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The Regulation of Counterfeiting Money in the German Criminal Code

ABSTRACT

The crime of counterfeiting is probably as old as the use of money. The right to coinage and to issue money has always belonged to the privileges of the monarch and the state. Its risky nature lies in the fact that it affects the trust and confidence towards state-issued money. Franz von Liszt stated that counterfeiting is a mixed crime which breaches two legal objects: on one hand the individuals' interest of property, and on the other hand it attacks the security of cash-flow. The purpose of this paper is to compare the statutory provisions of the Hungarian and German Criminal Code, the legal practice, and criminal statistics of both countries. With the comparative law approach, we can learn from the German criminal legal system and give proposals for the Hungarian regulation and court practice. The first part of the study deals with a brief legal history of counterfeiting money. The second and main part of the study analyzes the in-force regulations of the German Criminal Code regarding counterfeiting money. The contribution has a comparative law approach. The third and last part of the study deals with the criminal statistics and the conclusions.

KEYWORDS

counterfeiting money, Germany, Criminal Code

Introduction – Brief legal history of counterfeiting money

The crime of counterfeiting is probably as old as the use of money. The right to coinage and to issue money has always belonged to the privileges of the monarch and the state. Its risky nature lies in the fact that it affects the trust and confidence towards state-issued money. Karl Binding a German legal

scholar stated “that invention of money lead to the invention of counterfeiting.”¹

The Code of Hammurabi was one of the first written laws which punished counterfeiters. The specific sanction is not known, just the sacramental nature of it: “if he abolish the judgments which I have formulated, overrule my words, alter my statues, efface my name written thereon and write his own name... as for that man... whoever he may be, may the great god, the father of the gods... take from him the glory of his sovereignty, may he break his scepter, and curse his fate!”²

Among the ancient Greeks, Solon was the first who made a law against counterfeiters. The law passed in Athens in 594 B.C. contained capital punishment for counterfeiting money. With this law he intended to protect the Greek currency and make it more trustworthy than the Persian currency.³ Not just in Athens, as according to a note from the 3rd century B.C., in the town of Dimi four counterfeiters were punished by death.⁴

In Rome Marius Gracchianus was the first to punish counterfeiters in a written law. He established investigation offices which controlled the genuineness of the money.⁵ Under the reign of Constantine the criminal act of counterfeiting was seen as treason and thus was punishable by death. The acquittal was only possible if the offender voluntarily withdrew from the crime.⁶

The concept that counterfeiting money is treason remained in the middle ages. Counterfeiting was punishable by cruel sanctions under the German customary and written law. A written collection of the German customary law, the *Sachsenspiegel*, which was written by Eike von Repgow in 1230, contained capital punishment.⁷ The perpetrators of this crime were executed by burning at stake. If the offender counterfeited lesser amount of money, then there was an option for the court to punish him “only” by

¹ K. Binding, *Lehrbuch Des Gemeinen Deutschen Strafrechts: Besonderer Teil*, Band 2, München–Leipzig 1904, p. 306.

² M. Kröner, *Der Schutz des Furo durch die Geldfälschungstatbestände unter der besonderen Berücksichtigung des Talbestandsmerkmals “Inverkehrbringen als echt” – mit Hinweisen zu den Geldfälschungstatbeständen in der Euro-Zone*, Marburg 2009, p. 29.

³ *Ibidem*, p. 29.

⁴ H. Voigtlaender, *Falschmünzer und Münzfälscher*, Münster 1976, p. 32.

⁵ Th. Mommsen, *Römisches Strafrecht*, Leipzig 1899, p. 673.

⁶ W. Rein, *Das Criminalrecht der Römer von Romulus bis auf Justinianus*, Leipzig 1844, pp. 787–788.

⁷ I. Kajtár, *Egyetemes állam- és jogtörténet*, Budapest–Pécs 2005, pp. 119–120.

cutting off his hands.⁸ An example from the written law, the *Constitutio Criminalis Carolina*, which was written by Johan von Schwarzenberg in 1532, valued counterfeiting as treason. It had a differentiated regulation with having three perpetration conducts.⁹ Counterfeiting was only punishable by death in the most serious cases, otherwise it carried a pecuniary penalty.¹⁰

Comparing the German and Hungarian legal history we can establish that counterfeiting was also valued as treason. For example, the customary law collection of Hungary, the *Tripartitum*, which was written by István Werbőczy in 1514, prescribed that “who coins counterfeit money or uses counterfeit money in high numbers shall be responsible for treason.”¹¹

In the aspect of humane regulation regarding counterfeiting the *Allgemeines Landrecht (ALR)* from 1794 was progressive. The casuistic Prussian Code did not contain capital punishment for counterfeiters. In the most serious cases offenders got punished by lifelong imprisonment.

