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A White-Collar Criminal Organisation – the Zuschlag Case

"Excuse me, gentlemen, but I think someone's cheating here."
Jenő Rejtő: The Lost Battleship

The Zuschlag case is special in the history of Hungarian justice: it was the first time crimes committed in a criminal organisation were attributed to a politician; the head of the criminal organisation exerted influence upon the investigation conducted by the police; and criminal assets were used to finance a political party. A question during the trial was whether certain actions fell under the freedom of defence to answer charges or proved coordinated actions which are a basic criterion of a criminal organisation. During the proceedings, the defence was conflating the criminological characteristics of criminal organisations with the criteria under criminal law. Another thing that makes this case unique is that the court of first instance failed to take into account the fact that part of the damages caused by the crime had been reimbursed as a mitigating factor.

One cartoon says that when Carl steals a car, Carl goes to prison, but when Rooney steals the company which made the car, Rooney goes to Cannes. Another cartoon shows a child asking his father, "I thought when I grew up I'd work in organised crime." His father asks, "In the public or the private sector?" While the first cartoon makes you think of white collar crime, the second one evokes organised crime; both types of crime give special tasks to the authorities and they mean accentuated dangers to society.

The following case study presents a cross-section of these two: white collar organised crime where the perpetrators were methodically syphoning funds from public assets and municipal governments in a planned way. The degree of being methodical and organised passed the threshold where the court established that the defendants were committing criminal acts within a criminal organisation. The Zuschlag case is one of the "political" crimes of Hungary where the court established the commitment of crimes in a criminal organisation, the criminal organisation was directed by a politician of a national fame, part of the assets derived from the crimes were used for the aims of party politics; you could see nationally or locally well-known politicians in the rows of witnesses as well as those of the defendants. Among other people, four ministers and three state secretaries were heard on the witness stand.

The following definition of criteria by white-collar criminal István Schäfer fit the perpetrators perfectly: *"they commit their crimes by using their economic or social/political power or from behind its safe bastions."*[1]

The Kiskunhalas District Attorney conducted an investigation of legal compliance, pursuant to which charges were filed for the breach of accounting regulations and other statutes under the Criminal Code in the summer of 2005; the City Attorney of Kecskemét entrusted the investigation to the Bács-Kiskun County Police Headquarters. The police investigated for a year and a half, however, the investigation was referred to the jurisdiction of public prosecution from February 2007.

The primary defendant said the following to journalists (after the court had ordered his placement in custody): "There's no Zuschlag case, I haven't committed any crimes." The Bács-Kiskun County Presidency of the Hungarian Socialist Party [hereinafter: MSZP], however, held that the accusations that surfaced were morally untenable and called upon the defendant to suspend his membership and to abdicate his elected positions.[2]

The First Instance Ruling

Statement of Facts

The primary defendant was a member of parliament representing MSZP, actively participating in the leftist youth movements Socialist Youth Movement and Leftist

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[1] István Schäfer: The "White-Collar" Criminal Perpetrator. In: Papers in Criminal Law, New Volume No. 7, Budapest, Fővárosi Nyomda [Metropolitan Printing Press], 1948, p. 14.

[2] Tamás Lajos Szalay: Only Zuschlag Says There's No Zuschlag Case; article in Népszabadság [People's Freedom], 22 September 2007, p. 2

Youth Association, united in 2002 into a single organisation under the name "Young Left-Youth Socialists' Movement" [Hungarian: FIBISZ]. The unified leftist political organisation has been operating under the name "Young Left" [Hungarian: FIB] since 2004.

The funds needed for the operation of the left youth movements were provided by the primary defendant from tenders where the assistance won was not utilised for the targets named in the tender. The essence of the financing model was that these so-called phantomised organisations participated in tenders – organisations which had been legally founded but which conducted no real activities, created merely to obtain the tender funds.

The following organisations were used as phantom organisations: Association for the Budapest Youth (later operating as the Association for City Youth, then as the Association for Tomorrow's City); the Secure Point Youth Organisation; the Association for 21st Century Culture, the Y Generation Association, the Atlas Association and the Redwood Association; and the following organisations were used as phantomised organisations: MI [Us] Cultural Association, the Youth Association of Bács-Kiskun County, and the Foundation for a Better Future. The sole goal of the network created from these associations was to acquire money for political purposes, the tendering procedures were directed by primary defendant.

They submitted tender applications and individual assistance applications for 2000 to 2006 to several ministries and the Municipal Government of the Capital (Budapest).

Part of the funds acquired via tenders were used for political activities, financing MSZP's local chapter in Kiskunhalas along with the left-wing youth organisation, as well as the 2006 general election campaign.

The criminal organisation submitted altogether 70 tenders, with a total value exceeding HUF 132 million. Based on the illegally won tenders, HUF 72 million was disbursed to the associations. The primary defendant reimbursed HUF 50 million of the above amount, which came from an unidentified source.

The court emphasised the criticism of the proceeding authorities which said that extraordinary efforts were spent by the investigating authorities to investigate criminal acts causing insignificant amounts of damages and that the court had treated the case with a disproportionate investment of time. According to the defence argument, the proceedings were artificially maximised compared to the real weight of the case. The court pointed out that *"...in any given case, the extent of establishing evidence will not be adjusted to the amount of the damages caused, but rather to the characteristics of the case: its extent, its complexity, the nature and the intensity of the defendant's defence, as well as the evidence at hand."*[3]

A series of crimes consisting of about 80 part actions lasting for several years were investigated during the criminal procedure. The court also remarked that in addition to the evidence of the conclusions of individual facts, activities of a criminal organisation character and a coordinated response against the investigation had been observed.

