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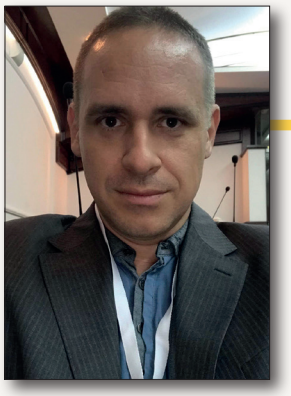

Szerkesztői előszó

Dear Reader!

The English-language special issue of the Criminal Law Review contains edited versions of the presentations of an international criminal law conference on the effects of the pandemic in 2021. We hope the pandemic will end soon and we can return to traditional conferences from 2022.

Budapest, 17. 11. 2021.

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A Szerkesztőbizottság és a Kiadó

Enikő Zsófia Balogh[1]

Virtual Trials

Introduction

The epidemic has fundamentally upset the lifestyles of all of us and has significantly affected all areas of law enforcement. This period was accompanied by a huge number of cancellations due to the virus, which unfortunately is now expected to remain a part of our lives for a long time to come.

We had to give up our basic everyday activities and reshape our daily lives, which unfortunately did not only affect our family, friends, relationships and the way we used to live.

Because while we are in the midst of a pandemic life situation, the perpetrators of the crimes have still not suspended their activities, and the judiciary cannot stop, we just need to change our habits a little bit.

Overall, it can be said that the epidemic situation has significantly upset the lives of our world. In the context of the present events, it is interesting to talk about the positive effects of the virus, but it is important to mention that the evidence behind us shows that the health emergency and the resulting restrictions on freedom of movement have also helped lives and work of practicing lawyers, attorneys, and clients.

While internet-based video chat is a commonplace in everyday communication, meeting rooms were not yet very common in Hungary.

While in Hungary witnesses were heard 17 times in 2012 and 62 times in 2013 during internal and cross-border distance hearings, in 2013 there were 10,476 hearings in Austria and in 2014 in the Netherlands 50,000 hearings.

In this sense, this is not a new thing, we have merely preferred the personal form of the procedure compare to the other countries.

During the virtual proceedings, the entire court council, the prosecutor, the defense counsel, the accused, the audience, and the witnesses who are heard by the court in the usual way are sitting in the courtroom. In the other room, only the witness and his legal representative may be present, as well as another judge or court clerk, who shall establish the identity of the witness and ensure that he can testify without interruption.

Today, even one technician is present at both locations, who manage the technical equipment and troubleshoot any faults.

In practice, the judge does not have to do anything differently, everything as if the participant in the proceedings were in the same room.[2]

In addition to the parties, litigants and other persons (eg witnesses, experts) may be present at the hearing, provided that their e-mail address is announced in advance at the request of the court and that they have an Internet connection and such means. which is capable of transmitting image and sound simultaneously.

The great advantage of distance negotiation over court proceedings is the security of enforcement as well as its cost-effectiveness

– In addition to its cost-effectiveness and workload-reducing effect, its most notable feature is that the prison keeps the detainee in a penitentiary institution, relieving the staff of the production task with the highest security risk.

– Distance trial contributes to maintaining the security and order of detention

– The method of trial proves to be particularly secure in cases where there is a protected witness

– Distance trials are cheap and make it easier for the court to hear convicts serving a final custodial sentence or pre-trial detention as witnesses.[3]

– Distance trials is used in the West primarily in multi-accused mafia lawsuits, when dangerous defendants should be transported to court from distant prisons in the country.

It is important that the system does not jeopardize fundamental rights, and it is important that issues affecting the most vulnerable, such as the elderly or the disabled, and those directly related to the epidemic are given priority.

– If they are not implemented, it is questionable

[1] Law student, Debrecen University Faculty of Law, A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

[2] Bogotyán Róbert, Telekommunikációs eszközök alkalmazása a büntetésvégrehajtásban az igazságszolgáltatás és a jogérvényesítés hatékonyságának növelése céljából, Börtönügyi Szemle, 2018/ 4.sz., http://epa.oszk.hu/02700/02705/00116/pdf/EPA02705_bortonugyi_szemle_2018_4_015-025.pdf 2021-02-14

[3] Schmehl János, A Büntetés-végrehajtási Szervezet megújulásának áttekintése a hatályos Bv. törvény szellemében, Börtönügyi Szemle, 2019/1.,

to what extent certain guarantee rules of criminal proceedings can be implemented.

– According to some, the right to a defense, equal opportunities – as it may be offended that the consultation time between the defense counsel and the accused is short.

With regard to internet justice, it is very important that you do not jeopardize fundamental rights when it comes to guaranteeing the purity of the procedure and the guarantee rules. The application of the institution does not infringe the principles of oral and directness, given that there is a simultaneous visual and audio connection between the place of the hearing and the place of the hearing. [4]

Negotiation guarantees can be fully enforced through the system.

As an interesting fact, I would like to mention that different countries have solved the pandemic situation during the coronavirus epidemic with different solutions, in connection with virtual court hearings.

In the U.S., federal courts have been temporarily allowed to use video and teleconferencing in criminal proceedings in view of the epidemiological situation. In Texas, however, attempts are being made to make court hearings public during this period by allowing judges to stream hear hearings through the Zoom app or on Youtube. Mention may also be made of England in terms of solutions, on the basis of a practical guide for judges, where judges may hold private hearings or hearings only if it is not possible for at least one member of the media (as a public) to take part. Primarily, the recordings are audio recordings, in exceptional cases, as far as possible or just necessary, a video recording of the hearing may be made. In retrospect, anyone can request access to these recordings.[5]

In order to enforce the principle in connection with the emergency situation, the Hungarian legislation introduced the possibility that in case of exclusion of the public, the accused or the defense counsel should be allowed to record what happened at the hearing by turning on the electronic device (except in the case of closed hearing).

– In addition to its cost-effectiveness and workload-reducing effect, its most notable feature is that the prison keeps the detainee in a penitentiary institution, relieving the staff of the production task with the highest security risk.

– Distance trial contributes to maintaining the security and order of detention.

– The method of trial proves to be particularly secure in cases where there is a protected witness.

– Distance trials are cheap and make it easier for the court to hear convicts serving a final custodial sentence or pre-trial detention as witnesses.

In practice, the judge does not have to do anything differently, everything as if the proceedings were put together in a room.

In addition to the many good qualities and characteristics, the question arises to the extent to which the generally recognized principles of publicity and immediacy apply to the application of general procedural principles.

How is the defendant able to feel the weight of the procedure?

Respectively, personal interactions and gestures are pushed into the background.

– In my opinion, the legal institution has not violated the general procedural principles (their enforcement in court) at the moment, but the principle of equality of arms is not undermined in such interrogations.

– But the solution will in the near future surely give birth to problems.

The problem of distance trial According to the report of the Human Rights Committee, the "human factor" is missing from such distance hearings. „Trust and personal relationships are harder to build... people and their behavior are easier to misunderstand when heard at a distance."

Summary

The positive experiences of the video communication technologies presented in the framework of the lecture suggest that their application is likely to gain more and more ground in the near future. The distance negotiations have already set foot in Hungary and their application has mostly been accompanied by positive feedback. The video communication solution meets the requirements of efficiency and cost savings, but they also have certain downsides. This is because they result in interactions in which traditional face-to-face relationships and their personal nature are taken over by a virtual, more impersonal medium. The situation reshaped by the video connection also transforms and shapes its actors: it presupposes different skills and abilities and attitudes on the part of judges, medical staff, enforcement, legal representatives and detainees.

At the same time, "videoconferencing is a useful tool and its potential is significant not only at national level, but also, in particular, in cross-border situations involving different Member States and even third countries.

In cross-border cases, it is crucial that the judicial authorities of the Member States communicate smoothly with each other.

[4] Szabó Krisztián (2011): *A tanú zártcélú távközlő hálózat útján történő kihallgatása, mint a tanúvédelem külön nem nevesített eszköze* http://epa.oszk.hu/02700/02705/00117/pdf/EPA02705_bortonugyi_szemle_2019_1_095-106.pdf 2021-02-14 http://www.debrecenijogimuhely.hu/archivum/4_2009/a_tanu_zartcelu_tavkozlo_halozat_utjan_torteno_kihallgatasa_mint_a_tanuvedelem_kulon_nem_nevesitett_eszkoze/- 2021-02-14

[5] Fülöp Anna (2020): Az online bíróság többé nem a távoli jövő, hanem a jelen https://jogaszvilag.hu/a-jovo-jogasza/az-online-birosag-tobbe-nem-a-tavoli-jovo-hanem-a-jelen/ 2021-02-14

Video conferencing provides an opportunity to facilitate communication and can encourage it.

The benefits of a legal institution are also recognized in European Union law and on the one hand it encourages its application.

We are in the midst of changes that are social – as soon as we have not seen much of it in criminal law – its aftermath will be decisive for later years and decades.

It is not foreseeable that this could bring a new era, but the changes are already happening can also be said to be rooted.

Dr. Júlia Dóra Batta[1]

The Principle of Official Proceedings in Practice of the CJEU and the ECtHR

1. The principle of officiality

Principle of official proceedings is a main principle of the inquisitorial system. Generally speaking, enforcement of the principals is always a relevant question in every branch of law, because principles express the specifics of the procedure and serve as guidelines in the application of law. These principles are never absolute, but they always have relative value, because they express the current social and legal policy perception. Based on this, examining the role of principles in criminal proceedings has a constant relevance to make criminal proceedings and the decision-making process more comprehensive. This way, the mechanisms, effects and possible errors in practice become visible, which, if we are aware of them, makes the whole procedure more predictable and this is essential for legal certainty and the success of the procedure.[2]

In criminal proceedings, the ex officio principle has a different meaning at the investigative and trial stages. In the course of an investigation, it means that the investigating authority or the prosecutor may also initiate criminal proceedings without a request. At the court stage, the principle of ex officio means, in the first place, that the judge is not bound by the parties' motions.[3]

For example in the Member States of the European Union there are different legal solutions as to whether the evidence can be taken of the court's own motion or only at the request of the prosecutor, the accused and the defense counsel.

Criminal procedure laws usually discuss in detail the duty of a judge without a motion by the parties. For example in criminal proceedings the judge must report ex officio if the judge is biased and unable to hear the case impartially,[4] but he must also detect if the offense in question is time-barred.[5]

The case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) thus repeatedly raises the question of what national courts must take into account in their proceedings in order to be lawful and not to infringe the EU law or the European Convention of Human Rights (ECHR).

2. Parallel administrative and criminal procedures in the legal systems of the Member States

The right not to be prosecuted or punished twice for the same offence is a fundamental principle of criminal law. This is called the *ne bis in idem* principle, which therefore means that no legal action can be taken twice because of the same fact, and if it begins, it cannot be continued.[6] It has a twofold rationale: Firstly, it is a key guarantee for the individual against abuses of the ius puniend and secondly it ensures legal certainty and the stability of the res iudicata.[7]

In the practice of the CJEU and the ECtHR a breach of a convention is usually established if the judge conducts the proceedings against the provisions of the conventions. As an example, we can mention the principle of the prohibition of double procedure, which is enshrined in several European documents.[8]

[1] PhD student Géza Marton Doctoral School of Legal Studies, A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

[2] Angyal, Pál, *A magyar büntetőeljárásjog tankönyve I. kötet*, Atheneum, Budapest, 1915, 253.

[3] Lichtenstein, András, *The Principles of Legality and Officiality in Criminal Procedure*, In: Central & Eastern European Legal Studies; 2018, Issue 2, 290–293.

[4] Ficsór, Gabriella, *A bíró kizárásának gyakorlati tapasztalatai*, In: Büntetőjogi Szemle, 2017/2., 75–77.

[5] Polt, Péter (szerk.), *Kommentár a büntetőeljárásról szóló 2017. évi XC. t*örvényhez, Wolters Kluwer Hungary Kft., Budapest, 2020, 980–981.

[6] Puccio, Andrea, *Double jeopardy in European and Italian case law: a summary of the most significant rulings*, 2019. https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=221EE609-305A-4699-951F-48B7C3B03F2B (2021. 02. 13.)

[7] Lasagni, Giulia – Mirandola, Sofia, *The European ne bis in idem at the Crossroads of Administrative and Criminal Law*, In: eucrim. The European Criminal Law Associations' Forum, issue 2019/2, 126.

[8] Elek, Balázs, *The NE BIS IN IDEM Principle in the Aspect of Criminal*

The Charter of Fundamental Rights into the Treaty regulate the prohibition of double jeopardy – double prosecution or punishment– : „No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law."[9]

The Convention Implementing the Schengen Agreement (CISA) also deal with the prohibition of double jeopardy. Article 54 of the Convention states: „A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party."

2.1. Ne bis in idem and double jeopardy in the practice of the ECtHR

In 2016, the ECtHR deviated from its previous case law and significantly narrowed the scope of the ne bis in idem principle in cases where double criminal and administrative criminal proceedings are pending for the same offense. Under strong pressure from the Contracting States to protect the practice of double-checking systems in *A and B v. Norway*, the Grand Chamber redefined the concept of *bis* and acknowledged that in certain circumstances the combination of criminal and administrative procedures is not a double procedure prohibited by Article 4 of Protocol No. 7 to the ECHR.[10]

The Court found that, if dual proceedings were "complementary responses to socially offensive behavior" and combined in an integrated way to form a "coherent whole" to deal with different aspects of a crime, they could be considered as part of a single proceeding rather than the breach of the ne bis in idem principle.[11] Therefore, the Court requires that the two sets of proceedings to be "sufficiently closely connected in substance and time" and lists the factors that determine whether there is such a close connection between them.[12]

In terms of its content, the Court considers that the dual procedure must satisfy the following four conditions:[13]

- They pursue complementary purposes and thus address, not only *in abstracto* but also *in concreto*, different aspects of the social misconduct involved;
- They are a foreseeable consequence, both in law and in practice, of the same impugned conduct;
- They avoid, as far as possible, any duplication in the collection and assessment of the evidence;
- They "above all" put in place an offsetting mechanism designed to ensure that the sanction imposed in the first proceedings is taken into account in the second proceedings, so that the overall amount of any penalties imposed is proportionate.[14]

In addition to the substantive context, it is also important that the temporal relationship must be present, although it is not necessary for the proceedings to be conducted simultaneously and the order of the proceedings is not relevant.[15]

It is clear from the decision that the examination of the fulfillment of these conditions is a requirement that must be examined ex officio by the competent authorities and courts.

Decisions A and B have been strongly criticized, as they have, according to some, undermined the protection given by the ne bis in idem principle, and its criteria for determining the compatibility of double criminal proceedings and administrative proceedings are often ambiguous and difficult to apply in practice, thereby leading to arbitrary results.[16]

While in Cases A and B the Court referred to the different purpose of the sanctions and to the other elements of the offense, namely its culpable character,[17] in *Nodet v. France* the Court had already considered the legal interest protected by the offense as an element in determining the complementarity of the proceedings.[18]

In that case, the applicant, a financial analyst, was fined by the financial markets regulator, the AMF, for manipulation of a share price, and subsequently by criminal courts for the offence of obstructing the proper operation of the stock market by the same action. He complained that he had been punished twice for the same offence.[19]

First, the Court observed that there was no sufficiently close connection in substance between the two sets of proceedings, of the AMF and of the criminal courts, in view of the purposes pursued and given, to some extent, the repetition in the gathering of evidence by various investigators; secondly, and above all, there was no sufficiently close con-

Punishment, In: Revista Facultatii De Drept Oradea. Journal of The Faculty Of Law Oradea, Publicatie bianuala 1/2019 35–44.

[9] Charter of Fundamental Rights of the European Union – TITLE VI – JUSTICE – Article 50 – Right not to be tried or punished twice in criminal proceedings for the same criminal offence.

[10] ECtHR (Grand Chamber), 15 November 2016, *A and B v. Norway*, Appl. no. 24130/11 and 29758/11. paragraph 139.

[11] ECtHR A and B v. Norway case paragraph 121.

[12] Lasagni – Mirandola, *i.m.*, 127–128.

[13] ECtHR A and B v. Norway case paragraph 132.

[14] Lasagni – Mirandola, *i.m.*, 128.

[15] ECtHR A and B v. Norway case paragraph 132.

[16] Lasagni – Mirandola, *i.m.*, 128.

[17] ECtHR A and B v. Norway case paragraph 144.

[18] ECtHR, 6 June 2019, *Nodet v. France*, Appl. no. 47342/14 paragraph 48.

[19] ECtHR Nodet v. France.

nection in time for the proceedings to be considered part of an integrated mechanism of sanctions prescribed by French law. It concluded that Mr Nodet had sustained disproportionate damage on account of his double prosecution and the double conviction, by the AMF and the criminal courts, for the same facts.[20]

As we can see, in that judgment, the ECtHR also stated that, in the case of double proceedings, the Member States had to prove that there was a close temporal and substantive connection between the individual proceedings. In the latter condition, it is necessary to examine ex officio whether the requirements apply laid down by the court.

2.2. Double-track systems and ne bis in idem in the case law of CJEU

According to the practice of the CJEU, the legal assessment of individual cases is not determined by their national classification, but by the legal nature of the cases.[21]

In some Member States, infringements are accompanied by administrative and criminal sanctions. According to the practice of the CJEU, the parallel administrative and criminal proceedings are not possible if the previous administrative proceedings were of a criminal nature. In such cases, the court or the administrative authority must examine ex officio the principle of ne bis in idem. It must be examined whether a final decision has already been taken in the case in question.

According to the practice of the CJEU the national courts are not bound by the motion of the prosecutor, the defense counsel or the accused. It is the duty of the national courts to examine ex officio the nature of the case and to compare the legal nature of the various proceedings.

One of the best-known criminal case before the CJEU was the *Akerberg Fransson c. Sweden case* where the court primarily ruled on whether parallel criminal and administrative proceedings are permissible.[22] However, the decision is also interesting because the CJEU has also highlighted the circumstances that the national court must examine ex officio in its own procedure.

The facts of the proceedings were the follows in the Swedish proceedings:

Mr Åkerberg Fransson was summoned to appear before the Haparanda District Court in particular on charges of serious tax offences. He was accused of having provided, in his tax returns for 2004 and 2005, false information which exposed the national exchequer to a loss of revenue linked to the levying of income tax and value added tax ('VAT'). Mr Åkerberg Fransson was also prosecuted for failing to declare employers' contributions for the accounting periods from October 2004 and October 2005. According to the indictment, the offences were to be regarded as serious, first, because they related to very large amounts and, second, because they formed part of a criminal activity committed systematically on a large scale.

Before the referring Swedish court, the question arised as to whether the charges brought against Mr Åkerberg Fransson must be dismissed on the ground that he has already been punished for the same acts in other proceedings, as the prohibition on being punished twice laid down by Article 4 of Protocol No 7 to the ECHR and Article 50 of the Charter would be infringed.

In its judgment, the CJEU defined the responsibilities of national courts as follows:

"Three criteria are relevant for the purpose of assessing whether tax penalties are criminal in nature. The first criterion is the legal classification of the offence under national law, the second is the very nature of the offence, and the third is the nature and degree of severity of the penalty that the person concerned is liable to incur."[23]

It is for the referring court to determine, in the light of those criteria, whether the combining of tax penalties and criminal penalties that are provided for by national law should be examined in relation to the national standards, which could lead, as the case may be, to regard their combination as contrary to those standards, as long as the remaining penalties are effective, proportionate and dissuasive.[24]

It follows from the foregoing considerations that the ne bis in idem principle laid down in Article 50 of the Charter does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of VAT, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature. It is for the national court to determine whether the first sanction was criminal in nature or not.[25]

It is thus clear from the decision that the national court, the court of the Member State must determine ex officio if the first penalty is criminal in nature or not.

In other cases, the Court has also concluded that the ne bis in idem principle guaranteed by Article 50 of the Charter of Fundamental Rights of the European Union confers on individuals a right which

[20] ECtHR Nodet v. France.

[21] Elek, Balázs, *Administrative and criminal proceedings in reflection of the principle of ne bis in idem*, In: Usaglasavanje pravne regulative sa pravnim tekovinama (acquis communautaire) Evropske Unije – stanje u Bosni i Hercegovini i iskustva drugih. Banja Luka, Istrazivacki Centar, 2018, 94-103.

[22] The case C-617/10 Hans Akerberg Fransson.

[23] Case C-489/10 Bonda paragraph 37.

[24] Case C-489/10 Bonda paragraph 37.

[25] Bana, Imre, *A „ne bis in idem" elv érvényesülése közigazgatási szankció és büntetőeljárás egyidejű alkalmazása során*, In: Új magyar közigazgatás, 10. Évf. 2. Szám, 2017, 39.

is directly applicable in the context of a dispute such as that at issue in the main proceedings.[26]

All this also means that this right of the accused must be taken into account by the national judge ex officio in the national criminal procedure, even if it is not invoked by the accused or the lawyer.

3. Principle of ex officio in evidentiary procedure

National courts have ex officio obligations not only in double jeopardy under the case law of the CJEU and the ECtHR. There are also a number of issues in the evidentiary procedure that national courts must examine ex officio in order to ensure the right to a fair trial and legal certainty.

3.1. Thorough examination of the evidence in the other proceedings

In the decision of the *Kossowski case* the CJEU also reflects the ex officio obligation of national courts in connection with the examination of evidences. The Court imposed on the national courts the obligation to examine ex officio the reasons of the decision from an other Member State.[27]

The facts of the proceedings were the follows in the German proceedings:

„On 7 February 2014, the accused, who was still wanted in Germany, was arrested in Berlin (Germany). The Hamburg Public Prosecutor's Office brought charges against him on 17 March 2014. The Regional Court, Hamburg, Germany refused to open trial proceedings, basing its decision on the fact that further prosecution had been barred, for the purposes of Article 54 of the CISA, by the decision of the Kołobrzeg District Public Prosecutor's Office terminating the criminal proceedings." [28]

The referring court took the view that, the evidence against the accused is sufficient to justify the opening of trial proceedings before the Landgericht Hamburg (Regional Court, Hamburg) and the acceptance of the indictment for the purposes of those proceedings, unless the principle of ne bis in idem laid down in Article 54 of the CISA and Article 50 of the Charter is a bar to that.[29] The referring court therefore asked, whether the accused's case has been 'finally disposed of'.

It is important to note that, in the case in the main proceedings, under Polish law the decision of the Kołobrzeg District Public Prosecutor's Office terminating the criminal proceedings precludes any further prosecution in Poland.[30]

The Court considered that, the referring court is essentially asking whether the ne bis in idem principle must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person – albeit with the possibility of its being reopened or annulled, without any penalties having been imposed, may be characterised as a final decision for the purposes of those articles, when that procedure was closed without a detailed investigation having been carried out.[31]

In this point, we need to highlight that the European enforcement of the ne bis in idem principle is of fundamental significance in EU law. It is because exercising the right to free movement of persons can only be effectively observed if a perpetrator knows that once his trial has been finally disposed of, after having been prosecuted and sentenced and following the imposition of a penalty in one member state, or in the event of being acquired upon a final judicial decision, he may freely move in the Schengen area without having to fear criminal prosecution in an other state because the said criminal act under the laws there is considered a different crime.[32]

According to the Court, for a person to be regarded as someone whose trial has been 'finally disposed of' within the meaning of Article 54 of the CISA, in relation to the acts which he is alleged to have committed, it is necessary, in the first place, that further prosecution has been definitively barred.[33] That first condition must be assessed on the basis of the law of the Contracting State in which the criminal-law decision in question has been taken.[34] If the decision given in the first Contracting State does not exclude the criminal liability of the person subject to the proceedings, there can not be obstacle to the initiation or continuation of criminal proceedings against that person in the other Contracting State.[35]

In the light of the foregoing, the Court stated that the principle of ne bis in idem laid down in Article 54 of the CISA, read in the light of Article 50 of the Charter, must be interpreted as meaning that a decision of the public prosecutor terminating criminal proceedings and finally closing the investigation procedure against a person, without any penalties having been imposed, cannot be characterised as a final decision when it is clear from the statement of

[26] Case C-537/16 Garlson case, Case C-524/15 Luca Menci case.
[27] Case C-486/14, Kossowski case.
[28] Case C-486/14, Kossowski case paragraph 19.
[29] Case C-486/14, Kossowski case paragraph 20.
[30] Case C-486/14, Kossowski case paragraph 36.
[31] Case C-486/14, Kossowski case paragraph 32.
[32] Karsai, Krisztina, *Transnational ne bis in idem principle in the Hungarian fundamental law,* In: Europe in Crisis: Crime, Criminal Justice, and the Way Forward, Sakkoulas Publications, Athens, 416.
[33] Case C-486/14, Kossowski case paragraph 34.
[34] Case C-486/14, Kossowski case paragraph 35.
[35] See, to that effect, judgments of 22 December 2008 in Turanský, C-491/07, EU:C:2008:768, paragraph 36, and 5 June 2014 in M, C-398/12, EU:C:2014:1057, paragraphs 32 and 36.

reasons for that decision that the procedure was closed without a detailed investigation having been carried out. According to the Court, in that regard, the fact that neither the victim nor a potential witness was interviewed is an indication that no such investigation took place.[36]

Finally, the Court stated that, Article 54 of the CISA necessarily implies that „the Contracting States have *mutual trust* in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied."[37] That mutual trust requires that the relevant competent authorities of the second Contracting State accept at face value a final decision communicated to them which has been given in the first Contracting State.[38]

It is important that the mutual trust can prosper only if the second Contracting State is in a position to satisfy itself ex officio, on the basis of the documents provided by the first Contracting State, that the decision of the competent authorities of that first State does indeed constitute a final decision including a determination as to the merits of the case. It thus follows from that decision that the principle of mutual trust is also an ex officio obligation for the court of the Member State to examine that the final decision in an other Member State was the result of a procedure where the evidence in the case was examined.