The Bayern Criminal Code, written by Anselm Feuerbach in 1813, had a very clear and precise terminology and at that time it was a role model for other German provinces. The Code has been written in the spirit of the enlightenment age. We can see from the title of the chapter – *Verbrechen wider öffentliche Treue und Glaube* – that the legal object of counterfeiting money was primarily the public trust in the legal tender.¹² According to the Code, the most serious case was when somebody intentionally distributed counterfeit money. In this case the punishment was 8 to 12 years of imprisonment.¹³

The Prussian Criminal Code from 1851 regulated counterfeiting in a separate chapter titled coin felonies and coin misdemeanors. Even though the title only mentioned coins, it also punished the counterfeiting of banknotes with between 5–15 years of imprisonment. Furthermore the counterfeiting of foreign money was also punishable.¹⁴ The imperial German Criminal Code from 1871 was mostly based on the above mentioned Prussian Crimi-

⁸ E. Balogh, *A pénzhamisítás bűncselekménye a XIX. század első felének néhány német kódexében és a korabeli magyar büntetőtvény-könyv*, [in:] *Emlékkönyv Dr. Meznerics Iván egyetemi tanár születésének 80. évfordulójára*. Szerk, ed. K. Tóth, Szeged 1988, pp. 21–22.

⁹ I. Kajtár, op. cit., p. 120.

¹⁰ E. Balogh, op. cit., pp. 21–22.

¹¹ M. Tóth, *Gazdasági bűnözés és bűncselekmények*, Budapest 2000, p. 322.

¹² E. Balogh, op. cit., p. 22.

¹³ *Ibidem*, p. 23.

¹⁴ G. Beseler, *Kommentar über das Strafgesetzbuch für die Preußischen Staaten*, Leipzig 1851, pp. 282–289.

nal Code. This was first Criminal Code of the unified Germany and it came into effect in 1st of January of 1872. The legal scholars from the 19th century valued counterfeiting as a financial crime.¹⁵ This Act regulated counterfeiting in the chapter titled crime against the state. Counterfeiting of foreign and national currencies were punishable. Securities were valued as the same as banknotes. The Code consisted of main and extension type of conducts:

1) Main type of conducts were:

- imitation of money with the purpose of distribution,
- the amendment of the money so that appears it has a higher value or money withdrawn money from the circulation has the appearance of money in circulation.

2) Extension type of conducts:

- distribution, procuring and import of counterfeit money,
- giving away of counterfeit money,
- coin debasement.

In the main cases the Code prescribed a minimum 2 years imprisonment.¹⁶

There were attempts to reform the German Criminal Code in the Weimar Republic, but in the end they failed. The national socialist Germany disregarded the principles of *nullum crimen sine lege* and *nullum poena sine lege* and the prohibition of analogy. The numbers of executed capital punishments have risen drastically. After the second world war a reform plan was developed for criminal law regulations, which were realized in the 70s. The statutory provisions of counterfeiting money were amended largely in 1975. The current in-force provisions preserve that state to a large extent, and 2003 was the last time when they were modified.¹⁷

1. The place of counterfeiting money in the current German Criminal Code

Counterfeiting money is regulated in Chapter 8 of the German Criminal Code titled *Counterfeiting of money and official stamps*. The regulation of the German Criminal Code was a possible role model for the Hungarian lawmakers

¹⁵ G. Molnár, *Gazdasági bűncselekmények*, Budapest 2009, p. 449; M. Tóth, op. cit., p. 371; I. A. Wiener, *Gazdasági bűncselekmények*, Budapest 1986, p. 252.

¹⁶ P. Angyal, *A magyar büntetőjog kézikönyve*, Budapest 1940, p. 17.

¹⁷ M. Kröner, op. cit., pp. 50–53.

due to the fact that the new Hungarian Criminal Code has a very similar chapter, with almost exactly the same crimes. The in-force regulation reads as follows:

Section 146

Counterfeiting money

(1) Whosoever

1. imitates money with the intent that it be brought into circulation as genuine or that such bringing into circulation be facilitated, or alters money with such intent, so that it appears to be of a higher value;

2. procures or offers for sale counterfeit money with such intent; or

3. brings counterfeit money which he counterfeited, altered or procured under the provisions of No. 1 or 2 above into circulation as genuine, shall be liable to imprisonment of not less than one year.

(2) If the offender acts on a commercial basis or as a member of a gang whose purpose is the continued counterfeiting of money the penalty shall be imprisonment of not less than two years.

(3) In less serious cases under subsection (1) above, the penalty shall be imprisonment from three months to five years, in less serious cases under subsection (2) above, imprisonment from one to ten years.