Testimonies

The primary defendant instructed his fellow defendants regarding the expected depositions; he issued orders for the destruction of evidence and the deletion of computer data, additionally, he tried to influence the investigation in illegal ways. The head of the criminal organisation was aware of the fact that his phone had been tapped, which qualified as a state secret.

The court determined three main themes regarding which the primary defendant did not clarify in his deposition: he did not make statements about the measures he had taken to influence the investigation, nor about his contacts with the police, furthermore, he was unwilling to share the source of his information of his phone being tapped. The defendant's deposition also failed to include the ways he was exerting pressure on the decisions made on the tenders. According to the court's position, these questions were an inherent part of unravelling the criminal organisation's activities.

The essence of the primary defendant's defence was that he was deceiving his fellow defendants about the legality of the tendering activities. This strategy obviously had the purpose of preventing the accusation of two others which would have been required to establish the criminal organisation charges. Nevertheless, the court established that the defendant's associates were aware of the illegal nature of their tendering activities.

The other defendants involved in the criminal organisation charges denied they were in contact with one another as an organisation; they merely admitted that they co-operated with one another in leftist youth activities. The primary defendant maintained they did not want to promote their individual interests using the tenders; they rather tried to operate the left youth organisation.

The vice president of FIB (the Left Youth Association) shed some light on the essence of the tendering system in his deposition: *"The primary defendant was directing the structure built from social organisations, foundations and fellowships, the function of which was to finance FIBISZ (Young Left-Youth Socialists' Movement)... his role was to ensure that the results of tenders would be judged positively through his connections... (the organisations) did not perform any actual activities."*[4]

The secondary defendant's aim during the investi-

[3] Bács-Kiskun County Court, Ruling No. 2.B.193/2008/538 (hereinafter: first instance ruling), p. 165.

[4] First instance ruling, 201

gation was that pursuant to Act XIX of 1998 on Criminal Procedures, Section 192, Subsection (1), he would be classified as a co-operating suspect. His testimony pleading guilty came after he was warned about two things: one, he was not guaranteed the above status, two, if the agreement was not honoured, the deposition could be utilised in the criminal procedure without limitations. His deposition was crucial in uncovering the matters of fact, however, the defence maintained he was shaping his testimony to suit the expectations of authorities expecting a plea deal.

The Issue of Establishing a Criminal Organisation

The court emphasised that the legal definition of a criminal organisation underwent a change during the perpetration of these serial crimes – between 2000 and 2006. During part of the periods of the commitment of crimes, the definition ran as follows: *"when targeting material gains by regular performance of crimes, a criminal association has been established based on sharing tasks, a hierarchical system of superiors and inferiors and personal contacts."*[5] This definition did not have any direct definition of the number of people involved, however, indirectly – by referring to a criminal association – it expressed that two perpetrators were enough to establish the commitment of a crime in a criminal organisation. The perpetrators have certainly passed the threshold of two participants which already qualified them as a criminal organisation between 2000 and 2002, since the primary defendant, Defendant No. 1 and 5 as well as Witness No. 8 all participated in the serial crimes along with others unnamed in the indictment. The goal of acquiring assets or profiting was also established as a criterion since the perpetrators' crimes exclusively targeted acquisition of assets. Regular commitment of crimes can also be established since fictitious tenders as well as individual subsidy requests were submitted to finance the political youth organisation, and a fictitious network of associations was formed. The division of tasks was characteristic of criminal organisations' operations: the primary defendant was the coordinator, Defendant No. 5 took care of administrative tasks, while Defendant No. 6 and Witness No. 8 performed the representation of NGOs. A hierarchical relationship with superiors and inferiors was also realised, with the primary defendant represented directing. Co-operation of NGOs and political youth organisations in leadership tenders was analysed as evidence of one of the criteria of a criminal organisation – assuming roles based on personal relationships.

The definition of a criminal organisation was modified as follows for the period between 1 April 2002 and 2006: *"a group working in a coordinated manner, consisting of three or more persons and organised for a longer term, the goal of which is the deliberate perpetration of crimes punishable by five years or more of imprisonment."*[6]

Regarding the minimum number of persons, the court remarked that the Defendants No. 2 and 4 became part of the circle of perpetrators as of 2003. Regarding being organised for a long period of time, it is sufficient to remark that the perpetrators continued their activities until 2006 within the above organisational framework, later the only change that took place was that the area of administrative tasks was transferred from Defendant No. 5 to Defendants No. 2 and 4. The leaders of the NGOs – Defendants No. 3, 6, 7 and 8 – were directed to act as stooges; on the one hand, they signed the documents – subsidising agreements, bank correspondence – on the other hand, they were the ones to perform bank transactions. Coordinated operations appeared at several levels in the hierarchical relationships of the organisation – decision-making, directing and executive tasks were separated as was the behaviour shown towards the authorities.

