



Regulation of Bankruptcy Offences in German and Hungarian Law

Mihály Filó

JD, LLM, PhD, Senior Lecturer

Gabriella F. Kiss

JD, PhD-Student

Eötvös Loránd University of Science

Faculty of Law, Department of Criminal Law

e-mail: filo@ajk.elte.hu

Abstract. The purpose of our study is to compare the German and Hungarian regulations relating to insolvency-related offences, including bankruptcy offences, to introduce the relevant German regulations, and to highlight their major differences from Hungarian regulations.

A comparison of the Hungarian and German criminal regulations seems expedient – apart from the fact that the legal systems under review belong to the same law group and represent the same “legal style” –, all the more so because the structures of these criminal regulations are largely identical, so an opportunity presents itself to compare the individual factors of crime. Allowing for codification in Hungary, our study of the German legal system, which is often quoted herein by way of example, becomes particularly timely.

Keywords: criminal law, bankruptcy offences, Germany, Hungary

I. Introduction

Zweigert & Kötz claim that the primary function of the comparison of law is to gain awareness, a method of legal science as such, which presents to the researcher an “array of solutions” in order to give aid in the prevention of social conflicts.¹ As a basic principle of methodology of legal comparison, one should highlight *functionality* as it is fairly straightforward that only those legal solutions are fit for comparison that fulfil the same regulatory task. It is natural that different legal systems satisfy the need for regulation in various manners. As a negative aspect of functionality, one should point out that the basic issue is always assessed under the dogmatic framework of the legal system in question. Concerning

¹ Zweigert & Kötz 1996. 13.

the positive aspect of the principality of functionality, we are about to find the answer on what domains of foreign law the research involving the comparison of law should focus on. According to the theory of totality, one should seek to expose a great number of elements of society, economy, and culture given the fact that these are the factors that fundamentally determine the legal system.² This recognition is especially appropriate with respect to economic crimes such as acts classified under the scope of bankruptcy.

The differences between the domains of legal history and legal comparison are relativistic as the examination of legal history “mandatorily” relies on comparison, primarily along the time dimension. Additionally, the wide concept of legal comparison evidently contains comparative legal history as well. However, as there is a fundamental difference between the two domains, while the research of legal history relates to the past, the comparison of law addresses the present and the future. Another common point is that both sciences have among their objective aspects involving legal criticism and legal politics, yet legal history can be assigned the title of “vertical legal comparison,” while the comparison of modern legal systems can be labelled as “horizontal legal comparison”.³

We seek to conduct the comparative aspect of our research as functional legal comparison. In other words, we assess what type of legal settlement performs a particular function in the legal systems in question. The comparison of Hungarian and German criminal law seems appropriate in the field of bankruptcy crime, to say the least; besides that the legal systems in question belong to the same family of law and represent the same “legal style,” the structures of criminal law legislation largely correspond, thus allowing to draw parallels for the particular facts of the case. If we know the currently valid law, we can then rely on this knowledge to assess what sociological or individual interest can be satisfied through such legal regulation, and hence the aspects of jurisprudence of interests (*Interessenjurisprudenz*) can also appear in our research.

II. Offences in the State of Insolvency under German Law

The solution, which appears in German law, i.e. the vast part of economic crimes is regulated in other legal regulations, particularly in the so-called “subsidiary legislation (*Nebenstrafrecht*),” not in the German Criminal Code, which is quite strange for a Hungarian lawyer.⁴ Consequently, for example, the Act on Limited Liability Companies (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung, GmbHG*), the Act on Companies Limited by Shares (*Aktiengesetz, AktG*),

2 Zweigert & Kötz 1996. 42.

3 Zweigert & Kötz 1996. 8.

4 Molnár 2013. 760–775.

and the Commercial Code (Handelsgesetzbuch, HGB) of Germany also include such cases which are relevant for our topic and which are related to the failure of initiation of insolvency proceedings such as postponement of bankruptcy and infringement of the special obligations to be fulfilled in the state of losses, insolvency, or indebtedness. The delayed or omitted filing of insolvency is also punished by the German Insolvency Statute (Insolvenzordnung, Inso) as it is a separate element of crime.⁵