Section 147

Circulation of counterfeit money

(1) Whosoever brings counterfeit money into circulation other than in cases under section 146 shall be liable to imprisonment not exceeding five years or a fine.

(2) The attempt shall be punishable.

2. The legal object of the crime

The legal object of counterfeiting money is the security of cash-flow, the trust in money and the state monopoly of issuing money.¹⁸ According to the prevailing concept of the German legal scholars, counterfeiting is a crime against assets.¹⁹ Two observations should be made regarding this. On one hand we can see from the classification of the crime that counterfeiting breaches individual interest. On the other hand, the concept of the legal object shows us that counterfeiting also breaches the communal interest. Franz von Liszt – the father of the mediation school of criminal law – summarized this by stating the following: “counterfeiting is a mixed crime which

¹⁸ Th. Fischer, *Strafgesetzbuch und Nebengesetze. Beckliche Kurzkommentare*, München 2013, p. 1059.

¹⁹ R. Schmidt, K. Priebe, *Strafrecht besonderer teil. II. Straftaten gegen das Vermögen. 11. Auflage*, Hamburg–Berlin 2012, pp. 333–340.

breaches two legal objects on one hand the individuals interest of property and on the other hand it attacks the security of cash-flow.”²⁰

Hungarian prevailing concept²¹ is a little different, because Hungarian legal scholars consider counterfeiting as an economic crime. In contrast of this concept András Kondorosi says – similarly as Franz von Liszt – that the criminal act of counterfeiting money firstly breaches the communal legal interest and secondly the individual legal interest.²² However it is important to note that it is hard to distinguish the class of economic and financial crime and there is no significant difference between the two.²³

Counterfeiting is a high risk crime to the society and to the economy, and thus the sanction is considerably high. In the basic case the sanction is between 1–15 years imprisonment. Due to the high risk of this crime there is an omission to report for who has credible information about the planning or the commission of the crime to the authorities otherwise the defaulter can be sanctioned by imprisonment.²⁴

Many German authors highlight that counterfeiting is a special case of the crime of public document forgery.²⁵ This concept in the Hungarian legal literature can be found in the writings of László Fayer.

3. The perpetration object of the crime

The perpetration object of the crime is money. Money in a criminal legal sense consists of

- money in circulation (banknotes and coins)
- and securities: bearer and order bonds which are parts of an entire issue, if the payment of a specified sum of money is promised in the bonds;

²⁰ P. Angyal, op. cit., p. 34.

²¹ J. Gula, *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, [in:] *Magyar Büntetőjog Különös rész*, ed. I. Görgényi, Budapest 2013, p. 582; K. Karsai, *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, [in:] *Kommentár a Büntető Törvénykönyvhöz*, ed. K. Karsai, Budapest 2013, p. 821; B. Kereszty, *A gazdasági bűncselekmények (Btk. XVII. Fejezet)*, [in:] *A magyar büntetőjog különös része. Korona Kiadó*, ed. F. Nagy, Budapest 2005, p. 699; M. G. Molnár, *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, [in:] *Büntetőjog II. Különös Rész. A 2012. évi C. törvény alapján*, ed. B. Busch, Budapest 2012, pp. 661–662; M. Tóth, op. cit., p. 371; *A büntető törvénykönyv magyarázata. 2. kötet*, eds. Z. Varga et al., Budapest 2009, p. 1295; I. A. Wiener, op. cit., p. 254.

²² A. Kondorosi, *Gondolatok a pénzforgalom rendjét sértő bűncselekmények kapcsán*, „Jogelméleti szemle” 2012, No. 7, p. 77.

²³ See further in: L. Kóhalmi, *A gazdasági és szervezett bűnözés*, [in:] *Bevezetés a bűnügyi tudományokba. Bíbor Kiadó*, ed. V. E. Csemáné, Miskolc 2007, pp. 141–155.

²⁴ Strafgesetzbuch § 138.

²⁵ R. Schmidt, K. Priebe, op. cit., p. 333.

shares of stock; share certificates issued by capital management companies; interest, dividend and renewal coupons of the types of securities indicated in Nos 1 to 3 above as well as certificates of delivery of such securities; traveler's cheques.²⁶

The concept of money under the German criminal law practice is the following: certified money in a legal sense is a value carrier which was issued by the state or someone authorized by the state and which is in circulation for the public regardless of the general compulsory acceptance.²⁷ It is important to note here that foreign currencies and securities are also protected by the statutory provisions of counterfeiting money.²⁸ This rule complies with the Geneva Convention for the suppression of counterfeiting currency which was adopted in 1929 and Germany is part of it.