One manifestation of coordinated operations was their harmonised countenance towards the proceedings by the authorities: according to the court's position, the criminal organisation was trying to make the task of the administrative and criminal proceedings impossible by a variety of methods. Disputing that, the defence maintained that the defendants used only habitual methods in the proceedings; that is, no consequences of a coordinated operation may be drawn from the methods of defence. The court, however, also covered that in addition to the general techniques of defending one's cause – refusal to make a deposition, false testimonies, conspiring with one another – the defendants also used methods during the proceedings which referred to a high degree of organisation and a system of higher relationships. Conspiring with one another is a customary method of defending one's cause, however, according to the court's explanation, the level of methodicalness was unusual, including checking with one another before questioning, sharing the contents of questioning afterwards, and providing attorneys for all persons under questioning. Destruction of incriminating evidence or forging documents is also a customary method, while the trumped-up false evidence – namely that they wanted to get the authorities to believe their accounting of information was destroyed by arson – cannot be regarded as customary. Another unusual method of defence was that the defendants were trying to stop the investigation or getting information on the activities of investigators via political mediators. Acquiring information on the status of the investigation and telephone surveillance, then subsequent replacement of

[5] Act IV of 1978 on the Criminal Code, Section 137, Subsection (8) (in effect from: 1 March 1999 to 31 March 2002).

[6] Act IV of 1978 on the Criminal Code, Section 137, Subsection (8) (in effect from: 1 April 2002).

the mobile phones also did not qualify as customary defence techniques.

The court pointed out another method referring to organised crime which was that a member of the organisation possessing a significant amount of information on the series of crimes was hiding abroad.

"...The organisation led by the primary defendant was simple, but well-structured and rationally formed. It was just this simplicity, and clear division of tasks that was the strength of the organisation and a pillar of long-term operations."[7]

Regarding the criminal organisation's goal, the defence cited that the material gravity of the criminal acts in the indictment did not reach the level expected from criminal organisations. The court regarded it insubstantial whether the crimes committed involved financial gains, or what weight the judgement of the public assigned to the crimes. The court stated in its ruling that 12 tenders out of the 73 could not be assessed as crimes meriting sentences of five years or more of detention; 54 tenders could meet the criteria of crimes meriting sentences of detention from 1 to 5 years, and 7 tenders were realised by crimes meriting detention between 2 and 8 years.

Based on the above explanations, the court determined that Defendants 1 to 7 as well as Defendant No. 9 formed a criminal organisation between 2000 and 2006, and the crimes they committed qualified as crimes committed in a criminal organisation.

Conflating the Criminal Organisation's Criminological Characteristics with the Definition under Criminal Law

There are many definitions for organised crime; this designation was typically used formerly to describe syndicates of criminals like the Mafia; but many researchers – e.g. Sutherland – represented the viewpoint that the definition should also include various forms of white-collar crime.[8]

Regarding the establishment of the fact of a criminal organisation, the court advanced the viewpoint that the defence arguments were not of a legal character: *"The essence of that system of arguments was that the legal definition of criminal organisations involved too wide a circle, therefore groups involved in criminal activities at a lower level of organisation could qualify as criminal organisations, in which cases it was not justified to involve them under a graver criminal judgement. According to the defence arguments, this was the situation in the present case with the primary defendant and certain of his partners in perpetrating crimes."*[9] The defence argued that certain well-known criteria of organised crime did not apply to the group of people committing crimes – an organisation in conspiracy, a criminal lifestyle and subculture, and that the majority of revenues derived from acts of crime. Regarding these criteria, the court pointed out that the legal definitions could not be arbitrarily extended, therefore the definition of a criminal organisation might not have added points.

Regarding the above, the court also referred that it was unable to deal with the criticism of the definition of criminal organisations, since the criticism was not targeting the application of the law, it was merely questioning the reasonableness of the legal provisions in force. According to the court, such arguments may have significance at the level of legislation, but actors who apply the law should consider existing material legal regulations. The criteria for organised crime brought up by the defence could be important in criminology instead of material law; the court argued that the defence was conflating the criminological criteria of criminal organisations with those of the Criminal Code.

According to the court, the other part of the criteria advanced by the defence referred to so-called Mafia-style organisations. The criminal proceedings did not present that type of criminal organisation, rather a white-collar criminal organisation, and the main difference is the application of violent methods and a criminal lifestyle. It is inconsequential from the perspective of criminal law, however, whether the criminal organisation was white-collar or Mafia type.

Freedom of Defence or Harmonisation as a Criminal Organisation?

Concerning the surveillance material, the court remarked that it served precious little information regarding the tenders and other fact assessments, however, it was one of the key points of evidence for the operations in the form of a criminal organisation, along with the organised resistance to the authorities. The tapping uncovered a piece of information comprising a state secret, namely that the primary defendant acquired awareness of the authorities tapping his phone.

During the plea, the defence attorney for the primary defendant remarked that when producing evidence for the existence of the criminal organisation, the way the defence was organised may not be taken into consideration. According to the Defendant No. 7s defence attorney, connivance by the accused could not be construed as a criminal activity.

Despite the above, the court held the opinion that the way defendants presented their cases and their coordination could not be side-stepped, since one can

[7] First instance ruling, 477

[8] Maximilian Edelbacher, Peter C. Kratcoski, Bojan Dobovsek: Conclusion and Future Perspectives. In: Maximilian Edelbacher, Peter C. Kratcoski, Bojan Dobovsek (eds.): Corruption, Fraud, Organized Crime, and the Shadow Economy., New York, CRC Press, 2016., p. 200.