III. German Bankruptcy Offences versus Hungarian Bankruptcy Offences

Bankruptcy offences standing in the specific focus of our research are addressed in the German Criminal Code⁶ (Strafgesetzbuch, StGB) in a specific chapter (Chapter 24: Offences in the State of Insolvency). A very remarkable difference is that while Hungarian criminal law, particularly (§ 404 of) the Hungarian Criminal Code⁷ (Btk.), specifies bankruptcy offences such as one single factum of crime,⁸ it is broken down into four offences in German law: Firstly, in German regulations, bankruptcy offences (StGB § 283), which are far more complex than in Hungarian regulations, even at first sight, are addressed in a total of eight paragraphs, indicating the prohibited acts and the formations of conducts of intention, mixed culpability and negligence. § 283a of StGB defines aggravated bankruptcy as a separate element of crime, giving importance to two aggravating circumstances. Extending unlawful benefits to creditors (§ 283c of StGB) is also a separate case. In Hungarian regulations, both aggravated bankruptcy and extending unlawful benefits to creditors are considered basic cases, that is, these crimes constitute a part of Btk., in particular, two separate paragraphs of Section 404 thereof. It is also a novelty for a Hungarian lawyer that in German law extending unlawful benefits to debtors (§ 283d of StGB) is punished as an independent case, namely because it is not regulated – for the time being – in Hungarian criminal law. It has to be noted that this chapter of the German Criminal Code includes “Violation of Book-Keeping Duties” (StGB 283b), which can be compared to the crime of “Infringement of Accounting Regulations” in Section 403 of Btk. The comparison of German and Hungarian regulations on this latter crime is not subject of this study.

⁵ Kindler-Nachmann 2013.

⁶ Criminal Code in the version promulgated on 13 Nov. 1998.

⁷ Act C of 2012 on the Criminal Code (hereinafter: “Btk.”).

⁸ Karsai 2013. 854–859.

Table 1. Comparison of German bankruptcy offences (§ 283 – 283d of StGB) and Hungarian bankruptcy offences (§ 404 of Btk.)⁹

GERMAN BANKRUPTCY OFFENCES	RELEVANT HUNGARIAN REGULATIONS
§ 283 of StGB: the actual criminal conducts of bankruptcy crime that might be committed in a crisis situation or that might bring about a crisis situation are listed in eight paragraphs. (We will define the categories of crisis situations (insolvency, danger of insolvency, indebtedness) in the following paragraphs.)	Similarly, bankruptcy offences within the meaning of Section 404 of Btk. are those that might be committed in a crisis situation or that might bring about a crisis situation. A crisis situation does not have completely the same meaning in the German and Hungarian practice (the concept of indebtedness is not known in Hungarian criminal law). According to the usual classification, bankruptcy offences are committed in a situation involving potential danger of insolvency; those bringing about insolvency and those committed in the state of insolvency can be distinguished.
§ 283a of StGB: aggravated bankruptcy. Aggravating circumstances: acting out of profit seeking or knowingly placing many persons in danger of losing their assets that were entrusted to the offender or in financial hardship.	Aggravated bankruptcy is specified in a separate paragraph (§ 404 (3) of Btk.) within the above mentioned factum of crime. The aggravating circumstances are absolutely different from those set out in German regulations; on the one hand, Hungarian regulations punish offences committed in respect of an economic operator qualified as having strategic priority more severely, and, on the other hand, the crime is deemed more serious if the amount of actual or false diminution of assets is particularly substantial.
§ 283b of StGB: violation of book-keeping duties outside a crisis situation	Similarly, it is regulated in a separate factum of crime in Hungarian law § 403 of Btk.: Infringement of Accounting Regulations. (A crisis situation is not a factor in the case.)

⁹ The Hungarian regulations are compared to the German solution.

