

**Act CCX of 2011**  
**on Punishing Crimes Against Humanity without Applying the Statute**  
**of Limitations and**  
**on Prosecuting Certain Crimes Committed During**  
**Communist Dictatorship**

Affirming its commitment under international law to declare that the statute of limitations shall not apply to offences classified as most serious in international law, and seeking to ensure the punishability of certain offences committed and left unprosecuted during communist dictatorship, Parliament hereby adopts the following Act:

*1. Non-applicability of statutory limitations to crimes not subject to limitation under international law*

**Section 1** – There shall be no limitation claims for crimes subject to the non-applicability of statutory limitation under international law even if such crimes were not, at the time they were committed, classified as crimes not subject to limitation or prescription under domestic law. Such crimes shall include in particular:

(a) crimes against humanity defined by subparagraph (c) of Article 6 of the Nuremberg Charter of the International Military Tribunal and referred to in subparagraph (b) of Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by the General Assembly of the United Nations in New York on 26 November 1968 as promulgated by Law-Decree 1 of 1971;

(b) grave breaches committed in international armed conflicts defined in Common Article 2 of the Geneva International Conventions relating to the protection of war victims adopted on 12 August 1949 and promulgated by Law-Decree 32 of 1954;

(c) grave breaches committed in non-international armed conflicts defined in Common Article 3 of the Geneva International Conventions relating to the protection of war victims adopted on 12 August 1949 and promulgated by Law-Decree 32 of 1954.

**Section 2** – (1) The official Hungarian translation of the definitions of the criminal offences laid down in Article 6 of the Nuremberg Charter of International Military Tribunal shall be as follows:

„(a) Béke elleni bűncselekmények: a nemzetközi szerződéseket, egyezményeket, vagy garanciákat sértő agresszív háború tervezése, előkészítése, kezdeményezése, vagy folytatása, illetve az olyan közös tervben vagy összeesküvésben való részvétel, amely az előzőek megvalósítására jött létre;

(b) Háborús bűncselekmények: a háború jogának vagy szokásainak a megsértése, különösen a megszállt területen élő vagy tartózkodó polgári lakosság tagjainak megölése, bántalmazása, rabszolgamunkára fogás vagy bármilyen más célból történő áttelepítése; a hadifoglyok vagy tengeren tartózkodó személyek megölése vagy bántalmazása; tűzok kivégzése, köz-, vagy magántulajdon fosztogatása, illetve városok, falvak katonai szükséglet által nem indokolt önkényes elpusztítása vagy lerombolása;

(c) Emberiesség elleni bűncselekmény: bármely polgári lakosság tagja ellen a háború előtt vagy alatt, elkövetett emberölés, kiirtás, rabszolgaságba taszítás, áttelepítés és embertelen cselekedetek, valamint a Törvényszék hatáskörébe tartozó más bűncselekmény végrehajtása során vagy azzal összefüggésben politikai, faji, vagy vallási alapon történő üldözés, függetlenül attól, hogy sérti-e az elkövetés országának jogát. (...)”

(2) The official English language text of the definitions of the criminal offences laid down in Article 6 of the Nuremberg Charter of International Military Tribunal is attached as Annex 2 hereto.

## *2. Prosecution of certain crimes committed during the communist dictatorship*

**Section 3–** (1) For the purposes of this Act:

(a) *a communist crime* shall mean an offence committed during the period of communist dictatorship which

(aa) the Criminal Code effective at the time it was perpetrated classified as a crime defined in Annex 1 hereof,

(ab) was committed in the name or in the interest of, or in agreement with the party-state, and

(ac) were left unprosecuted during the communist dictatorship since no criminal proceedings were launched against the offender due to political reasons;

(b) *communist dictatorship* shall mean the period between 20 August 1949 and 1 May 1990;

(c) *crimes committed on behalf of the state-party* shall mean offences committed by state-party officials listed as competent persons of the Central Directorate of the Hungarian Working People's Party (MDP) or of the Central Committee of the Hungarian Socialist Workers' Party (MSZMP) in relation to official duties while in office;

(d) *crimes committed for the benefit of the state-party* shall mean offences committed to secure benefits for any of the state-party officials listed as competent persons of the Central Directorate of the Hungarian Working People's Party (MDP) or of the Central Committee of the Hungarian Socialist Workers' Party (MSZMP), or to maintain, reinforce or express the power of the state-party;

(e) *crimes committed in agreement with the state-party* shall mean offences committed on the instructions, with the consent or knowledge of a state-party official listed as a competent person of the Central Directorate of the Hungarian Working People's Party (MDP) or of the Central Committee of the Hungarian Socialist Workers' Party (MSZMP), provided that such state-party official instructed the perpetrator to commit the crime or consented to it or obtained knowledge thereof in conjunction with his/her office.