Old money and money withdrawn from the circulation are not considered as money under the German criminal law. So for example if someone creates a fake Roman Denarii and sells it as original he commits fraud and not counterfeiting money. There is an exception regarding money withdrawn from the circulation: if the state has obligation to exchange it to money in circulation (e. g. in the case of the Deutsche Mark) these are protected by the statutory provisions of counterfeiting.²⁹

Before the Supreme Court of Germany there was a case called "Krugerrand decision" in 1983. In this case the Supreme Court had to decide if the offender committed counterfeiting money when he created fake Krugerrand coins. Krugerrand coins are investment gold coins issued by the state of South Africa. According to the South African Mint and Coinage Act (No 78 of 1964) Krugerrand coins were declared as unlimited legal tender. Under the German Criminal Code foreign currencies are protected by the statutory provisions of counterfeiting. The Supreme Court came to a decision that Krugerrands coins are not money in a criminal legal sense and it grounded its decision with the International Convention for the Suppression of Counterfeiting 04/20/1929. The court concluded that the German criminal law predetermines whether a value carrier fulfills the essential requirements for the concept of money and doesn't depend on the legal system of the

²⁶ Strafgesetzbuch § 151.

²⁷ J. Wessels, M. Hettinger, *Strafrecht besonderer teil 1*, München-Landsberg-Frechen-Hamburg 2014, p. 281.

²⁸ Strafgesetzbuch § 152.

²⁹ L. I. Gál, *A pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, [in:] *Új Btk. Kommentár, Különös Rész. 7. kötet. Nemzeti Közzolgálati és Tankönyvkiadó*, ed. P. Polt, Budapest 2013, p. 197.

country.³⁰ In conclusion, according to the German criminal law practice the Krugerrand gold coin does not meet the requirement of money due to that it only carries its value through the gold fineness.³¹

According to the Hungarian legal scholars the object of perpetration is controversial. According to some views the object of perpetration is money, as well as securities and bank notes that are equivalent to money in the criminal law, and therefore considered as money.³² Others pose that not all criminal conduct has an object of perpetration because in the case of imitation, the imitated money is not the object of perpetration but the product of it.³³ The Hungarian Criminal Code regulates the definition of counterfeiting money in the interpretation section of the statutory provisions (Section 389 (5)). According to the Hungarian Criminal Code (Act C of 2012) money in a criminal legal sense are the following:

1. Banknotes and coins, the circulation of which is legally authorized, or that will be authorized in the future on the basis of law, European Union legislation, or official notice published by an institution vested with the privilege of monetary emission, as well as banknotes and coins withdrawn from circulation, where the issuing national bank is required, or agreed, to redeem such withdrawn currency and exchange it to legal tender pursuant to the relevant national legislation or European Union legislation.
2. Printed securities issued as part of a series shall also be treated as banknotes, where the transfer of such securities is not restricted or precluded by law or by any endorsement made on the securities. The concept for securities otherwise found in the Civil Code.³⁴
3. Any alteration of money that has been withdrawn from circulation to create an impression as if it was still in circulation.
4. The application or removal of a sign serving as an indication that the currency is valid only in a specific country, furthermore, the diminution of the precious metal content of the currency.
5. Foreign currencies and securities are granted protection identical with that of domestic ones.

³⁰ Entscheidungen des Bundesgerichtshofes in Strafsachen, Band 32, Seite 198 [Decision of the Federal Court of Justice in criminal matter, Volume 32, p. 198].

³¹ J. Wessels, M. Hettinger, op. cit., p. 281.

³² G. Molnár, *Pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, op. cit., p. 1456.

³³ L. I. Gál, op. cit., p. 197.

³⁴ J. Gula, op. cit., p. 583.

4. The perpetration conducts of the crime

The statutory provisions of counterfeiting money contains the following perpetration conducts:

- imitation of money (*nachmachen*),
- counterfeiting of money (*verfälschen*),
- procuring counterfeit money (*sichverschaffen*),
- offering for sale counterfeit money (*feilhalten*),
- and lastly bringing counterfeit money into circulation as genuine (*in Verkehr bringen*).

I will analyze the conducts one by one.

The essence of “imitation” is creating a new product (counterfeit money). Usually criminals use copying machines for this purpose. It is required for the imitated money to be deceptive for the unsuspecting and general circulation.³⁵

It is irrelevant if the imitated money is created of original model or not. Under the German criminal practice creating for example a 25 euro banknote can be also punishable under the statutory provisions of counterfeiting money. The criminal practice applies this rule even to fantasy state money.