[9] First instance ruling, 471.

deduce the coordinated operation of a criminal organisation from that.

The court emphasised in the justification of its ruling that *"...the defence of the group to escape responsibilities under criminal law far out-stepped the measures customarily experienced in criminal cases. They were not only applying the customary techniques of defending themselves with great intensity, but additionally, an entire row of crimes were realised, or reasonable suspicions surfaced regarding the commitment of such crimes. Essentially, they applied every imaginable method, save violence, to hinder the proceedings."*[10] The court highlighted seven methods of defence arguments:[11]

1. Statement of unfounded activities by real persons unavailable to the authorities, and training those interested to say this.

2. Acquisition of photos and having those involved memorise them in order to trick investigators during the presentation of photos for identifying suspects.

3. Trumped-up evidence of arson on the vehicle in order to justify the missing documentation of the association(s).

4. Helping Defendant No. 2 escape abroad, and keeping him in hiding so that he could be prevented from providing testimony.

5. Subsequent doctoring of the books of the Foundation.

6. Impeding the investigation via the illegal influence exerted on the investigating authority, using political connections to acquire information.

7. Acquisition of information relating to surveillance, which qualifies as a national security issue, and a replacement of mobile phones for that reason.

The defendants harmonised their defence by inventing that the NGOs had all been directed by a person already deceased in 2004; the implication was that they wanted him to carry the burden of criminal responsibility. The primary defendant was thinking, not without reason, that during the investigation, photo identification was going to be arranged, therefore he asked Defendant No. 10 to acquire a photo of the deceased person. That was the photo they wished to present to all those summoned to court so that they could all recognise the same person and be prepared for questioning. Defendant No. 10 was trying to foil the success of the criminal proceedings by acquiring this photograph.

The defendants resolved in 2006 that they would simulate that the documents were burned in a fire, whereby they could prove the missing accounting proofs in regard of three NGOs. They set Defendant No. 13s van on fire, however, the documents were not destroyed as they were not kept in the vehicle By imitated incineration, Defendants No. 3 and No. 13 also attempted to render the criminal proceeding unfruitful.

Defendant No. 2 informed the primary defendant that his house had been searched and burdening evidence had been found. Since the primary defendant assumed that Defendant No. 2 would submit testimony admitting guilt at court, he proposed that the secondary defendant travel abroad – with the primary defendant covering expenses – and [said] that he (Defendant No. 1) could have the investigation suspended for that time.

The spending of funds won by tenders was proven with fictitious invoices, however, they did not submit the original invoices, only the representatives of the civil organisations authenticated the copies being the same as the originals. Some characteristics of fictitious invoices were as follows: the originals were not issued by the economic partnerships recorded to have issued them; the billed services did not materialise, and the Xerox copies of fictitious invoices were not authenticated by the same persons whose name appeared on the copies. According to the court, the majority of the invoice copies were rather primitive, careless forgeries.

The connection of the primary defendant to the Ministry of the Interior (BM) is to be emphasised; based upon the testimonies of the defendants and the surveillance data, it was this person who provided information on the investigation to the primary defendant, and it was also the same person trying to prevent the criminal proceedings. The primary defendant said to Defendant No. 10 on the phone in January 2007: *"...I talked to the BM; they agreed to call the superintendent tomorrow and if necessary, they'll stop that prosecutor lady."*[12] The head of the criminal organisation said this to Defendant No. 4: *"...I can hold the police."*[13] The court interpreted this saying as the defendant had no influence over the public prosecutor's work.

The court remarked on the investigators' activities having been performed late and insufficiently, and in some cases, nothing really advancing the investigation took place for several months. The quality of the investigation was characterised by the fact that some questioning sessions were only formally executed. The court remarked that mostly they did not devote attention to the methods, intensity, professional quality and targeting goals. It was necessary to focus upon these in the criminal proceedings, however, since, based upon the available information, the primary defendant wanted to influence the investigation illegally.

The court pointed at two aspects associated with the BM (Interior Ministry) connection: they would explain why almost no investigatory activities took place from the time of the ordering of the investigation in August 2005. The defendants were so well informed of the investigation that for example, the secondary defendant already received the list of questions he would be asked by the police during his wit-

[10] First instance ruling, 184.
[11] First instance ruling, 184–185.
[12] First instance ruling, 190.
[13] First instance ruling, 190.

ness questioning. The investigation really started when the public prosecution drew the case into its own competence. From the other point of view, the system of connections and its power was demonstrated by the fact that they were able to try and influence the undergoing investigation in an obstructive way. According to the court's position, the "BM connection" was the person who informally mediated between the investigating authorities and the political sphere. During one conversation – following the search in the office of the local chapter of MSZP in Kiskunhalas – the primary defendant informed his connection that the police would step up actions as directed by the orders of the public prosecutor. The defendant received the following answer: *"...I'll talk to the county superintendent and if necessary, I'll propose that someone talk to the chief prosecutor."*[14]

Suspects and witnesses were summoned a week after the search, the primary defendant called his connection and wondered what the public prosecution was planning to do. The answer on record said he could not do anything substantial to the prosecutor. The defendant received another phone call saying that the county police superintendent would call his connection the next day.