3.2. The principle of official proceedings in relation to the presumption of innocence

The presumption of innocence is one of the most important guarantee principles of criminal proceedings, from which the evidentiary requirements arise in criminal proceedings. It follows from the presumption of innocence that, during criminal proceedings, the trial court can only assess facts in its decision, which have been duly substantiated during the evidentiary procedure, in accordance with the requirements of the evidentiary procedure and supported beyond doubt by the guarantee rules. Another consequence arising from the presumption of innocence is the duty of the accuser to prove the guilt of the accused. This also means that if during the criminal proceedings it is not obtained beyond any doubt that the offense, which is the subject of the proceedings, was committed by the accused, his guilt cannot be established and the court acquits the accused in the absence of sufficient evidence.[39]

At the level of EU law, a directive on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings was adopted in 2016.[40]

The ECHR also already contains presumption of innocence, as the right to a fair trial enshrined in Article 6 includes the presumption of innocence. It states that: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

The EU Directive provides a wider range of guarantees than before, prohibiting public authorities from imputing guilt to a suspect or accused person in their public statements, decisions or informing the media until their guilt has been established.[41] However, several recitals in the Preamble refer to the Directive, as in general in sources of law guaranteeing the rights of defendants at EU level, again relying on the interpretation enshrined in the ECHR and reflected in the case law of the ECtHR and the Charter of Fundamental Rights.[42]

This is due, inter alia, to the fact that the ECtHR has extensive practice in relation to the presumption of innocence. The ECtHR ruled that there had been a violation of Article 6. 2 in, for example, *Lamanna v Austria case*, since, following the applicant's final acquittal, the courts had made findings in the damages proceedings that the applicant's suspicion remained.[43]

The Court also found a violation of the presumption of innocence in the *Pándy v Belgium case*, as the investigating judge compared the accused at the end of the criminal investigation phase to notorious serial killers. The Court held that that statement could, in essence, also be regarded as a finding of guilt, which could have given the impression to the public the guilt of the accused in advance and could even foresee the decision of the judge hearing the case.[44]

In *Grabchuk v Ukraine case*, the Court ruled that the presumption of innocence is also infringed if, in a decision terminating criminal proceedings partly for lack of evidence and partly for the limitation period for negligent acts, the court uses wording that clearly states that the accused committed the crime.[45]

In addition to the above, there are a number of cases in which the ECtHR deals with the presumption of innocence. This is significant for the purposes of the present study because the presumption

[36] Case C-486/14, Kossowski case paragraph 54.
[37] Judgment of 11 December 2008 in Bourquain, C-297/07, EU:C:2008:708, paragraph 37.
[38] Case C-486/14, Kossowski case paragraph 51.
[39] Fantoly, Zsanett – Gácsi, Anett Erzsébet, *Eljárási büntetőjog, statikus rész*, Szeged, Iurisperitus Bt. Szeged, 2013, 74, 204.
[40] Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.
[41] Directive (EU) 2016/343 of the European Parliament and of the Council Article 4.
[42] Róth, Erika, *Irányelv az ártatlanság vélelméről*, In: Miskolci Jogi Szemle, 12. Évfolyam, különszám, 2017, 96.
[43] ECtHR, 10 July 2001, *Lamanna v Austria*, Appl. no. 28923/95.
[44] ECtHR, 21 September 2006, Pándy v Belgium, Appl. no. 13583/02.
[45] ECtHR, 21 September 2006, *Grabchuk v Ukraine*, Appl. no. 8599/02.

of innocence and the enforcement of the requirements laid down by the Court in this regard are also an ex officio obligation for national courts.

4. Conclusions

In summary, we can state that the principle of official proceedings is a widespread and important principle of the criminal law. It follows from the practice of either the CJEU or the ECtHR that national courts have a number of obligations which they must examine ex officio, whether they have been requested by the parties. The significance of this is that the *principle of fair trial* and the rights guaranteed by the ECHR (such as right to liberty and security, presumption of innocence, no punishment without law, etc.) should not depend on the motion of the parties. For this reason, all judges are obliged to enforce parts of the fair trial *ex officio* during criminal proceedings.

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C-537/16 Garlson case

C-486/14, Kossowski case

C-524/15 Luca Menci case

C-398/12 M case

C-491/07 Turanský case

Charter of Fundamental Rights of the European Union

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András Péter Bodnár[1]

Digitization in criminal proceedings – issues related to eletronic data

„New technology is not good or evil and of itself. It's all about how people choose use it."
(David Wong)

Introduction[2]

The quote outlined above largely predicts which topic, which segment of it will be examined in the following. The aim of this dissertation is to process a small slice of a topic, to answer some of the many uncertain questions waiting to be answered, which revolve around digitization, the emergence of technology in law.

We are not making an ill-considered statement by saying that technology has been penetrating our daily lives for years, decades, but at an ever-accelerating pace, mostly with the aim of making our lives more comfortable and easier. However, this development also has a number of disadvantages.

Narrowing down the discussion of the topic to my field of research, criminal procedure, I want to focus on this area of law in the future. Of course, digitalisation and technological development are also having an impact in this area, be it positive or negative. The derogations of the IT explosion that can be felt from the point of view of criminal proceedings are mostly embodied in various crimes that are somewhat related to informatics and cyberspace, but not specifically related to cybercrime.[3] As a result of the explosion of information technology and telecommunications, both parties – the private perpetrator and the investigating authority – have acquired more and more advanced technical equipment. Digitization, embodied in all segments of life, the use of the World Wide Web makes it easier to commit on the one hand and difficult to detect on the other.[4] Of course, the development of this is not due to the overnight, but to a longer arc of development. But at the same time, he has now reached a level where he is increasingly urging a response to this. Cybercrime and the crime facilitated by information technology and digitalisation have advanced into a global problem that needs to be addressed not only at the legislative and law enforcement level in each country, but also at the supranational – European Union – level.[5]

In this respect, the necessary steps have been taken on the part of the legislator, as the Criminal Code in line with EU obligations, a new measure of a security nature, even applicable on its own, has been introduced to make electronic data permanently inaccessible.[6]

The Criminal Code already explicitly mentions electronic data in connection with this measure, while the old Criminal Procedure Act (1998) in connection with the taking of evidence, he understood the electronic data as a means of physical evidence.[7]

In this respect, July 1, 2018, marked (also) a major change and milestone, when the new Criminal Procedure entered into force. The Act which raised the electronic data to an independent evidence in relation to the evidence.

Among my first questions, the following question arose in me: we can really welcome a new type of evidence to the new Criminal Procedure Act as a dowry? It has been explained above that in the previous Procedural Law Act, electronic data could be

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[2] A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

[3] As an example, in 2018, about 978 million people were affected by cybercrime, in roughly 20 countries, and the number of people involved in cybercrime continues woman. Victims lost $ 172 billion worldwide, says Norton Kevin Haley From his Cyber Security Insights Report (https://www.nortonlifelock.com/about/newsroom/press-kits/ncsir-2017) (Downloaded: 2020. 10. 27.).

[4] Mráz Zoltán: *A digitális bizonyítási eszközök jelentősége a vagyon elleni bűncselekmények nyomozásában.* In.: Belügyi Szemle, 2018/7-8. 99.

[5] Gyaraki Réka Eszter: *A számítógépes bűnözés nyomozásának problémái (PhD értekezés).* Pécs, 2018. 8.

[6] Görgényi Ilona – Gula József –Horváth Tibor –Jacsó Judit – Lévay Miklós – Sántha Ferenc –Váradi Erika: *Magyar büntetőjog. Általános rész.* Wolters Kluwer Hungary, Budapest, 2019. 471.

[7] Section 115. of the old Criminal Procedure Act (1998): "For the purposes of this Act, the material means of proof shall be the document, the drawing and any object which records data by technical, chemical or other means. Where this law shall also be understood as meaning the subject of the record."

considered as a – special – type of material means of proof. If so, the question arises as to why it was necessary to regulate it as a stand-alone means of proof. Although it uses the new Criminal Procedure Act as an independent means of proof, which in its characteristics is closest to the material means of proof. This is indicated by our current procedural law itself, because Section 205. mentioned that „Where this Act mentions a material means of proof, electronic data shall be understood, unless otherwise provided in this Act."[8] In the textbook of Zsanett Fantoly and Árpád Budaházi, the reader may come across a reason for independent regulation, according to which self-regulation was necessary because electronic data cannot always be applied to the analogy of physical things in the regulation of certain criminal proceedings.[9]

1. Digitization in criminal proceedings – investigation

I explained earlier that technical progress has also made life easier for those living on the shady side of life, as it has made it much more comfortable to commit all crimes, not just those closely related to IT.

An example is the investigation of the crime of theft by violence against something committed during a travel crime. The concept of travel crime has long been part of forensics. A traveling criminal is a person who knowingly commits a crime away from his or her place of residence. In addition to the division of powers between the authorities, the perpetrator intends to take advantage of the uncertainty before the local authorities and the difficulty of recognizing the link between the crimes committed.[10] In the case of such offenses, the investigative authority's ability to detect is limited by the fact that local data collections provide little data on offenders. The widest possible use of passenger cars, the development of motorways and the enlargement of the European Union's Schengen borders have opened up new opportunities for offenders to commit more and more crimes that require more or less organization. All this without leaving their identities almost unidentifiable to the local investigating authorities.[11]

Thus, of course, it is not surprising that in recent years, among the perpetrators of burglary, in addition to Hungarian citizens, in addition to citizens of neighboring states, there have also been, for example, persons of Czech and Polish citizenship. The means of communication is the so-called work phone. The work phone is only a mobile phone that is active at the time of the crime and is used to communicate between the perpetrators. In addition to traditional telecommunications, the communication channel is, for example, the Viber application. The perpetrators use a web browser (Google Maps) to map the buildings and navigation applications to approach them.[12] This assistance with digitization has posed challenges to the perpetrators of the investigating authority. A growing percentage of facts and data relevant to reconnaissance exist on a digital basis. This process has significantly influenced the forensic activities of criminal agencies, necessitating a change in previously used procedures and mindsets. The use of an IT expert has become justified during the inspection, and the investigating authority must have the means to store and process digital traces, and the members of the investigating authority must be familiar with the concepts that can be basically associated with information technology.[13]

Remaining as an example of the crime against the said property, the digital means and traces detected during the data collection activity used in the investigation of burglary are: digitally recorded audio and video files (surveillance camera recordings), data stored on computers and computer systems (emails, browsing history), and data stored on telecommunications devices (call lists, location data). At the beginning of a burglary investigation, it is expected that the investigating authority will take action to obtain digital traces out of turn. The same obligation shall apply to due diligence in the search for, seizure and storage of mobile devices and computers in the case of coercive measures taken in the event of the apprehension of perpetrators.[14]

1.1. The new Criminal Procedure Act system of coercive measures for eletronic data

The new On. With its entry into force, it has brought about a significant change in the system of coercive measures, which has made it better able to meet the digital challenges. One of the most important regulatory steps was the already mentioned step that the new Crminal Procedure Act in Section 165. it elevated the electronic data to the rank of independent evidence, together with the wording of its concept. According to it: „Electronic data means the presentation of facts, information or concepts in any form suitable for processing by an information system, including a program which ensures the performance of a function

[8] Section 205. of the New Criminal Procedure Act (2017).
[9] Fantoly Zsanett – Budaházi Árpád: *Büntető eljárásjogi ismeretek. Statikus rész*. Dialóg Campus Kiadó, Budapest, 2019. 123.
[10] Mráz Zoltán: *i.m.,* 96.
[11] Mráz Zoltán: *i.m.,* 97.
[12] Mráz, Zoltán: *i.m.,* 97.
[13] Mráz, Zoltán: *i.m.,* 99.
[14] Mráz, Zoltán: *i.m.,* 100.

by the information system.".[15] As with other means of proof, the existence of legality, professionalism and a closed chain of proof is important for electronic data. Three basic criteria must be met at the stage of the investigation: the original data must not be damaged or altered when the evidence is obtained, the agreement with the original must be proven, and the analysis of the evidence must not alter it. The new Criminal Procedure Act at the same time, it introduced a system of coercive measures based on electronic data, such as the seizure of electronic data (Section 315.), including the retention obligation (Section 316.), and making it temporarily inaccessible (Section 335.). A substantive change in the rules of seizure was made in the new code.[16]

Pursuant to Section 151., the purpose of the seizure is to secure the means of proof or the confiscable property or property subject to confiscation in order for criminal proceedings to be conducted effectively. This coercive measure restricts ownership of electronic data, which can also be ordered by a court, prosecutor's office, and investigating authority. This legal institution has a key role to play in the detection of cybercrime as a means of obtaining and preserving electronic evidence.[17]

There has long been a debate about exactly what should be seized during the procedure, such as the scope of the data specified, or the medium, or the entire information system. It is worth mentioning that the data seizure was first inserted into the old Criminal Procedure Act by Section 21 of an Act in 2013. Prior to that, it was common practice to seize the entire computer (e.g., often with non-criminal hardware, such as a monitor and keyboard), later the hard drive or not, and only a copy was made, and then only the data were seized.[18]

The methods of seizing electronic data are set out in Section 151, which also sets out the order in accordance with the rules of gradation. Seizure may take place: by making a copy of the electronic data, by moving the electronic data, by making a copy of the entire contents of the information system or data medium containing it, by seizing the information system or data medium containing it, or by other means specified by law.[19]

In the first two cases, the contents of the data carrier itself, i.e. the data, are captured by copying or relocating. The methodological issues of seizure are not addressed by law, despite its serious significance. Copying can be done once by the authority inspecting the system on site and copying the data deemed relevant from the information system directly to a medium in the traditional way. However, its application poses a challenge to the forensic principle of both authenticity and completeness. Digital evidence is authentic if it is still possible to determine exactly from which system the data originates, whether an accurate and complete copy of the electronic data has been seized, and whether the data has remained unchanged since its seizure.[20]

2. Digitization in criminal proceedings – proof

Evidence, as a concept rooted in criminal procedure law, is the knowledge of past facts relevant to criminal substantive and formal law by means of lawful means and methods of proof and the proof and recording of those facts by means of evidence. The purpose of the evidence is therefore to obtain the facts and knowledge relevant to the assessment of criminal liability, and its task is to clarify the facts in relation to the committed tort.[21]

2.1. Electronic data as a new means of proof in criminal proceedings

Restricting what is said to electronic data, it should be said that domestic criminal procedure laws are characterized by the inclusion of a list of means of proof. This legislative intention did not mean a closed system for about half a century, an exhaustive list, as the term "in particular" in the relevant provisions referred to. It would follow that means of proof other than those listed could be used. Despite the illustrative list, one view was that the range of possible means of proof was closed, ie the means of proof that could be used in criminal proceedings could be classified into one of the existing types. Tibor Király also had the following opinion about the technical devices that have become known in recent decades. It did not consider it likely that, in the foreseeable future, means of proof would be introduced which would not be included in any of the existing categories. From this point of view, the legislature also thought confidently about the old Be. as it has omitted from the relevant provisions, in connection with the list of means of proof, the aforementioned word ‚in particular', referring to its exemplary nature. In addition to Herke Csongor, Flórián Tremmel and Csaba Fenyvesi do not explicitly consider it acceptable to list the means of proof in an exhaustive way. In their view, due to the development of forensics, more and more methods of proof are gaining independent significance, and at

[15] Section 205. of the New Criminal Procedure Act (2017).
[16] Mezei Kitti: *Az elektronikus bizonyítékokkal kapcsolatos kihívások és szabályozási újdonságok*. In.: Belügyi Szemle, 2019/10. 27.
[17] Mezei Kitti: *i. m.,* 27.
[18] Mezei Kitti: *i. m.,* 28.
[19] Mezei Kitti: *i. m.,* 28.
[20] Mezei Kitti: *i. m.,* 28.
[21] Gyaraki,Réka Eszter: *i. m.,* 87.

the same time legalized through sui generis procedural regulation.[22]

2.2. Reasons of the self-regulation

If we look for the answer to why it was necessary to declare electronic data as a separate means of proof, highlighting it from the material means of proof and the document, the answer to the law is: "One of the express aims of the law is to establish able to give an answer. The definition of the new means of proof is therefore not an end in itself, and procedural acts, such as special rules on seizure, are based on further detailed rules for electronic data. „Thus, it is possible to conclude that the aim was not to "autonomy" electronic data, it was merely a means to regulate more precisely certain procedural acts and coercive measures.[23]

The legislator justified this need with the following. "The law has taken a stand in favor of separate regulation of electronic data for the reason that electronic data cannot always be treated by analogy with physical things in the regulation of certain criminal proceedings. In cases where common provisions may be made for electronic data and material evidence, the electronic data shall also be treated as material evidence, unless otherwise provided by law.[24]

[22] Róth Erika: *Az elektronikus adat, mint új bizonyítási eszköz megjelenése a büntetőeljárási törvényben*. In.: Miskolci Jogi Szemle, 14. évfolyam, 2. különszám, 2. kötet, 2019. 341–342.
[23] Róth Erika: *i. m.*, 348.
[24] Róth Erika: *i. m.*, 348.

Summary

At the same time, I need to answer the question. Can electronic data really be considered a new means of proof in criminal proceedings? In addition to the classical dogmatic research method, the descriptive as well as the analytical research method helped me in giving the answer. As I had hoped, I came close to the answer. Based on what has been described so far, I would answer the question that it depends.

If I look at the closed dogmatic system of the new Criminal Procedure Act, the answer is definitely yes. After all, the legislator mentions it independently among the means of proof, later defines its specific concept, and creates special rules specifically tailored to electronic data in the system of coercive measures.

However, if I accept the position of Anett Erzsébet Gácsi and Csaba Fenyvesi, that all electronic data and electronic evidence are stored in material means, material means of proof. So computer evidence never exists in isolation, in itself, adding that the old Be. electronic data could also be used in the evidentiary proceedings under its scope, as well as in coercive measures, I have to answer: it cannot be considered as a completely new means of proof. It was merely a tool to define more precisely the rules of its rules of procedure and coercive measures. Which – taking into account the new Be. – the objectives and guidelines of its creation, was in any case an acceptable step on the part of the legislator. In this way, we managed to create a code of procedure that can answer all the questions and challenges of the modern world.

Bogdan Bodea

Considerations regarding the crime of usurpation of official qualities in the Romanian Penal Code

Abstract

Impersonating or acting as a public official constitutes one of the main ways to affect state authority, therefore the crime of usurpation of official qualities must be severely reprehended. But what constitutes the material element of the crime is up to debate. The article is set to analyze this material element and different ways in which the offence may be committed, to ensure the proper understanding of the criminal conduct sanctioned by the legal text.

1. Introduction

One of the attributes of the state power is to impose its authority that is to govern within predetermined limits the course of social life. State authority represents the power to impose mandatory obligations and to ensure their respect. Therefore the authority in itself represents a social value and its protection insures the effectiveness of the sovereign power of the state[1].

Protecting the authority through means of criminal law is necessary to ensure the proper development of a wide range of social relations[2] including the relations between the individual and the state.

In any criminal system the State tends to protect its authority from people that could in either a direct or indirect manner question it. The state and its institutions would function wit difficulty if the citizens were not to respect the officials that represent or incorporate state authority[3].

The crime of usurpation of official qualities prevents the abusive assumption of public duties by persons who do not have an adequate capacity. The credibility of the public function needs to be protected so that the citizens are not to be put in a position to question that in front of them sits an agent of the state and not a person who doesn't have this statute[4].

Article 258 of the Romanian Penal Code incriminates the usurpation of official qualities as the act of

1. **Using** without right of an official capacity that implies the exercise of state authority, accompanied or followed by the fulfillment of any act related to that capacity, shall be punished with imprisonment from 6 months to 3 years or with a fine.
2. the public official who **continues to exercise** a function involving the exercise of state authority, after having lost this right in accordance to the law, shall be sanctioned with the same punishment.
3. facts provided in par. (1) or par. (2) committed by a person who **wears**, without right, uniforms or distinctive signs of a public authority, the penalty is imprisonment from one to 5 years.

The official capacity refers to a position that confers on a civil servant certain attributions or prerogatives, a certain functional competence within the state or public apparatus (for example, the official quality of prosecutor, police officer, etc.).

Unlawful use of an official capacity involving the exercise of state authority means the act by which the perpetrator illegally pretends, assumes or assigns himself an official capacity that he does not have, or from which he has been disavowed.

Although the conduct incriminated seems to be explicit, the jurisprudence offered us a chance to explore the material element of this crime, within this article and to establish if certain conducts fall within the scope of the incrimination.

[1] V. Dongoroz, S. Kahane, I. Oancea, I. Fodor, N. Iliescu, C. Bulai, R. Stănoiu, V. Roșca, *Explicațiile Teoretice ale Codului Penal Român* – vol IV, ed. Academiei RSR, Bucharest, 1972, p. 7.

[2] idem

[3] S. Bogdan, D.A. Șerban, Drept Penal. Partea Specială, ed. Universul Juridic, Bucharest, 2020, p. 205.

[4] S. Bogdan, D.A. Șerban, *cited above*, p. 218.

2. Elements of the crime

In this respect the traditional doctrine stated on one hand that it is sufficient for the perpetrator to **pretend** he has the quality through a simple statement. For example, a person presents himself as a police officer, although he does not have this quality commits the crime of usurpation in the first form prescribed by the Romanian Penal Code.

We think that such a simple optic although it might justly sanction certain deeds is insufficient to accurately describe the act of usurpation. We think that there are some conditions that need to be accomplished simultaneously for such an activity to constitute the crime of usurpation.

First we argue that such a statement *needs to be a serious statement*, not a joke. Impersonating a public official officer can only be punished if the impersonation is a serious one. It falls out of the specter of such acts for example a theatrical impersonation, a parody or a practical joke, as they do not have the capacity to fulfill the requirements for the incriminated action.

Second it has to have an *appearance of truthfulness or worthiness*. Although we agree with the opinion that it does not need to convince or mislead[5] the person in respect to which the crime is being committed of the fact that the perpetrator has the capacity under which he presents himself, the crime cannot be committed if there isn`t at least an appearance of truthfulness and worthiness.

This condition was disputed in the doctrine[6] as the cited authors stated that the typicality of the action is not dependent on whether or not it appears to be credible to third parties. We think that this aspect is debatable. If we refer to the need to convince or mislead such a statement is acceptable. But if we look at the mere credibility of the action we argue that such an action must have a minimal credibility, even though the perpetrator it is not able to convince others. For instance if the perpetrator presents himself to be the president of the country or attributes himself a capacity that for reasons obvious to anyone he cannot fulfill we think that such an act falls short to the prescribed requirements. A minimal credibility of the pretense is needed, even though we accept it does not have to reach its goal. If the fraudulent means used by the perpetrator constitute themselves a crime we will have a concurrence of offenses[7].

The mere pretense is not enough. As it has been showed, this needs to be *followed by the fulfillment* of an act related to that capacity[8]. If such an act does not follow, the perpetrator cannot be held accountable for usurpation.

In relation to the deed described under paragraph 2 of article 258 some authors observed an inconsistency in the incrimination, that derives from the fact that it appears the active subject must still be a public official when committing the crime, a fact that would justify the incrimination in the sense that if a public official loses all his qualities not just some attributes and therefore is removed from the capacity of public official, he would be punished under paragraph 1 anyways[9].

However we think that this incrimination, although it may seem redundant, tends to sanction the person that prior to committing the deed had the capacity required by law in order to fulfill the act in question. It is true that at this point the sanctions are the same and there is an appearance of redundancy, but if they were different (a fact that in the future might occur) such an appearance would not be in question. Therefore we think that the intent of the legislator was to distinguish between people that had the capacity in the past and those who didn`t and this leads us to the conclusion that a perpetrator that had the proper capacity and lost it is sanctioned under this article whether or not he is still a public official.

3. Aggravated circumstance

The norm incriminates as an aggravated circumstance the wearing, **without right**, of uniforms or bearing distinctive signs of a public authority.

For a proper understanding of this circumstance we need to establish the meaning of the notion without right and whether it can be interpreted in the sense of as prescribed by law or a custom, a usual circumstance?

In our analysis in order to present our arguments we will refer to a case we have encountered in practice: a collaborator of the police identified a flagrant offence and informed a policeman. He watched the search that followed and for the purpose of hiding his identity the police officer offered him a mask and a vest that resemble the ones worn by a police officer.

The Prosecutor`s office qualified the simple participation of the collaborator to the search procedure as an act related to the capacity of a police officer. Furthermore he argued that in doing so he

[5] T. Toader, *Drept Penal Partea Specială*. Ed. Hamangiu, Bucharest, 2008, p. 228.

[6] S. Bogdan, D.A. Șerban, *cited above*, p. 219.

[7] T. Toader, *cited above*. Ed. Hamangiu, Bucharest, 2008, p. 228.

[8] S. Bogdan, D.A. Șerban, *cited above*, p. 219, T. Toader, *cited above*, p. 228, C. Rotaru, A.R. Trandafir, V. Cioclei, *Drept penal Partea Specială II*, ed. C.H. Beck, Bucharest, 2020, p. 21, R. Bodea, B. Bodea *Drept Penal Partea Specială*. Ed. Hamangiu, Bucharest, 2018, p. 299.

[9] S. Bogdan, D.A. Șerban, *cited above*, p. 220.

was an effective contributor to that search and fulfilled police duties in an aggravated manner given the fact that he wore the mask and the vest.

The notions of informant and collaborator are refered to in the Romanian Criminal procedure Code in articles 149 (informant) and article 148 (collaborator) respectively.

The doctrine defined the informant as a person that provides the authorities with data and information that he knows as a result of his daily interactions (sometimes mere rumors) not on a constant basis[10].

The collaborator is that person who is not part of the judicial bodies and who acts under their coordination to obtain data and information. However he although the collaborator has a legal status it is not that of a policeman.

We think that the situation presented offers some particularities and we argue that the deed cannot be qualified as usurpation.

Firstly, the simple presence of the collaborator (participation) to a search does not constitute in itself an act of impersonating the policeman. In accordance to the Romanian Criminal Procedure Code a witness does exactly the same – he participates to this procedure. Nevertheless he is not considered to be an agent of the state as such agent would not be able to have this capacity. Although it is true that the collaborator has no police attributes, the mere presence is not in itself a crime as this type of action does not meet the legal standard imposed on the material element.

In our opinion for this crime to be committed there needs to be *an effective act* done by the perpetrator. This act needs to be *circumscribed to the capacity* in question, and it needs to be *effectively fulfilled* even if the result might not be a proper one or the one expected

Secondly, the aggravated form of the offence can be retained only if the conditions of paragraph 1 or 2 are met[11]. This means that the simple wearing of clothing without falsely exercising the authority does not meet the criteria for engaging criminal liability.

