

FROM THE COUNTERFEITING, WITH A EUROPEAN UNION LOOKING OUT

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1. Prologue

Doubtless, that the counterfeiting is historically coeval with the existence of the money, but increasingly more of the world's states join under the aegis of Nation's Alliance to the Geneva Convention¹ which was signed by 31 states on 20 April in 1929. Its aim is the suppression of the counterfeiting and punishes the following:

- every fraudulent act which intends to do or reverse money, independently from the tool, which is used for the achievement of the result;
- if somebody circulates counterfeit money in a fraudulent way;
- those acts, which want to intent, import, receive or acquire fraudulent money, knowing that it is false;
- these crimes' experiment and premeditated participation: those fraudulent acts which goals are aimed at having, doing, receiving or acquiring tools or other matters what are able to construct counterfeit money or change money.

Nowadays, if we pay attention on the technic and mechanism of money counterfeiting and release of counterfeit money, we can say that – apart from unique cases- it is a global and organized crime. To the commission of crime like this, mostly competent specialists, technicians and experts of computer systems are needed. But the build-up network - which makes dissemination - can not be neglected beside the suitable technical infrastructure, since organized criminal networks diffuse counterfeit bank-notes in the whole world.

Currencies with high quality and counterfeit Forints became frequenter in Hungary and also in the world in the last ten years. The problem is that they can imitate the real bank notes' security elements very well. Earlier the counterfeit Dollar and Deutsche Mark were in the market, but now new false Euros blend with original, real currencies. Thanks to increase of tourism, and to opened Schengen borders grew the number of counterfeit bank-notes made in illegal workshops by leaps and bounds, and these go to the market with coverage of occasional money-changers.

¹ Hungary ratified it with a title 'In topic of ratification international treaty about suppression of counterfeiting' in 1993 (through XI. statute)

The counterfeiting represents marked criminal weight, since money issue is a state monopoly. It means that it harms interests of economy, legitimate array of money circulation and farming, trust in money or in money substitutes. Moreover a big amount or value of counterfeit money may have even more serious consequences: these may jeopardize the balance of the finances in the traffic and the stocks fund.²

The future connection to Economic and Monetary Union also highlights the importance of money counterfeiting's actualization. In that case it is important to roll back crimes against our national currency, than against the Euro, with which we can indicate to the member states that we are mature to the connection from a point of view of criminal and criminal investigation.

Sorrowful that number of transpired counterfeiting increased year by year, since 1982. Data of year 2000 broke this increase and additional decrease followed it in 2001. According to the latest data in Hungary, .in 2009 altogether 9041 pieces of false Forint banknotes were identified and subtracted from money circulation. Compared to the numbers of 2008 (2986 pieces), the causes of the substantial elevation are the new, counterfeit 5000, 10 000 and 20 000 Forints with very high quality.

In the next part we review the story of counterfeiting shortly, after that we will mention common norms of this topic, security elements of bank notes which can support protection against counterfeiting, and operative conclusions of fact. Last but not least we summarize the topic with "de lege ferenda" references.

2.About counterfeiting in short, in reflection of the law

Counterfeiting is one of the oldest of economic crimes, the importance of which gravely affects the states economical security and the states controlling role economy, challenging the trust put into money issued by the state. In criminal law, which is a reflection of the all-time level of development of the socio-economic system, necessarily formed, developed along with the economic policy of the state and the rules of economic administration defining the economic political concept.

The Hungarian criminal law in force lists crimes into the category of economic crime which hamper the smooth operations of market economy based economic order. Based on the former mentioned definitions it can not be denied that threatening economic crimes as a specific group of crimes with sanctions protects social interests so important that these could not go unpunished even over past centuries and millennia, however by that time different reasons could be raised as causes for defense.