It is interesting here to compare the German criminal practice to the Hungarian. In Hungary there was a case where an offender bought three sheep with a 54 000 Forint denominated banknote. The imitated money had the exact same look as the 20 000 Forint denominated banknote only the denomination was altered. The Hungarian Court said that imitation can only be made on money in circulation. So the verdict stated that 54 000 Forint banknotes are not in circulation and thus the offender committed fraud and not counterfeiting money. This narrow interpretation of the statutory provisions of counterfeiting currency can be criticized due to the fact that in this case the criminal clear intention was to bring imitated money into circulation. The offender even succeeded with his act and eventually breached the security of cash flow. Also this case points out another problem with the regulation: it was clear that the court intention was to impose milder sanction and thus applied the statutory provisions of fraud. The lawmaker should give wider options regarding the sanctions of counterfeit-

³⁵ Bundesgerichtshof Neue Juristische Wochenschrift, Jahr 1995, Seite 1844 [New Legal Weekly Paper of the Federal Court of Justice, Year 1995, p. 1844].

ing (for example by creating more privileged cases) so the courts would be motivated to value the criminal conducts correctly.³⁶

Another problematic area can be the quality of the imitated money. According to the German criminal practice, it is not required from the counterfeit money to have good quality but it is important that it can be mistaken for the legal tender.³⁷

The second perpetration conduct is “counterfeiting” where the criminal altering the money so that it appears to have a higher value. It is important to note that only original money in circulation can be counterfeited.³⁸ It is irrelevant how it appears to have a higher value, so not just altering denomination but silvering or gilding can be a perpetration method for the offender.³⁹ In the Hungarian criminal code the only stipulation is made is alteration so an absurd case of altering money to have a lower value can be also punished.

The third perpetration conduct is “procuring.” By procuring the counterfeit or counterfeited money, the offender has the power of disposal, he has the right to decide over the fate of it.⁴⁰ So if someone gets the counterfeit money as a depository, he will not commit the crime as perpetrator (the person who actually commits the crime) but maximum as accomplice (a person who knowingly and voluntarily helps another person to commit a crime).

“Offering for sale” is the fourth perpetration conduct. This is basically the attempt of bringing counterfeit money into circulation so the concluded offense sanction can be applied.⁴¹

The last but most dangerous criminal conduct is to bring counterfeit money into circulation as genuine. There are many ways possible for this: gifting, purchasing and so on. In one case the German criminal court stated that counterfeit money was brought into circulation when someone disposed of it in public so that everyone could easily access it.⁴²

³⁶ A. Kondorosi, *op. cit.*, p. 78.

³⁷ R. Schmidt, K. Priebe, *op. cit.*, p. 318.

³⁸ *Ibidem.*

³⁹ Bundesgerichtshof Zeitschrift für Wirtschafts- und Steuerstrafrecht, Jahr 2003, Seite 197 [Federal Court of Justice Journal's of Economic and Tax related Criminal Law, Year 2003, p. 197].

⁴⁰ Entscheidung des Rechtsgerichts in Strafsachen 59, 79, und 80 [Judgment of the Court of First Instance in Criminal matters number 59, 79, and 80].

⁴¹ R. Schmidt, K. Priebe, *op. cit.*, p. 320.

⁴² Entscheidungen des Bundesgerichtshofes in Strafsachen, Band 35, Seite 21 [Decision of the Federal Court of Justice in criminal matter, Volume 35, p. 21].

The Hungarian Criminal Code has a similar regulation and it contains five perpetration behaviors:

- imitation,
- the counterfeit,
- the intentional acquisition,
- the export, import, or transport through the territory of the country,
- the distribution of false or falsified money.

These five are extended with the interpretation section: the application or removal of a sign serving as an indication that the currency is valid only in a specific country, and any alteration of currency that has been withdrawn from circulation to create an impression as if it was still in circulation shall be considered imitation of currency.⁴³

5. Subjective side of the crime

The statutory provisions of counterfeiting money do not contain a special subject in the German Criminal Code so the perpetrator can be anybody. The crime can be committed only intentionally and in the first four perpetration conducts with the intention to bring counterfeit money into circulation as genuine. The last perpetration conduct can be committed with foreseeable intent (*dolus eventualis*) as well, but specific intent (*dolus directus*) is typical in the practice. If the perpetration conduct is procuring it is important that the offender must know about the origin of money at the moment when he procures it otherwise section 147 should be applicable.

In Hungary the regulation of the subjective side of counterfeiting money is almost the same. The perpetrator can be anybody. Counterfeiting currency can be committed only intentionally. The perpetration conduct of distribution of counterfeit or falsified currency can be committed with specific intent (if the perpetrator conceives a plan to achieve a certain result) and with foreseeable intent (if he acquiesces to the consequences of his conduct) as well. Imitation, counterfeiting, acquisition, and the transit type of conducts can be committed only with specific intent because the lawmaker prescribed in the statutory provision that the offender shall act with the purpose of distribution.⁴⁴

⁴³ K. Karsai, op. cit., p. 818.