Thirdly the wearing refers to original uniforms of the public official and not clothes that resemble or induce that idea. The reason behind this logic is that the uniform in itself incorporates the authority just as the fulfillment of an act does. If the perpetrator tries to mislead the party by wearing similar clothes we argue that the aggravated circumstance is not met. Such an act falls within paragraph 1 of article 258, and constitutes only the means through which the perpetrator induces the idea that he has the required capacity.

Furthermore we need to analyze if the act of disguising the informant falls within the notion of wearing, without right a uniform? In respect to the material typicality[12] of the crime in theory we would support this idea as a lack of intent does not mean that the material act is not met in relation to the incrimination in its abstract form.

Furthermore we need to establish if the right to wear a uniform can be granted by a public official such as was the case of the policeman in the example described above. We argue that the answer is a negative one, as this right is a juridical notion not a factual one and it derives from the law, not from an act of an authority. Only the law has the capacity to stipulate the conditions of wearing a uniform, and the fact that a public official agrees or encourages such an act constitutes a crime in itself and not a reason for excluding criminal liability.

4. Conclusions

We argue that a simple wearing of certain items of clothing without performing act of usurpation constitutes a reason for of the offence rendering such an act to be unpunished on the grounds of the lack of typicality not of the lack of intent.

The action of usurpation implies performing an effective act therefore the mere presence of a party does not satisfy the conditions of typicality of this crime

The *right* to wear uniforms in the context of the aggravated circumstance is given only by the law and cannot be granted by the action of an individual.

Although the collaborator has a legal status it is not that of a policeman. This does not mean that he should not be allowed to be part of criminal procedures, so therefore we argue that there is a need to set a legal frame relating to his activity

The act that constitutes an usurpation needs to be *to be a serious statement*, and to have an *appearance of truthfulness or worthiness*.

[10] M.Suian, *Aspects regarding the use of undercover investigators and informants,* Penalmente Relevant, no. 2/2016, p. 20.

[11] In the same sense S. Bogdan, D.A. Șerban, *cited above*, p. 221.

[12] Defined in doctrine as the situation in which there is a correspondence between the action executed by the perpetrator and the abstract action incriminated by the criminal norm. See F. Streteanu, D. Nițu, *Drept Penal. Partea Generală*, ed. Universul Juridic, Bucharest, 2020, p. 264. A part of the doctrine consideres that the typicality also refers to the subjective aspect of the crime. See M. Udroiu, *Drept Penal. Partea Generală*, ed. C.H.Beck, Bucharest, 2017, p. 79.

Balázs Elek[1]

The CJEU and the ECtHR changing case law in judging dual administrative and criminal sanctions

Introduction

The case law on the prohibition of double jeopardy is constantly evolving. Initially, we observed a strict judgment based on the identity of the facts in the practice of the Court of Justice European Union (CJEU) and the European Court of Human Rights (ECHR). Later, we could see that more and more exceptions were given to the Member States of the European Union. Initially, parallel administrative and criminal proceedings were prohibited by case law. Later, we observed that all this is not completely forbidden.

In the practice of the courts the so-called Engel criteria have extended the number of criminal cases for cases that do not fall closely into traditional categories of criminal law. We can mention the administrative penalties, the prison disciplinary proceedings, the customs law, competition law, penalties imposed by a court with jurisdiction in financial matters.[2] these cases have further reinforced the dilemma of whether criminal and administrative cases can be conducted in parallel. It was the Engel criteria that showed that in many Member States should change the traditional perception of res judicata.[3]

It should be mentioned that in the present study I examine the issue primarily in terms of domestic law. By this I mean the requirements that the two international courts impose on Member States for parallel proceedings under national law. Of course, there may be further parallel proceedings between Member States. There may be administrative proceedings in one Member State and criminal proceedings in another Member State for the same act. In such cases, the principle of mutual recognition of decisions further complicates the procedures.[4]

International treaties and conventions prohibiting double jeopardy

The ne bis in idem principle is enshrined in various international instruments.[5]

The International Covenant on Civil and Political Rights (1966) under the auspices of the UN General Assembly. The Article 14 (7) of the Convention provides that „No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."

The Convention for the Protection of Human Rights[6] and Fundamental Freedoms (1950) in Rome

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[2] Öztürk case, Campbell and Fell v. the United Kingdom, Salabiaku v. France, 7 October 1988, Société Stenuit v. France, 27 February 1992, Guisset v. France, no. 33933/96, ECHR 2000.

[3] Herke Csongor – Fenyvesi Csaba – Tremmel Flórian: A büntető Eljárásjog elmélete. Dialóg CampusKiadó, Budapest- Pécs, 2012, p. 318.

[4] Karsai Krisztina: The principle of mutual recognition in the international cooperation in criminal matters. Zbornik Radova 2008/1-2, pp. 941–954.

[5] In a wider concept, the protection against duplication of criminal proceedings is one of the specific safeguards associated with the general guarantee of a fair hearing in criminal proceedings. (Mihalache v. Romania [GC], § 48) Both of these prinicples are aiming at ensuring the procedural aspect of justice in a criminal proceeding. Described in more detail in: Zsiros, Bettina: Az igazság és az igazságosság összefüggései a büntetőeljárásban. Magyar Jog, 2020/12, 711 – 717), Józan Flóra – Kőhalmi László, Rule of Law and Criminal Law Thoughts about the criminal justice of the Millennium Era, Journal of Eastern-European Criminal Law, 1/2017. p. 209–210.

[6] Kőhalmi László: Terrorism and human rights, Journal of Eastern-European Criminal Law, 1/2015. p. 159–160.

and its eight Additional Protocols Article 4 of the Seventh Additional Protocol contains that „No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. The provisions of the proceeding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case."

The European Union main document on the prohibition of double jeopardy, double prosecution or punishment is theCharter of Fundamental Rights into the Treaty. The Charter declares that *„No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law."*[7]

The Convention Implementing the Schengen Agreement (CISA) Articles 54 deal with the prohibition of double jeopardy: *„A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party."*

The conventions that can be taken directly into account in the national criminal procedures are the Art. 4 of Protocol No. 7 to the European Convention on Human Rights (ECHR), Art. 50 of the EU Charter of Fundamental Rights (CFR), Art. 54 of the Convention implementing the Schengen Agreement (CISA).

Under both legal texts, the following four elements are necessary to the application. First of all the two sets of proceedings of criminal nature (bis). Secondly concerning the same facts (idem). The third condition is „against the same offender", and finally „a final decision".

The jurisprudence of the Courts of Strasbourg and Luxembourg on the prohibition of double jeopardy until 2016

The ruling of the European Court of Human Rights is based on the European Convention on Human Rights. The Court of Justice of the European Union act in accordance with the Treaties of the European Union. However, it can be stated that the tasks of the Court of Justice of the European Union are not limited to judicial review of acts of EU legal institutions. The Court of Justice of the European Union also examines the fundamental criteria of the rule of law in judicial review.[8] This includes the prohibition of double jeopardy.

Until 2016, the jurisprudence of the Courts of Strasbourg and Luxembourg on the prohibition of double jeopardy aligned towards a higher level of protection.[9]

In Case C-436/04 the criminal proceedings against Leopold Henri Van Esbroeck the Europen Union Court said that article 54 of the Convention must be interpreted as meaning that the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected. So punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the Convention are, in principle, to be regarded as 'the same acts' for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.[10] In this circle, I cannot ignore mentioning Hager's scientific achievements. Hager pointed out that „when analysing the process of the establishment of the statement of facts, we need to have a particular consideration for the search for the truth, for the specific truth theories, and for the accessibility of truth in the criminal procedure. The law in force does not require the obtaining of the objective truth any more, it only obliges the court to establish a statement of facts that is true. The task of the court is to do justice, so I think that the judge of the court has to strive to reach justice at all costs. However, in many cases, due to the particularities of verification, to the difficulties of recognition, and due to other objective and subjective circumstances, objective truth cannot be reached, only the procedural truth can prevail."[11] The description of the datas and facts of a previous proceedure undoubtedly falls within the sphere of procedural truth.

In the case Sergey Zolotukhin v. Russia Judgment the European Court of Human Rights find that „although the initial set of proceedings against the ap-

[7] Karsai Krisztina: The principle of mutual recognition in the international cooperation in criminal matters. Zbornik Radova 2008/1-2, pp. 941–954.

[8] Czine Ágnes: A tisztességes bírósági eljárás. Audiatur et altera pars. hvgorac Lap- és Könyvkiadó Kft., Budapest, 2020, p. 50.

[9] Giulia Lasagni – Sofia Mirandola: The European ne bis in idem at the Crossroads of Administrative and Criminal Law. 2/2019, pp. 126-135, https://eucrim.eu/articles/european-ne-bis-idem-crossroads-administrative-and-criminal-law/#docx-to-html-fn14.

[10] ECJ, 9 March 2006, case C-436/04, Van Esbroeck, para. 42.

[11] Háger Tamás: A tényállás megalapozottsága, megalapozatlansága a büntetőperben. Globe Edit, 2018, p. 88. (ISBN 978-620-2-48777-1)

plicant were classified as administrative in national law, they were to be equated with criminal proceedings on account, in particular, of the nature of the offence of 'minor disorderly acts' and the severity of the penalty. As to whether the offences were the same, the Court had adopted a variety of approaches in the past, placing the emphasis on identity of the facts irrespective of their legal characterisation, on the legal classification as the same set of facts could give rise to different offences, or on the existence of essential elements common to both offences. Taking the view that the existence of these different approaches was a source of legal uncertainty which was incompatible with the fundamental right guaranteed by Article 4 of Protocol No. 7, the Court decided to define in detail what was to be understood by the term "same offence" for the purposes of the Convention."[12]

The courts adopted a similarly strict position on the issue of notion of bis.

The CJEU declared that a detailed investigation of the case is necessary for a decision to be given after a determination of the merits of the case.[13] „The Kossowski judgment introduces an autonomous concept of the final disposal of criminal proceedings, which in the aspect of termination of investigation is different from that at the national level in Poland. There is no doubt that the decision to terminate an investigation, issued by the public prosecutor and not appealed against by the parties, after the time for an appeal has elapsed, becomes final, and any new proceedings in Poland would be barred by the domestic ne bis in idem principle (article 17 § 1 (7) of the Polish Code of Criminal Procedure)."[14]

This requirement of a detailed investigation has been taken up by the ECtHR as well for determining whether a decision to discontinue the proceedings constitutes an "acquittal" for the purposes of Art. 4 of Protocol No. 7 ECHR.[15] (Mihalache v Romania) „In view of the foregoing considerations, a decision terminating criminal proceedings, such as the decision in issue before the referring court – which was adopted in a situation in which the prosecuting authority, without a more detailed investigation having been undertaken for the purpose of gathering and examining evidence, did not proceed with the prosecution solely because the accused had refused to give a statement and the victim and a hearsay witness were living in Germany, so that it had not been possible to interview them in the course of the investigation and had therefore not been possible to verify statements made by the victim – does not constitute a decision given after a determination has been made as to the merits of the case."[16]

In fact, this stricter approach meets the requirements of litigation economy, the cost-effectiveness ont he part of the state.[17]

Reduction of the protection afforded by ne bis in idem

The ECtHR in the decision A and B v Norway and the CJEU (2018) in decisions Menci, Garlsson and Di Puma and Zecca dealt with the so-called double-track enforcement regimes, and said that it is a widespread reality in several Member States especially in the field of economic and financial crime.[18]

Both courts reduced the protection afforded by the ne bis in idem principle. The courts declared that joint imposition of administrative and criminal sanctions are permissible in respect of the same conduct.

In Garlsson case the CJEU said that Article 50 of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation which permits the possibility of bringing administrative proceedings against a person in respect of unlawful conduct consisting in market manipulation for which the same person has already been finally convicted, in so far as that conviction is, given the harm caused to the company by the offence committed, such as to punish that offence in an effective, proportionate and dissuasive manner.

In Enzo Di Puma case the CJEU said that Article 14(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), read in the light of Article 50 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation in accordance with which proceedings for an administrative fine of a criminal nature may not be brought following a final criminal judgment of acquittal ruling that the acts capable of constituting a violation of the legislation relating to insider dealing, on the basis of which those proceedings had also been initiated, were not established.[19] So if the accused is acquitted by the criminal court for lack

[12] 10 February 2009, Sergey Zolotukhin v Russia, Appl. No. 14939/03, para. 84.

[13] Kossowski Case C-486/14.

[14] Arkadiusz Lach : Effective investigation of crime and the European Ne Bis In Idem Principe 1, ISSN 2029-4239 (online)Teisės apžvalga Law review No.2 (16), 2017, p. 5–16.

[15] Giulia Lasagni – Sofia Mirandola: The European ne bis in idem at the Crossroads of Administrative and Criminal Law. 2/2019, pp. 126-135, https://eucrim.eu/articles/european-ne-bis-idem-crossroads-administrative-and-criminal-law/#docx-to-html-fn14.

[16] Case of Mihalache v. Romania 54012/10.

[17] Ligeti Katalin: A klasszikus bűnügyi együttműködési formák. In: Kondorosi Ferenc – Ligeti Katalin (szerkesztette): Az Európai Büntetőjog Kézikönyve. Magyar Közlöny Lap- és Könyvkiadó, Budapest, 2008, p. 66.

[18] The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of Court of Justice of the European Union. Eurjust, Sept, 2020, p. 1-25. file:///C:/Users/elekb/AppData/Local/Temp/QP0220233ENN.en.pdf.

[19] Enzo Di Puma (C-596/16) case of the CJEU.

of evidence, the subsequent administrative proceedings may not be conducted if a criminal fine can be imposed there.

In the practice of ECHR the Grand Chamber also redefined the notion of bis and admitted that under certain circumstances a combination of criminal and administrative procedures does not constitute a duplication of proceedings.[20] In A and B v Norway case the ECHR found that where dual proceedings represent *"complementary responses to socially offensive conducts"* and are combined in an integrated manner so as to form a "coherent whole" in order to address the different aspects of the offence, they should rather be considered as „parts of one single procedure", and not as an infringement of the ne bis in idem principle.[21]

The dual proceeedings are not in violation of conventions if pursue complementary purposes and thus address, not only in abstracto but also in concreto, different aspects of the social misconduct involved; they have a foreseeable consequence, both in law and in practice, of the same impugned conduct; avoid, as far as possible, any duplication in the collection and assessment of the evidence; and "above all" put in place an offsetting mechanism designed to ensure that the sanction imposed in the first proceedings is taken into account in the second proceedings, so that the overall amount of any penalties imposed is proportionate.[22]

The ECtHR emphasised that complementarity condition would be more likely met if the proceedings are not formally classified as criminal and do not carry any significant degree of stigma.[23] In parallel the ECtHR in A and B referred to the different purpose of the sanctions the additional constitutive elements of the offence, namely its culpable character, and the legal interest protected by the offence as element to assess the complementarity of the proceedings.

In Case C-617/10, Åklagaren v Hans Åkerberg Fransson, the Court decision also was that the ne bis in idem principle laid down in Article 50 of the Charter of Fundamental Rights of the European Union does not preclude a Member State from imposing successively, for the same acts of non-compliance with declaration obligations in the field of value added tax, a tax penalty and a criminal penalty in so far as the first penalty is not criminal in nature, a matter which is for the national court to determine.[24]

It should be noted that this stricter concept also includes practices that do not recognize the prohibition of double jeopardy for war criminals after the convict has been pardoned in the first state.[25]

Conclusion

It can be seen that the ne bis in idem principle does not completely rule out parallel administrative criminal proceedings in the Member States. However, the national courts of the Member States have a duty to pay attention to the preventive administrative procedure. However, the CJEU and ECtHR now recognize the historical tradition in some Member State of sanctioning different procedures for different legal purposes.

Under strict conditions, parallel procedures do not run counter to the criteria of the rule of law. Condition, however, that they are combined in an integrated manner so as to form a "coherent whole" in order to address the different aspects of the offence, they should rather be considered as „parts of one single procedure", and must be foreseeable.

[20] A and B v Norway case, The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of Court of Justice of the European Union. Eurjust, Sept, 2020, p. 1-25. file:///C:/Users/elekb/AppData/Local/Temp/QP0220233ENN.en.pdf

[21] A and B v Norway case, The Principle of Ne Bis in Idem in Criminal Matters in the Case Law of Court of Justice of the European Union. Eurjust, Sept, 2020, p. 1-25. file:///C:/Users/elekb/AppData/Local/Temp/QP0220233ENN.en.pdf

[22] Giulia Lasagni – Sofia Mirandola: The European ne bis in idem at the Crossroads of Administrative and Criminal Law. 2/2019, pp. 126-135, https://eucrim.eu/articles/european-ne-bis-idem-crossroads-administrative-and-criminal-law/#docx-to-html-fn14

[23] ECtHR, 23 November 2006, Jussila v Finland [GC], Appl. No. 73053/01, A and B v Norway

[24] Case C-617/10, Åklagaren v Hans Åkerberg Fransson

[25] Tóth Andrea Noémi: Súlyos emberi jogsértések a strasbourgi bíróság esetjogának tükrében – Háborús és emberiesség elleni bűncselekmények, népirtás. Kúriai Döntések, 2016/10, p. 1243

DR. BALÁZS GÁTI[1]

Possible links between digitalization, cybercrime, and the COVID-19 pandemic

Abstract

The research aims to provide insight into relationship between COVID 19 pandemic, digitalization and cybercrime with special attention to their interconnection points and interactions. Currently, the COVID 19 pandemic is present in more than 200 countries around the world. This has an impact on social and economic life as well as on people's privacy. As part of the fight against the coronary virus epidemic, governments have been forced to lockdown, which has changed the socio – economic environment in which the digital revolution has already played a major role. All of these changes have obviously led to a further increase in digitalization, in which not only the working conditions have been changed, but it has also plaid a significant role in the fight against the pandemic.

The COVID-19 pandemic also caused changes in the modes of crimes, the perpetrators react very quickly, the number of acts committed in cyberspace has increased significantly. In this paper we present the main types of offenses as well. In the fight against cybercrime, the digitalization plays even more significant role, by combining Internet of Things (IoT) with Blockchain, enterprise and individual users, what can create a reliable, secure network that protects data from attackers.

Introduction

Digitalization in the 21st century interweaves all areas of society, so there is no economic and legal area that would not be affected.[2] This is often referred to as the Fourth Industrial Revolution.[3] According to Schwab "*The Third used electronics and information technology to automate production. Now a Fourth Industrial Revolution is building on the Third, the digital revolution that has been occurring since the middle of the last century. It is characterized by a fusion of technologies that is blurring the lines between the physical, digital, and biological spheres.*" Let's think to technologies like artificial intelligence, robotics, the Internet of Things, autonomous vehicles, 3-D printing, nanotechnology, biotechnology, materials science, energy storage, and quantum computing. Digital solutions help create jobs, advance education, boost competitiveness and innovation and can improve the lives of citizens. Among others, digital technology has a key role to play in transforming the economy and society.[4]

The last major pandemic was the Spanish flu[5] that erupted exactly a hundred years ago. Restrictions caused by the coronary virus that caused the pandemic in 2020 -scientifically known as COVID-19[6]- accelerated the digital switchover, which had to take place in a very short time in many areas, such as education, a significant part of jobs, and the entertainment industry. Digitalization is an essential component of the EU's response to the economic crisis caused by COVID-19. As such, the COVID-19 pandemic has made the need to accelerate the digital transition in Europe more pressing.[7]

"[...] estimation of these effects assumes that there was a digital transformation already underway, be-

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[2] Dávid Tóth, Digitalization trends in the Hungarian Criminal Procedure. In: Belaj, Ivan; Vajda, Halak Željka; Slobodan, Stojanović (szerk.) 10. Međunarodna Konferencija Razvoj Javne Uprave.

[3] Klaus Schwab, *The Fourth Industrial Revolution: What it Means, how to Respond.* (WEF, 2016,)www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond. Accessed 15.01.2021.

[4] Balázs Gáti ," Major legal and economic aspects of digitalization in the EU with special attention to recent developments on data protection " In*: Szilovics, Csaba; Bujtár, Zsolt; Ferencz, Barnabás; Breszkovics, Botond; Szívós, Alexander Roland (szerk.) Gazdaság és pénzügyek a 21. Században ii. – konferenciakötet = Business and economy in the 21st century II.. – Conference proceedings* Pécs, Magyarország , (Pécsi Tudományegyetem, Állam- és Jogtudományi Kar 2020) 207 p. pp. 139–154. , 16 p.

[5] "Influensa, FLU", Centeres for Deseases (CDC), https://www.cdc.gov/flu/pandemic-resources/1918-commemoration/1918-pandemic-history.htm, Accessed 15.01.2021.

[6] "Coronavirus disease (COVID-19)", WHO, pandemic, https://www.who.int/emergencies/diseases/novel-coronavirus-2019, Accessed 15.01.2021

[7] "A digital future for Europe " Council of the European Union, https://www.consilium.europa.eu/en/policies/a-digital-future-for-europe Accessed 15.01.2021.

fore the pandemic set in, and it will take certain forms owing to the impact of the lockdowns."[8]

Criminals have quickly seized the opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities. Organized crime groups[9] are notoriously flexible and adaptable and their capacity to exploit this crisis means we need to be constantly vigilant and prepared.[10] The higher number of users has also significantly increased the number of potential victims.[11]

The aim of the article is to present the effects of COVID-19 on both digitization and cybercrime, as well as their interactions and criminological aspects, and the main types of treats committed in cyberspace.[12]

Digitalization and the Covid-19 pandemic

The WHO data stream is currently affected by the COVID-19 pandemic in 223 countries and the number of confirmed cases 107 423 526.[13]

Governments around the world restricted movement of people, using social distancing and lockdowns, to help stem the global coronavirus (COVID-19) pandemic.

The lockdowns across countries have entailed a rise in the use of information systems and networks, with massive changes in usage patterns and usage behavior. Employees are adjusting to new norms – with meetings going completely online, office work shifting to the home, with new emerging patterns of work.

These changes have come across most organizations, whether in business, society, or government.

All these changes have fundamentally changed both business and the digital economy, education, and our daily lives using digital technologies. The data below show a further rapid growth of the digital transformation, while we are already living in an era of the digital revolution.

Internet services have seen rises in usage from 40% to 100%, compared to pre-lockdown levels. Video-conferencing services like Zoom have seen a ten-times increase in usage, and content delivery services like Akamai have seen a 30% increase in content usage.[14]

Along with synchronous modes of teaching, video conferencing platforms like Zoom and Google Meet, the synchronous platforms like edX and Coursera have also seen an increase in enrolments. The use of video- and audio-conferencing tools increases significantly, organizations ramps up their technology infrastructure. This leads to increased investment in bandwidth expansion, network equipment, and software that leverages cloud services.[15]

Digital transformation technologies such as Cloud, Internet-of-Things (IoT), Blockchain (BC), Artificial Intelligence (AI), and Machine Learning (ML), constitute a bulk of the of what is being adopted by organizations as part of their transformation effort.

Blockchain (BC) technology presents an opportunity to create secure and trusted information control mechanisms.[16]

Based on a 2020 survey of OECD, since the start of the COVID-19 crisis, demand for broadband communication services has soared, with some operators experiencing as much as a 60% increase in Internet traffic compared to before the crisis, and the COVID-19 crisis also placed an unprecedented demand on communications networks.

"*The underlying Internet infrastructure is also facing unprecedented demands. One critical element of this infrastructure are IXPs, which are bulk traffic exchange crossroads where multiple networks connect (to exchange traffic). IXPs report record net increases of up to 60% in total bandwidth handled per country from December to March 2020.*[17]

According to measurements by the Deutscher Commercial Internet Exchange in Frankfurt, the world's total Internet traffic peaked at 9.1 terabits per second in the spring (the previous record was 8.3 terabits).[18]

The Cable.co.uk analyzed data from the Oxford Coronavirus Government Response Tracker (Ox-

[8] De' R, Pandey N, Pal A., "Impact of digital surge during Covid-19 pandemic: A viewpoint on research and practice" *Int J Inf Manage.*(2020 Dec) 55 .

[9] Dávid Tóth, István László Gál, László Kőhalmi, Organized Crime in Hungary JOURNAL OF EASTERN-EUROPEAN CRIMINAL LAW 2 : 1 pp. 23-25. , 6 p. (2015).

[10] László Kőhalmi, "Some issues of criminal liability by reason of economic decisions" *Journal of Eastern-European Criminal Law* (6 : 1 , 2019) ,pp. 44-52. , 9 p.

[11] "Catching the Virus Cybercrime, Disinformation and the COVID-19 Pandemic". Europol, www.europol.europa.eu/publications-documents/catching-virus-cybercrime-disinformation-and-covid-19-pandemic, Accessed 15.01.2021.

[12] László Kőhalmi, Jogállam és büntetőjog – avagy kételyeim az ezredforduló kriminálpolitikája körül. In Krisztina Karsai (szerk.): Keresztmetszet: tanulmányok fiatal büntetőjogászok tollából. Pólay Elemér Alapítvány, Szeged. pp. 128–129. 17p. (2005).

[13] "Coronavirus disease (COVID-19) pandemic" WHO,https://www.who.int/emergencies/diseases/novel-coronavirus-2019, Accessed: 11.02.2021.

[14] Mary Branscombe, *The New Stack; 2020. The network impact of the global COVID-19 pandemic.*https://thenewstack.io/the-network-impact-of-the-global-covid-19-pandemic/ Accessed: 05.01.2021.

[15] Shah D. Class Central's MOOC Report; 2020. MOOC Watch 23: *Pandemic brings MOOCs back in the spotlight – Class central.* https://www.classcentral.com/report/moocwatch-23-moocs-back-in-the-spotlight/ Accessed: 05.01.2021.

[16] Nitin Upadhyay, "Demystifying blockchain: A critical analysis of challenges, applications and opportunities. "*International Journal of Information Management.*(2020) 54, Accessed: 06.01.2021.

[17] "OECD Policy Responses to Coronavirus (COVID-19), Keeping the Internet up and running in times of crisis". OECD, https://www.oecd.org/coronavirus/policy-responses/keeping-the-internet-up-and-running-in-times-of-crisis-4017c4c9/ Accessed: 05.01.2021.