It was not only the primary defendant that knew about the telephone being tapped; four of his fellow defendants also knew about it. During the criminal proceedings, one witness referred to phone tapping: he was told by the primary defendant that he had been told about being tapped. A few days later the primary defendant also informed the witness that he had read the executive summary written by the operative officer.

One of the telephone calls between the primary and the tertiary defendant, on the subject of tenders, the head of the criminal organisation said this to his partner: *"...everyone is complaining all the time that they don't have money, this way and that way, and in the meantime, everyone's well aware that they come from business deals like this... the Party costs a fucking lot of money... you gotta solve the party and you from the associations' money."*[15]

Belittling, Relativising, Exculpation, Mafia Accusations, Quality of Proceedings

Techniques of neutralisation[16] – e.g. excluding responsibility, arguing that the crime served higher goals etc. – appeared as justifications in the case of certain perpetrators. Some denied having caused any damages, saying there were no observable damages.[17] Certain techniques of neutralisation also appeared in the case.

At the conclusion of its ruling, the court remarked upon certain positions of the defendants and the defence, which reflected upon their points of view throughout the proceedings[18]:

1. Belittling the case
2. Relativising what happened
3. Exculpation
4. Voicing the Mafia accusation
5. The quality of certain witnesses in the proceedings

Some persons held the opinion that the case was a single case and it was not to be emphasised among similar cases due to its damage value. Regarding belittling, the court remarked that the significance of the case was not the roughly HUF 70 million damage value, but rather the wrong conduct of the youth and non-governmental organisations. The main actor of the case is a nationally well known politician who used to be a member of Parliament, however, the court stressed that the emphasis is not upon the persons of the defendants, but rather that a group of public political actors wanted to reach their goals illegally. The court highlighted that the significance of a case is the objective weight of the crime, and the standards of judging are the framework of sanctions defined in the Criminal Code. In the case of some defendants, imprisonment between 5 to 20 years was possibly meted out, therefore it is not a case to be belittled but one with significant, material weight.

The defence highlighted that the background of the case was the impossibility of financing political organisations; they also cited that both the left and the right wing used the same techniques of financing. *The defence put it this way: "Let's not be hypocrites", everyone knows that the questions of financing [political] parties have never been solved.*[19] According to the court, this system of arguments relativises what happened; from the point of view of criminal liability, it has no significance whether and to what extent the questions of financing political organisations have been solved, *"questioning the rationality or the purpose of the statutory background may not serve as an argument for the breaching of the norms of criminal law."*[20]

The argument of the defence that non-governmental and political youth organisations were organising joint programmes during which the funds of the organisations were intermixed can be exculpation. According to the court, the contrary of the written testimony is true; in other words, no joint programmes could be mentioned. The expenses of the political youth organisations were covered from the sources organised by the non-governmental organisations.

[14] First instance ruling, 191.
[15] First instance ruling, 258.
[16] Gresham M. Sykes, David Matza: Techniques of neutralization: A theory of delinquency. American Sociological Review, Vol. 22 No. 6 (1957), p. 664–670.
[17] Petter Gottschalk: CEOs and White-Collar Crime A Convenience Perspective., Cham, Springer Natura, 2017, pp. 114–115.
[18] First instance ruling, 445–449.
[19] First instance ruling, 446.
[20] First instance ruling, 446.

During the proceedings, they felt aggrieved that the court was not taking into account the defendants' moving along a predetermined trajectory. The expression of a predetermined trajectory referred to the fact that there was no legal way to finance political youth organisations. The court emphasised that there was a reason why they left this argument out of consideration; it was not their task to solve the problem of how to finance political organisations, all they could focus on was that financing by the method the defendants were using was forbidden.

"The defence was aggrieved at the charges saying that even the very thought that this was a criminal organisation or a Mafia was absurd in such a case when 'all that happened' was incorrect tendering activities, and the assistance won this way was spent on community goals."[21] The court argued that the reason why the defence was conflating criminal organisations with the Mafia was because *"if the absurdity of the 'Mafia charge' can be demonstrated, having identified these two, the charge of operating a criminal organisation can also be deflected easier."*[22] Criminal organisations defined pursuant to the Criminal Code cannot be identified with a Mafia-type grouping of criminals. The court pointed out that the correct train of thought would include that one type of criminal group relationship is the criminal organisation, and one of its possible manifestations is the so-called Mafia-type criminal organisation. The court's assessment was that the group of the primary defendants formed a criminal organisation but not of the Mafia type, rather a so-called white-collar criminal organisation.

The incorrect tendering process – cited by the defence – was such a series of crimes targeting material acquisitions during the course of which, routine forging of documents were used to deceive others in a regular way. The defence was trying to belittle the capacity to act of the defendants, thereby wishing to undermine the "Mafia charge". Furthermore, the defence brought up that the assistance won by tenders was used for community goals, however, the court emphasised that the funds were not only acquired in an incorrect way but also in a criminal way, and instead of community and youth goals, they were financing the structure of a political network using the tender amounts.

Acquiring money that way created the opportunity to grow one's prestige within the party or the political youth organisation.

According to the defence, well-grounded suspicions of committing crimes surfaced in connection to certain witnesses, relating to which the court emphasised that the positions of the procedure were assigned following the indictment, and the lack of charging other potential perpetrators may not disadvantage the situation of those accused.

