

Hungary

I. Brief Introduction to the Legal System of Hungary

Hungary's legal system is within the civil law tradition and therefore is greatly influenced by continental legal principles and traditions. The unicameral Parliament is the main legislative body in Hungary but it is by no means the only body that can issue legal regulations. The government and its ministers have the power to issue decrees. Municipalities may issue decrees regulating local issues that are not provided for in a regulation of a higher level. The President of the Hungarian National Bank and the National Media and Info-communications Authority also have the right to issue decrees. Decrees may not be contrary to any legal provision at a higher level.

Hungary has a four-level court system, consisting of district and local courts, the metropolitan court and county courts, five courts of appeal and the Curia (Supreme Court). The Curia may issue guidelines which are binding on all courts. The so-called administrative and labour courts are the only special courts.

As a rule, district / local courts have general jurisdiction. It is worth noting that the metropolitan court and county courts have competence over cases with a value exceeding 30 million Hungarian forints (about 100,000 Euros) and in certain specific issues. In the case of criminal proceedings, the division of the competency between the local and county (metropolitan) courts is subject to the type of crime in question.

II. Hungary's Anticorruption Laws

Hungary ratified the OECD Convention and implemented it in its national legislation by Act XXXLII of 2000. Hungary also signed the UN Convention and is a party to the Criminal Law Convention on Corruption of the Council of Europe, concluded in Strasbourg, January 27, 1999 (ratified on November 22, 2000, effective from July 1, 2002). Although the Protocol to the Criminal Law Convention on Corruption was signed, it has not been ratified yet. As a result of these instruments, Hungary accordingly modified its relevant legal sources in harmony with these conventions. The results of the international conventions mainly appeared in the continuous amendment and modification of the national Criminal Code.

Hungarian law contains several provisions that aim at battling corruption. Hungary adopted a new Criminal Code which entered into force on 1 July 2013. The Criminal Code – just like the previous Criminal Code – contains, amongst others, the following provisions on bribery.

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Criminal Code

Active Bribery

Pursuant to Section 290 of the Criminal Code, any person who gives or promises an unlawful advantage to a person working for or on behalf of a business entity, or to another person on account of such person, to induce him to breach his duties is guilty of a felony punishable by imprisonment not exceeding three years. The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

The penalty shall be imprisonment between one to five years if the criminal offense described above is committed in connection with a person working for or on behalf of a business entity who is authorized to act in its name and on its behalf independently.

Any person who commits the act of corruption in connection with a person working for or on behalf of a foreign business entity shall also be punishable.

Passive Bribery

According to Section 291 of the Criminal Code, any person who requests or receives an unlawful advantage in connection with his activities performed for or on behalf of a business entity, for himself or for a third party, or accepts a promise of such an advantage, or is in league with the person requesting or accepting the advantage for a third party on his behest, is guilty of a felony punishable by imprisonment not exceeding three years. The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and unveils the circumstances of the criminal act.

Any person working for or on behalf of a foreign business entity shall also be punishable.

Active Corruption of Public Officials

Under Section 293 of the Criminal Code, any person who attempts to bribe a public official by giving or promising unlawful advantage to such person or to another person for influencing such official's actions in an official capacity is guilty of a felony punishable by imprisonment not exceeding three years.

Any person committing bribery is punishable by imprisonment between one to five years if he gives or promises the advantage to a public official to induce him to breach his official duty, exceed his competence or otherwise abuse his position of authority.

The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

Passive Corruption of Public Officials

Under Section 294 of the Criminal Code, any public official who requests or receives an unlawful advantage in connection with his actions in an official capacity, for himself or for a third party, or accepts a promise of such an advantage, or is in league with the person requesting or accepting the advantage for a third party on his behest, is guilty of a felony punishable by imprisonment between one to five years.

The penalty shall be imprisonment between two to eight years if the criminal offense is committed by a high-ranking public official.

The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and unveils the circumstances of the criminal act.