[18] Johannes Wiggen, *The Impact of COVID-19 on Cyber Crime and State-Sponsored Cyber Activities*, (Berlin, Konrad Adenauer Stiftung, 2019) 2.

CGRT), and over 364 million broadband speed tests courtesy of M-Lab to compare average internet speeds in 114 countries during and outside of their most stringent COVID-19 lockdown periods. According to his research, the average speed of the Internet fell by 6.31% worldwide, but with an uneven distribution: while in China the decline was 50%. The Cable annual global broadband speed tracker has demonstrated global increases of around 20% year-on-year since 2017.[19]

This study also supports the association with increased data traffic caused by the COVID-19 epidemic.

Digital Marketing Trends in Ecommerce – the new face of digital marketing

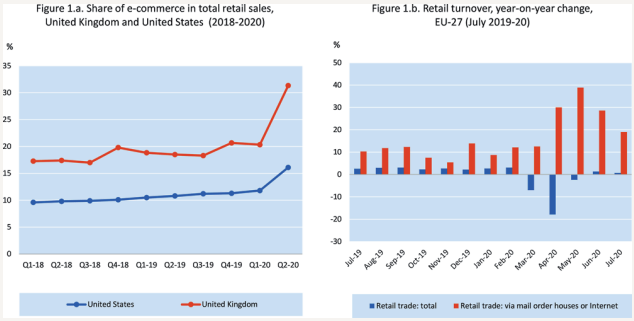
The COVID-19 pandemic has undoubtedly had a significant effect on digital marketing trends this year. Its full impact is yet to be seen, but businesses have been forced to adapt to the changing circumstances on a weekly or even daily basis.

The SEMrush study has collected and analyzed recent data from over 2,000 of the world's most visited ecommerce websites across multiple categories, including Fashion, Consumer Electronics and Health and Beauty, to determine what the new face of digital marketing looks like. The analysis revealed that shifts in the ecommerce landscape and consumer shopping patterns had already arrived: Monthly "buy online" searches almost doubled in the first month of the pandemic: there were 27,500+ searches in March 2020 vs. 14,800+ in February 2020 across all categories. Looking at the overall year-on-year (YoY) trend for June (2019 vs. 2020), these searches rose globally by 50%. Worldwide searches for food delivery services increased by an average of 180%. The average YoY traffic growth for ecommerce sites in the first half of 2020 was around 30%. Ecommerce sales have already been growing at unprecedented rates. In 2020, e-Marketer forecasts a collective $3.914 trillion in ecommerce sales.[20]

OECD studies include the following key messages. The COVID-19 crisis accelerated an expansion of e-commerce towards new firms, customers, and types of products. Despite persistent cross-country differences, the COVID-19 crisis has enhanced dynamism in the e-commerce landscape across countries and has expanded the scope of e-commerce, including through new firms, consumer segments (e.g. elderly) and products (e.g. groceries).[21]

In the EU-27, retail sales via mail order houses or the Internet in April 2020 increased by 30% compared to April 2019, while total retail sales diminished by 17.9% .The resulting shifts from brick-and-mortar retail to e-commerce are likely significant across countries.

Figure 1. The COVID-19 crisis has increased the share of e-commerce in total retail



Source: OECD's elaboration based on data from the US Census Bureau, the Office for National Statistics in the United Kingdom and Eurostat.

While official statistics are not available for most other countries, estimates suggest that online orders were up across several regions during the first half of 2020, including Europe, North America, and Asia-Pacific (OECD, 2020). For Asian-Pacific countries, e-commerce had already increased significantly during the first quarter of 2020, while the increase occurred later in Europe and North America, namely after several OECD countries followed Italy's example and introduced confinement measures within a short period of time of each other.[22]

According to the McKinsey study the shift to digital persists across countries and categories as consumers in most parts of the world keep low out-of-home engagement. Food and household categories have seen an average of over 30 percent growth in online customer base across countries. Online growth for China seems more moderate, as the country had a high level of online penetration prior to the pandemic.[23]

Studies draw attention to the fact that, although individual e-commerce changes do not affect individual countries and certain sectors of the commer-

[19] "How global broadband speeds changed during COVID-19 lockdown periods" Cable.co.uk. https://www.cable.co.uk/broadband/speed/broadband-speeds-covid-19-lockdown/ Accessed: 05.01.2020

[20] "Digital Marketing Trends in Ecommerce https://www.semrush.com/blog/2020-digital-marketing-trends-in-ecommerce " SEMRUSH, 2020 Accessed: 05.01.2021

[21] "E-commerce in the time of COVID-19," 7 October 2020, OECD, http://www.oecd.org/coronavirus/policy-responses/e-commerce-in-the-time-of-covid-19-3a2b78e8/#endnotea0z2 Accessed: 05.01.2021.

[22] "Connecting businesses and consumers during COVID-19: trade in parcels", OECD Policy Responses to Coronavirus (COVID-19), OECD (2020), http://www.oecd.org/coronavirus/policy-responses/connecting-businesses-and-consumers-during-covid-19-trade-in-parcels-d18de131/. Accessed: 06.01.2021.

[23] "Consumer sentiment and behavior continue to reflect the uncertainty of the COVID-19 crisis" October 26, 2020 | Mckinsey Company, Article https://www.mckinsey.com/business-functions/marketing-and-sales/our-insights/a-global-view-of-how-consumer-behavior-is-changing-amid-covid-19# Accessed: 06.01.2020.

cial sector in the same way,[24] but the changes will be long-term. Accordingly, decision makers need to ensure that e-commerce is accessible to all, and better than ever. This will continue to drive digitalization and the growth of the digital economy, affecting not only large companies but also small businesses.[25,26].

Digitalization in the fight the pandemic

Digitalization has a significant role to play, even in the fight against pandemics, even in the areas already mentioned, which are the survival of economic life, education, and everyday life.

However, it plays a significant role in both direct protection[27] and health services[28].

The European Commission has been working to coordinate, complement and initiate measures to deal with every aspect of the coronavirus pandemic, and digital, media and telecoms play a vital role. The further improvements proposed by the EU [29] are:

- *Data, artificial intelligence and supercomputers*: Data, artificial intelligence (AI) and supercomputers are a major asset in detecting patterns in the spread of the virus, developing potential treatments and devising strategies for reconstruction.
- *Telecommunications, networks and connectivity*: Telecommunications, networks and connectivity are more vital than ever, with so much of our society confined to their homes and economy dependent on them.
- *Online platforms and disinformation*: Online platforms are important sources of information and activity. But above all, in times of crisis, they are a vital information channel.
- *Skills, collaborative working and creativity*: Digital networks provide platforms offering a wealth of information and learning, from skill sharing and collaborative working to accessing culture and creativity online
- *Cybersecurity, trust and safety online*: The networks are secure from attacks and we need to be sure that we as individuals are safe when online.

Blockchain for COVID-19

The sudden development of theCOVID-19 pandemic has exposed the limitations in modern healthcare systems to handle public health emergencies. It is evident that adopting innovative technologies such as blockchain can help in effective planning operations and resource deployments.

Blockchain technology can play an important role in the healthcare sector, such as improved clinical trial data management by reducing delays in regulatory approvals, and streamline the communication between diverse stakeholders of the supply chain, etc. Moreover, the spread of misinformation has intensely increased during the outbreak, and existing platforms lack the ability to validate the authenticity of data, leading to public panic and irrational behavior. Thus, developing a blockchain-based tracking system is important to ensure that the information received by the public and government agencies is reliable and trustworthy.[30, 31, 32]

Blockchain technology has several potential use cases that can help tackle the current pandemic crisis. It can be used to simplify the clinical trial processes for vaccines and drugs, raise public aware-

[24] "Covid 19 and e-commerce" UNCTAD, https://unctad.org/system/files/officialdocument/dtlstictinf2020d1_en.pdf, Accessed: 06.01.2021.

[25] " COVID-19 will permanently change e-commerce in Denmark" Deloite, https://www2.deloitte.com/content/dam/Deloitte/dk/Documents/strategy/e-commerce-covid-19-onepage.pdf, Accessed: 06.01.2020.

[26] NEWS Europe, „The impact of Covid-19 on ecommerce" , E-commerce https://ecommercenews.eu/the-impact-of-covid-19-on-ecommerce/ Accessed: 06.01.2021.

[27] „ In the wake of the coronavirus crisis, the European Commission's Digital Strategy gains renewed importance as digital tools are used to: monitor the spread of the coronavirus, research and develop diagnostics, treatments and vaccines ensure that Europeans can stay connected and safe online. National contact tracing and warning apps can be voluntarily installed and used to warn users, even across borders, if they have been in the proximity of a person who is reported to have been tested positive for coronavirus. In the case of an alert, the app may provide relevant information from health authorities, such as advice to get tested or to self-isolate, and who to contact." European Commission, Digital solutions during the pandemic, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/digital-solutions-during-pandemic_en, Accessed: 06.01.2021.

[28] „Three powerful European supercomputing centres are engaged in studying and developing vaccines, treatments and diagnoses for the coronavirus. By comparing digital models of the coronavirus' proteins and matching them against a database of thousands of existing drugs, the aim is to discover which combinations of active molecules react to the virus. The supercomputers complement the classic trial and error clinical approach. A pharmaceutical company and several large biological and biochemical institutes participate by providing access to their databases of drugs. The Exscalate-4CoV project, supported by €3 million in EU funding, is conducting research using an EU-backed supercomputing platform to check the potential impact of known molecules against the structure of the coronavirus." "Using European supercomputing to treat the coronavirus" European Commission,https://ec.europa.eu/digital-single-market/en/news/using-european-supercomputing-treat-coronavirus, Accessed: 06.01.2021.

[29] "Digital technologies - actions in response to coronavirus pandemic" European Commission, https://ec.europa.eu/digital-single-market/en/content/digital-technologies-actions-response-coronavirus-pandemic, Accessed: 06.01.2021.

[30] Dounia Marbouh ,Tayaba Abbasi, Fatema Maasmi, at al.,"Blockchain for COVID-19: Review, Opportunities, and a Trusted Tracking System" *Arab J Sci Eng* , (2020) 45, 9895–9911.

[31] "tracking valid data is vital to monitor the progress of the pandemic. Tech giants, researchers, and healthcare officials started using contact-tracing mobile apps that use Bluetooth-based proximity tracing or geolocation tracking functionality to help track COVID-19 cases". Paul Bischoff, "COVID-19 App Tracker: Is privacy being sacrificed in a bid to combat the virus?" CompariTech, 20 April 2020, https://www.comparitech.com/blog/vpn-privacy/coronavirus-apps/

[32] Kelsey Warner , Shireena Al Nowais, "Coronavirus: Doctors urge public to help track COVID-19 cases with tracing app. The National" 28 April 2020. https://www.thenational.ae/uae/health/coronavirus-doctors-urge-public-to-help-track-covid-19-cases-with-tracing-app-1.1012267.

ness, transparently track donations and fundraising activities, and act as a reliable data tracker.[33,34]

The COVID-19 pandemic and crime

The impact of a coronavirus epidemic on crime has special characteristics. Traditional forms of crime have been pushed into the background, and most of the acts have been transferred to the online space. However, the potential for organized crime has increased.[35]

Most governments around the world restricted the movement of people through some combination of social distancing and lockdown, as part of efforts to tackle the coronavirus pandemic. This produced a range of unintended consequences, including upon crime.

Several researchers have made initial examinations into how crime rates have fluctuated in the advent of COVID-19.

One of the earliest studies was by Shayegh and Malpede[36] which identified an overall drop in crime in San Francisco of 43% and Oakland of about 50% following city issuance of some of the most restrictive and early stay-at-home orders in the US, beginning March 16th, 2020 and the two weeks after.

Gerell, Kardell, and Kindgren [37] examined crime during the five weeks after government restrictions on activities began, observing an 8.8% total drop in reported crime despite the country's somewhat lax response – when compared to other countries' policies on restricting the public's movement. Specifically, the researchers found residential burglary fell by 23%, commercial burglary declined 12.7%, and instances of pickpocketing were reduced by a staggering 61% – however, there was little change in robberies or narcotics crime.

Halford[38] et al. examine crime eects for one UK police force area in comparison to 5-year averages. There is variation in the onset of change by crime type, some declining from the WHO 'global pandemic' announcement of 11 March, others later. By 1 week after the 23 March lockdown, all recorded crime has declined by 41%, with the following variations: shoplifting (↓62%), theft (↓52%), domestic abuse (↓45%), theft from vehicle (↓43%), assault (↓36%), burglary dwelling (↓25%) and burglary non-dwelling (↓25%).

István László Gál[39,40] reaches a similar conclusion regarding COVID-19 and crime rates in Hungary.

Stickle and Fergus argue that the single most salient aspect of the steep fall in crime rates during the COVID-19 pandemic are the legal stay-at-home orders (i.e., lock-down, shelter-in-place) implemented to slow the spread of the virus by promoting social distancing.[41]

Cause of decrease: Lockdowns have changed everyday life, which caused the absence of the three offender conditions: a motivated perpetrator, a lack of the right target, and the right protection.[42]

A special area of crime is organized crime, the analysis of which goes beyond the scope of this article.[43] However, it should be mentioned that during the COVID-19 pandemic, certain conditions were met that facilitated this.

„While the COVID-19 pandemic is first and foremost a global public health crisis, it has also proven to have a significant and potentially long-lasting impact on the serious and organized crime and terrorism landscape.. [...]"[44]

The short-term impact of the COVID-19 pandemic and the consequent lockdown measures imposed across the EU manifested over the course of 2020. The mid- to long term impact of the situation on society, economy and political discourse is becoming apparent and points to significant economic strain on a European and global level during and in the aftermath of a prolonged pandemic. Some countries

[33] Mehdi Benchoufi ,Philippe Ravaud ,"Blockchain technology for improving clinical research quality *"BioMed Central* , (2017) 18, 1–5.

[34] Chang, M.C,Park, " How can blockchain help people in the event of pandemics such as the COVID-19? "*J. Med. Syst.* (2020) 44 ,102.

[35] Dornfeld László, "A koronavírus-járvány hatása a kiberbűnözésre" *In medias res: Folyóirat a sajtószabadságról* és *a médiaszabályozásról,* (2020) ,v9 : 4 p. 193.

[36] Soheil Shayegh ,Maurizio Malpede, "Staying home saves lives, really! 2020. Staying Home Saves Lives, Really!" scholar.google.com/scholar_lookup?title=Staying+home+saves+lives,+really!&author=S+Shayegh&author=M+Malpede&publication_year=2020&, Accessed: 06.01.2021.

[37] Manne Gerell , Johan Kardell , Johanna Kindgren, " Minor COVID-19 association with crime in Sweden, a five week follow up." (2020)Malmo University https://osf.io/preprints/socarxiv/w7gka/

[38] Eric Halford et al.," Crime and Coronavirus: Social Distancing, Lockdown, and the Mobility Elasticity of Crime" *Crime Science* 1 (2020) 11.

[39] István László Gál, "The Possible Impact of the COVID-19 On Crime Rates in Hungary". *Journal of Eastern-European Criminal Law* . (2020) ,7: 1 pp. 165-177. 13 p.

[40] István László Gál, A koronavírus (COVID-19) és az általa okozott gazdasági világválság lehetséges hatásai a bűnözésre" *Magyar Jog* , (2020) 67. évf.: 5 pp. 257–265. , 9 p. (2020)

[41] „Stay-at-home orders were issued by most states and legally required residence to stay within their homes except for authorized activities. Commonly, these activities included seeking health care, purchasing food and other necessary supplies, banking, and similar activities. The orders either outright closed or by de-facto closed broad swaths of the economy and impacted schools, private social gatherings, religious activities, travel, and more. In short, these orders disrupted the daily activities of entire populations and was the only variable that changed abruptly, just days before double-digit drops in crime around the world. As such, we believe, the Environmental Criminology suite of perspectives including; Rational Choice (Clarke & Felson, 1993) and Routine Activity (Cohen & Felson, 1979) will emerge as frontrunners in understanding the crime changes during COVID-19 and will provide insight how to influence crime in the future." Ben Stickle, Marcus Felson "Crime Rates in a Pandemic: The Largest Criminological Experiment in History" *American Journal of Criminal Justice* 4 (2020) 526–527.

[42] Lawrence E. Cohen, Marcus Felson. "Social Change and Crime Rate Trends: A Routine Activity Approach." *American Sociological Review*, (1979), vol. 44, no. 4, pp. 588–608.

[43] See: László Kőhalmi,"Szervezett bűnözés „In: *Barabás, A. Tünde (szerk.) Alkalmazott kriminológia* (Budapest, Magyarország, Ludovika Egyetemi Kiadó 2020) 654 p. pp. 461-474., 14 p.

[44] "How Covid-19-Related Crime infected Europe during 2020, 11 November 2020, Europol Report" Europol,https://www.europol.europa.eu/publications-documents/how-covid-19-related-crime-infected-europe-during-2020 Accessed: 07.01.2021.

have already entered into recession and others are expected to do so imminently. As witnessed in the past, economic crises are fertile ground for the growth of organized crime in terms of its scope of activities and its influence.

Economic hardship and rising unemployment may also drive the recruitment of individuals for organized crime groups (OCGs2).[45]

Digitalization and cybercrime

Before examining the connections and causes of the COVID-19 pandemic and cybercrime, it can be concluded that the growth of digitalization itself is also a factor among many that leads to the growth of cybercrime.

Cause of the increase in criminal interest: speed, relative anonymity, and the number of users of modern information technology is growing.[46] Wall asks the questions – how has the internet transformed social behavior and how has the internet transformed criminal behavior? – and he says that the two behaviors have a similar appearance.[47]

The Center for Strategic and International Studies (CSIS), in partnership with McAfee, present Economic Impact of Cybercrime – No Slowing Down, a global report that focuses on the significant impact that cybercrime has on economies worldwide. The report concludes that close to $600 billion, nearly one percent of global GDP[48] is lost to cybercrime each year, which is up from a 2014 study that put global losses at about $445 billion. The report attributes the growth over three years to cybercriminals quickly adopting new technologies and the ease of cybercrime growing as actors leverage black markets and digital currencies.

The COVID-19 pandemic and cybercrime

Cybercrime has come to the fore and is showing significant growth.

As early as March 2020, the Council of Europe drew attention to the dangers of cybercrime in connection with the epidemic.[49] The COVID-19 pandemic renders individuals and society extremely vulnerable in all respects. During this crisis, we all rely more than ever on computer systems, mobile devices and the Internet to work, communicate, shop, share and receive information and otherwise mitigate the impact of social distancing.

The unprecedented coronavirus pandemic is profoundly affecting the global cyber threat landscape.

According to Catherine de Bolle Executive Director of Europol, „looking back at the last eight months, we can trace how criminals have used uncertainty and change to identify and exploit opportunities targeting individual citizens, businesses and the public sector... The fallout from the COVID-19 pandemic has weakened our economy and created new vulnerabilities from which crime can emerge... Economic and financial crime, such as various types of fraud, money laundering, intellectual property crime, and currency counterfeiting, is particularly threatening during times of economic crisis."[50]

In its reports, Europol focuses on the various elements of crimes since the beginning of the Covid-19 pandemic.

It not only analyzes each criminal conduct, but also studies on economic crime[51], organized crime, terrorism[52], and, of course cybercrime.

It deals with drug trafficking, migrant smuggling, and deception, which cause significant damage mainly in the health environment.

[45] See" How Covid-19-Related Crime infected Europe During 2020" Europol, 11 November 2020.

[46] David S. Wall, *Cybercrime*, (Cambridge, Polity, 2007) 3.

[47] „How has the internet transformed social behavior? ¬ Informational exchanges ¬ the internet is based upon intangible informational exchanges ¬ everything leaves a data trail (disappearance of disappearance!) ¬ Globalization and Glocalism ¬ globalization shapes the relationship between the global and the local (hence the term glocalisation) ¬ Networks ¬ Distributed networks and grid technologies create new forms of commercial and emotional relationships between individuals. [Ideas such as Tipping Point, Wisdom of Crowds, Wikinomics] ¬ Asymmetric not symmetric relationships-empowered single agent ¬ Has both a Panoptic and Synoptic effect CYBERCRIMES exhibit similar characteristics". „How has the internet transformed criminal behavior? ¬ Information – Values online are linked to ideas, not physical property ¬ Why bank robbery? Virtual theft (e.g. of intellectual property)? ¬ Global – Changes in the scope of criminal opportunity ¬ There are generational differences cybercrime in terms of levels of mediation by technology ¬ Substantive changes in types of criminal behavior ¬ Network – Changes in the organization of crime and division of criminal labour – reaching victims through networks ¬ Gives one person control over the whole criminal process ¬ Makes the organization of criminal activity more efficient. ¬ Broadens the span of criminal activity to give offenders a global reach – creates single empowered agent – 50m X £1 robberies?? Cybercrime Motivations – distance from victim – self-satisfaction – peer respect – revenge – protest/terror – criminal /financial gain". David S Wall, „CYBERCRIME: What is it and what do we do about it? – Mapping out and policing cybercrimes" https://core.ac.uk/download/pdf/9582049.pdf, Accessed: 07.01.2021.

[48] James Lewis, *Economic Impact of Cybercrime – No Slowing Down.* (*CSIS* 2018), www.mcafee.com/enterprise/en-us/assets/reports/restricted/rp-economic-impact-cybercrime.pdf Accessed: 07.01.2021.

[49] "Cybercrime and COVID-19" Council of Europe https://www.coe.int/en/web/cybercrime/-/cybercrime-and-covid-19,Accessed: 07.01.2021.

[50] "Financial and Economic Crime Targeted by New Europol Center" Europol, https://www.bankinfosecurity.com/financial-services-crime-targeted-by-dedicated-europol-center-a-14411. Accessed: 07.01.2021.

[51] Dávid Tóth, Kockázatelemzés egyes gazdasági bűncselekmények kapcsán BÜNTETŐJOGI SZEMLE 8 : 1 pp. 108-114. , 7 p. (2019).

[52] Dávid Tóth, Melánia Nagy, „The types of terrorism – with special attention to cyber and religious terrorism". *JURA* (2019) 25 : 1 pp. 413-422. , 10 p.

The main types of cybercrime based on EUROPOL Report[53]

In the following, based on Europol's reports, we highlight the most common types of offenses and acts.

Counterfeit and sub-standard goods:

The distribution of counterfeit and substandard goods has been one of the key criminal activities during the pandemic. With the onset of the pandemic, the demand for healthcare and sanitary products (masks, gloves, cleaning products, hand sanitizers), as well as personal protective equipment increased significantly.[54]

Some additional developments, such as the sales of fake 'corona home test kits' and fraudulent pharmaceutical products, advertised as allegedly treating or preventing COVID-19, have been particularly worrying from a public health perspective. Scammers have already offered fake vaccines.[55]

While some product offers for counterfeit goods related to the COVID-19 pandemic have appeared on the dark web, the product offerings available there remain limited compared to the surface web, which continues to host the primary distribution platforms for counterfeit goods. Dedicated websites have been set up for the purposes of selling counterfeit sanitary and pharmaceutical products. These often disappeared shortly after receiving negative reviews by defrauded customers. Targeted ads on social media platforms, web shops and in some cases messaging apps have been also reported to have been used to drive up the sales of counterfeit or non-existent goods.[56, 57, 58]

Cybercrime- Phishing

Phishing emails through spam campaigns with a specific reference to COVID-19 and with the primary purpose of harvesting credentials and other sensitive data, as well as infecting users, Phishing emails have been also reported to come from organizations which, for example, focus on disease prevention and health. SMS phishing[59] and phishing attacks occurring against crowdfunding campaigns have been also noted.[60]

Malware, ransomware and malicious apps

The trend of ransomware-targeted attacks against public health organizations appeared to have decreased towards the second quarter of 2020. Cybercriminals have exploited new attack surfaces; malware has appeared on typo-domains relating to commonly used video conferencing software, exploiting the attack vector of increased teleworking practices.[61]

Child sexual exploitation

With children spending more time online due to the various restrictions introduced in response to the COVID-19 pandemic, the potential increase in demand for CSAM and attempt to engage in child sexual exploitation has been a considerable threat. Though it has remained a priority for law enforcement, it has been difficult to quantify the seriousness of the threat posed.[62] Offenders are likely to attempt to take advantage of emotionally vulnerable, isolated children through grooming and sexual coercion and extortion. Children allowed greater unsupervised internet access will be increasingly vulnerable to exposure to offenders through online activity such as online gaming, the use of chat groups in apps, phishing attempts via email, unsolicited contact in social media and other means.

Dark web

The numbers of overall criminal listings on dark markets have fluctuated over time as a result of vendors' decreased ability to source and/or deliver goods. Nonetheless, the number of listings offering COVID-19-related products such as masks, fake test kits and pharmaceuticals on dark web platforms has been increasing. The dark web has been extensively used to carry out fraud as well, by taking money and never delivering the illicit products purchased.[63]

[53] See in Europol, "How Covid-19-Related Crime infected Europe During 2020, 11 November 2020, Europol Report".

[54] „Viral marketing – counterfeits, substandard goods and intellectual property crime in the COVID-19 pandemic" Europol 2020, https://www.europol.europa.eu/newsroom/news/viral-marketing-counterfeits-in-time-of-pandemic, Accessed: 07.01.2021.

[55] „Beyond the pandemic – how COVID-19 will shape the serious and organized crime landscape in the EU" Europol 2020, https://www.europol.europa.eu/publications-documents/beyond-pandemic-how-covid-19-will-shape-serious-and-organised-crime-landscape-in-eu, Accessed: 07.01.2021.

[56] See,"Viral marketing – counterfeits, sub-standard goods and intellectual property crime in the COVID-19 pandemic" Europol 2020.

[57] István L.Gál, Zoran Pavlović, „Corruption In Healthcare and New Regulations: One step forward, two back". In: *Jelena, Kostić; Aleksandar, Stevanović (szerk.) Uloga društva u borbi protiv korupcije Belgrád, Szerbia* (Institut za uporedno pravo, Instituta za kriminološkai sociološka istraživanja 2020) pp. 303-316. , 14 p.

[58] Dávid Tóth, „The new Directive related to counterfeiting "*In: Czeferner, Dóra; Mikó, Alexandra (szerk.) XIII. Országos Grastyán Konferencia előadásai,* Pécs, Magyarország ,(PTE Grastyán Endre Szakkollégium 2015) 344 p. pp. 324-332. , 9 p.