Hammurabi already tied a specific legal consequence for counterfeiting coin illustrated with his image or inscribed with his name: "if someone removes the writing of my name in order to write his own...to that man...the great Anu, father of the gods...will curse his destiny."³

The seeds of counterfeiting in criminal law can already be discovered in the ancient Greek and Roman law. Imitation of money on behalf of individuals in ancient Rome was

² Belovics – Molnár – Sinku: Criminal Code Special Division, Budapest 2003, page 530.

³ Quote by Pál Angyal: *The handbook of the Hungarian criminal law*, Budapest, 1940. p.5

forbidden, even if the precious metal content and value of coins were matching the official money.⁴ And the impact of Roman law seeped into the Germanic public laws as well.

The canon law first mentioned in a decree issued by John XXII. that the counterfeiter falls under church imprecation and has to pay the penniless an amount matching the sum of counterfeit coin.⁵

In the Hungarian development of law no regulations on the subject of counterfeiting can be found from the time of our first kings. The first written source is linked to the name of Charles Robert and Sigismund.

From the ordinal era, since only the ruler had the privilege of minting coin, counterfeiting was considered a capital public crime and treachery, which was to be punished with death and confiscation of stock. Crime against public credit was one of the specific types of treachery: “One who counterfeits coin, one who releases large amounts of money knowing it is counterfeited...”⁶

The act of 1723 ordered the punishment of counterfeiters or users counterfeit coin of only fifty Forints or above in the category of treachery, and only if it was committed in the area of business.

A proposition in the year of 1792 relieved counterfeiting from the category of royal crimes, and a proposition in 1843 put it among the crimes against estate, much after “bank notes also being the subject of counterfeit has been proclaimed in our homeland as well”⁷

During the preparation of the Codex of Csemegi, the V. act of 1878, the legislators still thought it necessary to mention the royal criminal nature of counterfeit as well, besides its effective role. The Codex – with modern ruling contents of its age – contained the state of affair of counterfeiting in altogether ten sections in its IX. chapter. It punished counterfeiting, along with the issue of money and its acquisition with the same intentions, as well as deceitful usage of counterfeit coin, issue of counterfeit coin, and unauthorized bank note issue. The legislations formed in the field of counterfeiting have been newly refined in the ratified Geneva Convention.

The V. law of 1961 didn't bring any change in content, but merely created the framework of code with formal correction. It extended the protection on foreign currencies, in the way they would be provided the same protection as domestic currencies.

The IV. law of 1978 further simplified the state of affairs, and emission of counterfeit coin was secluded into a separate set of affairs. The law left a part of the defining regulations for the definition of the law-decree about the Criminal Code's entry into force and execution (5. law-decree of 1979). Thereafter more significant modifications have been made in point of sanctions in 1993 when the XVII. act in the area of counterfeit overruled the 304. § (5) section, which ensured the practice of confiscation of assets.

Paragraph 63 of the CXXI. act of 2001 modified the standard cases of counterfeit, and affected the compound cases as well. Reason for the modification was the framework issued by European Council on 29th May 2000 on strengthening the defense reinforced with criminal

⁴ János Zlinszky: *Roman criminal law*, Budapest 1995, p.135

⁵ Quote by: Pál Angyal, p.8.

⁶ Gábor Béli: *Hungarian legal history*, Pécs 1995, p84

⁷ Mihály Tóth: *Economic delinquency and crimes*, Budapest 2002, p372

law against counterfeit and other sanctions, considering the introduction of the Euro. One of the aims emphasized by the framework was the protection of the Euro before its release. By the ministerial justification of the law, since the framework would be part of the III. legged acquis, its execution was obligatory to the awaiting joining states, therefore our homelands as well. The piquancy of this is given by the fact that the law itself is only operative from 1st April 2002, whereas the Euro has been the effective currency in the European Union since the day of 1st January 2002. Consequently, the protection of the Euro has been resolved without separate commissions for three months by then, since the foreign currency has/had been given the same protection as the domestic one.

3. More important community decisions, which were born in the object of the criminal appearance against the counterfeiting norms

I.) The European Council made a framework decision with number of 2000/383/IB on 29 May 2000³. It is about fight against counterfeiting, protection with sanctions and criminal law. The council decree (974/98 of 3 May 1998⁴) explicated the introduction of the euro, the new regulations, and that the member states should lay against counterfeiting with adequate sanctions because of the huge importance of Euro currency.