GERMAN BANKRUPTCY OFFENCES	RELEVANT HUNGARIAN REGULATIONS
§ 283c of StGB: extending unlawful benefits to creditors, a privileged case of bankruptcy offences regulated in § 283	Similarly, extending unlawful benefits to creditors (§ 404 (4)) is a crime regulated in a separate paragraph of the bankruptcy offences regulated in § 404.
§ 283d of StGB: extending unlawful benefits to debtors is a crime, whereby a person who may be only an accomplice of a bankruptcy offence under § 283 may be deemed as an offender as well.	No relevant regulation in the laws of Hungary.

Table 2. Comparison of bankruptcy offences described in § 283 of StGB, i.e. the basic case of German bankruptcy offences, and Hungarian bankruptcy offences (§ 404 of Btk.)¹⁰

BASIC CASE OF GERMAN BANKRUPTCY OFFENCES	HUNGARIAN BANKRUPTCY OFFENCES
The intentional formations of bankruptcy offences are described in § 283 (1-2) of StGB so that the conducts described in Subsection (1) are committed in a crisis situation, and, in respect of Subsection (2), the crisis situation is brought about by the same conducts. Prohibited acts are described in eight paragraphs, the last of which constitutes a general clause which gives a summary of the other prohibited acts not mentioned in the previous seven paragraphs.	Each formation of Hungarian bankruptcy offences requires intention and no act of negligence is punishable. As a result, i.e. the actual or apparent diminution of the assets of the debtor economic operator and partially or entirely the frustration of satisfaction of its creditors or at least one of its creditors should also be determined by the offender's intention. Hungarian regulations mention two groups of criminal conducts specifically (§ 404 (1) paragraphs a) and b)), which are also included in German regulations, and the third paragraph (§ 404 (1) para. c)) constitutes a general clause to punish other committals in a way contrary to the requirements of reasonable management. As we have already mentioned above, aggravated bankruptcy and extending unlawful benefits to creditors are also included in the factum of crime.

¹⁰ The Hungarian regulations are compared to the German solution.

BASIC CASE OF GERMAN BANKRUPTCY OFFENCES	HUNGARIAN BANKRUPTCY OFFENCES
According to Subsection (3), the attempt shall be punishable. (In German law, the punishability of an attempt is regulated in particular rules as well.)	The attempt of bankruptcy crime is also punishable. (In Hungarian law, the attempt of an intentional crime is always punishable as stipulated in Section 10 (1) in the General Part of Btk.) ¹¹
Bankruptcy described in Subsection (4) is an offence of mixed culpability.	The result should also be determined by the intention.
Negligent formations of bankruptcy offences are described in Subsection (5).	Acts of negligence shall not be punishable.
The objective conditions for punishability are described in Subsection (6).	The objective conditions for punishability are described in Subsection (5), which conditions are more limited than in German regulations and apply to both the basic and qualified cases of bankruptcy offences.

IV. Crisis Categories

From the point of view of our topic, not only StGB but also the German Act on Insolvency¹² (Insolvenzordnung, InsO) has prominent importance because it defines the individual “crisis categories”. A bankruptcy offence within the meaning of Subsection (1), paragraph 1) of Subsection (4), and paragraph 1) of Subsection (5) of § 283 of StGB can be established on the condition that the offender commits it in a crisis situation. According to Subsection (1) of § 283 of StGB, a crisis situation means the state of insolvency (§ 17 (2) of InsO), the danger of insolvency (§ 18 (2) of InsO), or indebtedness (§ 19. (2) of InsO). A person is in the state of insolvency if he is unable to pay their overdue debts. A danger of insolvency occurs if it is likely that the debtor is unable to meet his payment obligations in due course. The debtor becomes indebted if their assets fail to cover their outstanding debts any longer unless it is very likely, based on the circumstances, that the debtor is able to continue their business activities.

It has to be noted that German regulations preceding InsO had not been uniform; furthermore, there had existed no uniform concept of insolvency, and therefore it was formed and established by the legal practice in relation to bankruptcy offences. According to the judicial practice, insolvency means permanent lack of

11 The person who commences the perpetration of an intentional crime but does not finish it shall be punishable for attempt.