[59] Andrea Kraut, László Kőhalmi, Dávid Tóth, „Digital Dangers of Smartphones" *Journal of Eastern-European Criminal Law* (2020) 7 : 1 pp. 36-49., 14 p.

[60] „COVID 19: Phising and smishing scams" Europol 2020, https://www.europol.europa.eu/covid-19/covid-19-phishing-and-smishing-scams, Accessed: 07.01.2021.

[61] „Catching the virus – cybercrime, disinformation and the COVID-19 pandemic", Europol 2020," https://www.europol.europa.eu/newsroom/news/catching-virus, Accessed: 07.01.2021.

[62] " Exploiting isolation – Offenders and victims of online child sexual abuse during the COVID-19 pandemic" Europol 2020, https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic, Accessed: 07.01.2021.

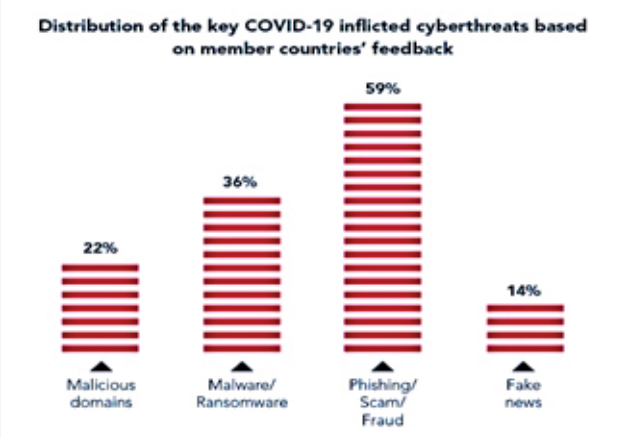
[63] „Catching the virus – cybercrime, disinformation and the COVID-19

Interpol, UNODC and other research, such as the Benchmark study, are also in line with Europol's data. Based on these studies, we intend to use statistical data to demonstrate the effects of COVID-19 on crime and cybercrime.

Cybercrime main types based on INTERPOL Report[64]

Key findings highlighted by the INTERPOL assessment of the cybercrime landscape in relation to the COVID-19 pandemic include: Online Scams and Phishing, Disruptive Malware (Ransomware and DDoS), Data Harvesting Malware, Malicious Domains, Misinformation.

Figure 2: shows the distribution of cyber threats and their main types.



Source: INTERPOL report shows alarming rate of cyberattacks during COVID-19S

COVID 19 Cyber Threat Analysis by UNODC[65]

What are the main threats by UODC survey? Malicious Campaigns – like phishing e-mail: the biggest threat vector for individuals and organizations. This includes the impersonating an official website, spreading malware, and the fake campaigns. Increased use of disinformation and social media is typical based on the data from the study.

New websites are being registered to disseminate information related to the pandemic. Of the end of March 2020, *more than 9,000 domains* were registered with the Corona Virus theme. There are websites that are trying to investigate misinformation related to COVID-19.7 In a little over a month, *more than 50 articles have been* debunked and proven *false.* It has become exceedingly difficult to keep up with the amount of misinformation related to the current situation.

In the field of Social Media Enhanced Usage the below statistics have been gathered from a survey of more than 25,000 consumers in 30 markets and it was conducted from March 14th to March 24th, 2020.

The application *WhatsApp has seen a 40% increase in usage overall.* Initially it jumped 27% in usage at the very beginning of the crisis. During the mid-phase of the pandemic, that number reached 41% and finally for countries already in the later phase of the pandemic, WhatsApp usage has jumped by 51%. In specific countries, the usage can even represent a much higher value. For example, WhatsApp usage in Spain was up to 76%. However, this application is not alone in its enhanced usage; the study found that Facebook, Instagram, *WeChat and Weibo also witnessed a 40% increase* in their interaction time.[66]

COVID-19 Benchmarking Report December 2020[67]

This report provides the results of our third in a series of studies exploring the ways that the fight against fraud has changed in the wake of COVID-19.[68]

The questions first of the report: How COVID -19 is affecting the overall level of fraud

A growing number of survey participants have observed an increase in fraud in the wake of COVID-19. As of November 2020, *79% of respondents said they have seen an increase in the overall level of fraud* (compared to 77% in August and 68% in May), *with 38% noting that this increase has been*

pandemic" Europol 2020, https://www.europol.europa.eu/newsroom/news/catching-virus, Accessed: 07.01.2021.

[64] „INTERPOL report shows alarming rate of cyberattacks during COVID-19" Interpol, https://www.interpol.int/News-and-Events/News/2020/INTERPOL-report-shows-alarming-rate-of-cyberattacks-during-COVID-19, Accessed: 07.01.2021.

[65] „ Several dark web malicious websites are advertising COVID-19 Phishing Email Kits using an infected email attachment disguised as a map of the virus's outbreak for various prices that can range from 150$ up to 1000$. Cybercriminals purchasing these "kits" can then use them to start their email campaigns targeting anyone from individuals to large scale organizations. These infections are made possible by unpatched operating systems and the infected attachment will exploit the weaknesses of the computer it is visualized on." „United Nations Office on Drugs & Crime, COVID-19: Cyber Threat Analysis" https://www.unodc.org/documents/middleeastandnorthafrica/2020/COVID19/COVID19_MENA_Cyber_Report_EN.pdf, Accessed: 08.01.2021.

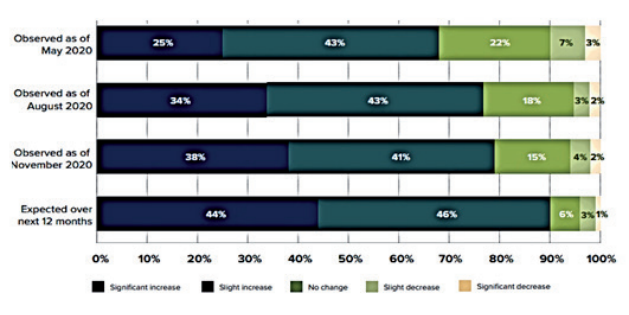
[66] Sarah Perez, „Report: WhatsApp has seen a 40% increase in usage due to COVID-19 pandemic" https://techcrunch.com/2020/03/26/report-whatsapp-has-seen-a-40-increase-in-usage-due-to-covid-19-pandemic/. Accessed: 08.01.2021.

[67] „FRAUD IN THE WAKE OF COVID-19: Benchmarking Report" ACFE, December 2020 Edition, Covid-19%20Benchmarking%20Report%20December%20Edition%20(1).pdf, Accessed: 08.01.2021.

[68] Approximately half (49%) of the survey respondents are located in the United States or Canada, and 17% live in Sub-Saharan Africa. Smaller proportions of participants live in Western Europe (8%), Southern Asia (7%), the Asia-Pacific region (7%), the Middle East and North Africa (5%), Latin America and the Caribbean (4%), and Eastern Europe and Western/Central Asia (3%).

significant (compared to 34% in August and 25% in May). As we look toward 2021, our members expect this trend to persist; *90% anticipate a further increase* in the overall level of fraud over the next 12 months, with 44% saying this change will likely be significant.

Figure 3: Change in the overall level of fraud



Source: Covid-19 Benchmarking Report December 2020

The second: How COVID 19 is affecting specific fraud risks

The way specific fraud risks are affecting organizations also continues to evolve in the wake of COVID-19. Among the categories of the 12 fraud risks, several of these risks are affecting organizations more significantly than others. Specifically, cyber fraud (e.g., business email compromise, hacking, ransomware, and malware) continues to be the most heightened area of risk, with *85% of respondents already seeing an increase in these schemes*, and 88%expecting a further increase over the next year. Other significant fraud risks in terms of both observed and expected increases include payment fraud (e.g., credit card fraud and fraudulent mobile payments), identity theft, and unemployment fraud.

Fig.4. Top 5 fraud schemes – predicted increase over 12 months due to the coronavirus

Source: Covid-19 Benchmarking Report December 2020

The third: How COVID-19 is affecting organizations' anti-fraud programs

The survey asked participants about the expected changes in the budgets and resources for their anti-fraud programs. *41% of organizations are planning to increase their overall anti-fraud budget*, while only 13% anticipate a reduced budget for next year. Similarly, anti-fraud staffing is largely expected to either increase (one-third of organizations) or remain flat (53% of organizations), with just 14%expecting cutbacks or layoffs within their anti-fraud teams.

Nearly *half (48%) of organizations anticipate increased investments in anti-fraud technology*, and 38% plan to increase the use of fraud-related consultants or other external resources.

The fourth: How COVID-19 is affecting the ability to fight fraud

The majority of our survey respondents noted that preventing, detecting, and investigating fraud have all become more difficult in the wake of COVID-19. More than three-quarters (77%) indicated that fraud prevention and fraud investigation are more challenging now than they were previously—with 26% and 31%, respectively, saying that these activities are significantly more difficult. Similarly, 71% of survey participants see fraud detection as more challenging (20% significantly so) than it was before the pandemic.

Digitalization against cybercrime

Digitalization increases the risk of cyberattack, and this is exacerbated by theCOVID-19 pandemic. Cyberattacks have become progressively more complex due to the increasing use of sophisticated malware and threat from professional cyber organizations. Users or organizations with malicious intent attempt to steal valuable data such as financial data, personal identifiable information, intellectual property, and health records. Several strategies, such as monetizing data access through the use of advanced ransomware techniques or disrupting business operations through DDoS attacks, have been attempted.

The peer-to-peer and decentralization structure of blockchain technology helps in improving its cyber defense since the platform can prevent malicious activities through robust consensus algorithms and detect data tampering due to its inherent features such as transparency, immutability, data encryption, auditability, and operational resilience

due to no single point of failure.[69,70] Blockchain opens up new ways to combat the rampant threat of cybercrime in a variety of ways.[71,72,73,74]

Future plans

The COVID-19 pandemic renders individuals and society extremely vulnerable in all respects. During this crisis, it is necessary to rely more than ever on computer systems, mobile devices and the Internet to work, communicate, shop, share and receive information and otherwise mitigate the impact of social distancing. The COVID-19 Pandemic – Guidelines for Law Enforcement,[75] issued by INTERPOL will be useful for criminal justice practitioners.

Criminal justice authorities need to engage in full cooperation to detect, investigate, attribute and prosecute the above offences and bring to justice those that exploit theCOVID-19 pandemic for their own criminal purposes.

With the Budapest Convention[76] a framework for effective cooperation with the necessary rule of law safeguards is available to 65 States. As a result of capacity building programs, many States should now be able to act. It is also clear that additional solutions are required to address future crises. Capacity building for criminal justice authorities must be further enhanced. And the 2nd Additional Protocol to the Budapest Convention that is currently under negotiations will be crucial to permit instant cooperation in urgent and emergency situations.

Based on their investigations, UNODC[77] made the following recommendations.

Cybercrime MENA Program[78] has different activities and procurement planned for the following months that will strengthen countries' capacities to respond more efficiently to the COVID-19 crisis from a Digital World's perspective.

Enhanced Cybersecurity for the Critical Infrastructures at the country level.

– Development of Standard Operating Procedures to ensure a proper digital response.

– Procurement of internationally recognized training for first responders and government officials.

– Procurement of digital forensics equipment to ensure proper investigation of various cyberattacks in the current context.

– Assessment of needs and regional coordinated assistance response.

– Cybercrime investigations specialized interventions to prevent further attacks.

– Digital Forensics response to various crime scenes or data tracking.

– Legislative review and counsel.

– International Cooperation assistance.

– Social Media Awareness campaign on specific pandemic issues.

In the current time, there is an immediate need for these activities to assist countries in ensuring the response is leveled across the world.

Summary

The Covid-19 pandemic is a social, economic, health crisis, with all its challenges. It is also a challenge for all fields of science in terms of developing both research and coping strategies. In this paper we ex-

[69] Eric Piscini, David Dalton, Lory Kehoe, " Blockchain & Cybersecurity Point of View. Deloitte, 2017" https://www2.deloitte.com/content/dam/Deloitte/ie/Documents/Technology/IE_C_BlockchainandCyberPOV_0417.pdf, Accessed: 08.01.2021.

[70] Fenyvesi Csaba, „A kriminalisztikai világtendenciák – Különös tekintettel a digitális felderítésre" In: *Mezei, Kitti (szerk.) A* bűnügyi tudományok és az informatika ,Pécs, Magyarország, Budapest, Magyarország (Pécsi Tudományegyetem, Állam- és Jogtudományi Kar, MTA Társadalomtudományi Kutatóközpont 2019) 204 p. pp. 64-82., 19 p.

[71] Ralph Tkatchuk, "Is Blockchain the ultimate weapon against cybercrime?" http://dataconomy.com/2017/10/blockchain-ultimate-weapon-cybercrime-2/, Accessed: 08.01.2021.

[72] Catherine Luff, "Cybersecurity and the future of blockchain technology", http://www.gingermaypr.com/cybersecurity-blockchain-technology.htm, Accessed: 08.01.2021.

[73] Lester Coleman, "$81 Million Cyberheist Underscores Need for Blockchain Security", https://www.ccn.com/81-million-cyberheist-need-for-blockchain-security/, Accessed: 08.01.2021.

[74] „ Originally developed for the digital currency called Bitcoin, blockchain technology created a platform for a new segment of Internet, influenced the decentralization of the network by the principle of a distributed registry, and began to be used in all kinds of combinations and combinations for various purposes, including cybersecurity. The use of blockchain technology for ensuring cybersecurity and its leading potential in that is unlimited, thanks to such unique properties as reliability, accessibility, high adaptability, economic efficiency, and profitability. Our results show that the use of blockchain technologies in combating cybercrime, including cyber terrorism, can extend to the control of financial services, transport, or any other industry. However, the growth of criminal activity using blockchain technologies will also intensify if law enforcement agencies cannot technologically competently, at a faster pace, detect these developing centres, determine their actions, and destroy illegal plans." Olga Vorobyova, Julia Polyakova, Olga Borzenkova, "Leading Opportunities for Fighting Cyberterrorism Using Blockchain Technology " In: *6th International Conference on Social, economic, and academic leadership*, (Atlantis Press,) 523,528, 2352-5398, https://doi.org/10.2991/assehr.k.200526.076, Accessed: 08.01.2021.

[75] "COVID-19 Pandemic – Guidelines for Law Enforcement" https://www.interpol.int/content/download/15014/file/COVID19_LE_Guidelines_PUBLIC_26mar2020.pdf, Accessed: 08.01.2021.

[76] "Council of Europe, Budapest Convention and related standards" https://www.coe.int/en/web/cybercrime/the-budapest-convention, Accessed: 08.01.2021.

[77] „As evidently indicated by UNODC's Cybercrime Global Program initiative, "Now is not the time to de-invest in specialist cybercrime law enforcement. The capability and capacity to counter cybercrime are vital components for protecting Critical National Infrastructure, keeping children safe online, empowering industry, securing hospitals and supporting economic recovery from COVID-19." UNODC "Global Programm on Cybercrime, CYBERCRIME AND COVID19: Risks and Responses" (14 April 2020),www.unodc.org/documents/Advocacy Section/UNODC_CYBERCRIME_AND_COVID19_-_Risks_and_Responses_v1.2_-_14-04-2020_-_CMLS-COVID19-CYBER1_-_UNCLASSIFIED_BRANDED.pdf , Accessed: 08.01.2021.

[78] UNODC "MENA Regional Programme, COVID-19: How to stay safe from cybercriminals exploiting the pandemic"(March 2020), https://www.unodc.org/middleeastandnorthafrica/en/web-stories/covid-19_-how-to-stay-safe-from-cybercriminals-exploiting-the-pandemic.html, Accessed: 08.01.2021.

amined the relationships between digitization and crime/cybercrime in connection to coronavirus epidemic, and their influences to each other.

Considering the effects of COVID-19 epidemic, one might suppose several connections between these scientific areas independently of each other. These connections are cited in this work from previous publication.

It can be clearly seen that digitalization, which has undergone tremendous development, necessarily requires further growth and development as a result of the epidemic – as it is a consequence of the COVID-19 pandemic itself – lockdown needed to protect against it, restrictions and changes in certain economic sectors (e.g. e-commerce) – make this necessary.

At the same time, from a health point of view, epidemic surveillance, control tools, clinical trials, vaccine research, and application similarly require it.

The increase in digitalization processes is also a unique way to increase the opportunities for the rapidly adaptable criminal layer in this area – especially in cyberspace.

Statistics show that "traditional" crime patterns have declined as a result of the epidemic, while the number of online crimes has increased significantly, even in the first few months of the epidemic.

The changes in the digitalization and the criminology affect governments, economic actors, those involved in education, and the masses of people locked up their homes. Protecting against cyber-attacks has become more important now than ever, requiring further improvements in many areas of digitalization, enhancing cybersecurity, all the more so because criminals themselves use these methods. Several technologies are awaiting further development, such as Blokchain, IoT, and AI.

However, the protection needs to be applied more widely than ever before, as it affects users of supercomputers as well as simple users of telephones.

According to et al Ben Stickle and Marcus Felson the COVID-19 pandemic might be declared a huge social experiment.

Examining the changes in the digitization and cybercrime, I wanted to draw the attention to the actual tendencies in their connections, the risk of further growth of cybercrime, and encourage researchers to study these modern criminological challenges.

The populations of several continents live in the era of significant changes in the economic, technologic and social life, and this Covid-19 epidemic even highlights the significance of these changes which might serve a special aspect of the criminology in this quite "inverse situation".

Péter Lajos Kovács[1]

The opportunities for the development of the telecommunications "device system" for the future

Introduction

We are all aware that the advances in computer technology are now an essential tool in most professions. However, society is able to reach a new level of development by expanding their scope of application, utilizing computers, the Internet, or other machines in more and more places. In the judiciary the development of technology can also be seen in the telecommunication device named in the Act XC. of 2017 Code of Criminal Procedure (hereinafter: CCP). In connection with this device, this study addresses why the name is incorrect, and what would be more appropriate to use instead. Following that I would like to introduce how these tools work and what development directions can be imagined in the future in connection with this system. My hypothesis will be that a telecommunication device system can be a perfect substitute of personal interrogation – as we have seen during a viral situation – but this system is not yet perfect.

1. Telecommunication device system advances

The first step in examining the topic is to define what a telecommunications device means as a concept. Under in the current Criminal Procedural Law „A person obliged or entitled to be present at a procedural act pursuant to this Act may also be provided with a means of telecommunication (hereinafter together: the use of a means of telecommunication)."[2] The legislator doesn't say more about this. In my opinion, since several devices are required for the telecommunications device to function perfectly, it is not a single device, but rather a system of devices including at least of pair of cameras, monitors, microphones and a device capable of transmitting via the Internet. This idea is also supported by Anita Nagy's position that it is an „audiovisual system".[3] Because of all this, I will use the term telecommunication device system hereafter.

The first stage in the development of the toolkit was witness protection. In connection with witness protection, the idea arose in Hungary for the first time in the late 1990s and early 2000s that the creation of a legal framework is not enough, therefore the necessary logistical background, infrastructure and – above all – human resources are required to create witness protection tools.[4]

In 2015, the "Electronic solution for the development of work organization and communication of public administration in different geographical locations" was launched, ie the VIKI project, which is operated by Nemzeti Infokommunikációs Szolgáltató Zrt. (Hereinafter: NISZ).[5] With the help of the VIKI project[6], by 2018, 215 locations were set up for remote hearing rooms, most of which have courts with endpoints. Thanks to the further development of the past few years in the country, the number of NISZ video conferencing service endpoint rise to 817, of which 458 is built to be an endpoint. The table below shows in detail how the deployment of remote listening endpoints has evolved in recent years.[7]

In order to get to know the practical experience of the application of the telecommunication device system in the courts, I contacted the Court of De-

[1] University of Debrecen Faculty of Law, V. Year, Law student, Supervisor: Andrea Noémi Tóth assistant professor, A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

[2] CCP 120.§

[3] Anita Nagy: A telekommunikációs eszközök használata különös tekintettel a büntetés-végrehajtásra, Kúriai Döntések, 2019/10., 1350-1354. p.

[4] http://acta.bibl.u-szeged.hu/56965/1/juridpol_forum_007_002_005-024.pdf Erzsébet Anett Gácsi: Büntetőtárgyalás tartása zártcélú távközlő hálózat útján (letöltve: 2020.10. 16)

[5] https://birosag.hu/hirek/kategoria/ugyfeleknek/targyalotermi-kepes-hangrogzites-folytatodik-az-uj-eszkozok-telepitese Tárgyalótermi kép- és hangrögzítés: folytatódik az új eszközök telepítése (letöltve: 2020. 10. 16)

[6] VIKI Projekt https://videokonferencia.nisz.hu/ (letöltve: 2020. 01. 13)

[7] Based on the answers to the questionnaire sent to NISZ.

brecen, however, due to the pandemic situation, I could not personally conduct research. Instead, I was able to submit my questions as a questionnaire and illustrate the results of their answers to some of the following. The following diagram shows the proportion of individual participants in the telecommunications proceedings conducted at the General Court of Debrecen in September 2020. It is interesting to observe from these data that the court primarily uses the procedure of telecommunication devices for defendants and suspects, which is a significant development. considering, as I wrote above, this system was originally created to protect witnesses. But it also proves the development from the beginning, which can be expected in the 21st century from an electronic device system.

According to the questionnaire filled in for me by the General Court of Debrecen, 191 remote hearings took place in 2019, while in 2020 there were 761 remote hearings by 26 October 2020, which shows a huge increase compared to last year. It can be concluded from this that the courts consider this system of tools, which also facilitate the conduct of the proceedings, to be an appropriate method and are happy to use it. Furthermore, they are also preferred after the quarantine situation, as an outstanding increase was produced from May, when court workers were able to return to work. When asked by the head of the Penal Chamber about the opinion of criminal judges about the telecommunication device system, he stated that "it is completely positive and in my opinion there is no disadvantage of this device system".[8]

Among the anonymized decisions found on bíróság.hu, the system found 174 decisions for the term telecommunication device. Of these, 75 (and a further 8 in military) were decisions in criminal cases. Interestingly, there was no decision on an offense law or a sentence. On closer inspection, however, it can be stated that only a negligible part of these 83 decisions in which a telecommunications equipment system or a private telecommunications network in the old CCP name was used.[9] The results were issued because the crime was committed in several places using a telecommunications device. As for the procedure to be followed with this toolkit, the result was 12. However, from the point of view that these negotiations all took place under the CCP, it shows a positive picture of the fact that the courts are indeed happy to use this system of tools.[10]

[8] Dr. Antal Nagy is a judge of the Debrecen Tribunal Court and head of the Criminal college.

[9] Act XIX. of 1998 Code of Criminal Procedure.

[10] Anonimizált határozatok – UIR (birosag.hu) (letöltés dátuma: 2020. 11. 03.).

2. Psychological analysis

"In addition to the legality of evidence and the laws of logic, aspects of judicial conviction and psychology are highly emphasized in evidence and judicial fact-finding."[11]

The purpose of this part of the dissertation is to support the argument, which I also mentioned in the introduction, that it would be necessary to psychologically examine the persons involved in the proceedings who testify in front of the camera, as their behaviuor in front of the camera may change. In the following, I would like to present my experiences drawn from interviews conducted during my research. My interviewees included several physicians and psychologists. Among these was a chief physician of the hospital's adult psychiatry, an addictologist and a psychological rehabilitation specialist (‚the doctor'), a psychiatrist who was also a television reporter (‚the doctor') and a master's student in psychology (‚the student'). In the interviews, I asked questions similar to those interviewed in some places, and I wanted to get an answer to whether the prosecution and the defense could also refer to the fact that the person testifying could not be discounted for psychological reasons because one was affected differently by the camera. than other people. In my opinion, this would also be a relevant investigation for the court, as if a person involved in the proceedings were sent for such a psychological examination before the interrogation, they could save the subsequent examination. The duration of the proceedings would be further reduced and it would be more cost-effective with the investigation I propose, as a complex resolution on the person making the testimony would be in the hands of the judge even before the interrogation.

Below, I organize the information gained during the interviews around some topics.

2.1. The effect of the camera on human behavior

The camera as well as the sound recorders affect people because they record what they say and they don't know who and how many people can watch it later. People try to appear their best, most ideal self, when they want to make a good impression, similar to a court trial. Thus, in this situation, one can speak of an image of the "idealized self," which is not always honest, not always in line with reality. And in this case, in a procedure with the system of

[11] https://debreceniitelotabla.birosag.hu/sites/default/files/field_attachment/gondolatok_a_bizonyitasrol_ht_0. pdf Tamás Háger: Gondolatok a bizonyításról, 2.p. (letöltve: 2020. 03. 16).

telecommunication devices, this idealized self-denotes of the self in front of the camera, because it wants to reach, show, and even influence how they are seen. However, it should be added that just like in front of a camera in a show, it means a lot to the presenter trying to control the conversation. In our case, there are several "presenters," as this person may be the judge, the prosecutor, or the defense counsel at the trial, and the person conducting the interrogation at the interrogation.

My other interviewees also supported the position expressed above, adding that it is absolutely possible to change a person's behaviour in front of a camera or even just a microphone, which is recorded and can be recalled later. The presence in front of the camera completely confuses many people and they cannot think properly. „The compliance constraint can work very strongly to put it nicely, to make your hair look good and to have all the external factors in place."[12] Other interviewees also supported the fact that there is more self-control in front of the camera, and there is also a kind of compliance compulsion so that what they say and show there is right and they paint a good picture of themselves. This is why often people hesitate to answer a particular question. If there were no cameras, the person would not feel that what the person was saying could be checked and used later because it would be on a recording.[13] During my interview with the police, I learned that during the interrogation, the person talking to the camera sees himself a little on the monitor, so it's probably not as confusing as if they had to look at a fixed point and not see themself, even in a smaller picture.[14] It's also a setback to talking in front of the camera, because that kind of concentration can distract from the content and get confusing into the text you want to say.

Depending on the personality, the presence of the camera affects who. There are extroverted people who are not interested in what others have to say, they are only interested in what they have to say and take control. However, we have to reckon with the so-called facilitating anxiety, which is an inspiring push, like when an athlete goes up on the field and it encourages him.