(2) For the purposes of this Act, no criminal proceedings shall be deemed to have been launched against a perpetrator because of the crime concerned due to political reasons if, contrary to the Criminal Code in force at the time of perpetration, no criminal proceedings were brought against the offender during the communist dictatorship, and the criminal act was committed in the name or in the interest of, or in agreement with the party-state.

**Section 4 –** (1) The provisions of paragraphs (7) and (8) of Article U of the Fundamental Law shall apply to the statutory limitations of communist crimes.

(2) This Act shall not affect the statutory limitation of communist crimes that, in accordance with the Criminal Code effective at the time of perpetration, would have lapsed between 2 May 1990 and 31 December 2011, and for which criminal proceedings were launched against the offender between 2 May 1990 and 31 December 2011.

**Section 5 –** Without prejudice to the provisions on statutory limitations set forth in the Hungarian Criminal Code in effect at the time of perpetration and also to Section 4 hereof, crimes committed during the communist dictatorship that are not subject to statutory limitation under international law shall continue to be punishable.

**Section 6 –** (1) Without prejudice to Sections 4 and 5 hereof, communist crimes shall be assessed in accordance with the Criminal Code in effect at the time of committing the offence; the Criminal Code in effect at the time of assessment – with the exception laid down in paragraph (2) – shall have no retroactive effect.

(2) If a communist crime does not qualify as a crime under the Criminal Code in effect at the time of assessment, or it is to be treated more leniently, then, without prejudice to the provisions of Sections 4 and 5, the Criminal Code in effect at the time of assessment should be applied.

(3) As regards communist crimes referred to in paragraphs (1) and (2) above, the penalty imposed may be reduced without restriction, with special regard to the state of health or age of the person accused of a communist crime.

Section 7 –The statutory limitation of communist crimes as laid down in paragraphs (7) and (8) of Article U of the Fundamental Law shall be interrupted by any act of prosecution made against the offender on account of an offence after 31 December 2011. On the date of interruption the period of limitation set forth in paragraphs (7) and (8) of Article U of the Fundamental Law shall start again.

### *3. Closing provisions*

Section 8 – This Act shall enter into force on 1 January 2012.

Sections 9 and 10 \*

#### *Annex I to Act CCX of 2011*

##### *The list of crimes that may qualify as communist crimes*

1. *murder* [pursuant to Sections 279-280 of Act V of 1878 on crimes and misdemeanors (Hungarian Criminal Act) in effect during the communist dictatorship (hereinafter referred to as 'Act V of 1878) and sections 349, 351 and 352 of the Official List of the Effective Substantive Criminal Rules of 1952 (hereinafter referred to as 'BHÖ'); pursuant to paragraphs (1) and (2) of Section 253 of Act V of 1961 on the Criminal Code of the People's Republic of Hungary (hereinafter referred to as 'Act V of 1961'); or pursuant to paragraphs (1) and (2) of Section 166 of Act IV of 1978 on the Criminal Code (hereinafter referred to as 'Act IV of 1978') in effect during the communist dictatorship];

2. *aggravated grievous bodily injury committed intentionally* [pursuant to Sections 303–307, the second alternative of the first sentence of Section 309 and the second sentence of Section 309 of Act V of 1878 in effect during the communist dictatorship, or pursuant to sections 362–366, second alternative of paragraph (1) of section 368 and paragraph (2) of section 368 of BHÖ; pursuant to paragraphs (2)–(4) of Section 257 of Act V of 1961; or pursuant to paragraphs (3)–(5) of Section 170 of Act IV of 1978 in effect during the communist dictatorship];

3. *interrogation by torture* [pursuant to Section 477 of Act V of 1878 in effect during the communist dictatorship, or pursuant to section 128 of BHÖ; pursuant to Section 146 of Act V of 1961; or pursuant to Section 227 of Act IV of 1978 in effect during the communist dictatorship];

4. *unlawful detention* [pursuant to Sections 193–197 of Act V of 1878 in effect during the communist dictatorship, or pursuant to sections 132–136 of BHÖ; pursuant to Section 147 of Act V of 1961; or pursuant to Section 228 of Act IV of 1978 in effect during the communist dictatorship];