12 Insolvency Statute of 5 Oct. 1994.

assets on the part of the debtor based on the lack of his payment instruments as a consequence of which the debtor is unable to satisfy the material part of their cash debts due and payable forthwith and claimed in earnest.

As far as crisis situations are concerned, German and Hungarian Criminal Codes show a fundamental difference, namely that the Hungarian criminal law assesses only two forms of crisis situations and the concept of indebtedness is not regulated either in Btk. or in Hungary's Act on Bankruptcy Proceedings¹³ (Bankruptcy Act). The concepts of insolvency and danger of insolvency are defined in the Bankruptcy Act (§ 27 (2) and § 33/A (1), respectively. The concept of insolvency is defined in Hungarian law far more precisely since the Bankruptcy Act includes the itemized list of the conditions under which a debtor can be deemed insolvent and the court may establish him being insolvent. For example, a debtor is deemed insolvent if he fails to settle or contest his previously undisputed or acknowledged contractual debts within 20 days of the due date, and fails to satisfy such debt even upon receipt of the creditor's written payment notice, or – for example – if the enforcement procedure against the debtor was unsuccessful. Such a situation is considered to carry potential danger of insolvency as of the day when the executives of the economic operator were or should have been able to predict that the economic operator will not be able to fulfil its payment obligations when due.

V. Protected Legal Interests

The protected legal interests of insolvency-related offences (including bankruptcy crimes), that is, protection of the insolvency assets against any uneconomic diminution or use at the expense of creditors' interests, protection of the credit system, protection of operability of crediting, and providing for freedom of movement of capital, are identical in both German and Hungarian regulations.¹⁴

VI. Is a Result Required for Bankruptcy Offences to Become Consummated?

It is a considerable difference between the two criminal regulations. The basic case of a German bankruptcy offence described in the first section (§ 283 (1)) constitutes a crime of endangerment and it is sufficient to commit a bankruptcy offence in a crisis situation to make it consummated if one of the objective

¹³ Act II of 1991 on Bankruptcy Proceedings, Liquidation Proceedings and Voluntary Dissolution (hereinafter: Bankruptcy Act).

¹⁴ Kindhäuser 2013.

conditions (§ 283(6)) is performed. On the contrary, all formations in Hungarian regulations are “result offences,” i.e. partial or entire failure of satisfaction of one or more creditors is indispensable for a Hungarian bankruptcy crime to become consummated. Partial failure means that while a part of a certain group of creditors are satisfied the chances of satisfaction of some creditors would permanently or ultimately become reduced. Reverting to German bankruptcy offences, their forms, which bring about a crisis – more particularly only indebtedness or insolvency –, also require result.¹⁵ A situation carrying the danger of insolvency cannot be the result of such forms of bankruptcy offences. An aggravated bankruptcy has both a danger formation and a result formation.

VII. Objective Conditions for Punishability

Both German and Hungarian regulations include objective conditions for punishability, which are partly overlapping. According to German regulations (§ 283 (6)), the person may be punished if, alternatively, they either suspend payments or are involved in insolvency proceedings¹⁶ or the application for instituting insolvency proceedings is rejected due to lack of assets.¹⁷ Suspension of payments is not necessarily identical to insolvency as it means suspension of payments to creditors. As far as we know, Hungarian legal regulations include no definition of the collective concept of insolvency proceedings. It might be the reason why Btk. includes a list of individual insolvency proceedings (bankruptcy, liquidation, forced cancellation, forced dissolution proceedings) the instituting, ordering or failure of mandatory ordering of which is an objective condition for the punishability of a bankruptcy crime. Insolvency (liquidation) proceedings should be conducted in a simplified form if there are no available assets in a liquidation proceeding and neither this fact nor suspension of payments is an element of a bankruptcy offence under Hungarian law.