According to the 1. section of third article, general offences are the following:

“1. Each Member State shall take the necessary measures to ensure that the following conduct is punishable:

(a) any fraudulent making or altering of currency, whatever means are employed;

(b) the fraudulent uttering of counterfeit currency;

(c) the import, export, transport, receiving, or obtaining of counterfeit currency with a view to uttering the same and with knowledge that it is counterfeit;

(d) the fraudulent making, receiving, obtaining or possession of

- instruments, articles, computer programs and any other means peculiarly adapted for the counterfeiting or altering of currency, or

- holograms or other components of currency which serve to protect against counterfeiting.

2. Each Member State shall take the necessary measures to ensure that participating in and instigating the conduct referred to in paragraph 1, and attempting the conduct referred to in points (a) to (c) of paragraph 1, are punishable.

The fourth article has additional offenses, namely:

Each Member State shall take the necessary measures to ensure that the conduct referred to in Article 3 is punishable also with respect to banknotes or coins being manufactured or having been manufactured by use of legal facilities or materials in violation

³ Official Journal of the European Union, HL L 140, 14 June 2000

⁴ HL L 139., 11 June 1998

of the rights or the conditions under which the competent authorities may issue currency, without these authorities' agreement.

The name of article 5 is currency not issued but designated for circulation. According to that, "each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 and 4 is punishable if:

(a) it relates to the future banknotes and coins of the euro and is committed before 1 January 2002;

(b) it relates to banknotes and coins which are not yet issued but are designated for circulation, and are of a currency which is legal tender."

The 6. article describe possible penalties in case of counterfeiting.

"1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 3 to 5 is punishable by effective, proportionate and dissuasive criminal penalties, including penalties involving deprivation of liberty which can give rise to extradition.

2. The offences of fraudulent making or altering of currency provided for in Article 3(1)(a) shall be punishable by terms of imprisonment, the maximum being not less than eight years."

Next part is jurisdiction in the 7th article.

"1. Without prejudice to paragraph 2 of this Article:

- each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 5, where the offence is committed in whole or in part within its territory,

- Articles 8 and 9, as well as Article 17 of the Convention are applicable to the offences referred to in Articles 3 to 5 of this framework Decision.

2. At least the Member States in which the euro has been adopted shall take the appropriate measures to ensure that the prosecution of counterfeiting, at least in respect of the euro, is possible, independently of the nationality of the offender and the place where the offence has been committed.

3. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which Member State shall prosecute the offender or offenders with a view to centralising the prosecution in a single Member State where possible."

The following theme that the Council discussed, is article 8, namely liability of legal persons. This part is about the followings:

"1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 3 to 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person, or

- an authority to take decisions on behalf of the legal person, or

- an authority to exercise control within the legal person, as well as for involvement as accessories or instigators in such offences or the attempted commission of the offences referred to in Article 3(1)(a) and (b).

2. Apart from the cases already provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has rendered possible the commission of an offence referred to in Articles 3 to 5 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in an offence referred to in Articles 3 to 5.”

Article 9 has the name of sanctions for legal persons.

“1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 8(2) is punishable by effective, proportionate and dissuasive sanctions or measures.”

II.) Next council regulation (No 1339/2001 of 28 June 2001) was extending the effects of Regulation (EC) No 1338/2001 laying down measures necessary for the protection of the euro against counterfeiting to those Member States which have not adopted the euro as their single currency.

In adopting Regulation (EC) No 1338/2001 (3), the Council provided that Articles 1 to 11 thereof will have effect in those Member States which have adopted the euro as their single currency.

(2) However, it is important that the euro should enjoy the same level of protection in those Member States which have not adopted it and the necessary provisions should be taken to that end.”

III.) Council had its decision of 6 December 2001 on the protection of the euro against counterfeiting.