5. *disloyalty and high treason, or high treason against the territory of the State of Hungary* [pursuant to subparagraph 3 of Section 127 of Act V of 1878 in effect during the communist dictatorship, or pursuant to certain provisions of Chapter III of PART TWO of Act V of 1878 – as laid down in Sections 58 and 59 of Act III of 1930 on entering the military penal code into force as well as on amending and supplementing certain provisions of common criminal laws – in effect during the communist dictatorship, or pursuant to sections 13, 35 and 36 of BHÖ; pursuant to Section 129 of Act V of 1961; or pursuant to Sections 144 and 145 of Act IV of 1978 in effect during the communist dictatorship];

6. *complicity relating to the crimes laid down in subparagraphs 1–5 above* [pursuant to Sections 374–378 of Act V of 1878 in effect during the communist dictatorship, or pursuant to Section 77 of Act III of 1930 on entering the military penal code into force as well as on amending and supplementing certain provisions of common criminal laws, or pursuant to sections 211–215 of BHÖ; pursuant to Sections 148 and 184 of Act V of 1961; or pursuant to Section 244 of Act IV of 1978 in effect during the communist dictatorship].

*Annex 2 to Act CCX of 2011*

The official English language text of the definitions of the criminal offences laid down in Article 6 of the Charter of Nuremberg International Military Tribunal is as follows:

..(a) Crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) War crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

(c) Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. (...)"

Reasoning to Act CCX of 2011

on Punishing Crimes Against Humanity without Applying the Statute of Limitations and on Prosecuting Certain Crimes Committed During Communist Dictatorship

***General justification***

By signing the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity adopted by the General Assembly of the United Nations in New York on 26 November 1968 and published in Hungary by Law-Decree 1 of 1971 (hereinafter referred to as the 'Convention'), the State of Hungary undertook to declare with retroactive effect the non-applicability of statutory limitations to crimes against humanity set forth in subparagraph (c) of Article 6 of the Nuremberg Charter of the International Military Tribunal (hereinafter referred to as the 'Charter').

In accordance with the unbroken jurisprudence of the Constitutional Court, "the international obligation to punish all war crimes and crimes against humanity applies to the entire cogent international legislation". This compulsory legislation includes all generally recognized rules of international law i.e. customary international law and the general principles recognized by the community of nations as well [Constitutional Court Decision 53/1993 (X. 13.)]. Any state prosecuting and penalizing those international crimes, will act on the mandate of the community of nations in accordance with the terms laid down in international law, "irrespective of whether any similar crime is regulated by its domestic law, or the relevant conventions had been incorporated into its domestic law" [Constitutional Court Decision 53/1993 (X. 13.)].

Since according to the position of the Constitutional Court "both the definition of war crimes and crimes against humanity and the conditions of penalizing those crimes are determined by international law [...]" [section V.1. of Constitutional Court Decision 53/1993 (X. 13.)], they shall be construed in accordance with the rules and principles of international law, too.

Modelled after Act XC of 1993 on the Proceedings Relating to Certain Crimes Committed During the 1956 Revolution and Fight for Freedom, this Act aims to promote the application of law based on the Hungarian statute promulgating the Convention. That Act declares that crimes against humanity referred to in the Fundamental Law has been and shall be part of the Hungarian criminal law by virtue of the international obligation undertaken in the Convention and, furthermore, that such crimes shall not be subject to the statute of limitations.

The crime has a uniform name in the international documents:

*crimes against humanity* in English, *crime contre l'humanité* in French, *crímenes de les a humanidad* in Spanish and *Verbrechen gegen die Menschlichkeit* in German. Nevertheless, effective Hungarian legislation uses seven different designations:

- offences against humanity,
- offences committed against humanity,
- crimes against humanity,
- crimes committed against humanity,
- crimes against mankind,
- felonies against mankind,
- felonies against humanity.

This Act uses the designation 'crimes against humanity' in order to create a uniform terminology, to distinguish this crime from the title of Chapter IX of the Criminal Code (crimes against mankind), and to follow the position adopted by literature and the most recent trends of codification.