2.2. Automation of behavior in front of the camera

I was also wondering whether there was enough practice or practice to prepare for an interrogation with a telecommunications device system or just an audition. The basis of my line of thought was that we can prepare for a lecture with enough practice, and the ability and skill to perform can be learned. This is supported by what my interviewees said.

They were all of the view, as can be seen from what has been described so far, that the behavior in front of the camera can be practiced as well as taught. We know exactly how much training those who do a lot in front of the camera get in this. This is also the reason why the authorities use spokespersons.

2.3. The narcissistic personality in front of the camera

Narcissistic personalities all want attention and would do anything for it. That's why I was wondering if these people can be filtered out and who has such a personality, how they behave in front of a camera.

My interviewees said that personality depends on how they react to the camera or the microphone, so it can all happen that someone comes to life in front of the cameras or even closes up. There are those who are encouraged to appear in public and thus want to make as much impact as possible, so even if you say great, just pay attention to it. However, there are also those who are introverted and do not want to appear in public.

The narcissistic personality trait can be seen as parallel with an introverted personality. However, it should also be noted that this is a separate area – a kind of personality – which is why it can be examined not only from the point of view of the camera and the manifestation before it.[15] The characteristic of this personality trait is that one is in the middle of everything and that is why one needs attention. Very often, one treats other people merely as a tool. This is the reason why this type of personality often occurs around the camera, because in some cases it is not the point that needs to be said, but that one himself is in the crossfire of the cameras and can talk and be watched. In such cases, it often happens that there is no kind of humility that is relevant to the topic, the situation. Such a person is practically interested in nothing but to portray him in the best possible image. It is conceivable that if one knows that the interview will be published, one will try to magnify himself and try to reinforce his way of thinking on the given topic as much as possible in his narrative. For such a person, a lie is completely natural and very often one does not even notice that one is lying, because the most important thing for him is to maintain his narcissistic self-image. However, this personality type can be detected by a simple test (STAI-S state anxiety test, STAI-T trait anxiety test).

Of course, narcissism also has a milder manifes-

[12] Based on an interview with a doctor.
[13] Based on an interview with my fellow student.
[14] Based on an interview with an officer in the crime department.
[15] Super self-centered image. Narcissus looked into the water of the lake and fell in love with himself.

tation that can be described as "everything that is attached to me must be perfect"[16]. However, if we think about it better, it's in all of us and it can even be healthy because it drives us forward to be better.

2.4. Justification of the existence of a preliminary psychological test

My view is that it would be worthwhile to complete a psychological test with a person involved in a procedure using a telecommunications device system. In my opinion, this would be necessary because in this way the previously mentioned personality traits and problems would be noticeable and on this basis it would be easier to decide to what extent the truth content of the confession can be substantiated.

My interviewees also endorsed my idea, and doctor also said that in his opinion, it would be worthwhile not only because of this, but anyway. Because a psychological study is a thing that moves on a lot of spectra. "It's worth going to the butcher shop among the plethora of butchers you can buy, but we may need the butcher's help to choose between the goods. This is exactly what a psychological examination in criminal proceedings is like, because there are also a lot of questions in the proceedings that a psychologist can help the court answer."[17] This is because people, whether in the investigation or trial phase, are capable of acting performance, and amateur acting performance can be explored by psychology. I would consider the psychological examination to be valuable and relevant in any case, but the questions and the interviewer are also very important.

My psychiatrist interviewee, who has been working as a reporter for decades, would also see the point of such a test because she found on her own skin that the camera was able to distort the manifestations and sayings of the person in front of her. In any case, you would consider a personality disorder test or anxiety test to be necessary in order to obtain the most valid statements / results when making a confession.

The psychological tests I mentioned can even be found in a university textbook. Individuals 'levels of anxiety jump when they are videotaped or recorded. If an anxiety test were completed before and after the confession, there would certainly be a change. They could also be filled with a personality disorder test because the behaviour of narcissistic or camera-sensitive people would change completely and this could be demonstrated by psychological experts in simple ways.

This brings us to the part of my dissertation where I would like to say what solutions I would like to use in my research on how this toolkit could evolve.

3. Problems encountered and suggestions for solutions

In an emergency caused by the coronavirus, there was a real need to use the telecommunications device system in the courts. Had they been able to do so earlier, it could have been applied from the first day of the extraordinary break in the spring, with the necessary precautions, and the burden that might have arisen during that time would have been less. According to one of the heads of departments of OBH, the future of the telecommunication equipment system will be significant not only in terms of the conduct of proceedings, but also in terms of the further training of court staff.[18]

According to the principle of impartiality, „the court shall base its decision on the facts and evidence examined directly at the hearing". This evidence includes the testimony of a person in the proceedings. The telecommunication device system helps in this, as it allows the person making the confession to be present at the hearing in real time, even from a distance of hundreds or thousands of kilometers. It can therefore be said that the procedure with the system of telecommunication devices complies with the principle of directness.

Problems also include data transfer problems that can sometimes occur despite advanced technology. NISZ Zrt. Does its best for the perfect connection, just like those working in the police, the court or the prison on the receiving side. If such an error occurs, NISZ Zrt. Will correct it immediately at the request of the police. If the police make a mistake, it should be reported to the ORFK authority immediately, also to correct the mistake.

The police believe that the fact that they cannot pay perfect attention to the body language of the person being interrogated can also be a problem during interrogation with a system of telecommunication devices. Interrogation with a system of telecommunication devices is completely different, as it creates a special atmosphere and differs from that if the person is interrogated in person. People to be interrogated may feel in front of the camera as if they are at a safe distance from the interviewer, so they can be calmer, more liberated, or even more likely to lie. This is also why personal questioning is better in the opinion of those working in the police, as questioning a suspect is an art because you need to be prepared for it both professionally and spiritually. It is a two-way game, as a contact is made between the interrogator and the person to be interrogated. This is why respondents stressed that

[16] Based on an interview with a doctor
[17] Based on an interview with a doctor
[18] Péter Zoltán János https://youtu.be/VHmWOSsloqA (letöltve: 2020. 11. 03.)

personal presence is essential in some cases. Signs of a psychic nature can be damaged during remote interrogation during interrogation because a completely different image comes through. This is why there are often times that they prefer to travel and interrogate the person locally, but during a pandemic they try to keep this to a minimum. In my opinion, by developing a system of telecommunications tools, the benefits of personal interrogation could be transferred to the online space.

One of the conditions for accepting the testimony of the accused confessor during the preparation of the trial is that there is no reasonable doubt as to the accused's ability to set off and the voluntary nature of his confession.[19] With regard to "reasonable doubt", the question arises as to whether it can be established with absolute certainty by means of a telecommunication device system or only in the personal presence of the accused. Since CCP does not specify at what stage of the proceedings the court may use this system of equipment, so my question to the Debrecen General Court also included the question of whether a telecommunications equipment system would be used during the indictment phase of the preparatory hearing and whether it could be used to filter out reasonable doubt or insist on a personal presence. I received the answer that this toolkit is also suitable for establishing reasonable doubt and the toolkit is also used during the preparatory meeting.

I believe that the next step in the application of the telecommunication device system, even in the event of another emergency, will be to be able to carry out more procedures in the form of remote interrogation / remote interrogation than before, thus preventing their prolongation. The number of such proceedings could also increase for persons in need of special treatment, as it would be much safer than if transportation were required, for example, if such a person had to testify in court as a witness. The same can be said for a child talking to a trained psychologist in a playroom about what happened, this would be recorded with a video and audio recording and the relevant parts of that recording would be played back in court.

My suggestion for development is that it would be easier to testify by creating an application that can be connected to a telecommunications device system, as the person to be questioned could testify on a telecommunications device (smartphone, tablet, laptop, computer) or in their own home. In the case of the accused, the defense counsel, in the case of the victim, the legal representative, or in the case of the witness, the lawyer acting on behalf of the witness may also be summoned to the interview. During the interrogation, a continuous video and audio recording can be made, which can later be used to make a record or the recording can be attached to the documents. It is much easier to question juvenile witnesses using a telecommunications device system, as most young people already have such a device.

A further development option would be for the authority to put the suspect in a suitable chair for questioning, which, like a polygraph, performs a continuous heart rate measurement on it, in addition to monitoring his physical reactions and his body temperature. Numerous studies have already shown that physiological reactions change, if not tell the truth. For the same, a smart watch could be used to download an app to track the changes just listed. If a person does not have a smartwatch, the authority conducting the interrogation or hearing could provide him or her with a smartwatch for the duration of the proceedings.

Since there is now a "stripped-down" flow of information when using a telecommunication device system, another direction of development could be the use of a facecam (facial camera) that tracks facial expressions, the eye, and its changes. In this way, we can keep track of all the information that would be seen on the confessor's face during a personal interrogation using a telecommunications device system. All this is not so distant future, as there is also a camera with 3D face recognition for laptops, tablets and smartphones, which can also be used by the judiciary.

In addition, I would suggest completing a psychological test to determine how a person participating in the proceedings would be affected by a statement or interrogation in front of the camera.

4. Summary

In my dissertation, my hypothesis was confirmed, as the telecommunication device system can replace the personal interrogation with all the development suggestions I presented in my presentation. It is particularly important to carry out a psychological test of participants before applying the procedure with the telecommunication device system, as this would help the court to determine the creditworthiness of the confession. At the same time, it cannot be neglected that almost everyone now has a smartphone and related smart devices that can be used for interrogation with the telecommunications device system.

I think that advances in technology are already appearing in the judiciary – and will continue to evolve – and not only in DNA tests that are known to everyone, but also in interrogations. In my opinion, there are innumerable opportunities for development in the field of the system of telecommunication devices, either for the examination of witnesses or only for the conduct of court proceedings, and it has not yet reached its perfect form and utilization. I believe that the greater role played by the emergency will have a positive impact on the telecommunications equipment system and can be further developed.

[19] CCP 504. § (2) b) point

Cristian Dumitru Miheș[1]

Misrepresentation and computer fraud

Abstract

The Romanian Penal Code criminalizes as an offence misrepresenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused. This is considered a "classical" fraud. Meantime, the means of perpetration a fraud, in general, have evolved due to the large scale of utilization of information technology. As a consequence, computer fraud is criminalized. The paper tries to address the similarities and differences between the two offences that are more – or less, different forms of fraud.

Any utilization of computer in order to induce misrepresentation will trigger the applicability of article 249 – Computer fraud? Can the "classical" fraud – misrepresentation be perpetrated through information technology?

Keywords: computer fraud, misrepresentation, property protection

The Romanian Penal Code criminalizes under article 244 first paragraph as an offence "*misrepresenting false facts as being true, or of true facts as being false, in order to obtain undue material gains for oneself or for another, and if material damages have been caused*". The second paragraph of this article stipulates an aggravated form of the offence: "*Misrepresentation committed by using false names or capacities or other fraudulent means shall be punishable by no less than 1 and no more than 5 years of imprisonment. If the fraudulent means is in itself an offense, the rules for multiple offenses shall apply.*" And, finally, within the third paragraph a special procedural provision is included: "*Reconciliation removes criminal liability.*"

This is considered in a "classical" fraud[2]. Meantime, the means of perpetration, in general, have evolved due to the large scale of utilization of information technology in our everyday life. As a consequence, in the present we have a significant number of offences that do criminalize conducts related to utilization of a computer system, as well as new means of perpetrations and, of course, new methods of investigation[3].

In this respect, the Romanian Penal Code includes expressly two categories of cyber crimes: In Title II – "Offenses against property", Chapter IV – "Fraud committed using computer systems and electronic payment methods" (art. 249-252)[4], and Title VII – "Offenses against public security", Chapter VI – "Offenses against security and integrity of computer systems and data" (art. 360 – 366)[5].

As concerning computer fraud, this offence in criminalized under article 249 of the Penal Code: *"Entering, altering or deleting computer data, restricting access to such data or hindering in any way the operation of a computer system in order to obtain a benefit for oneself or another, if it has caused damage to a person, shall be punishable by no less than 2 and no more than 7 years of imprisonment."*

The paper tries to address the similarities and differences between the two offences that are more – or less, different forms of fraud. Initially, due to the name of the offence it was considered that computer fraud is practically the "computerized" form of misrepresentation, but if we look at the legal text and its interpretation, one can determine that the situation could be very different. Our attempt is important also from another perspective – ne bis in idem principle. The exact nature and features of the offence must be precisely determined and the ex-

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[2] R. Bodea, B. Bodea, *Drept penal. Partea Specială*, "Hamangiu" Publishing House, Bucharest, 2018, p. 273; Mihai-Adrian Dinu, *Fraudă informatică sau înșelăciune?,* available at: https://www.juridice.ro/517449/frauda-informatica-sau-inselaciune.html#_ftn1, last visited at 14.03.2021;

[3] C. Miheș, *Considerații asupra necesității adaptării unor instituții tradiționale ale dreptului penal în condițiile societății dominate de tehnologia informației* in F. Ciopec, L.M. Stănilă, I.C. Pașca (editors) – "Previzibilitatea legislației și jurisprudenței în materie penală", "Universul Juridic" Publishing House, Bucharest, 2015, p. 103–117; L.M. Stănilă, *Inteligența Artificială Dreptul penal și sistemul de justiție penală,* Ed. "Universul Juridic" Publishing House, Bucharest, 2020, p. 65–71; also the EU position on Criminal Law did change: M. Pătrăuș, Drept european instituțional, Prouniversitaria Publishing House, Bucharest, 2018, p. 44-45.

[4] Within this chapter are included: Computer fraud; Making fraudulent financial operations; Accepting transactions made fraudulently

[5] Within this chapter are included: Illegal access to a computer system; Illegal interception of computer data transmissions; Altering computer data integrity; Disruption of the operation of computer systems; Unauthorized transfer of computer data; Illegal operations with devices or software

act, particular form of responsibility (civil, administrative or penal) must be triggered[6].

Both the offence of misrepresentation and computer fraud are regulated in Title II of the Criminal Code, entitled „Crimes against patrimony", but in different chapters, the offence of misrepresentation being provided in Chapter III – "Crimes against property by breach of trust", and computer fraud, in Chapter IV – "Frauds committed through computer systems and electronic means of payment".

The offence of computer fraud was incriminated for the first time in Romanian legislation through Article 49 of Law no. 161/2003, as the provisions of the Cyber Crime Convention signed at Budapest in 2001 were transposed in our legislation. Subsequently, the provision was included in the (new) Criminal Code, where at art. 249 provides for the crime of computer fraud.

The legal texts from article 49 of Law no 161/2003 and article 249 of the Criminal Code are almost identical and the new Penal Code does not bring any essential modification of the previous regulation as regarding the conditions of incrimination, there are no differences of regulation, the crime having the same content. However, only with regard to the sanctioning regime, the new Criminal Code provides for a reduction of the punishment limits, because if in the legislation prior to the entry into force of the new Criminal Code the crime was punishable by imprisonment from 3 to 12 years, according to the new regulation, the penalty is imprisonment from 2 to 7 years, which means that the latter is considered the lenient penal law.

From our point of view, to understand the similarities and differences between these offences we have to understand and to clarify what is the social value that is intended to protect under by criminalizing misrepresentation and computer fraud.

Why were needed two legal text? What is the reasoning of having two legal text?

The offence of misrepresentation is an offence that aim to protect the property of the persons (natural person or any legal entity) by safeguarding the trust in social relations[7]. One should not expect to be misled by another person at any time when they engage in social relations, irrespective of the nature of this relation. Trust (social trust) is a fundament of a civilized society. If we approach all our social relation without any form or level of trust then the effectiveness of those social relations would be minimum, because in each case you will need to be convinced that your partner is not misleading you. Of course, trust and precaution are not excluding each other, and people have to exercise both of them.

Meantime, the computer fraud aims to protect the property of the persons (natural person or any legal entity) by safeguarding the trust in computer systems – utilization of the computer systems. The juridical object of the offence is described in different wordings among the doctrine, but all of these wordings do refer to the correct, the trustfulness and/or to the integrity of computer systems[8]. From our point of view is there is a question of integrity of the computer system, then the matter is addressed by article – alteration of computer data.

The most effective solution in case of the juridical object of computer fraud is to consider its complex and "pluri-offensive nature"[9]. The main goal is to protect the patrimony, but is case of criminalizing computer fraud this goal is achieved by ensuring the trust in the utilization of computer systems. The offence is perpetrated by certain means that affect the trust in the utilization of computer systems.

From this perspective, if we add the constant multiplication of the influence of computers in every day life then a break of trust in utilization of computer systems could be devastating to the entire society.

Who can imagine a present society without computer systems? And, on the other hand, if one does not trust the utilization of computer systems, he or she will have at least a constant suspicion of fraud or misleading or even damage caused by utilization of computer systems.

As regarding the subject of both offences, the law does not require any special features or conditions. The active subject of misrepresentation is usually a person that has a significant power to persuade other people, in most cases the active subject has a high degree of social cleverness in misleading the passive subject; meantime the active subject of computer fraud does not necessarily enter in direct contact or engage in social relation with the passive subject, but she/he possess computer skills in order to perfume the conduct criminalized by the law.

But, as regarding the passive subject we can argue that she or he could be considered at least is at least

[6] About the posible conflict and the problems related to the enforcement of this principle please see: Elek Balázs, *The "criminal nature" requirement – The dual administrative and criminal procedures,* The Journal of Faculty of Law Oradea, issue no. 2/2020, p. 35-41; Krisztina Karsai, *Transnational ne bis in idem principle in the Hungarian fundamental law,* in C.D. Spinelis, N. Theodoraki, S. Billis, G. Papadimitrakopoulos (editors) – "Europe in Crisis: Crime, Criminal Justice, and the Way Forward", "Ant. N. Sakkoulas" Publishers L.P., Athens, 2017, p. 409-440.

[7] G. Antoniu, T. Toader, *Explicațiile Noului Cod Penal*, vol. III, "Universul Juridic" Publishing House, Bucharest, 2015, p.534; H. Kádár, *Drept Penal. Partea Specială, Infra□ iuni contra patrimoniului*, "C.H. Beck" Publishing House", Bucharest, 2019, p. 150;

[8] G. Zlati, *Frauda informatică aspect controversate,* Universul Juridic Premium nr. 3/2020, available at: https://www.universuljuridic.ro/frauda-informatica-aspecte-controversate/ accessed at 14.03.2021 ; H. Kadar, *Drept Penal…*, p. 202; G. Antoniu, T. Toader, *Explicațiile...*, p. 599, V. Cioclei, Drept penal. Partea Specială I, second edition, "C.H. Beck" Publishing House", Bucharest, 2017, p. 380; Norel Neagu, *Fraude comise prin sisteme informaticeți mijloace de plată electronice – variante speciale ale infracțiunii de înșelăciune?* in Revista Română de Drept Penal al Afacerilor nr. 3/2019 and Universul Juridic Premium nr. 2/2020, available at: https://www.universuljuridic.ro/fraude-comise-prin-sisteme-informatice-si-mijloace-de-plata-electronice-variante-speciale-ale-infractiunii-de-inselaciune/, last accessed at 14.03.2021.

[9] G. Zlati, *Frauda informatică aspect controversate,* Universul Juridic Premium nr. 3/2020, available at: https://www.universuljuridic.ro/frauda-informatica-aspecte-controversate/

negligent. Others consider that in certain proportion also the passive subject contributes with his naivety and lack of self-protection to the success of the perpetrator[10].

The conduct of the active subject is directed to the mind of the passive subject, in order to mislead him about the appearance of the situation presented and to ear his misplaced trust. On the other hand, the conduct of the active subject in case of computer fraud is directed to the computer system that host the computer data which will be transformed.

The misleaded person could be different that the person that has suffered a patrimonial harm through missrepresentation, and also in case o computer fraud the passive subject could be multiple since besides the person that owns the computer system, the patrimonial damage could be caused also to other persons. As a consequence, in both cases the patrimonial damage could be caused not only the persons primarily afected by the objective conduct, but to other persons who will be considered passive subjects also[11].

Moving further and looking to the nature of the (objective) conduct we can determine that there are significat differences and a few intereferences:

If we compare the conduct (conducts) prescribed by article 244 and article 249 of the Penal Code we can determine the following differences and similarities:

a) The feature of the objective conduct is different. Article 244 speaks about "misrepresenting false facts as being true, or of true facts as being false", meantime article 249 stipulates a number of alternatives such as: "entering, altering or deleting computer data, restricting access to such data or hindering in any way the operation of a computer system". As regarding the last aspect, it is important to underline that within the Penal Code there is a definition of computer system and digital data, in article 181 of the Penal Code: *Computer systems mean any device or group of (functionally) interconnected devices, where one or several of such systems ensure automatic processing of data, using a computer program. Digital data means any representation of facts, information or concepts in a manner which allows processing by means of a computer system.*

Practically, misrepresentation can be performed through computer systems through the simplest manner – for example when the person is using a computer to transmit an offer that will mislead the beneficiary of that offer.

For example, even under the previous regulation, High Court of Justice and Cassation – Criminal Section, through decision no. 2106 of June 14, 2013[12] reasoned that "*Fictitious online sales of goods, made through the platform specializing in online goods trading, which causes damage to injured persons misled by entering computer data about the existence of the goods and thus determined to pay the price of non-existent goods, meet the constituent elements of computer fraud offenses must be in art. 49 of Law no. 161/2003. In this case, the constitutive elements of the crime of deception are not met, as the crime of computer fraud presents a variant of the crimes of deception committed in the virtual environment, and art. 49 of Law no. 161/2003 constitutes the special norm in relation to art. 215 of the Penal Code, which constitutes the general norm, being applicable exclusively the special norm.*" This decision is important because it stipulates a principle of specialty between the two offences, and considers the provision from misrepresentation as the general law[13], meantime computer fraud as special provision.

Furthermore, in other caselaw, based on the principle stated above, one of most good explained reasoning can be found in the decision no. 88 from 03rd of April 2018 issues by Medias City Court[14]. In this file the court received a request from the defense to change of the legal classification of the offence from the crime of computer fraud as regulated by art. 249 of the Criminal Code in the crime of misrepresentation provided by art. 244 paragraph 2 of the same code. The court considered "*act of placing advertisements on the sale of certain products which the alleged seller does not own or does not display for sale for the real purpose of alienating them, meets the constituent elements of the crime of deception, including a modern variant, adapted to the current context of the development of trade documents in electronic form; the use of its own computer system to place those sales offers, without entering, modifying or deleting the computer data, restricting access to this data or preventing in any way the operation of a computer system belonging to another person, could not represents something other than a fraudulent means of committing the crime of deception, incriminated in the aggravated form in paragraph (2) of art.244 C. pen*". The decision is correct since misrepresentation is carried out through electronic means of perpetration.

However, the two offences can be concurrent offence in case when the fraudulent means as stipu-

[10] The perpetrators of deception – misrepresentation have to demonstrate a special capacity for persuasion, meantime the perpetrator of computer fraud must have IT/computer skills. Practically the consent of the victim in affected and is considered no longer valid both. Also, in Civil Law we have deception as a vice of consent (for details of this institution in Romania please see: F. Morozan, *Drept Civil, partea generală,* University of Oradea Publishing House, 2014, p. 174–175).

[11] Norel Neagu, *Fraude comise prin sisteme informatice și mijloace de plată electronice – variante speciale ale infracțiunii de înșelăciune?* in Revista Română de Drept Penal al Afacerilor nr. 3/2019; Universul Juridic Premium nr. 2/2020.

[12] Available at: https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=83717, last accessed at 14.03.2021.

[13] Misrepresentation could be also the "general law" in cases of intelectual property violations, for details please see: Cristian Miheș, Carmen Oana Mihăilă, *A Few Considerations Regarding the Criminal Protection of Intellectual Property,* The Journal of Faculty of Law Oradea, issue 2/2018, p. 38.

[14] Available at: http://www.rolii.ro/hotarari/5ad5ead1e49009401f00003b; last accessed at 14.03.2021.

lated under the second paragraph of article 244 could be classified a computer fraud. In this perspective, the courts should look very closely to the relation between the two offences in order to make the best decision within each particular file.

In this respect, we mention the decision no. 88/2014[15] issued by Vâlcea County Tribunal where the court sentenced the perpetrator for committing a multiple offence – misrepresentation (author) and computer fraud (accessory): *"The deeds committed by the defendant DC, consisting in the fact that he knowingly joined an organized criminal group, supporting one of the members of the group, repeatedly and on the basis of the same criminal resolution, between January and April 2009, to carry out the activities of deception consisting in misleading fraudulent transactions on the Internet, of the foreign nationals referred to, by opening in his name a bank account in which the victims were instructed to transfer the value of the goods subject to the transactions, as well as facilitating the appropriation by MV of the unjust material use, consisting in taking from the account these sums which, after deducting the agreed percentage, he handed over to the perpetrator of the above mentioned facts, meet the constitutive elements of the crimes continued by complicity in the crime of misrepresentation in conventions and of accessory in the crime of computer fraud and in ideal competition."* In the findings the court considered the computer fraud the means to perpetrate the misrepresentation.

In other case, decision no. 160/2020 Prahova County Tribunal the court ruled that the misrepresentation was carried out through forgery and not computer fraud, since the perpetrator falsified the documents as regarding the property documents as well as identity documents: *"based on a prior agreement, on 16.12.2015 he handed over to the defendant a forged identity document with the identity data of P and the photo of the suspect to collect the amount of 1931 euros from the exchange agency. The defendant signed the form attesting to the withdrawal of money on behalf of P and gave the amount raised to G, stopping a 10% commission. After receiving the amount, the defendant stopped a 10% commission, sending the difference to the person who had posted the ad. The money raised came from a computer fraud committed by another person, who had posted an advertisement on the Internet selling a Skoda car even though he had no right to the property."* although, initially the charge was computer fraud as well as forgery, the final decision was to change the classification into misrepresentation – and since there was a mediation and a conciliation with the victim as a result the perpetrator was convicted only for forgery.

b) the condition of obtaining undue material advantages for oneself or for another is present, although the wording is a little different, also in the legal text of computer fraud. It is important for both offences that the perpetrator to obtain a benefit for himself or for another person. Still, if we look closely, there is a slight difference – in case of computer fraud the legal text is referring to material benefit, and in case of misrepresentation the expression used by the law is "undue patrimonial damage". It could happen that the damage caused by the computer fraud could refer to a benefit that is not contrary to the law, for example when that person did does have the right to obtain the benefit, but she/he did not exercise that right, and through computer fraud the perpetrator activates that benefit.

c) the condition of causing a damage is identical for both offences, and most of the doctrine considers that the legal text refers to material damage. But, in our opinion, we cannot exclude *de plano* also non-material damages such as moral damages as a secondary social value that is affected. In this case since still we have to have also material damage, otherwise we cannot talk about an offence against the property.