Active Corruption in Court or Regulatory Proceedings

Under Section 295 of the Criminal Code, any person who promises or gives unlawful advantage to another person for himself or for a third party for him to refrain from acting in accordance with his duty or in the exercise of his rights in court, arbitration or other judicial proceedings is guilty of felony punishable by imprisonment not exceeding three years. The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand and unveils the circumstances of the criminal act.

Passive Corruption in Court or Regulatory Proceedings

According to Section 296 of the Criminal Code, any person who requests or receives an unlawful advantage to refrain from acting in accordance with his duty or in the exercise of his rights in a court, arbitration or other judicial proceedings, for himself or for a third party, or accepts a promise of such an advantage, or is in league with the person requesting or accepting the advantage for a third party on his behest, is guilty of a felony punishable by imprisonment between one to five years. The penalty may be reduced without limitation - or dismissed in cases deserving special consideration - against the perpetrator of a criminal offense if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and unveils the circumstances of the criminal act.

Misprision of Bribery

Under Section 297 of the Criminal Code, any public official who has positive knowledge of an act of active or passive corruption yet undetected, and fails to promptly report that to the authorities is guilty of a felony punishable by imprisonment not exceeding three years. Family

members of the person who failed to report the act of active or passive corruption may not be prosecuted.

Criminal sanctions against legal entities

Under Hungarian law, it is worth noting that no criminal proceeding may be initiated against a company with legal personality and a company has no criminal liability per se. However, Act no CIV of 2001 on criminal measures against companies with legal personality contains the following sanctions which may be applied:

- (i) termination of the company;

- (ii) restriction of the company's operation and

- (iii) imposition of a fine.

The criminal measures may be applied in case of the commitment of a deliberate crime if the commitment of crime aimed at or resulted in obtaining a benefit to the company with legal personality or the company with legal personality was used for committing a crime, and the crime was committed by

- a) the executive officer, authorized member or employee, managing director, general manager, member of the supervisory board of the company with legal personality or by a person authorized by any of the afore-said persons within the scope of activities of the company with legal personality;

- b) a member or employee of the company with legal personality within the scope of activities of the company with legal personality, and the executive officer, managing director, general manager or the members of the supervisory board could have prevented the crime had they fulfilled their directing or controlling obligations.

In addition to clauses a) and b) above, the criminal measures under clauses (i) to (iii) above may also be applied if the commitment of crime resulted in the company obtaining a benefit or

the company with legal personality was used for committing a crime, and the executive officer, authorized member or employee, managing director, general manager or member of the supervisory board of the company with legal personality were aware of the commitment of the crime.

For the purposes of the act, “benefit” shall mean any asset, right of monetary value, claim or allowance – regardless whether such benefit has been registered in accordance with the rules of the Act on Accounting – and also if the company with legal personality is exempted from any obligation arising from any law or contract, or from any expenditure necessary under reasonable business standards.

Under the act, the court may terminate the company if the company was founded for the purposes of hiding the commitment of crimes or the actual activities of the company serve the purposes of hiding crimes.

The court may also ban/restrict the company's operation for a period of one, two or three years. During the term of ban/restriction, the company may not e.g. publicly collect deposits, take part in public procurement proceedings, conclude concession agreements, receive any subsidy (whether national or EU). If the court restricts the company's operation, depending on the content of the court's order, the consequences of immediate termination would apply to any public procurement or concession agreement, and any subsidy awarded in connection with a crime would have to be repaid.

Under the act, the maximum amount of fine is three times the amount of benefit achieved or wished to be achieved and at least HUF 500,000 (about USD 2,250).

Act no CLXV of 2013 on complaints and reports of public interest

Hungary has recently enacted the "whistle-blowing" act which provides statutory framework for establishing whistle-blowing hotlines at employers. Since the act entered into force on 1 January 2014, there is not yet practice behind the act.