⁴⁴ P. Polt, *Pénz- és bélyegforgalom biztonsága elleni bűncselekmények*, [in:] *Büntetőjog Különös rész II. Rejtjel kiadó*, eds. B. Blaskó, Z. Hautzinger, S. Madai, A. Pallagi, L. Schubauer, Budapest 2013, p. 278.

6. Aggravated and privileged cases

The regulation counterfeiting money consists of two aggravated cases:

- if the offender acts on a commercial basis,
- or as a member of a gang whose purpose is the continued counterfeiting of money.

In these two cases the punishment is higher due to the higher risk to the society. The minimum level of sanction is raised by one year: two years imprisonment.

The definitions of the aggravated cases cannot be found in the German Criminal Code but in the practice of the German courts. According to this someone commits the crime on commercial basis if his first or secondary source of income is from counterfeiting for a longer period of time.

The gang consist of at least 3 persons acting in unified will for a longer period of time to commit crimes in the future.⁴⁵

The regulation of the privileged cases is very different from the Hungarian and therefore it is very interesting. There is a so called less serious cases section. In the less serious cases of the basic case the sanction shall be between 3 months to 5 years and paradoxically in the less serious case of the aggravated case shall be 1 to 10 years imprisonment. When can this section be applied? The category of a less serious case is not defined by the law so again we have to call the criminal court practice to enlighten us. According to this the courts should take into account every circumstance. For example

- on the objective side: did the offender commit a crime before this, is he a recidivist,
- on the subjective side: the personality of the offender, etc.

To show an example of a less serious case: a cashier accepts the counterfeit money in order to avoid conflict with the offender and after this he brings it into circulation as genuine.

There is an independent crime called circulation of counterfeit money which can be considered as the privileged case of counterfeiting money.⁴⁶ The German Criminal Code defines this crime in a negative way: "Whosoever brings counterfeit money into circulation other than in cases under sec-

⁴⁵ Entscheidungen des Bundesgerichtshofes in Strafsachen, Band 46, Seite 321 und 338 [Decision of the Federal Court of Justice in criminal matter, Volume 46, pp. 321 and 338].

⁴⁶ R. Schmidt, K. Priebe, op. cit., p. 320.

tion 146 shall be liable to imprisonment not exceeding five years or a fine.” This crime can be established when someone procures the counterfeit money without the knowledge that it is counterfeit, but later he realizes it and thus brings it into circulation. The attempt of the privileged case is also punishable.

In the Hungarian Criminal Code there are two different aggravated cases:

- involves a particularly considerable or greater amount of money; or
- is committed in criminal association with accomplices.

According to the closing provisions of the Criminal Code particularly considerable amount of money is between 50 million plus one and 5 hundred million Forints so the aggravated case of counterfeiting currency can be committed above 50 million plus one Forints which is equivalent to about 161 235 Euros. Criminal association is formed when two or more persons are engaged in criminal activities in an organized fashion, or they conspire to do so and attempt to commit a criminal act at least once, without, however, creating a criminal organization. The state of affairs is stricter compared to the previous regulation (The Act IV of 1978). In the aggravated cases the punishment can be imprisonment for up to 15 years at maximum (previous Criminal Code had 10 years at maximum).⁴⁷

The Hungarian Criminal Code has a privileged case too, which is similar to the German circulation of counterfeit money. But as opposed to the German solution the Hungarian Criminal Code enacts the issue and distribution of counterfeit money not as an independent statutory provision, but rather within the act of counterfeiting. The actual difference between the two acts is that in this case the perpetrator obtains the money legally and “bona fide,” and realizes its wrong, disingenuous and sophisticated nature only after. Legality refers to the legal pretence of acquisition. Therefore, the acquisition is not legitimate if the person obtains the counterfeit money through a criminal act. The legal tradition measures this act as a privileged case with respect to the cause emerged from the expectations, that the international agreement has made feasible and to which it has given potential. For the security of the money flow (the circulation) the initiation of increased protection is reasonable. The distribution of forged or counterfeit money of substantial or greater amount cannot be measured as the lack of expectations, since the perpetrator is aware of the increased risk, therefore the new Criminal Code ensures the possibility for the mitigation of the

⁴⁷ Z. Nagy, D. Tóth, *Computer related economic crimes in Hungary*, “Journal of Eastern European Criminal Law” 2015, No. 2, pp. 167–168.

punishment only in specific cases, tied to a threshold limit (when the value of the money is trivial or even less substantial) and with an unlimited mitigation of the punishment.⁴⁸

7. Stages of the crime

The preparation and the attempt of counterfeiting money is punishable. Preparatory act under the section of 149 consists of:

Whosoever prepares to counterfeit money [...] by producing, procuring for himself or another, offering for sale, storing or giving to another plates, frames, type, blocks, negatives, stencils, computer programs or similar equipment which by its nature is suitable for the commission of the offence; paper, which is identical or easy to confuse with the type of paper designated for the production of money [...] and especially protected against imitation; or holograms or other elements affording protection against counterfeiting.⁴⁹

The sanction for preparation of the crime is lower just as in the Hungarian Criminal Code due to not being as dangerous as the completed act. The offender in this cases shall be liable to imprisonment not exceeding five years or a fine if he prepared to counterfeit money.