As regarding the subject element both offence must carried out with intent, and the purpose should be "present" in the perpetrator s mind, since both legal texts require that the act must be performed in order to obtain material advantages for oneself or for another.

Finally, we have to underline other category of differences referring to the sanctioning conditions stipulated by the law. There are certain differences, misrepresentation in sanctioned with imprisonment from 6 mounts to 3 years in basic form and from 1 year to 5 year in case of aggravated form; meantime computer fraud is sanctioned with imprisonment from 2 to 7 years. Also, in cases of misrepresentation, there is the possibility that reconciliation removes criminal liability, and this institution is used very common the judicial practice, especially when the damage is recuperated. On the other hand, computer fraud is investigated by special body from prosecutor's office, that also investigates organized crime and terrorism.

The conclusion of the paper would be that both offences have similar features since the legislator aimed to protect the property. But, we have to pay attention to the reasoning of the law, and to classify in a correct manner the act perpetrated using computer systems or involving digital data. Not in all cases when computer systems or digital data are used the offence is a computer fraud. Also, we have to bear in mind the possibility of multiple offence – misrepresentation and computer fraud, especially when misrepresentation is carried out using fraudulent means.

[15] Available at: http://www.rolii.ro/hotarari/599ea517e49009042d0009ce, last accessed at 14.03.2021.

DR. MELÁNIA NAGY

Radicalization of children soldiers[1]

Abstract[1]

In the context of this study, I examine the strategy of the Islamic State terrorist organization in the process of radicalization of children. In this paper, I examine the segment of the organization's operation, how to include the little ones among the members of their armies, and look for the answer to what warrior activity leaves, traces physically and mentally in children, and whether reintegration succeeds. A number of programs are working to achieve this goal effectively, including the United Nations DDR (Disarmament, Demobilization, Reintegration) programs. In connection with the study, I summarize the peculiarities of the system.

1. Introduction

The tools and areas of radicalization have changed enormously in recent decades, driven by technological advances. Initially, the framework for this was provided by religious sites, i.e. various mosques, "cultural institutes". Examples include the mosque in London-based Finsbury Park or the Hamburg al-Kudx (Taiba) Mosque, where the perpetrators of the 9/11 attacks also visited countless times. Closely related to the mosques were the imams idolized as a charismatic religious leader preaching there, who were also involved in the recruitment of extremists. However, the role of mosques has declined significantly in recent years. The site was mostly relocated to its prison walls (Camp Bucca), where individuals professing extreme dogmas were able to provide support to the broken prisoners. The radicals also surrounded universities as a venue for advertising their ideas, leading them to reach out to very young people. Many, after graduating, traveled to terrorist organizations to receive the necessary training. It can be seen that the main religious converts are not only the imams, but also the members themselves, and the easiest way to reach targets on the Internet is thus becoming the main radicalization scene in recent years. [2] And here the younger generation lives , including teenage youth, but today it is quite common for 7-8 year olds to also exist in computer space. ISIS has also developed its own computer game-based technique in a matter of seconds, using Grand Theft Auto V in its videos to spread its own ideas and recruit.[3]

2. The process of the indoctrination

Radicalization is not a new phenomenon. It can be found in all ages and continents, from the biblical ages, through the early days of colonization to the present day. Suffice it to mention the Bar-Kohba uprising i. s. Between 132 and 135, or José Gabriel Tupac Amaru led an uprising against the Spaniards between 1778 and 1783. Of the radicals of later ages, noteworthy are the Russian anarchists, the "Narodniks," who attempted to assassinate with a firearm four times. Against Tsar Alexander, whose life was eventually extinguished by the Polish Ignacy Hryniewiecki in 1881 with a bombing. And examples of 20th century radicalization could be listed continuously: Fidel Castro, Ernesto Che Guevara. The leaders of the Red Army Faction (RAF), Gudrun Esslin, Andreas Baader, Ulrike Meinhof, the founders of the Red Brigades (BR), Renato Curcio and his wife, Margherita Cagol, and Alberto Franceschini, the Army of the Republic of Ireland (IRA), the Basque Country and Freedom (Euskadi ta Askatasuna) and political branch of the Batasuna Party, etc.[4]

[1] The study "was prepared with the professional support of the New National Excellence Program of the Ministry of Innovation and Technology, code number ÚNKP-20-4-I-PTE-580, financed from the National Research, Development and Innovation Fund. A tanulmány „Az Innovációs és Technológiai Minisztérium ÚNKP-20-4-I-PTE-580 kódszámú Új Nemzeti Kiválóság Programjának a Nemzeti Kutatási, Fejlesztési és Innovációs Alapból finanszírozott szakmai támogatásával készült."

[2] Répási Krisztián: Európa az iszlamista terrorizmus árnyékában. Hadtudományi Szemle, 2013/1.

[3] Révész Béla: A gyermekek háborúja https://honvedelem.hu/hatter/biztonsagpolitika/gyerekek-haboruja.html (2021.01.12.)

[4] Bács Zoltán György: A radikalizáció és a terrorizmus kapcsolata, egyes

Right at the beginning, the question arises: how can one be recognized when one enters the path of radicalization in connection with extremist religious ideas? Research shows that there are certain signs that show up at the beginning of the process. Among other things, he begins to change his lifestyle, personality, appearance, which is noticed only by those who closely follow the life of the individual. The first signs include:

– isolation from others,
– leaving the usual places,
– rejection of alcohol and non-Muslim celebrations and forms of entertainment,
– refusal to celebrate birthdays (since the full conversion to Islam is the date of rebirth),
– contempt for Western customs and clothing
– rejecting music while listening to the lyrics of wandering imams.[5]

However, the physical transformations are also very spectacular. Men appear to be wearing beards, modest and neutral colored clothes, refusing to wear silk shirts or gold items, and removing any previous tattoos.

For women: the clothing is completely transformed, the former feminine pieces are replaced by the closed clothes for example jador (women's clothing covering the whole body) the complete refusal to use makeup.

Among the new habits, it should be emphasized that they only eat with the right hand, hot food cannot be blown, the consumption of unclean food becomes forbidden. Special cosmetics and soaps that contain alcohol or are of animal origin are rejected. Physical contact with other sexes, borrowing of money become forbidden and stricter adherence to the provisions of the Qur'an (e.g., washing hands before touching the Qur'an).[6] Sometimes too clear signs of radicalization are deliberately hidden by martyrs preparing for martyrdom. He keeps it a secret from his surroundings and follows a Western lifestyle, consuming alcohol.

Many researchers emphasize that the internet and various social media interfaces are indeed effective tools in the beginning of the radicalization process (contact, encouragement, information videos), but in order for these messages to lead to a successful recruitment, this requires a receptive to an individual who is able to embark on the path of radicalization. This is supported by the fact that foreign fighters mostly come to the organization in groups and these groups prove to be friendly communities, and there are a number of geographical points where the connection rate is exceptionally high (Molenbeek district, Brussels) [7]

„According to a study in the United States focusing on the role of cultural identity in the process of radicalization, it can lead to isolation and a sense of insignificance if a particular immigrant cannot identify with the culture in which he or she lives," researchers called the phenomenon „cultural homelessness." Isolation The lack of belonging is exploited by the leaders of terrorist groups in the process of radicalization. The study looked at the experiences of 198 respondents with a Muslim background and also addressed the issue that possible negative experiences associated with isolation (such as discrimination, feelings of humiliation or job loss) could further facilitate the process of by accepting a radical and violent ideology, it finds its purpose in life. Other researchers view that in times of uncertainty and tension, an individual tends to identify with the segment of his or her identity that he or she feels most vulnerable to. This is also an important aspect for understanding some second- and third-generation immigrants. Not to be overlooked is the fact that Europe's Muslim population is constantly growing and that their average age is younger than that of ‚indigenous' European citizens, there is an urgent need to examine the issue of immigrant identity among both European Muslim and host communities. This is also essential because finding a balance between inherited religious and / or ethnic identity within Muslim families – the primary loyalty to the issuing community – and the values and way of life of the host society can lead to failures and frustration from time to time.[8]

Real spatial and internet propaganda promotes, and can promote radicalization in those whose personalities and emotions tend to do so, the value of injustices in their lives that they have suffered because of their racial, religious, national or ethnic affiliation.

The result of a vicious circle is xenophobia and radicalization, all of which are prerequisites or mediums for each other.

The reasons for becoming a terrorist cannot be traced back to a single cause. There may be types or typical situations that help you understand this complex process.

A person's political, religious, social, national and other grievances, „injustices" together with his personal – internal, spiritual – qualities (wanting to be a hero, struggling with a narcissistic personality or mental problem) are integrated into his psyche and this is the basis for his decision.

formái, gondolatok a megelőzés lehetséges perspektíváiról. Nemzetbiztonsági Szemle, 2017/ 5., 5. o.

[5] Szabó Tibor: Az „új terrorista" lélektana és a védekezés módszertana. Valóság, 2016/10. 12. o. https://peacekeeping.un.org/en/disarmament-demobilization-and-reintegration (2021.01.10.).

[6] Szabó Tibor: 2016/10. i. m. 12. o. https://peacekeeping.un.org/en/disarmament-demobilization-and-reintegration (2021.01.10.).

[7] Jasko, Katarzyna – Kruglanski, Arie W. – Hassan, Ahmad – Gunaratha, Rohan: ISIS: Its History, Ideology and Psychology. In: Woodward, Mark – Lukens-Bull, Ronald (eds.) Handbook of Contemporary Islam and Muslim Lives. Springer International Publishing, 2018.

[8] Horváth-Sánta, Hanga: Radicalization into Salafi Jihadism: Some Patterns and Profiles in Europe 2015–2017. Defence Review, 2017/2. 26–44.

A similar view of radicalization is the study of Fathali Moghaddam (Georgetown University, USA), which identified the path to this in 6 steps:

– the first step is to look for the relative deprivation that characterizes the person's life in the individual's individual social environment,

– the second step is for the individual to seek his or her truth;

– the third step is for the person to start recognizing the groups, countries responsible for the injustice and to consider an aggressive response,

– the fourth step is to identify oneself with the morals of terrorists, which justifies violence in order to end injustice,

– the fifth step is to fix the opposition between us and them in the person and join a terrorist organization, and

– the last, sixth step, the commission of a terrorist act.[9]

The role of the Internet is particularly evident between the second and fourth steps.

A person can easily find information and websites on the Internet to echo their "injustice," their grievance. You can find people or groups who have the same opinion, the same grievances.

Moreover, the Internet, with its system of communication tools, also provides an opportunity for the convert to carry out his or her spiritually convincing, persuasive activities, regardless of geographical distance.

The convert can send the documents in text form and can impress the user through online chat.

It is worth recalling Marc Sagerman's view of radicalization, his study focusing specifically on a broad interpretation of Islam. It sets out four conditions in this regard:

– religious outrage,

– the Western war against Islam,

– resonance with personal experience, and

– mobilization of networks.[10]

In practice, al-Qaeda, which was also extremely effective before the terrorist organization Islamic State, established the principle of "action-retaliation-action". The creator of this was Osama bin Laden, who consciously incited external resistance, that is, in fact, consciously provoked the "unbelievers" and the United States, which was seen as their leader. He sought to create a situation in which the "infidels" responded to the assassinations with an overreaction, provoking outrage and radicalization (and triggering a further wave of fundamentalist volunteers) in hitherto peaceful Muslim communities. Another element of the principle was that it is only necessary to have a control center in the beginning, because later the organization will become self-sustaining and self-stimulating. [11]

The movement may find it difficult to succeed without outside sponsors. In this case, under external sponsors, active believers living in different countries of the world are to be considered. Who are already carrying out assassinations on behalf of the Islamic State without the direct involvement of the main governing body. György Zoltán Bács divides people who are more exposed to radicalization into two groups, and one group clearly becomes a terrorist as a means of escaping from a system of complex problems resulting from social difficulties. It states that "social injustices, inequalities, the dogma of religious intolerance, cultural incompatibility and illiteracy as raw materials will be added to the' factory 'of society, exclusion, frustration and marginalization will be added to the' production line 'as catalysis. from this is born the social end product, radicalization itself. Its end users are terrorist organizations. [12]

But what about children? How do boys and girls aged 6-7 become child soldiers?

3. Indoctrination and reintegration of child soldiers

In the case of radicalized young people, we must also distinguish between two groups:

– on the one hand, minors from the West (there is a difference between children arriving on their own and young people coming here with their families), and

– among children living in crisis areas.

The way recruitment and thus radicalization will be completely different. Because of the distance, you can reach sympathizers from the West primarily on the Internet. While you can do both physical and mental training with the child living on site.

It employs a well-established "routine" procedure when occupying new areas of ISIS. As part of this, male members of the community will be killed, women and young girls will be victims of sexual violence, and women deemed older will also be executed. And the very tiny boys are taken to re-education camps, where they are subjected to a program-

[9] Mealer Micheal: Internet Radicalization: Actual Threat or Phantom Menace. US Government, Department of Defense, Naval Postgraduate School, Monterey, 2012.

[10] Mealer Micheal: Internet Radicalization: Actual Threat or Phantom Menace. US Government, Department of Defense, Naval Postgraduate School, Monterey, 2012.

[11] Béres János: A modern iszlám fundamentalizmus gyökerei és az al-Kaida. Felderítő Szemle, 2006/V. 152. o.

[12] Bács Zoltán György: A radikalizáció és a terrorizmus kapcsolata, egyes formái, gondolatok a megelőzés lehetséges perspektíváiról. Nemzetbiztonsági Szemle, 2017/ 5., 5. o.

matic brainwashing.[13] The situation with radicalization is different in children than in adults. The younger a little girl or boy is, the easier it is for a group leader to promote an extreme idea. Young people have a completely different sense of fear, they do not feel the consequences of the weight of their actions, but they are also much easier to influence. All they need is a charismatic individual to look up to, who they are somewhat afraid of, knowing that they alone are not yet able to control their lives. Normally, this role is mostly performed by the father and mother of the pups, however, in societies where close ties between seedlings and their parents cannot be established, they are easily replaced by the leader of the religious leader or terrorist organization. At an early age, even the community has a huge role to play, as it is typical at this age to imitate and follow each other in carrying out various activities. So if one of your buddies is a terrorist, your comrades will join him soon.[14] Similarly, Ed Husain puts it "the community of a young child determines its whole destiny"[15]

It is not uncommon in Africa to have 6-7 children in a family. Everyone has their own job to do and responsibility. Dad asks for that as well. This system is easily transferred to perform the tasks expected in the army. [16]After the conscription of minors, they may not find their previous life. They do not recognize their parents, their place of birth, and in extreme cases they do not even remember their own names. The reason for this is, among other things, complete mental transformation, indoctrination by the method of mantras. They repeat ten times, a hundred times, a thousand times the same extreme ideas that their group leaders demand. This can result in a very severe loss of identity over many years. Another source of the problem is that the fixation of dogmatic foundations alone does not involve the loss of total memory, so it is likely that children are under the influence of various mind-altering agents from the beginning to the end of the process. The list of drugs used for infants varies widely. They also chain young people to themselves by using these agents. For example, cocaine has an effect that makes the little girl, little boy, feel good and she will think she is in the right place here as she is in a great mood. Calming agents help to overcome resistance, as not everyone will immediately be a humble soldier who can kill people without thinking. The passage of time on these military bases plays a major role. Participation that lasts for several years can have even irreversible consequences in the life of the little one. They are attacked during an extremely receptive period, and they are best suited to a deep feed of extreme dogmas. They are educated that aggression, violence is not anti-norm, but an accepted ordinary behavior that is difficult to shape later.[17] They show young people videos about the execution of killings, there is no doubt that their method of radicalization is effective, as after a certain time they are able to kill on behalf of ISIS without hesitation. [18]

DDR (Disarmament, Demobilization, Reintegration) programs have been set up to reintegrate young people. The program is nothing more than: „The dismantling, disarmament and reintegration will lay the foundation for the protection and maintenance of the communities to which these individuals return, while building the capacity for long-term peace, security and development." In situations where it is too early or impossible to carry out a DDR program, the UN supports community-based violence reduction activities that create the right conditions for political processes to advance and for the disbandment of armed groups.[19]

It may take weeks, months or even years to participate in this program to highlight young people. As a result of the struggles, their socialization remained at a very low level, so teaching basic tasks such as. sending a letter is also required. Due to the events experienced, young people experience post-traumatic stress disorder (PTSD).[20]

The basic symptoms of PTSD, such as intrusive symptoms (flashback, nightmares), withdrawal symptoms (avoidance of trauma-like people, places), and symptoms associated with increased wakefulness (sleep disturbance, irritability, difficulty concentrating) result in severe disability and other gloomy symptoms. anxiety disorders, drug and alcohol dependence may further increase the burden of the disease. „[21] In Western society, this is an extremely rare disease in children, and it is difficult to treat. It can occur up to months after experiencing trauma, when the person concerned sees the events that have happened before their eyes as if they had happened again and again. As a result comes shame, guilt that after a while becomes un-

[13] Révész Béla: A gyermekek háborúja https://honvedelem.hu/hatter/biztonsagpolitika/gyerekek-haboruja.html (2021.01.12.).

[14] Könczöl Zsófia: Gyermekkatonák – egy pszichológus szemével, 2015 https://honvedelem.hu/hatter/biztonsagpolitika/gyermekkatonak-egy-pszichologus-szemevel.html (2021.01.12.).

[15] Princz Orsolya: Terrorszervezetek toborzási tevékenysége áttekintő elemzés az al-Kaida és az ISIS módszerei alapján. http://publikaciok.lib.uni-corvinus.hu/publikus/szd/Princz_Orsolya.pdf (2021.01.13.).

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[19] https://www.surreycc.gov.uk/people-and-community/families/support-and-advice/keeping-your-family-safe/radicalisation (2021.01.14.).

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[21] Marténi Ferenc: A poszttraumás stressz-betegség. Tünetek, neurobiológia és gyógyszeres terápiák https://mptpszichiatria.hu/folyoirat.aspx?web_id=&tmi=0&f=1&an=935.

bearable. Rehabilitation for these young people is different in each case, completely individual, therefore special attention should be paid to the follow-up period after the end of the program. Child victims with a kinship are in a better position. There, there is a greater chance of being brought back into a successful society. It is important that the building of trust is gradual, which you can rely on later in reintegration.

One of the most effective tools for recruitment is the web interface, so various strategies have emerged to reduce its effectiveness. JIGSAW, a Google subsidiary, came up with an idea that targeted young people who support ISIS. The idea is very simple. If Google's user-monitoring robots detect someone's interest in the organization's videos and content, they will rank the deterrent videos that represent the true image of ISIS at the top of the search engine results list.[22]

There have also been a number of trends in the UK for early detection of the radicalization process. To help parents, websites specialize in recognizing radicalized children. It is explained that children may be more susceptible to extreme ideas who:

– struggle with their identity

– live separately from peer groups or UK culture

– a traumatic event hit them

their self – esteem is low, or

– they live in family tensions.[23]

Attention is drawn to various signs, some of which may be typical of teenagers, but it is worth being vigilant:

– willing to listen to those who have a different point of view

– conversion to a new religion, which also means rejecting friends and the activities they enjoy

– Spends a lot of time online or on the phone and keeps a secret of what he does

– have multiple profiles on social media, use their own name or pseudonyms to share extreme views

– the support or sympathy for groups with extremist political or religious views who encourage illegal or violent acts.

– joining or seeking to join extremist organizations.[24]

The facts can be seen that the radicalization of children in the online space is already a current problem in many Central European countries, so it is not inconceivable that there will be a trend in Hungary as well.

[22] Révész Béla: A gyermekek háborúja https://honvedelem.hu/hatter/biztonsagpolitika/gyerekek-haboruja.html (2021.01.12.).

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4. Conclusions

The biggest problem with the phenomenon of child soldiers is that in societies where a large number of minors go to war, there is a strong fear that in the future, based on patterns learned in childhood, it will necessarily reproduce the factors that it has the victim. Put simply, „where the little ones are harassed, exploited and killed, the children will do nothing but harass, exploit, kill others."

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Dr. Laura Répássyné Dr. Német

Die Vergangenheit, Gegenwart und Zukunft der Jugendstrafrechtspflege, die Rolle der Studie des Jugendjuristen bei der Verurteilung, weitere Wege der Jugendgerichtsbarkeit

Wenn eine komplexe, aber nur ein enges Segment betreffende Studie durchgeführt wird, ist es wichtig, mit den Grundlagen zu beginnen, d.h. in diesem Fall, wer die Jugendlichen sind und was die Einwilligungs- und Schuldfähigkeit bedeutet, die ihre Kriminalität bestimmt. Die detaillierte Darstellung dieser Rechtsinstitutionen wurde bereits von vielen Forschern und Strafverfolgungsbehörden durchgeführt, und es steht eine beträchtliche Menge an Literatur zur Verfügung. Basierend auf dieser Idee möchte ich nur die wichtigsten Momente der internationalen und nationalen Rechtsentwicklung wiederbeleben. Ich tue dies nur, um die Momente der Gesetzgebung zu verstehen und die weiteren Schritte der Gesetzgebung zu bestimmen.

1. Internationaler Ausblick

Nach dem Zweiten Weltkrieg und dem Regimewechsel wurde Ungarn Mitglied mehrerer internationaler Organisationen, darunter am 14. Dezember 1955 Mitglied der Vereinten Nationen, am 6. November1990 des Europarates und am 1. Mai 2004 der Europäischen Union. Als Mitglied dieser internationalen Organisationen hat Ungarn nicht nur Rechte, sondern auch Pflichten erworben. Empfehlungen, Richtlinien und Grundsätze internationaler Organisationen dienen als Grundlage für die Gesetzgebung und die Anwendung von Gesetzen, sie haben auch früher dazu gedient und können auch jetzt dazu dienen.

1.1. Vereinten Nationen

1.1.1. 1985 – „Beijing-Regeln”

Die von der Generalversammlung der Vereinten Nationen angenommene Rahmenbedingen für die Jugendgerichtsbarkeit aus dem Jahr 1985, auch „Beijing-Regeln“ genannt, sind eine Reihe von Regeln, die Standards für die Verwaltung der Jugendgerichtsbarkeit, insbesondere für die Behandlung jugendlicher Straftäter, festlegen.[1]

Nach diesen Regeln muss eine Jugendgerichtsbarkeit „fair und human” sein, so dass die Reaktionen auf jugendliche Straftäter immer im Verhältnis zu den von ihnen begangenen Straftaten sowie zu persönlichen Situationen stehen müssen. Insbesondere unter Hinweis darauf, dass es einem Kind schwerer fällt, die moralischen und psychologischen Folgen der strafrechtlichen Verantwortung zu tragen, empfiehlt dieser Text spezifische Richtlinien für seine Behandlung.

„17. Leitgrundsätze für die (richterlichen) Entscheidungen und die nachfolgenden Maßnahmen

17.1.Für die Entscheidung durch die zuständige Instanz gelten folgende Grundsätze

a) Die Reaktion hat stets in einem angemessenen Verhältnis nicht nur zu den Umständen und der Schwere der Tat, sondern auch zu den Umständen und den Bedürfnissen des Jugendlichen wie auch zu den Bedürfnissen der Gesellschaft zu stehen;

b) Einschränkungen der persönlichen Freiheit des Jugendlichen werden nur nach sorgfältiger Prüfung angeordnet und sind auf ein Mindestmaß zu beschränken;

c) Freiheitsentzug wird nur angeordnet, wenn der Jugendliche einer schweren Gewalttat gegen eine

[1] Lévai Miklós: A fiatalkorúak igazságszolgáltatási rendszerére vonatkozó ENSZ minimum szabályok: a „Pekingi szabályok” – Jogtudományi Közlöny 1989. december 12. szám 664-668. old. http://real-j.mtak.hu/2251/1/JogtudomanyiKozlony_1989.pdf. http://real-j.mtak.hu/mwg-internal/de5fs23hu73ds/progress?id=FWHfg0rfWC2IipRfo5BvBjAjj4MtcJI2eZNDgGVAY5g,&dl.

andere Person oder wiederholter anderer schwerer Straftaten für schuldig befunden worden ist und keine anderen angemessenen Lösungen zur Verfügung stehen;

d) Bei der Würdigung des Falles ist das Wohl des Jugendlichen das ausschlaggebende Kriterium.

17.2.Die Todesstrafe darf für strafbare Handlungen, die von Jugendlichen begangen worden sind, nicht verhängt werden.

17.3.Körperliche Züchtigung ist bei Jugendlichen unzulässig.

17.4. Die zuständige Instanz kann das Verfahren jederzeit einstellen."

1.1.2. UN-Kinderrechtskonvention[2]

Konvention über die Rechte des Kindes, kurz UN-Kinderrechtskonvention (englisch *Convention on the Rights of the Child*), wurde am 20. November 1989 von der UN-Generalversammlung angenommen und trat am 2. September 1990, dreißig Tage nach der 20. Ratifizierung durch ein Mitgliedsland, in Kraft.

Der Konvent wurde vom ungarischen Parlament gemäß dem Gesetz LXIV. von 1991. gesetzlich verkündet und somit in nationales Recht aufgenommen. Das Gesetz trat am Tag seiner Verkündung in Kraft, seine Bestimmungen gelten jedoch ab dem 6. November 1991 in Ungarn.

Die Kinderrechtskonvention basiert auf 4 Grundprinzipien:

Neben der „Allgemeinen Erklärung der Menschenrechte" stellt die UN-Kinderrechtskonvention ein weiteres umfassendes, für alle Vertragsstaaten völkerrechtlich verbindliches Übereinkommen zum Schutz der Menschenrechte dar. In der Kinderrechtskonvention wird den speziellen Bedürfnissen der Kinder als besonders schutzbedürftige Gruppe Rechnung getragen. In 54 Artikeln werden darin jedem Kind (in der Kinderrechtskonvention werden alle Menschen unter 18 Jahren als „Kind" definiert) grundlegende politische, soziale, ökonomische, kulturelle und bürgerliche Rechte zugesichert. Damit wird erstmalig jedes Kind als selbstständiger Träger von Rechten anerkannt und respektiert.