It is about that “Council Regulation (EC) No 974/98 of 3 May 1998 on the introduction of the euro lays down that currency denominated in euro shall start to be put into

circulation as from 1 January 2002 and obliges the participating Member States to ensure adequate sanctions against counterfeiting and falsification of euro banknotes and coins.

(2) The measures to protect the euro put in place by previous instruments should be supplemented and strengthened by provisions ensuring close cooperation between the competent authorities of the Member States, the European Central Bank, the national central banks, Europol and Eurojust to suppress offences involving counterfeiting of the euro.

Member States shall ensure that the results of the analyses carried out by the NAC and the NCAC in accordance with Article 2 are communicated to Europol in accordance with the Europol Convention.”

And last, but not least, here is article 4, which describe information what Europol need: “The Member States and Europol shall cooperate with a view to determining which information is to be communicated. The information shall, at least, include the particulars of the persons involved, the particulars of the offences, the circumstances in which the offences were discovered, the context of the seizure and links with other cases.”

4. Safety elements applied in the interest of the suppression of the euro forgery

The Euro became common currency of 12 countries participated in the economic and monetary union from 1 January 2002, and pursuant to the decision of EU, four small European countries (Andorra, Monaco, San Marino and Vatican City) can use the Euro banknotes and coins. They have been in circulation since 2002 and are issued by the European Central Bank (ECB). Because of prevention and effective protection against counterfeiting - as well as preparing of professionals -, the European Commission European Anti-Fraud Office made and its prospectus in 2008, and after that they gave out assistance in 2010. These were about the Euro banknotes and coins in respect of the security elements and signs of recognisability. The essential elements of information can be summarized as:

1. The seven denominations of notes are the followings: € 5, € 10, € 20, € 50, € 100, € 200 and € 500, each of them has different size and colour. On the forefront of banknotes windows and gates symbolize openness and cooperation. The pictures of bridges are visible on the back side of the banknotes. The common elements of the euro banknotes are:

- name of the euro with Latin and Greek alphabets;
- the initials of the European Central Bank in five versions (BCE, ECB, EZB, EKT, EKP);
- symbol concerning legal defence ©;
- signature of the president of the European Central Bank;
- the flag of the European Community.

2. The security elements of euro banknotes and coins were already known from other national, legal currencies, so the solutions are conscious system of the following elements:

a.) If a banknote is held up to the light, the watermark appears on both sides of the non-printed area.

b.) A dark line runs from top to bottom of the banknote, and a security thread which is embedded into the paper near the middle of the note and is visible when held up to the light.

c.) Under a magnifying glass you can see tiny writing on some areas of the banknote.

d.) The small-value and large-value banknotes have different special foil elements. A special foil stripe can be found on the front right-hand of the small-value banknotes (€5, €10 and €20). When you tilt the banknotes, either the euro symbol or the value numeral (5, 10 or 20) appears as a hologram with shifting colours. When held up to the light, you can see the euro symbol in the foil perforations.

e.) On the back-side of large-value banknotes can be found several characteristics under ultra-violet light.

3. In addition, the specially manufactured banknotes, including paper made from pure cotton, so the catch of a typical paper crisp, not soft and not slippery. Besides, the tactile features of the banknotes are first abbreviation of the European Central Bank in five versions, second the denomination and the dominant visual elements on the front of banknotes (windows and doors).

Countries in the Euro area have the same front of the coins, on which are pictures of three different maps of Europe and the star of the European Community's flag. The back of the coins are national sides, the countries have different, country-specific motifs. The € 1 and € 2 coins are so called 'bicolor' coins, ie their outer and inner rings have another colour.

5. Operative criminal conclusion of fact in Hungary

Counterfeiting

(1) Any person who:

a) imitates or forges money with the purpose of distribution;

b) obtains counterfeit or forged money with the purpose of distribution, exports or imports such money or transports it through the territory of the country;

c) distributes counterfeit or forged money; is guilty of a felony punishable by imprisonment for between two to eight years.