The German Criminal Code gives the option to the offender to remain unpunishable if he withdraws from the preparatory acts.

Whosoever voluntarily

- gives up the commission of the offence prepared for and averts a danger caused by him that others continue to prepare the offence or commit it, or prevents the completion of the offence; and
 - destroys or renders unusable the means for counterfeiting, to the extent that they still exist and are useful for counterfeiting, or reports their existence to a public authority or surrenders them there,
- shall not be liable under subsection (1) above.⁵⁰

The Hungarian regulation also gives the chance for the perpetrator to remain unpunished if he withdraws from the preparation of the crime. The main difference is that this rule is regulated in the General Part and not in the Special Part and it is applicable to all crimes.

⁴⁸ Based on the justification of the Act C of 2012.

⁴⁹ Strafgesetzbuch § 149 (1).

⁵⁰ Ibidem, § 149 (2).

The attempt of a crime in the German Criminal Code is only punishable if the statutory provisions of the special crime expressively contains it. This is different in the Hungarian Criminal Code, because every single crime attempt is punishable as stated in the General Part of the Act.

Under the German Criminal Code attempt is defined as the following: "A person attempts to commit an offence if he takes steps which will immediately lead to the completion of the offence as envisaged by him."⁵¹ The attempt of the crime has the same sanction as the completed offence but the judge has the option to punish the offender more leniently. This regulation method is very similar in the Hungary. The main rule is that the sentence is applicable to a completed criminal act, but the penalty may be reduced without limitation or dismissed altogether by the court if the attempt has been carried out on an unsuitable subject, with an unsuitable instrument or by way of unsuitable means. Furthermore, the Section 82 of the Hungarian Criminal Code states that in respect of attempt or aiding and abetting, if the sentence to be imposed remains excessive, a more lenient sentencing can be applied.

Both Codes give the option to the offender to withdraw his commission. The German regulation reads as follows:

A person who of his own volition gives up the further execution of the offence or prevents its completion shall not be liable for the attempt. If the offence is not completed regardless of his actions, that person shall not be liable if he has made a voluntary and earnest effort to prevent the completion of the offence. If more than one person participate in the offence, the person who voluntarily prevents its completion shall not be liable for the attempt. His voluntary and earnest effort to prevent the completion of the offence shall suffice for exemption from liability, if the offence is not completed regardless of his actions or is committed independently of his earlier contribution to the offence.⁵²

The Hungarian Criminal Code consists of two cases when the offender shall not be liable for an attempt:

- who voluntarily withdraws from the completion of the criminal act, or
- who attempts to prevent the crime of his own volition.

Even though it is important to note that if the attempt in itself constitutes another crime, the perpetrator shall be liable for prosecution for that crime.

⁵¹ Ibidem, § 22.

⁵² Ibidem.

Summary and conclusions

To summarize, the Hungarian and German regulation regarding counterfeiting money is very similar. It is possible that the Hungarian lawmaker used the German Criminal Code as a role model when creating the relatively new Hungarian Criminal Code. The following table summarizes the similarities and differences between the two Code:

Table 1: The similarities and differences between the Hungarian and German regulation regarding counterfeiting money

| | German regulation | Hungarian regulation |
|----------------------------------|--|--|
| dogmatic place | counterfeiting is a crime against assets | counterfeiting is an economic crime |
| legal object of the crime | the security of cash-flow, the trust in money and the state monopoly of issuing money | same |
| perpetration objects | <ul style="list-style-type: none"> – money in circulation, – securities listed in the German Criminal Code. – Foreign currencies protected with the same criminal law measures – According to the court practice: – money withdrawn from the circulation: if the state has obligation to exchange it to money in circulation. | <ul style="list-style-type: none"> – banknotes and coins in circulation; – money withdrawn from the circulation where the issuing national bank is required, or agreed, to redeem such withdrawn currency and exchange it to legal tender pursuant to the relevant national legislation or European Union legislation; – printed securities issued as part of a series shall also be treated as banknotes, where the transfer of such securities is not restricted or precluded by law or by any endorsement made on the securities – Foreign currencies and securities are granted protection identical with that of domestic ones. |
| perpetration conducts | <ol style="list-style-type: none"> 1. imitation of money 2. counterfeiting of money 3. procuring counterfeit money 4. offering for sale counterfeit money 5. bringing counterfeit money into circulation as genuine. | <ol style="list-style-type: none"> 1. imitation of money in circulation 2. counterfeiting of money in circulation 3. acquisition of counterfeited money 4. the export, import, or transport through the territory of the country |