VIII. The Object of Crime

One of the most essential differences between German and Hungarian regulations is that a bankruptcy offence is committed in respect of the assets of an economic operator under Hungarian law. The concept of “economic operator” is defined in the Bankruptcy Act (§ 3 a)); in particular, an economic organization and a natural

15 StGB § 283 Subsection (2), Paragraph 2 of Subsection (4), and Paragraph 2 of Subsection (5).

16 Ordering of insolvency proceedings is regulated in § 27 of InsO.

17 According to § 26 of InsO, any application for institution of insolvency proceedings shall be rejected if the debtor's assets will be unlikely to cover the costs of the proceedings.

person cannot become an economic operator even if they pursue economic activities as a private entrepreneur. There is no such limitation in German law, and the German Act on Insolvency is applicable also in the case of economic bankruptcy of natural persons aimed at furthering economic resumption by forgiveness, as the case may be, as part of the debt. The assets of a natural person may also be object of a bankruptcy offence.

IX. Intentional Formations of German Bankruptcy Offences

The bankruptcy offences regulated in Subsections (1-2) of § 283 can be committed intentionally, usually both by a specific and foreseeable intent. In the cases described in Subsection (1), the intent is supposed to be in a crisis situation and the criminal conduct is supposed to be committed by the offender in such a situation, and in the cases described in Subsection (2) the intent is supposed to cover that the crisis situation is brought about by the result of the act. The conducts under Subsections (1) and (2) are identical. The following paragraphs explain these conducts in detail:

The German Criminal Code describes prohibited conducts in a total of eight paragraphs. The first paragraph applies to assets, which, in the case of institution of insolvency proceedings, would belong to the available bankruptcy assets (liquidation assets). It is prohibited to dispose of any parts of assets, which means any withdrawal of property affecting the basis of satisfaction of creditors. This includes the physical hiding of such assets or the conclusion of a legal transaction by means of which a part of the assets becomes inaccessible, e.g. their sale for less than the normal value. Similarly, it is prohibited to conceal, destroy, damage, or render unusable any parts of assets. Concealment means, for example, that the offender fails to comply with his obligation to provide information at the time the insolvency proceedings are initiated by concealing the existence of a part of the bankruptcy assets. Damaging, destroying, and rendering unusable of a thing constitute the various sections of physical interventions affecting the condition of the thing and are punishable acts only if they are not in compliance with the requirement of ordinary management.

All conducts described in the first paragraph are deemed as bankruptcy offences also under Hungarian law (S. 404 (1) a)), except that in Hungary the committal of the above acts is not sufficient, but at least partial frustration of satisfaction of at least one creditor is required in addition to that the bankruptcy assets are diminished actually or fictitiously as a result of the bankruptcy offence under Hungarian law. Similarly, “recognition of a doubtful claim” belongs to bankruptcy offences both under Hungarian law (§ 404 (1) b)) and German law

(§ 283 (1) 4)). It is indicated together with “pretending the existence of another’s rights” in German law and together with “conclusion of a fictitious transaction” in Hungarian law. Hungarian regulations require the above result for an offence to become consummated.

The conducts of German bankruptcy offences listed below are not specified in Hungarian regulations and such acts are punishable under Hungarian law only in the case if they belong to the general clause of the Hungarian bankruptcy offences.

According to paragraph 2 of § 283 (1) of StGB, the person who, in a manner contrary to regular business standards, enters into losing or speculative ventures or futures trading in goods or securities or consumes excessive sums or becomes indebted through uneconomical expenditures, gambling or wagering shall be punished. In this section, the legislator declares such an act – which would be legitimate in itself – punishable if it was realized outside a crisis situation; however, if the offender concludes such a transaction in a crisis situation, it will be deemed as gambling at the expense of the creditors.

According to paragraph 3, the person who procures goods or securities on credit and sells them or things produced from these goods, i.e. wastes or sells them substantially under their value in a manner contrary to regular business standards, shall be punished. It is to be mentioned at this point that, according to § 950 of the German Civil Code¹⁸ (*Bürgerliches Gesetzbuch*, BGB), the title to goods produced through processing shall be due to the processing party and the right for the basic materials perish.