Sentences and Factors in Meting Them Out

When handing down sentences, the court examined aggravating and extenuating circumstances always keeping an eye on the goals of sentencing. The primary defendant reimbursed HUF 50 million out of the damages; but since the funds came from an unidentified source, the court did not assess that as an extenuating circumstance. The court emphasised, however, that in most cases, the source of the funds used for reimbursing damages did not matter; however, this procedure was unique due to the establishment of a criminal organisation, therefore confiscation of assets was required. The court cited the requirement of an efficient response against criminal organisations; funds derived from controllable and legal sources should be used for reimbursement; were it not so, taken to its logical extreme, even assets that belonged under the scope of assets to be confiscated would be used to try to decrease criminal liabilities. In the case of a criminal organisation, reimbursement of damages could only be taken into account as a mitigating circumstance if the legal source of the funds could be proven. Despite that, the primary defendant refused to answer questions about the source of the funds.

The defence brought up that the fact that the funds won were used for community purposes – leftist youth – as a circumstance to be considered mitigating, since the perpetrators were not driven by individual interests. This system of argument essentially means that the illegal use of funds were a mitigating circumstance since it was serving socially useful purposes. The court refused to accept this argument – based on twisted logic – holding the position instead that the defendants converted the funds to political influence. To support that, the court cited the deposition of the primary defendant: the groups [lit. *camps*] financed from the amounts won were popularising left-wing politics or used to finance party politics. The ruling recorded that the defendants' activities could be regarded as a method for building a political career.

The secondary defendant, however, assisted investigation and evidence to such an extent that it was justified to hand down a minimal sentence. *"The court maintains its position that it is an emphatic interest of law enforcement and serving justice to investigate to the widest possible extent – regarding both material and personal conditions – all grave cases with the characteristics of corruption which call for criminal sentences, along with the liquidation of criminal organisations and other criminal groups, which*

[21] First instance ruling, 448.
[22] First instance ruling, 448.

should also prevail by the support of the favourable judgement in the present case."[23]

Pursuant to the law, the detention term must be completed in a penitentiary if it is at least two years in duration, and the defendant committed the criminal acts in a criminal organisation. The court also examined the option of the more lenient detention option – prison – as the law provides that – based upon the perpetrator's personality and the motives for the criminal act – one degree harsher or one degree more lenient than the terms in the regulations may be meted out considering the prevailing circumstances of the sentencing. The ruling records that there is no provision in the Criminal Code to forbid the application of a sentence one degree more lenient than the specified term in the case of commitment in a criminal organisation. The court's position was that in this case *"it would appear an exaggerated and unreasonably grave sentence to require the completion of the detention term in a penitentiary, even in the case of the relatively higher level of personal and social danger associated with crimes committed within a criminal organisation."*[24]

The court commented on the expressions of Defendant No. 8 voiced under the right to allocution (last words), which could be cited as a summary of the defendants' view: *"Young and inexperienced people have committed misappropriation and forgery for the sake of power and slightly higher positions. They have reimbursed the damages and whichever way I look at it, they basically did not cause any profound changes in anyone's life. No one was injured in any way, no opportunities were lost, no one's life was ruined, and no one was reduced to poverty."*[25]

Reactions to the First Instance Ruling

The media does not devote equal attention to traditional and white-collar criminality, usually reports of white-collar crimes are not covered to a large extent.[26]

Following publication of the first instance ruling, the Zuschlag case was in the headlines in almost all the printed media – with the largest [political] parties commenting on the verdict. MSZP's speaker said that Mr. János Zuschlag was not worthy of the MSZP's support because his deeds were breaking the law and infringing on everyday morals, plus contrary to the party's interests; therefore his automatic exclusion from the party would commence immediately. According to the leader of the parliamentary fraction of Fidesz, "János Zuschlag and his fellows were operating a criminal organisation, even if legally it did not qualify as such." Sociologist of law Zoltan Fleck was stunned by the gravity of the sentence; the sociologist of law said that commitment of crimes in a criminal organisation could also be in question with this type of criminal act, but that it mostly applied to Mafia-type activities.[27]

Mr. Péter Hack thought the primary defendant's sentence was relatively too harsh, however, all in all, a professionally correct ruling was rendered. The university professor emphasised that the timing of the issuance of the ruling was questionable in this case, which otherwise deserves to be in the centre of public interest and politics – it preceded the general elections by ten days.[28]

Mr Zuschlag is an insignificant figure, not a Godfather; according to Mr. Péter Bárándy in an interview with the press. According to the attorney, the Criminal Code was extending the activities classifiable as Mafia crime by providing a very generous definition of criminal organisations. Mr. Péter Bárándy emphasised that it was not the justice procedure but rather the Criminal Code that made Mafia criminals out of Mr Zuschlag and his partners.[29]

One of the dailies published an article titled "Cannons on Zuschlag": *"According to law, this is all Mafia crime, and that is how the court acted. They attacked a few young political crooks, as they were called, 'chocolate thieves' with tools created for the super-heavyweight professionals of the gangster world. The Wednesday ruling was good for Hungary to understand that politicians should get the point that they would be judged by the outside world, and not only by the voters."*[30]

The defence attorney for the primary defendant also gave an interview to journalists saying that his client *"...could only commit his deeds where the financing of political parties was unregulated ever since the system change. My client has been socialised in that context. This does not make his deed any less grave, but it calls attention to it, that until it is regulated, this context will somehow keep on producing cases like this."*[31]