(2) The punishment shall be imprisonment between five to ten years if the counterfeiting:

a) involves a substantial or greater amount of money;

b) is committed as part of a criminal conspiracy.

(3) The punishment shall be imprisonment for up to five years if the object of counterfeiting is coinage, or if the quantity or value involved is trivial or even less substantial.

(4) Any person who engages in preparations for counterfeiting money is guilty of a misdemeanour punishable by imprisonment for up to two years, community service work, or a fine.

5.1. Object of the crime

On the one hand object of the crime is particular, independent life phenomenon to which the lawmaker provided the criminal protection, than legal object. On the other hand it is the physical thing managing existence on which appears the value demanding protection, such a commission object.⁵ In the case of counterfeiting, legal object of crime is money issue, the interest connected with the safety of the traffic of the money and stocks and their order, furthermore confidence in money valid from future time.

Its commission object is money - and in the case of commission with the imitation of money it is result at the same time -, concerned stock which can be considered for money.

The economic concept of money is different from the legal money concept⁶; it is good to know that economics approaches the definition of money on the one hand through convention theory (so across the evolution and development of money), on the other hand on the road of functional tendency (which means with the examination of played role of money).⁷ The so called law-decree about “the Criminal Code’s entry into force and execution” gets the definition of the criminal money concept with the 24th §, so the following tools rate for money according to 304-306. § of the Hungarian Criminal Code:

1.) The currency qualified lawful, respectively the official announcement of the instrument which is authorized to issue money – from the day 1st of April 2002 – in the future, from a defined time, coins or bills and bank note qualified as a legal currency. Money was under the protection of criminal law, regardless from the fact that legal tender has not even been on the market or have already withdrawn from the market. According to Criminal Code’s section 305. part a): “any alteration of money that has been withdrawn from circulation to create an impression as if it was still in circulation shall be considered imitation of money.” Making distinction between manifestation of money, between paper money and banknotes, it is now completely useless because they have become synonymous concepts.⁸

The explanation of Criminal Code (the law-decree about “the Criminal Code’s entry into force and execution”) identified financial instruments which are under the same adjudication as paper money:

- a) securities issued by the state,
- b) bonds,
- c) certificates of deposit,
- d) mutual fund,
- e) share,
- f) property note,

⁵ József Földvári: *Hungarian Criminal Law General Section*, Budapest 1997, page 96

⁶ László István Gál: *The criminal and economic questions of the counterfeiting*. Manuscript, p. 7-8

⁷ Attila Madaras: József Varga: *Financial knowledge I*. Budapest 2001, p:11

⁸ About the theme: László István Gál p. 7-8

g) warehouse ticket.

provided that assignment of registered shares is not prohibited or limited through legal regulation or through declaration on the securities. The explanation of Criminal Code is also lays down that foreign money and security have the same protection like domestic; it points out - completely unnecessarily -that the euro belongs also to these.

5.2. Real aspects of counterfeiting

Counterfeiting, because it is fact of conduct, only the execution of criminal conduct can come to pass from the elements of the objective side, since the fact is not rated in the legislative outcome. The crime is finished with the attestation of any behaviour defined in the state of affairs. The basic case of felony has got three turns, based on these here are the possible commission behaviours:

1.) Money on the market in order to imitate: it represents the behaviour when the offender is working to create a facsimile of the original sample, and therefore did not exist until a new - but the existing denominations - copies will be created. The establishment of the judicial practice does not consider the non-existent denominations of money (called spurious-money) for counterfeiting, while it is not a crime, as long as somebody does not try to put the spurious-money on the market. At this point, however, there is (also) an opportunity to determine fraud, if the false copy is suitable for deception. According to the interpretative provision of the Criminal Code's 305. §, the imitation of money withdrawn from circulation should be consider to the alteration of money in circulation if that money give an impression of money in circulation.