According to paragraph 5, failure to keep books of account – as stipulated, first of all, in the German Commercial Code (*Handelsgesetzbuch*, HGB) – or keeping them in such a manner that a survey of net assets is made more difficult is declared punishable. The purpose of this section is to provide for the permanent and correct self-information of the enterprise as well as to protect creditors in a crisis situation. § 238 of HGB includes a list of the accounting obligations; however, such obligations apply only to businessmen who hold and bear rights and duties in full scope (“*Vollkaufmann*”),¹⁹ so the group of offenders is limited at this point. Similarly, the group of offenders is limited also in respect of the conducts described in paragraphs 6 and 7, namely because these sections are related also to correct fulfilment of the book-keeping obligation stipulated in commercial law. According to paragraph 6, disposal, hiding, damaging, or destroying of books of accounts and documentation before expiry of the archiving periods, and thereby making a survey of the assets more difficult, are punishable acts. Paragraph 7 prescribes sanctions if balance-sheets are drawn up in such a manner that a survey of the assets is made more difficult or if the balance sheet or inventory is not drawn up in the prescribed time.

18 Civil Code in the version promulgated on 2 Jan. 2002

19 The group of “*Vollkaufmann*” is defined in § 1–3 of HGB.

The regulations on criminal conducts regulated in the last paragraph include a general clause including the cases not covered by the previous paragraphs. An offender is punishable if s/he, in a manner which grossly violates regular business standards, diminishes his/her net assets or hides or conceals the actual circumstances of his/her business. Similarly, the regulations on Hungarian bankruptcy offences include a section (§ 404 (1) para. c) of Btk.) which fills a similar function; however, Hungarian regulations are drafted more concisely and punish the diminution of assets carried out in a manner contrary to regular business standards, so that in Hungary an offence is deemed – as mentioned above – as consummated if the satisfaction of at least one creditor has been frustrated. Reverting to the general clause relating to German bankruptcy offences, this section gives simultaneously a summary of the above paragraphs since it prohibits the diminution of the bankruptcy assets in a manner severely contrary to regular business standards (summary of paragraphs 1–4), on the one hand, and it regulates hiding or concealing of actual circumstances of business (summary of paragraphs 5–7), on the other. For example, under this section, the person who takes over a well-paying clientele from one of his companies being in a crisis situation through establishing a new company shall be punished.

X. Punishable Attempt

According to § 283 (3) of StGB, the attempt shall be punishable in respect of bankruptcy offences described both in Subsection (1) and Subsection (2). Similarly, the attempt of aggravated bankruptcy (§ 283a) and extending unlawful benefits to creditors (§ 283c (2)) shall also be punishable. Considering that in Hungarian law the attempt of an act of crime shall always be punishable if it is committed intentionally, the attempt of bankruptcy offence shall be punishable in Hungary. In German law, 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/her.²⁰ Similarly to the regulations in the Hungarian Csemege Code, an attempt is punishable more leniently than a completed offence in German law.²¹ However, according to the Hungarian Criminal Code in force, the item of punishment of the finished crime shall be applied for the attempt.²²

20 § 22 of StGB.

21 § 23 of StGB.

22 S. 10 (2) of Btk.

XI. Acts of Negligence and Mixed Culpability

According to § 283 (4–5), actions whereby the action of the offender is determined by negligence in respect of certain factors of the crime shall be punishable. In the case described in paragraph 1 of Subsection (4), the person who negligently fails to be aware of the crisis situation and shows any of the conducts described in Subsection (1) intentionally shall be liable to punishment. This kind of bankruptcy offences is of mixed culpability and is deemed an offence committed by negligence under German law, so the attempt and complicity are excluded. According to German law, only intentional committal is punishable except if the law provides for punishing also acts committed by negligence.²³ In the case described in paragraph 2 of Subsection (4), insolvency or indebtedness is brought about negligently as a result of an intentional act described in Subsection (1). This section is deemed as intentional crime because the person who committed the act intentionally but who cannot be held liable in respect of the result caused thereby due to negligence is deemed to act intentionally within the meaning of StGB.²⁴

According to paragraph 1 of Subsection (5), the person who commits an act described in paragraphs 2, 5, and 7 of Subsection (1) also by negligence, and the offender fails to be aware of the crisis situation due to his/her negligence, is liable to punishment. As concerns paragraph 2, the person brings about insolvency or indebtedness at least by negligence in conjunction with the negligent acts described in paragraphs 2, 5, and 7 of Subsection (1).