On announcement of the first instance ruling, MSZP's speaker declared that the Party had nothing to do with these financial transactions: *"...they had no knowledge of the case under discussion, and whatever happened did not take place on behalf of the party, nor for its interests."*[32]

[23] First instance ruling, 485.
[24] First instance ruling, 485.
[25] First instance ruling, 483–484.
[26] Tim Newburn: Criminology; New York, Routledge, 2017., p. 399.
[27] Zuschlag Case: Tough Sentence with Formal Mistakes; Article in the daily Népszava [People's Voice], 1 April 2010, p. 8.
[28] http://index.hu/belfold/2010/04/01/ennyit_emberolesesert_szoktak_adni/
[29] Károly Lencsés: Does the Criminal Code Make Mafiosi out of Politicians? Article in the daily Népszabadság [People's Freedom], 2 April 2010, p. 3.
[30] Péter N. Nagy: Cannons on Zuschlag; article in the daily Népszabadság [People's Freedom], 2 April 2010, p. 3.
[31] Zuschlag Case: Tough Sentence with Formal Mistakes; article in the daily Népszava [People's Voice], 1 April 2010, p. 8.
[32] Zuschlag's Sentence: Eight and a Half Years in Prison Plus Assets Confiscated; article in the daily Népszabadság [People's Freedom] 1 April 2010, p. 3.

The Second Instance Ruling

The defendants and their defence attorneys have attacked provisions regulating the commitment of crimes in a criminal organisation.

The appeals court disregarded the statement on the bearings of the case that the primary defendant requested the mediation of Witness No. 1 in an attempt to illegally influence the investigation. According to the appeals court, there was no need for that statement as well as the evidence gathered for it and it did not matter to the indictment. According to the appeals court, there was no factual basis for the assertion that the top managers of the political youth organisations knew about the application of this method of securing funds using the network created by the primary defendant, therefore it left the above section out of its ruling.

Furthermore, the court disregarded those statements referring to the organisation of the defence and the impediment of justice which did not belong to the subject matter of the indictment. According to the appeals court, the above are irrelevant evidence and arguments from the point of view of the assessment of the deeds from the criminal justice point of view. Related to the evidence of the first instance court and its justification, the appeals court emphasised that the [first instance] ruling overemphasised the investigation of the defendants' external relations; it was not justified by the court's tasks in investigating the actions which were the indictment's subject matter, neither by investigating the elements of the criminal organisation.

Related to the establishment of the criminal organisations, the second instance court emphasised that the county court was according an unnecessary influence to "external relations" which additionally did not belong among the definitive elements of criminal organisations. The first instance court, furthermore, devoted an unreasonable amount of evidence, which increased expenses, to ascertain the existence of a criminal organisation, therefore the second instance court decreased the amounts of the sentence fines universally payable relevant to the defendants involved in the criminal organisation.

Regarding the circumstances of guilt, the [second instance court] rejected several statements in the ruling of the county court, since it held the opinion that the status of being an accomplice in commitment is an aggravating circumstance while being an accessory is an alleviating one. The forms of commitment of a crime committed in a criminal organisation must also be differentiated. Amongst the aggravating circumstances, the second instance court disregarded the "persistent stubbornness" targeting the impediment of the criminal procedure by illegal methods; the second instance court opined that it was either unsupported by the findings of facts, or it amounted to accomplishment of crimes relevant to other fact establishments, or it belonged to the freedom of defence.

Although the first instance court excluded the reimbursement of part of the damages by the primary defendant from among the attenuating circumstances, the second instance court held the opinion that the exclusion was incorrect, or that it was incorrect to assume that the amount paid as damage compensation had come from illegal sources. The second instance court assessed the partial damage compensation by the primary defendant as a strong attenuating circumstance, holding that it was irrelevant to prove the source of the funds, stressing that there was no theoretical basis to bring up the illegal origins.

The second instance court commented that the county court was not judging activities held to be classical in the framework of organised crime, since the aim of the defendants was the acquisition of resources for political youth organisations. According to the second instance court, the above-mentioned facts must be taken into consideration in the meting out of sentences. The second instance court's position was that the first instance court had meted out excessive main sentences to those defendants who appealed the ruling.

Related to the more lenient option of detention, the second instance court remarked that although the fact of commitment of crimes in the framework of a criminal organisation would call for application of the [graver] degree of penitentiary, the goal of the defendants was only indirectly personally motivated, and that the level of danger to society posed by the organisation they created was not at the same level as that posed by traditional organised crime. In agreement with the first instance court, the second instance court took the stance that based on the above, it was reasonable to apply the more lenient option of executing the sentences.

The second instance court called the attention of the first instance court to the fact of commitment of a crime within a criminal organisation must be included in the operative part of the ruling, and that the county court failed to include that among the provisions relevant to the meting out of the sentences.

Reactions to the Second Instance Ruling

One of the journalists voiced the opinion that with the second instance ruling, *"...one of the most edifying crime stories was closed of the entire period since the system change."* In the procedure lasting for about four years, *"... political looting, an uninhibited robbing of the social support gave reasons for public attention... the politician who would live out the rest*

of his thirties in prison became an example of how part of the political elite became distorted, plunderers who still believed there were no consequences of one's actions in this country."[33]

It is interesting that the press did not deal with the case by a strong emphasis following the second instance ruling; it matter-of-factly informed readers of the most important provisions of the second instance ruling; attorneys and politicians – in contrast to the experience after the first instance ruling – were not interviewed.