2. Counterfeiting of money for place it into circulation in the market: in this phrase offender creates counterfeit issue with conversion of valid, real money. In this situation it is not a new issue, but it is about modification of already existing and functioning pieces. If we look at the above-mentioned interpretative provision, we can see that such an indication or removal of application should be regarded as counterfeiting of money, which serves to indicate that the money is valid only for certain countries, furthermore the reduction of money's content of precious metal. The importance of last mentioned phrase has already declined by today.

3. Acquisition of falsified or counterfeit money with the object of places it in circulation, from this aim import or export it, transfer it through the territory of the country: the acquisition means real taking possession of money, independently from the fact that the counterfeit money got into the property of perpetrator lawfully or unauthorized. Irrelevant the goal of counterfeiting before acquisition, the substance is fulfilment of acquisition with the aim of place it in the market. Finding fake money does not mean crime, but if offender tries to place it in the market after he or she has recognized the nature of false money, then perpetrator is responsible for crime will be mentioned in the 4th point.⁹

⁹ Judicial decision in Hungary 1991.138.

Fulfilment of acquisition with the aim of place it into circulation is culpable even if the money is completely unsuitable for delusion.¹⁰

Import, export and transit of counterfeit currency do not claim stranger explanation, to the realization is necessary the lack of evidence on the side of proprietor. In the case of these expressions, however, it should be emphasized that commission behaviours give a base to allocate crimes only if the offender "is aware of money's falsified or counterfeit nature and if the aim is to turn over it, this point is available even if offender did not have this intention before."¹¹

4. Place counterfeit or forged money into circulation: it is the turn which makes counterfeit money available to others, free or by consideration. The marketing includes "paying with false money, donation, gifts, or non-target, simply delivery."¹²

5.3. Relationships between criminal conducts

According to the Criminal Code's 304. § (1) paragraph, regulated conducts in the a) and b) points are 'sui generis' preparations of the behaviour in the c) point. Conducts in the a) and b) points exclude each other in case of same currency, but "... not just in theory can be raised that fake and get money with the aim of place it into the market , so both of them (simultaneously, at one time or one after the other as well) can be done, both of them is possible. A number of specific conclusion of facts can confirm that many of defendants partly made this "products" himself, partly they bought or even replaced it. Acquisition does not fade into the imitation, and obviously falsification does not melt into acquisition ".¹³

5.4. Subject of the crime

The subject of crime can be anyone as a perpetrator or a participant who has got the general conditions of becoming a crime's subject, so who has set-off capability and already had his fourteenth birthday. Counterfeiting was made individually, if perpetrators do not make the crime together, but independently. (Supreme Court. III. 541/1983.)

5.5. The subjective side

Culpability has to be examined in the framework of the subjective side like imperative element, or intent and motive such a contingent subjective element. If we examine guilt, we can establish that counterfeiting can make only wilfully, according to 304 § (1) a) and b) only with direct intention and with the aim of placing it into the market. In these cases, the perpetrator is aware of the constitutive facts (which are evaluated in the statement of fact) and if that person wants the consequences of his behaviour. In the (1), paragraph c) points contains that it is enough if intent is foreseeable, so if he has indifferent behaviour against the possible consequences of the act. Last but not least, the legislature does not interpret any motive.

¹⁰ JD in Hungary 1989.346.

¹¹ Quoted work from Mihály Tóth, p. 377.

¹² Judicial decision in Hungary 1994.173.

¹³ Quoted work from Mihály Tóth, p. 378.

5.6. Qualified and privileged cases

The legislature constitutes qualified or privileged facts in the case of those surplus circumstances, which increase or decrease social dangerousness of a particular crime. According to the counterfeiting, there are also qualified and privileged cases, as well. The 304. § (2) of the Criminal Code said that:

“The punishment shall be imprisonment between five to ten years if the counterfeiting:

- a) involves a substantial or greater amount of money;
- b) is committed as part of a criminal conspiracy of the act and considered seriously for five years to ten years imprisonment if the counterfeiting of currencies
 - a) particularly high, or more worth of money,
 - b) conspiracy committed.”