### *Detailed justification*

#### *To Section 1*

No limitation shall be claimed for crimes not subject to limitation under international law even if domestic law in effect at the time of perpetration failed to declare the non-applicability of statutory limitation to such crimes. Such crimes shall include but shall not be limited to:

The crime set forth in subparagraph (b) of Article I of the Convention. A former decision by the Constitutional Court established that "decisions 3/I (dated 13 February 1946) and 95/I (dated 11 December 1946) of the UN General Assembly reinforced the principles of law laid down in the Constitution and recognized by the judgments of the Court and declared them the basic principles of international law, and reinforced the definitions of crimes against humanity, too" [Constitutional Court Decision 2/1994 (I. 14.)].

Breaches laid down in Common Articles II and III of the international conventions adopted in Geneva on 12 August 1949.

#### *To Section 2*

The Tribunal was established by the Convention for the prosecution and punishment of the major war criminals of the European Axis, adopted in London on 8 August 1945. On 6 October 1945 the Contracting Parties clarified the English and French language definition of a crime against humanity as set forth in the Charter attached to the Convention (the so-called Berlin Protocol). In view of this, the official Hungarian translation of Article 6 of the Charter is included in the Act. The official English language text is enclosed in Appendix 2 hereto.

#### *To Sections 3–7 and 9–10*

Pursuant to Article 2 of the transitional provisions of the Fundamental Law of Hungary, serious crimes defined in an Act which were committed against Hungary or persons under the communist dictatorship in the name or in the interest of, or in agreement with the party-state and which were left unprosecuted for political reasons by ignoring the Act on criminal law in force at the time of commission, shall not be considered as time-barred. Compared to the provisions included in the Criminal Code, these sections set forth special rules on limitation from the perspective of both international law and domestic law. The Act also defines certain terms referred to in Article 2 of the transitional provisions of the Fundamental Law. It calls the offences referred to in subparagraph (1) 'communist crimes'. The term 'communist crime' is not the designation of a single offence, it is merely a collective name used in the act to comply with the requirements arising from the transitional provisions of Fundamental Law.

The Act does not establish individual criteria in relation to the politically motivated failure to launch criminal proceedings during the communist dictatorship but it puts forward a presumption stating that if a certain act qualified as a crime under the criminal law in effect at the time of perpetration, and was committed in the name, in the interest of, or in agreement with the party-state, then the failure to prosecute such crime was due to political reasons.

The Act determines in accordance with Section 2 of Act IV of 1978 on the Criminal Code which criminal law is to be applied in relation to communist crimes. In general, it is the criminal law in force and effect at the time of perpetration that should be applied, however, if the criminal law in effect at the time of assessment is more lenient toward the accused then it shall prevail. Although the Act lists crimes that also qualify as penal offences today, several of the associated penalties have changed and, considering the lesser and/or greater modifications of the factual elements of the definitions of these crimes, it cannot be excluded that an act which qualified as a crime at the time of perpetration is no longer regarded to be one today.

In respect of such cases, the Act permits the application of the criminal code which is more lenient for the offender. As regards Annex 1, there were several modifications during the decades after 20 August 1949 of the designation of the facts that define the crimes that may qualify as communist crimes. With the exception of subparagraph (5), the designation of the crimes specified in the Act follow the traditional names, however, the Act specifies clearly the acts and section(s) in effect during the communist dictatorship to regulate a specific crime which is equivalent to the one listed therein.

The crimes defined in subparagraph (5) of Annex 1 are exceptions because on account of the period of Soviet military aggression relating to the suppression of the 1956 Revolution and Fight for Freedom, the facts of cases in effect at the time of perpetration can be clearly determined. When defining the crimes laid down in this paragraph, the legislator took into account the case law of the Constitutional Court, which suggests that in case the legal subject protected by a crime is the People's Republic of Hungary then the definition of the crime shall not be applicable with a view to the absolute prohibition of criminal legislation with retroactive effect.

That is why subparagraph (5) of Annex 1 only lists crimes where the protected legal subject is the State of Hungary or the territorial independence of the country, which are values independent of and superior to the actual form of government. Article 2 of the transitional provisions of the Fundamental Law itself renders such crimes punishable by providing that the statute of limitations shall not apply to serious crimes committed against Hungary.

Compared to the otherwise applicable Criminal Code, this Act establishes special rules by defining the rules of statutory limitations as such arise from the transitional provisions of the Fundamental Law, and by facilitating the reduction of the penalty without restriction with special regard to the state of health or age of the person committed a communist crime.

Concerning communist crimes, the provisions of the Act on Criminal Proceedings shall also apply *mutatis mutandis*, the obligation of the state to prosecute all crimes not subject to limitation must be observed in accordance with the procedural rules thereof.

To Section

8

This Section contains a provision on the entry into force of the Act.