III. Assessment

In 2012, the OECD Working Group conducted its Phase 3¹ examination of Hungary's implementation of the OECD Convention. The Working Group found that while the legal regime is strong on paper, it lacks effective enforcement, that is, the actual detection of and enforcement against individuals. In its executive summary the Working Group found that Hungary has made progress in its enforcement actions since the previous, Phase 2 evaluation (in 2005), with the conviction of 26 individuals in connection with one case that involved bribes in small amounts provided to border officials in a neighboring country. In addition, two foreign bribery investigations of legal persons have been opened at the time of the preparation of the summary. The Working Group noted that the number of convictions for foreign bribery remained low and considered that, in the context of companies, this may be due to difficulties in applying provisions on the criminal liability of legal persons. Those provisions require, in virtually all cases, that a natural person must be convicted and punished as a prerequisite to the liability of a legal person.

The Working Group noted with satisfaction the adoption of new legislation protecting whistleblowers reporting damage to public interests in both the public and private sectors. They however called upon Hungary to clarify that the protection of whistleblowers reporting foreign bribery is provided under this legislation, and that responsibility for its enforcement is clearly allocated.

They further noted that implementing the new legislation in practice will require an important cultural change and therefore recommend that steps are taken to raise awareness and educate public officials, the private sector and other non-governmental stakeholders about the new protection. The lead examiners recommended that the Working Group follow up on the implementation of the new legislation.²

The report also noted shortcomings as regards awareness of the offence among the private sector and therefore recommended that Hungary take steps in this matter – including encouraging companies to adopt and develop internal controls or ethics and compliance programs to prevent and detect bribery – and above this Hungary was required to engage in further awareness raising activities targeting the public administration and public agencies that work with Hungarian companies active in foreign markets. The failure to take proactive steps to discover suspicions of foreign bribery is also noted.³

¹ The Working Group examines a country's implementation of the OECD Convention in three separate on-site evaluations, called "Phases." The Phase II examination of Hungary took place in December 2005. (available at: <http://www.oecd.org/daf/briberyininternationalbusiness/50026740.pdf>)

² Hungarian Working Group Report, page 41

³ Hungarian Working Group Report, page 5

In its Evaluation Report on Hungary on Incriminations adopted by GRECO at its 47th Plenary Meeting,⁴ the GRECO Evaluation Team found that the Hungarian legal framework regarding the criminalisation of corruption offences is to a large degree in conformity with the standards of the Criminal Law Convention on Corruption and the Additional Protocol thereto: the amendments of the Criminal Code followed the international needs. It is also mentioned that in the examined period (2006-2008) a not insignificant number of corruption cases have led to convictions both in respect of public sector bribery and bribery in the private sector. In light of the critiques made, the Criminal Code was amended and a few of the problematic issues were settled (*e.g.* in accordance with the suggestion of the Evaluation Team the concept of foreign passive bribery was introduced). In addition, the new criminal code entering into force as of July 1, 2013 was to take the suggestions into account.

In addition to the conventions noted in the text and GRECO, Hungary is a member of the IACA. It is ranked 46 in Transparency International's 2012 Corruption Perceptions Index.

IV. Texts

A. Hungarian court system

<http://www.birosag.hu/en/information/hungarian-judicial-system>

B. Act No. C of 2012 on the Criminal Code

(available in Hungarian at

http://njt.hu/cgi_bin/njt_doc.cgi?docid=152383.252012)

C. Act No. CIV of 2001 on the Criminal Sanctions against Legal Persons

(available in Hungarian at

http://njt.hu/cgi_bin/njt_doc.cgi?docid=57521.251999)

⁴ Evaluation Report on Hungary on Incriminations, pages 20-21. The report is available at: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%298_Hungary_One_EN.pdf



D. Act No. CLXV of 2013 on Complaints and Reports of Public Interest

(available in Hungarian at

http://njt.hu/cgi_bin/njt_doc.cgi?docid=164339.250742)

<http://www.dataguidance.com/news.asp?id=2152>

E. OECD Report

<http://www.oecd.org/daf/anti-bribery/hungary-oecdanti-briberyconvention.htm>

<http://www.oecd.org/daf/anti-bribery/Hungaryphase3reportEN.pdf>