The category of particularly considerable is according to the Criminal Code 138 / A §:

“For the purposes of this Act the amount of value, damage, pecuniary injury, or the amount of reduction in tax revenues and customs revenues shall be construed:

- a) minor, if more than twenty thousand but less than two hundred thousand forints;
- b) considerable, if more than two hundred thousand but less than two million forints;
- c) substantial, if more than two million but less than fifty million forints;
- d) particularly considerable, if more than fifty million but less than five hundred million forints;
- e) particularly substantial, if more than five hundred million forints.”

The Criminal Code also deals with the concept of organized crime and 137 § (7) points include the following: “criminal conspiracy shall mean when two or more persons are engaged in criminal activities under arrangement, or they conspire to do so and attempt to commit a criminal act at least once, however, it is not considered a criminal organization.”

The privileged case of the counterfeiting comes into existence in accordance with Criminal Code’s 304 § (3): “The punishment shall be imprisonment for up to five years if the object of counterfeiting is coinage, or if the quantity or value involved is trivial or even less substantial.”

The change has smaller nominal value than a given country's official monetary unit, which is no longer in circulation, so this circumstance can only be determined in the case of foreign country’s change. Here, however, should note that "the imitation or falsification of money which is withdrawn from circulation (this provision hold primarily especially interest of the coin collectors primarily) is also counterfeiting”.¹⁴ The subject of counterfeiting is

¹⁴ Quoted work from László István Gál, p. 52.

minor, if the nominal value of money is more than twenty thousand but less than two hundred thousand forints.

After the act in 2001 (Act CXXI. 63. §) Criminal Code's 304. § (3) altered, in which counterfeit of money below ten thousand Forint was no crime – except for falsification of change. If somebody did it with imitation, it could be a misdemeanour according to the act of 1999. LXIX. 163 §, otherwise it was offense neither.¹⁵ According to the act of 2003. CXXX. 73. §¹⁶, any falsification of money under ten thousand forint became crime. Earlier the judgement practice decided whether it was a basic, a privileged or a qualified case based on the value of the counterfeit money.

5.7. Unity-majority, limitation

In the question of unity and majority, legal literature has the following point of view:

a) to counterfeit more copies is a natural unit, so the number of fakes – provided that it is at the same time - does not affect the counts, it has significance only in the qualification. Accomplishing the commission behaviour in different time may be suitable for the statement of continuative.

b) the simultaneous acquisition of several fake copies, import, export or transit them may also be evaluated among the natural unit;

c) repeated acquisition and transport of counterfeit money may be also continuous unit if other sequent assumptions prevail;

to place counterfeit money into circulation does not include the continuous nature of criminal conduct it can be read in a decision of the Hungarian Supreme Court.¹⁷

Among the distinctions worth noting that with counterfeiting, judicial practice bar out the establishment of fake in formal aggregation; and making spurious-money is realising fraud, not counterfeiting.¹⁸

6. Promotion and preparation of counterfeiting

Section 304/A. § “Any person who creates, obtains, keeps possession of, distributes or deals with any material, instrument, equipment or computer software intended to be used for counterfeiting money is guilty of a misdemeanour punishable by imprisonment for up to two years, community service work, or a fine.”

Preparation of counterfeiting have already been punished in our country because of the Geneva Convention (20th of April in 1929) also qualified as crime the production or acquisition of devices which anybody is able to do counterfeiting with.

The 304 § (4) contains that “any person who engages in preparations for counterfeiting money is guilty of a misdemeanour punishable by imprisonment for up to two years, community service work, or a fine.” Anyway, the preparation of counterfeiting has wider

¹⁵ Criminal harmonized resolution I/2003.

¹⁶ Valid from 1st of March 2004.

¹⁷ Judicial decision in Hungary, 1995.556.

¹⁸ Judicial decision in Hungary, 1986.312.

circle than it was listed as commission behaviours in this state of affairs, because it contains commission calling, offering, undertaking, or an agreement of common commission.