| | | |
|--|--|---|
| | | <p>5. the distribution of false or falsified money</p> <p>This 5 is extended with the interpretation subsection</p> <ul style="list-style-type: none"> – the application or removal of a sign serving as an indication that the currency is valid only in a specific country, and – any alteration of currency that has been withdrawn from circulation to create an impression as if it was still in circulation shall be considered imitation of currency |
| Subjective side of the crime | can be anybody. Can be committed only intentionally | same |
| Stages of the crime | The preparation and the attempt of counterfeiting money is also punishable | same |
| Is there an omission to report the planned counterfeiting to the authorities? | Yes, if someone has a credible information about the planning of the offense. at a time when the commission or result can still be averted, and fails to report it in time to the public authorities or the person threatened, shall be liable to imprisonment not exceeding five years or a fine. | No |
| aggravated cases | if the offender acts on a commercial basis or as a member of a gang. | <p>if counterfeiting:</p> <ul style="list-style-type: none"> – involves a particularly considerable or greater amount of money; or – is committed in criminal association with accomplices. |
| Privileged case | The so called less serious cases and the circulation of counterfeit money | The penalty of any person who distributes counterfeit or falsified currency of minor value or less, obtained as genuine, may be reduced without limitation. |

| | | |
|------------------|---|--|
| Sanctions | <ul style="list-style-type: none"> – basic case 1–15 years imprisonment – aggravated case 2–15 years imprisonment – less serious case of the basic case 3 month to 5years – less serious case of the aggravated case 1–10 years imprisonment – circulation of counterfeit money imprisonment not exceeding 5 years or a fine – preparation: imprisonment not exceeding 5 years or a fine. | <ul style="list-style-type: none"> – basic case 2–8 years imprisonment – aggravated cases 5–15 years imprisonment – preparation: not exceeding 3years imprisonment. |
|------------------|---|--|

Source: Act C of 2012 on the Hungarian Criminal Code §§ 389–390, and Strafgesetzbuch [German Criminal Code] §§ 146–149.

The following table shows the registered numbers of counterfeiting money and official stamps yearly in Germany. The German authorities counts these two crimes together but presumably counterfeiting money has a big percentage of these numbers.⁵³

Table 2: The registered numbers of counterfeiting money and official stamps

| Year | 2011 | 2012 | 2013 | 2014 | 2015 |
|-----------------------------|------|------|------|------|------|
| Registered numbers of crime | 7100 | 5476 | 5902 | 5338 | 4779 |

Source: Polizeiliche Kriminalstatistik (PKS) 2015, [online] https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/PolizeilicheKriminalstatistik/PKS2015/pks_2015_node.html;jsessionid=EFF6F5AD679ED9B2D4B7858F80544242.live0611 (accessed: 20.09.2016).

We can draw the conclusion from the statistics that the registered numbers of counterfeiting are low. There are only around two to three thousand cases a year in Germany where the population is 80 million. Comparing the 10 million inhabitant Hungary has around 1000–2000 cases yearly.

⁵³ Bundesministerium des Innern, [online] https://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2016/pks2015.pdf?__blob=publicationFile [accessed: 20.09.2016].

Even though the low number of counterfeiting cases there are many counterfeits withdrawn from the circulation.

Table 3: Numbers of counterfeit money withdrawn from the circulation

| Banknote | 5 € | 10 € | 20 € | 50 € | 100 € | 200 € | 500 € | All together |
|------------|-----|------|-------|-------|-------|-------|-------|--------------|
| Number | 991 | 1526 | 37916 | 46567 | 5608 | 2032 | 717 | 95357 |
| Percentage | 1% | 2% | 40% | 49% | 6% | 2% | 1% | 100% |

Source: *Deutlich mehr Falschgeld in Deutschland*, [online] https://www.bundesbank.de/Redaktion/DE/Pressemitteilungen/BBK/2016/2016_01_22_falschgeld.html [access: 20.09.2016].

All together almost one hundred thousand counterfeit euro banknotes were withdrawn from the circulation in Germany in 2015. The perpetrators counterfeited particularly the 50 and 20 euro banknotes (89%). The main reason for this that they do not want to get caught and these banknotes are not as often controlled as for example the 100 euro banknote.

The worth of the counterfeited banknotes withdrawn from the circulation were about 4.4 million euros.

Even though counterfeiting is not primarily a quantity but a quality problem of crime. The real threat of this crime is the damage it can cause to the economy. High numbers of fake money in the circulation can destabilize the economics relations, and the trust in a country's money.

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