XII. Extending Unlawful Benefits to Creditors (§ 283c of StGB)

Extending unlawful benefits to creditors is a privileged case of bankruptcy offences, whereby the bankruptcy assets are not diminished and the intention is to satisfy real creditors' claims. The offender may only be such an insolvent person who is aware of his insolvency and in respect of whom the objective condition for punishability within the meaning of § 283 (6) exists. According to Subsection (2), the attempt shall be punishable. The offender extends benefits to one of the creditors at the expense of the other creditors by granting that creditor a security or satisfaction to which s/he was not entitled at all or not in such a manner or at the time. In German legal literature, such kind of satisfaction or security is called incongruent coverage, which means that the debtor grants satisfaction or security unreasonably or in a manner not supported by law or grants the satisfaction of a claim which is not yet due.²⁵

23 § 15 of StGB.

24 § 11 (2) of StGB.

25 Udvaros 1994, 21: *A hitelező előnyben részesítésének büntette a hatályos német büntetőjogban*, in

Similarly, under Hungarian law, extending unlawful benefits to creditors, which is the kind of bankruptcy offences liable to the most lenient punishment, does not involve diminution of the bankruptcy assets. The scope of prohibited acts is narrower than in German regulations, and such acts may be established only after the liquidation proceeding has been ordered finally and the act of extending benefits in violation of the mandatory order of satisfaction of creditors in the liquidation proceeding²⁶ is punishable. Therefore, extending benefits violates the statutory order of satisfaction of creditors; otherwise, it is about the satisfaction of expressly justified creditors' claims.

XIII. Aggravated Bankruptcy

In German law, acts committed out of profit-seeking and acts of placing many persons in danger of losing their assets that were entrusted to the offender or in financial hardship can be punished more severely. The offender realizes any of the acts described in § 283 (1) in a recognized crisis situation intentionally or brings about the crisis situation by the same acts himself intentionally. The attempt is also punishable.

In Hungarian criminal law, the offender is punished more severely if two quite different circumstances exist. On the one hand, it punishes offences committed in respect of an economic operator qualified as having strategic priority more severely or, on the other hand, the crime is deemed more serious if the amount of actual or false diminution of assets is particularly substantial. The liquidator and the court should conduct the liquidation proceeding concerning the assets of the economic operator qualified as having strategic priority in accordance with the special rules of procedure allowing for the special role of the economic association in the national economy. The amount of diminution of assets is particularly substantial if it exceeds five hundred million HUF, that is, approximately EUR 1.7 million.

XIV. Comparison of the Ranges of Punishment

Amounts of punishment are very similar, except that Hungarian criminal law applies no alternative sanctions by imposing fines: Hungarian law applies no punishment for acts of negligence or mixed culpability at all, while German law holds out the prospect of more stringent punishment on aggravated bankruptcy.

English: Offence of extending benefits to creditors in the currently effective German criminal law.

26 Section 57 (1) of the Bankruptcy Act. First of all, the liquidation expenses shall be satisfied from the economic operator's assets.