7. The related misdemeanour procedure

Those unlawful conducts, which harm or endanger norms of society in a milder form than crimes, have been placed in the act of 1999 LXIX. The 163 and 164 § include the facts of offense related to counterfeiting:

The contravention of rules is connected to the money imitation:

Who constructs, or makes somebody construct imitation of money which is in circulation, or injure the observances concerning production, recording, safekeeping, disposal, destruction, can be liable to a fine of up to thirty thousand forints. The procedure belongs to the Hungarian Customs and Finance Guard.

The statement of fact of offense is auxiliary of counterfeiting in the infringement law. Lack of straight intention bounds it from qualification as crime; and with certification of criminal conduct, it is complete. So, offense comes true.

8. Issue of counterfeit money

The Criminal Code. to sui generis crime, by counterfeiting provides protection with auxiliary nature preventing from counterfeit money placing into the market, as follows:

Section 306.

(1) Any person who engages in the distribution of counterfeit or forged money that has been acquired lawfully as genuine or authentic is guilty of a misdemeanour punishable by imprisonment for up to one year, community service work, or a fine.

(2) The punishment shall be imprisonment for a felony for up to three years if the crime involves a substantial or greater amount of money.

This state of affairs is the privileged way of counterfeiting, which was mentioned firstly in the recommendation in the year of 1843 and then it became a law. The legal and committing subject of the crime of using counterfeit money is the same as it was mentioned in the case of counterfeiting.

The main difference is that in the case of this crime the money collection happens according to the law knowingly that the money is real and unadulterated; the perpetrator realizes the crime later and tries to devolve its loss to another person.

There is no crime if during the spending of the money the perpetrator still has no information about the counterfeiting, because still misses the fact about the counterfeit money. Practical experiences show that the user of the counterfeit money defends himself with the mistake and usually it cannot be confuted that he got the money accidentally and did not realize its failure.

The evaluated behaviour is also narrower: the legislature's order is to punish the issuing of the money.

The legislator evaluates a qualified case of the crime: the perpetration in the case of the particularly big or bigger amount of money; where the value of the money exceeds the 50 000 000 Forints. The question is whether in the real life someone would collect at least

50 000 001 forints of counterfeit money as real and genuine and will try to get rid of it without noticing the failure.

9. Summary

The Hungarian regulations of the counterfeiting – in the reflection of above mentioned - meet the European standard fully. The conception is absolutely correct, which - from the 1st March 2003 – differentiates the money and the other cash substitute instruments, and in the case of any crimes with the latter the CC has sanctions in an independent state of affairs.

As a criminal definition, the “paper money” expression is unnecessary in the Criminal Code and it would be efficient to ignore it and use the expression “bill” in the interpretative provisions.

The associated conclusion of fact, specifically the crime of subservience of the counterfeiting may seem to be unnecessary, if the preparation has already been ordered to be punished by the legislator.

According to this we cannot forget that circumstance, when during the criminal procedure the conditions are suitable for counterfeiting but the intention of counterfeiting cannot be proved, then this behaviour’s simple realizations must be punished because of the increased danger which this act means to the society.

Not only in the case of counterfeiting, but against any other economic-related crimes it would be a more efficient deterrent, if the Criminal Code would not specify the ceiling of the amount of the supplementary money penalty or would specify it in a much higher level.

In the case of counterfeiting the procedure stops at the investigation stage, because the counterfeiter can be found really rarely. According to this view, to increase the efficiency of the criminal procedures and the secret information collection activities it is an important task to train those employees who deal with the crime of counterfeiting, the colleagues must get up-to-date information about the security attributes of the bills and coins and their task is to learn the newest techniques of the identification of the counterfeit money and the newest counterfeiting methods.

The opportunities of the secret information collection must be used more efficiently and actively. With wider range of methods, tactical recommendations and their practical introduction the usage of operative forces, tools and methods could be increased. Furthermore the Europol’s subsidies and technical help according to the Euro-counterfeiting should be encouraged to be used in Hungary.