Summary

The minimum detention – referring to defendants who were found guilty in the charge of committing crimes in a criminal organisation – was 1 year in prison, the maximum was 6 years, their average detention time came to between 2 years and 6 months. The costs of the criminal proceedings surpassed HUF 11 million.

The following table contains the sentences from the ruling of the court:

One of the characteristics of organised crime – which has been apparent in these criminal proceedings as well – is that the perpetrators seek contacts with the authorities in order to influence proceedings. The leader of the criminal organisation tried to intervene in the investigation: *"The exceptionally weak efficiency of the police investigation fortifies the conclusion that the primary defendant was actually able to exert influence on the police, which was apparent from the calls intercepted by surveillance, and to which many depositions referred."*[34] My position is that if the public prosecutor had not taken over the investigation, one possible scenario is that the criminal proceedings would have been suspended, or the guilt of those accused would have been established for crimes of no significant material damage. The efficiency of the investigation was given strong criticism in the court phase; the reason for the investigators' apparent or real lack of professionalism could – theoretically – be sloppiness, lack of experience, being overburdened, or "directed idleness," when an investigator is condemned to passivity. Much information was found during the proceedings which showed that the criminal organisation was successfully impeding the process of investigation.

Defendants [No.]	Sentence in first instance ruling	Criminal organisation	Sentence in the second instance ruling	Criminal organisation
No. 1 (Primary)	8 years and 6 months in prison; banned from public office for 10 years	x	6 years in prison; banned from public office for 10 years	x
No. 2	2 years in prison; banned from public office for 2 years (binding)	x		
No. 3	5 years and 6 months in prison; banned from public office for 6 years	x	3 years and 6 months in prison; banned from public office for 6 years	x
No. 4	4 years in prison; banned from public office for 4 years	x	2 years and 6 months in prison; banned from public office for 4 years	x
No. 5	3 years in prison; banned from public office for 3 years	x	1 years in prison; banned from public office for 3 years	x
No. 6	2 years and 4 months in prison; banned from public office for 3 years	x	1 years in prison; banned from public office for 3 years	x
No. 7	3 years and 4 months in prison; banned from public office for 4 years	x	1 year and 6 months in prison; banned from public office for 4 years	x
No. 8	Fine for 500 days (daily amount: HUF 2,000)		Fine for 300 days (daily amount: HUF 1,000)	
No. 9	1 years and 4 months in prison; banned from public office for 2 years	x	Fine for 500 days (daily amount: HUF 1,000)	x
No. 10	Fine for 400 days (daily amount: HUF 1,000)		Fine for 200 days (daily amount: HUF 1,000)	
No. 11	10 months of jail, suspended on probation for 3 years		Fine for 200 days (daily amount: HUF 1,000)	
No. 12	2 month of prison, suspended on probation for 4 years		1 month of prison, suspended on probation for 4 years	
No. 13	10 months of prison, suspended on probation for 3 years		Fine for 200 days (daily amount: HUF 1,000)	
No. 14	Fine for 400 days (daily amount: HUF 500)			
No. 15	Fine for 200 days (daily amount: HUF 1,000)		Fine for 150 days (daily amount: HUF 1,000)	
No. 16	not guilty (binding)			

[33] Tamás Lajos Szalay: No Disputes in Some Things; article in the daily Népszabadság [People's Freedom], 1 February 2011, p. 3.

[34] First instance ruling, 400.

Antal Kacziba, the Deputy State Secretary of the Ministry of the Interior was still voicing the opinion in 1996 that *"the investigative authorities of the police are unworthy of the attention of exerting daily political influence"*[35]. The Deputy State Secretary brought up the following arguments to prove his point:

– no single political force can acquire such an influence of power in a democratic state of legality that illegal attempts to influence would remain uncovered;

– it is an existential interest of the investigative authorities that their organisations work free of political influence, since in case the political situation changes, they might be called to account due to their illegal decisions;

– exerting influence would be uncovered during the processes of arriving at rulings by courts as well as by the mass media.

We can only hope that the Zuschlag case was an exception and Hungarian investigation authorities are not reached by political pressure these days...

"Society must learn to recognise that while a blackmailer is a businessman of the underworld, a white-collar criminal is more than an upperside gangster; the former transforms crimes into illegal enterprise, while the latter transforms legal enterprises into crimes."[36] The leader of the criminal organisation was neither a businessman, nor a gangster, rather a politician; he was a politician who surrendered everything to build his political career: the criminal organisation he founded was syphoning away budgetary funds successfully for six years in the name of Macchiavellism.

It was Gottschalk that adapted Maslow's pyramid of needs to examining the needs of criminals; he says street crime emphasises lower needs while white-collar crime emphasises higher needs. In the case of some white-collar criminals, the acquisition of money is the main goal of committing a crime, while in the case of others, money is only a means, the actual goal is being accepted, exercising influence or acquiring fame.[37] In the present case, the perpetrators used the funds won at tenders as a means to step up the political ladder of ranks, and criminal money was exchanged into political prestige.

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[35] Antal Kacziba: Economy, black economy, organised economic crime and corruption; Papers in Criminology No. 54, Budapest, the Hungarian Association for Criminology, 1996, p. 65

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[37] Gottschalk, work cited pp. 90-92