one amount in proportion to the perpetrator’s income conditions and with less regard to the gravity of the crime. It ranges from a minimum of HUF 5,000, and a maximum amount of HUF 2 million. Failure to pay the fine will result in imprisonment. One day of imprisonment may substitute for the amount of HUF 1,000 to 15,000.

1.4. Confiscation

Confiscation is a measure involving the abstraction of the pecuniary advantage. It may cut to the quick of the perpetrator even more than the punishment itself. Its special feature should be imposed even if there is a reason for precluding culpability. It can also be imposed to a limited extent independently, in addition to another punishment or provision.

Its general conditions are regulated under Article 77 of the Penal Code. According to this provision the object originating from a crime or given to the perpetrator for committing a crime has to be confiscated. Besides the general conditions the Special Part of the Penal Code

3. If it is a juvenile perpetrator, this turn is possible only if the fine as a supplementary punishment is unenforceable.