Table 3. Comparison of the ranges of punishment

RANGE OF PUNISHMENT ON BANKRUPTCY OFFENCES IN GERMANY	RANGE OF PUNISHMENT ON BANKRUPTCY OFFENCES IN HUNGARY
Basic case of bankruptcy offences (§ 283 (1–2)): imprisonment not exceeding five years or fine	Basic case of bankruptcy offences (§ 404 (1–2)): imprisonment from one to five years
Bankruptcy offences of negligence – and mixed culpability (§ 283. § (4–5)): imprisonment not exceeding two years or fine	
Aggravated bankruptcy (§ 283a): imprisonment from six months to ten years	Aggravated bankruptcy (§ 404 (3)): imprisonment from two to eight years.
Extending unlawful benefits to creditors (Section 283c): imprisonment not exceeding two years or fine	Extending unlawful benefits to creditors (§ 404 (4)): imprisonment not exceeding two years.
Extending unlawful benefits to – debtors (Section 283d): imprisonment not exceeding five years or fine and imprisonment from six months to ten years	

Except for acts of negligence and mixed culpability, the attempt of all of the above acts is punishable in the German law as well. Considering that in Hungarian law all acts of bankruptcy offences imply intention, the attempt of such acts is also punishable.

XV. Conclusions

As a summary, it can be stated that the German criminal regulations are far more complex and stringent in respect of bankruptcy offences than the Hungarian ones, with special regard to the followings: in German law, bankruptcy crime (§ 283 (1)) is a crime of endangerment, which does not require diminution of assets or failure of satisfaction of the creditor's claims for becoming consummated; StGB includes a far more detailed (rather “voluble”) list of prohibited acts which would lead to a high probability of uneconomic diminution; even acts of negligence or mixed culpability are punishable.

According to our opinion, the more complex regulations can be explained partly by the complete lack of market economy in Hungary, namely in the forty-

year period right after World War II.²⁷ On the other hand, according to our opinion, it was the bankruptcy offences occurring much more often as a result of over-indebtedness following the 2008 economic crisis which created the first serious challenge to the Hungarian crediting system and the Hungarian legal practice.

References

1991. évi IL törvény a csődeljárásról, a felszámolási eljárásról és a végelszámolásról.
2012. évi C. törvény a Büntető Törvénykönyvről.
BRAUN, E. 2006. *Commentary on the German Insolvency Code*. Düsseldorf.
Bürgerliches Gesetzbuch, German Civil Code in the version promulgated on 2 Jan. 2002.
GULA, J. 2008. A csődbűncselekmények de lege ferenda. *Büntetőjogi Kodifikáció* 2008/1: 9–25.
Handelsgesetzbuch, German Commercial Code (10 May 1897).
Insolvenzordnung, German Insolvency Statute (5 Oct 1994).
KARSAI, K. 2013. A csődbűncselekmény. (The Bankruptcy Crime). In: Karsai, K. (ed.), *Kommentár a Büntető Törvénykönyvhöz*. Budapest.
Kindhäuser, U. 2013. Vor §283 bis §283 d. In: Kindhäuser, U.–Neumann, U.–Paeffgen, H.-U. *Strafgesetzbuch*, 4. Auflage. Baden-Baden.
Kindler, P.–Nachmann, J. (eds). 2013. *Handbuch Insolvenzrecht in Europa*. 3. Ergänzungslieferung. München.
LACKNER, Karl–KÜHL, Kristian. 2011. *StGB Kommentar*, 27. Auflage. München.
MOLNÁR, G. M. 2013. A csődbűncselekmény. (The Bankruptcy Crime) In: Busch, B. (ed.), BELOVICS, E.–MOLNÁR, G. M.–Sinku, P. *Büntetőjog II. Különös Rész*. A 2012. évi C. törvény alapján. Budapest.
Strafgesetzbuch, German Criminal Code in the version promulgated on 13 Nov. 1998.
UDVAROS, J. 1994. A hitelező előnyben részesítésének büntette a hatályos német büntetőjogban. (Offence of Extending Benefits to Creditors in the Currently Effective German Criminal Law). *Ügyészek Lapja* 1994/1: 16–28.
WEI, C. 2012. The Hungarian Economic Criminal Law in the New Hungarian Criminal Code. *Büntetőjogi Szemle* 2012/3: 3–5.
ZWEIGERT, K.–KÖTZ, H. 1996. *Einführung in die Rechtsvergleichung auf dem Gebiete des Privatrechts*. Tübingen.

27 Wei 2012. 3–5.