- Diskriminierungsverbot: Alle Kinder haben die gleichen Rechte. Kein Kind darf – egal aus welchen Gründen (Hautfarbe, Herkunft, Staatsangehörigkeit, Sprache, Geschlecht, Religion, Behinderung, Vermögen der Eltern etc) – benachteiligt werden.
- Vorrang des Kindeswohls: Bei Entscheidungen, die Kinder betreffen, muss das Wohl des Kindes ein vorrangiges Kriterium sein.
- Entwicklung: Alle Kinder haben ein Recht auf Leben, Existenzsicherung und bestmögliche Entfaltungsmöglichkeiten.
- Beteiligung: Kinder sollen bei Entscheidungen, die sie selbst betreffen, angemessen eingebunden werden und ihre Meinung äußern können.

Die wichtigsten Bestimmungen des Übereinkommens zu diesem Thema sind in den Artikeln 37., 38. und 40. enthalten:

„Artikel 37: Verbot der Folter, der Todesstrafe, lebenslanger Freiheitsstrafe, Rechtsbeistandschaft

Die Vertragsstaaten stellen sicher,

a) dass kein Kind der Folter oder einer anderen grausamen, unmenschlichen oder erniedrigenden Behandlung oder Strafe unterworfen wird. Für Straftaten, die von Personen vor Vollendung des achtzehnten Lebensjahrs begangen worden sind, darf weder die Todesstrafe noch lebenslange Freiheitsstrafe ohne die Möglichkeit vorzeitiger Entlassung verhängt werden;

b) dass keinem Kind die Freiheit rechtswidrig oder willkürlich entzogen wird. Festnahme, Freiheitsentziehung oder Freiheitsstrafe darf bei einem Kind im Einklang mit dem Gesetz nur als letztes Mittel und für die kürzeste angemessene Zeit angewendet werden;

c) dass jedes Kind, dem die Freiheit entzogen ist, menschlich und mit Achtung vor der dem Menschen innewohnenden Würde und unter Berücksichtigung der Bedürfnisse von Personen seines Alters behandelt wird. Insbesondere ist jedes Kind, dem die Freiheit entzogen ist, von Erwachsenen zu trennen, sofern nicht ein anderes Vorgehen als dem Wohl des Kindes dienlich erachtet wird; jedes Kind hat das Recht, mit seiner Familie durch Briefwechsel und Besuche in Verbindung zu bleiben, sofern nicht außergewöhnliche Umstände vorliegen;

d) dass jedes Kind, dem die Freiheit entzogen ist, das Recht auf umgehenden Zugang zu einem rechtskundigen oder anderen geeigneten Beistand und das Recht hat, die Rechtmäßigkeit der Freiheitsentziehung bei einem Gericht oder einer anderen zuständigen, unabhängigen und unparteiischen Behörde anzufechten, sowie das Recht auf alsbaldige Entscheidung in einem solchen Verfahren.

Artikel 38: Schutz bei bewaffneten Konflikten; Einziehung zu den Streitkräften

(1) Die Vertragsstaaten verpflichten sich, die für sie verbindlichen Regeln des in bewaffneten Konflikten anwendbaren humanitären Völkerrechts, die für das Kind Bedeutung haben, zu beachten und für deren Beachtung zu sorgen.

(2) Die Vertragsstaaten treffen alle durchführbaren Maßnahmen, um sicherzustellen, dass Personen, die das fünfzehnte Lebensjahr noch nicht vollendet haben, nicht unmittelbar an Feindseligkeiten teilnehmen.

(3) Die Vertragsstaaten nehmen davon Abstand, Personen, die das fünfzehnte Lebensjahr noch nicht vollendet haben, zu ihren Streitkräften einzuziehen.

[2] https://unicef.hu/wp-content/uploads/2014/10/K%C3%A9zik%C3%B6nyv-a-gyermekjogi-egyezm%C3%A9ny-alkalmaz%C3%A1s%C3%A1hoz.pdf.

Werden Personen zu den Streitkräften eingezogen, die zwar das fünfzehnte, nicht aber das achtzehnte Lebensjahr vollendet haben, so bemühen sich die Vertragsstaaten, vorrangig die jeweils ältesten einzuziehen.

(4) Im Einklang mit ihren Verpflichtungen nach dem humanitären Völkerrecht, die Zivilbevölkerung in bewaffneten Konflikten zu schützen, treffen die Vertragsstaaten alle durchführbaren Maßnahmen, um sicherzustellen, dass von einem bewaffneten Konflikt betroffene Kinder geschützt und betreut werden.

Artikel 40: Behandlung des Kindes in Strafrecht und Strafverfahren

(1) Die Vertragsstaaten erkennen das Recht jedes Kindes an, das der Verletzung der Strafgesetze verdächtigt, beschuldigt oder überführt wird, in einer Weise behandelt zu werden, die das Gefühl des Kindes für die eigene Würde und den eigenen Wert fördert, seine Achtung vor den Menschenrechten und Grundfreiheiten anderer stärkt und das Alter des Kindes sowie die Notwendigkeit berücksichtigt, seine soziale Wiedereingliederung sowie die Übernahme einer konstruktiven Rolle in der Gesellschaft durch das Kind zu fördern.

(2) Zu diesem Zweck stellen die Vertragsstaaten unter Berücksichtigung der einschlägigen Bestimmungen internationaler Übereinkünfte insbesondere sicher,

a) dass kein Kind wegen Handlungen oder Unterlassungen, die zur Zeit ihrer Begehung nach innerstaatlichem Recht oder Völkerrecht nicht verboten waren, der Verletzung der Strafgesetze verdächtigt, beschuldigt oder überführt wird;

b) dass jedes Kind, das einer Verletzung der Strafgesetze verdächtigt oder beschuldigt wird, Anspruch auf folgende Mindestgarantien hat:

i) bis zum gesetzlichen Nachweis der Schuld als unschuldig zu gelten,

ii) unverzüglich und unmittelbar über die gegen das Kind erhobenen Beschuldigungen unterrichtet zu werden, gegebenenfalls durch seine Eltern oder seinen Vormund, und einen rechtskundigen oder anderen geeigneten Beistand zur Vorbereitung und Wahrnehmung seiner Verteidigung zu erhalten,

iii) seine Sache unverzüglich durch eine zuständige Behörde oder ein zuständiges Gericht, die unabhängig und unparteiisch sind, in einem fairen Verfahren entsprechend dem Gesetz entscheiden zu lassen, und zwar in Anwesenheit eines rechtskundigen oder anderen geeigneten Beistands sowie – sofern dies nicht insbesondere in Anbetracht des Alters oder der Lage des Kindes als seinem Wohl widersprechend angesehen wird – in Anwesenheit seiner Eltern oder seines Vormunds,

iv) nicht gezwungen zu werden, als Zeuge auszusagen oder sich schuldig zu bekennen, sowie die Belastungszeugen zu befragen oder befragen zu lassen und das Erscheinen und die Vernehmung der Entlastungszeugen unter gleichen Bedingungen zu erwirken,

v) wenn es einer Verletzung der Strafgesetze überführt ist, diese Entscheidung und alle als Folge davon verhängten Maßnahmen durch eine zuständige übergeordnete Behörde oder ein zuständiges höheres Gericht, die unabhängig und unparteiisch sind, entsprechend dem Gesetz nachprüfen zu lassen,

vi) die unentgeltliche Hinzuziehung eines Dolmetschers zu verlangen, wenn das Kind die Verhandlungssprache nicht versteht oder spricht,

vii) sein Privatleben in allen Verfahrensabschnitten voll geachtet zu sehen.

(3) Die Vertragsstaaten bemühen sich, den Erlass von Gesetzen sowie die Schaffung von Verfahren, Behörden und Einrichtungen zu fördern, die besonders für Kinder, die einer Verletzung der Strafgesetze verdächtigt, beschuldigt oder überführt werden, gelten oder zuständig sind; insbesondere

a) legen sie ein Mindestalter fest, das ein Kind erreicht haben muss, um als strafmündig angesehen zu werden,

b) treffen sie, soweit dies angemessen und wünschenswert ist, Maßnahmen, um den Fall ohne ein gerichtliches Verfahren zu regeln, wobei jedoch die Menschenrechte und die Rechtsgarantien un-eingeschränkt beachtet werden müssen.

(4) Um sicherzustellen, dass Kinder in einer Weise behandelt werden, die ihrem Wohl dienlich ist und ihren Umständen sowie der Straftat entspricht, muss eine Vielzahl von Vorkehrungen zur Verfügung stehen, wie Anordnungen über Betreuung, Anleitung und Aufsicht, wie Beratung, Entlassung auf Bewährung, Aufnahme in eine Pflegefamilie, Bildungs- und Berufsbildungsprogramme und andere Alternativen zur Heimerziehung."

Die Überwachung der Umsetzung des Übereinkommens wird vom Ausschuss für die Rechte des Kindes durchgeführt, der die Fortschritte der Vertragsstaaten bei der Erfüllung ihrer Verpflichtungen aus dem Übereinkommen überprüft. Jeder Vertragsstaat ist verpflichtet, gemäß Artikel 44. des Übereinkommens einen Bericht zu erstatten.[3]

„Artikel 44.

(1) Die Vertragsstaaten verpflichten sich, dem Ausschuss über den Generalsekretär der Vereinten Nationen Berichte über die Maßnahmen, die sie zur Verwirklichung der in diesem Übereinkommen anerkannten Rechte getroffen haben, und über die dabei erzielten Fortschritte vorzulegen, und zwar: a) innerhalb von zwei Jahren nach Inkrafttreten des Übereinkommens für den betreffenden Vertragsstaat, b) danach alle fünf Jahre.

(2) In den nach diesem Artikel erstatteten Berichten ist auf etwa bestehende Umstände und Schwierigkeiten hinzuweisen, welche die Vertragsstaaten

[3] Család, gyermek és ifjúság 14/3. https://epa.oszk.hu/03400/03457/00045/pdf/EPA03457_csalad_2005_3_021-027.pdf.

daran hindern, die in diesem Übereinkommen vorgesehenen Verpflichtungen voll zu erfüllen. Die Berichte müssen auch ausreichende Angaben enthalten, die dem Ausschuss ein umfassendes Bild von der Durchführung des Übereinkommens in dem betreffenden Land vermitteln.

(3) Ein Vertragsstaat, der dem Ausschuss einen ersten umfassenden Bericht vorgelegt hat, braucht in seinen nach Absatz 1 Buchstabe b vorgelegten späteren Berichten die früher mitgeteilten grundlegenden Angaben nicht zu wiederholen.

(4) Der Ausschuss kann die Vertragsstaaten um weitere Angaben über die Durchführung des Übereinkommens ersuchen.

(5) Der Ausschuss legt der Generalversammlung über den Wirtschafts- und Sozialrat alle zwei Jahre einen Tätigkeitsbericht vor.

(6) Die Vertragsstaaten sorgen für eine weite Verbreitung ihrer Berichte im eigenen Land."

Die Regierung sendet daher einen Bericht an den Ausschuss für die Rechte des Kindes, in dem sowohl zivilgesellschaftliche Organisationen als auch Kinder die Möglichkeit haben, ihre Ansichten zu äußern. Die Berichte werden von einem internationalen Gremium unabhängiger Sachverständiger, dem sog. Ausschuss für die Rechte des Kindes, geprüft und es werden nach der Anhörung der zivilgesellschaftlichen Organisationen des Landes und anschließend der Regierung, Empfehlungen zur Verbesserung der Situation von Kindern in den Unterzeichnerländern formuliert. Die ungarische Regierung legte dem Ausschuss für die Rechte des Kindes zuerst 1998, 2006, dann 2014 und schließlich 2019 einen Bericht vor.[4]

Der jüngste Bericht der Regierung wurde von der Zivilen Koalition für die Rechte des Kindes unter Beteiligung von 18 Organisationen und einzelnen Experten erstellt. Demnach hat die Regierung seit dem letzten Bericht im Jahr 2014 weitere Änderungen im Bereich des Kinderschutzes und der Kinderrechte vorgenommen.[5] Viele dieser Maßnahmen sind zukunftsweisend, beispielsweise die EMMI-Protokolle zur Anerkennung und Bekämpfung von Missbrauch, zur Verschärfung des Strafgesetzbuchs bei der Sanktionierung von Gewalttaten gegen Kinder oder zur Änderung der Strafprozessordnung, um eine kindzentrierte Justiz zu erreichen. Er erkannte nicht nur die vielen positiven gesetzgeberischen Schritte an, sondern machte auch auf die Probleme des institutionellen Systems des Kinderschutzes sowie auf das Phänomen der Diskriminierung von Roma-Kindern und auf die territorialen Ungleichheiten in der Kindergesundheitsversorgung aufmerksam. Er hob die Probleme hervor, die sich aus den infrastrukturellen Mängeln des Kinderschutzsystems ergeben und die noch immer nicht wirksam angegangen wurden. Er beschwerte sich darüber, dass bisher kein nationaler Aktionsplan zur Sensibilisierung und wirksamen Umsetzung der Kinderrechte entwickelt worden sei.

Die UN-Kommission für die Rechte des Kindes hat am 13. Februar 2020 ihren Bericht über die Lage der Kinderrechte in Ungarn veröffentlicht.[6] Der Ausschuss stellte im Berichtszeitraum (2014-2019) in fast allen wichtigen Bereichen besorgniserregende Entwicklungen fest, darunter die Qualität der Gesetzgebung, Gewalt gegen Kinder, Diskriminierung, Bildung, Gesundheit und die Situation von behinderten Kindern, sowie die Lage der ihrer Freiheit beraubten und Asylsuchenden Kinder. Darüber hinaus enthält der Bericht eine Reihe von Forderungen nach wirksamer Einhaltung bereits bestehender Rechtsvorschriften und Gesetzesänderungen.

Der Ausschuss betonte, dass mehr als 200 Gesetzesänderungen in den letzten fünf Jahren die Rechte von Kindern beeinträchtigt haben, aber es gibt keinen Hinweis darauf, dass die Regierung versucht, das Wohl der Kinder zu berücksichtigen. Der Ausschuss betonte auch, dass der Kommissar für Grundrechte, das Büro des unterfinanzierten Ombudsmanns, nur einen Bruchteil der Haftanstalten mit Kindern hinter Gittern besuchte, nicht nur in Transitzonen, sondern auch in Justizvollzugsanstalten, Strafanstalten und Haftanstalten. Er widersprach, bei Kindern könnte der Freiheitsentzug anstelle von Inhaftierungen mit größerer Wahrscheinlichkeit zum Ziel führen, diese jedoch in der ungarischen Justiz nur selten eingesetzt werden. Die Sensibilität des Gesetzgebers für die Rechte des Kindes, die Erstellung geeigneter Folgenabschätzungen für die Rechte des Kindes, die angemessene Berücksichtigung des Wohls des Kindes und die Ausbildung von Richtern sind dabei von wesentlicher Bedeutung.

Kinder werden oft zum Opfer von Gewalttaten, daher ist es besonders wichtig, dass sie die Regierung mit besonderen Maßnahmen schützt. Polizei- und Gerichtsverhandlungen traumatisieren Kinder häufig erneut, das ist ein Problem, das mit dem Barnahus-Modell angegangen werden kann, der weit verbreitete Einsatz eines behördenübergreifenden Schutzmechanismus für sexuell belästigte oder missbrauchte Kinder. Der Bericht fordert Ungarn nachdrücklich auf, diese so bald wie möglich umzusetzen.

1.1.3. Havanna-Regeln

Die von der Generalversammlung der Vereinten Nationen angenommenen Regeln für den Schutz von

[4] https://unicef.hu/igy-segitunk/hireink/benyujtotta-magyarorszagrol-szolo-jelenteset-a-gyermekjogi-civil-koalicio-az-ensz-gyermekjogi-bizottsagahoz.

[5] Dr. Vaskuti András: A nemzetközi dokumentumokban megfogalmazott ajánlások érvényesülése a fiatalkorúak büntető igazságszolgáltatásában – Doktori értekezés 91.o. https://edit.elte.hu/xmlui/bitstream/handle/10831/32555/Disszertacio_VaskutiAndras_EDIT.pdf?sequence=1&amp%3BisAllowed=y.

[6] https://helsinkifigyelo.blog.hu/2020/02/24/hogyan_csatlakozik_a_gyermekbantalmazokhoz_a_magyar_allam.

Jugendlichen, denen ihre Freiheit entzogen ist aus dem Jahr 1990, auch „Havanna-Regeln" genannt, sind Regeln, die die Standards festlegen, die anzuwenden sind, wenn ein Kind von einer öffentlichen Justizbehörde festgehalten wird. Diese Regeln wurden in der Sitzung vom 14. Dezember 1990 mit Beschluss 45/113 verabschiedet.

In diesem Text wird argumentiert, dass der Freiheitsentzug eine Maßnahme des letzten Auswegs sein muss, die nur in Ausnahmefällen angeordnet werden kann. In diesem Zusammenhang wird in diesem Text ausführlich dargelegt, unter welchen Umständen einem Kind seine Freiheit genommen werden kann.Für den Fall, dass ein Freiheitsentzug unvermeidlich erscheint, legen diese Regeln dann sehr detaillierte Anweisungen fest.

1.1.4. Riad-Leitlinien

Resolution der Generalversammlung (45/112. Leitlinien der Vereinten Nationen für die Verhütung der Jugendkriminalität verabschiedet am 14. Dezember 1990).

In dem Dokument formulieren die Mitgliedstaaten Empfehlungen zum Schutz der Rechte und des Wohlergehens von Jugendlichen, um zu verhindern, dass Jugendliche zu Kriminellen werden, und heben das Verfahren der Sondergerichte sowie die Zusammenarbeit der in der Jugendgerichtsbarkeit tätigen Einrichtungen und Personen hervor.

Grundsätze enthalten die Punkte 1-6:

„1.Die Verhütung der Jugendkriminalität ist ein wesentlicher Bestandteil der Verbrechensverhütung in der Gesellschaft. Indem junge Menschen rechtmäßigen, für die Gesellschaft nützlichen Betätigungen nachgehen und eine humanistische Einstellung zur Gesellschaft und zum Leben nnehmen, können sie eine Geistes haltung entwickeln, die nicht kriminogen ist.

2. Die erfolgreiche Verhütung der Jugendkriminalität setzt Anstrengungen der gesamten Gesellschaft voraus, eine harmonische Entwicklung der Heranwachsenden zu gewährleisten, indem ihre Persönlichkeit von frühester Kindheit an geachtet und gefördert wird.

3. Bei der Auslegung dieser Leitlinien sollte im Mittelpunkt das Kind stehen. Junge Menschen sollten in der Gesellschaft eine aktive Rolle als Partner spielen und sollten nicht als bloße Objekte von Sozialisations – oder Kontrollmaßnahmen betrachtet werden.

4. Bei der Anwendung dieser Leitlinien in Übereinstimmung mit den einzelstaatlichen Rechtsordnungen sollte das Wohl der jungen Menschen von frühester Kindheit an den Mittelpunkt aller Präventions-programme bilden.

5. Die Notwendigkeit und Wichtigkeit progressiver, auf die Kriminalitätsverhütung abzielender Politiken und der systematischen Untersuchung und Ausarbeitung entsprechender Maßnahmen sollte anerkannt werden. Die Kriminalisierung und Pönalisierung von Kindern für Verhalten, das die Entwicklung des Kindes nicht nachhaltig beeinträchtigt und andere nicht schädigt, sollte dabei vermieden werden. Die entsprechenden Politiken und Maßnahmen sollten folgendes vorsehen:

a) Angebote, insbesondere im Bildungsbereich, die den unterschiedlichen Bedürfnissen der jungen Menschen gerecht werden und einen stützenden Rahmen abgeben, innerhalb dessen die persönliche Entfaltung aller jungen Menschen gesichert wird, insbesondere derjenigen, die nachweislich gefährdet sind oder soziale Risikofälle darstellen und besonderer Fürsorge und besonderen Schutzes bedürfen;

b) besondere Konzepte und Methoden zur Kriminalitätsverhütung, gestützt auf Gesetze, Verfahren, Institutionen, Einrichtungen und ein Netz von Diensten, deren Zielsetzung es ist, die Motivation, das Bedürfnis und die Gelegenheiten, gegen das Gesetz zu verstoßen, beziehungsweise die Bedingungen, die zu Gesetzesverstößen führen, zu verringern;

c) amtliches Eingreifen in erster Linie im allgemeinen Interesse des jungen Menschen und geleitet von Fairneß und Gerechtigkeit;

d) Schutz des Wohls, der Entfaltung, der Rechte und der Interessen aller jungen Menschen;

e) Berücksichtigung dessen, daß Verhaltensweisen junger Menschen, die nicht den allgemeinen sozialen Normen und Wertvorstellungen entsprechen, oft Teil des Reifungs- und Wachstumsprozesses sind und bei den meisten jungen Menschen mit dem Erwachsenwerden in der Regel von selbst aufhören;

f) Klarheit darüber, daß nach vorherrschender Expertenmeinung das Abstempeln junger Menschen als „abweichlerisch", „kriminell", oder „präkriminell" bei diesen oft zur Herausbildung beständiger unerwünschter Verhaltensmuster beiträgt.

6.Es sollten Gemeinwesendienste und -programme zur Verhütung der Jugend kriminalität entwickelt werden, insbesondere dort, wo bisher noch keine entsprechenden Einrichtungen bestehen. Formelle Einrichtungen der Sozialkontrolle sollten nur als letztes Mittel in Anspruch genommen werden."

Der Geltungsbereich der Leitlinien ist in den Punkten 7. und 8. festgelegt:

„7. Diese Leitlinien sollten im Gesamtzusammenhang mit der Allgemeinen Erklärung der Menschenrechte, dem Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte, dem Internationalen Pakt über bürgerliche und politische Rechte, der Erklärung der Rechte des Kindes und der Konvention über die Rechte des Kindes so wie im Kontext der Rahmenbestimmungen der Vereinten Nationen für die Jugendgerichtsbarkeit (Beijing -Regeln) sowie aller anderen die Rechte, die Interessen

und das Wohl aller Kinder und jungen Menschen berührenden Rechtsinstrumente und Normen ausgelegt und angewandt werden.

8. Die Leitlinien sollten außerdem im Kontext der in den einzelnen Mitgliedstaaten gegebenen wirtschaftlichen, sozialen und kulturellen Bedingungen angewandt werden.

1.1.5. Die Tokio-Regeln

Die Regeln wurden in der Resolution 45/110 der Generalversammlung der Vereinten Nationen vom 14. Dezember 1990 verabschiedet. Die Entscheidung betrifft die Möglichkeit einer alternativen Sanktion ohne Freiheitsentzug und die diesbezüglichen Grundsätze. Neben erwachsenen Straftätern hebt er den Kreis jugendlicher Straftäter hervor. Zusammen mit dem später formulierten Kommentar gilt es auch als Grundlage für Gesetzgebung und Strafverfolgung.

1.2. EU-Kommission 7

Die Europäische Menschenrechtskonvention (1950) unter der Schirmherrschaft des Europarates wurde 1993 verabschiedet. Die Europäische Sozialcharta (1961) wurde vom Parlament in Gesetz C von 1999 verkündet und wurde Teil der Anwendung des nationalen Rechts. Beide Dokumente enthalten eine Bestimmung zum Schutz der Kinderrechte, die als Grundlage für die Entwicklung weiterer Konventionen, Empfehlungen und Leitlinien diente.

1.2.1. Leitlinien des Ministerkomitees des Europarates für eine kindgerechte Justiz

(verabschiedet durch das Ministerkomitee des Europarates am 17. November 2010)

Kindgerechte Justiz während Gerichtsverfahren

– Recht auf Gehör und Meinungsäußerung

– Die Richter sollten das Recht der Kinder achten, in allen sie betreffenden Angelegenheiten gehört zu werden, zumindest jedoch dann, wenn davon ausgegangen werden kann, dass sie die jeweilige Angelegenheit ausreichend verstehen. Die dabei eingesetzten Mittel sollten an den Verständnisgrad des Kindes und an seine Fähigkeit zur Kommunikation und zur Berücksichtigung der Umstände des Falles angepasst sein. Kinder sollten gefragt werden, auf welche Weise sie gehört werden wollen.

– Den Ansichten und Meinungen des Kindes sollte ein seinem Alter und Reifegrad entsprechendes Gewicht beigemessen werden

– Das Recht des Kindes auf Gehör ist ein Recht und keine Pflicht des Kindes

– Einem Kind sollte die Anhörung nicht ausschließlich aufgrund seines Alters verwehrt werden. Wenn ein Kind in einem es betreffenden Fall aus eigenem Antrieb gehört werden will, sollte es der Richter nicht ablehnen, dessen Ansichten und Meinungen dazu anhören, es sei denn, das Wohl des Kindes verbietet dies.

– Kinder sollten alle erforderlichen Informationen darüber erhalten, wie sie ihr Recht auf Gehör wirkungsvoll ausüben können. Es sollte ihnen jedoch auch erklärt werden, dass ihr Recht auf Gehör und die Berücksichtigung ihrer Ansichten für die endgültige Entscheidung nicht unbedingt ausschlaggebend sind.

– Entscheidungen und Gerichtsurteile, die Kinder betreffen, sollten hinreichend begründet und den Kindern in einer Sprache erklärt werden, die sie verstehen. Dies gilt insbesondere für ntscheidungen, in denen entgegen den Ansichten und Meinungen des Kindes entschieden wurde.

Die spektakulärste Umsetzung in der Strafjustiz – auch vor Gericht – ist die Einrichtung von Verhörräumen für Kinder, die Einführung spezieller Befragungstechniken, sowie die Darstellung als „kindzentrierte“ Justiz im ungarischen Rechtsleben.

1.3. Europäische Union:

Die die Kinder betreffende Gesetzgebung der Institutionen der Europäischen Union wurde und wird in Übereinstimmung mit den Grundsätzen der Charta der Grundrechte der Europäischen Union und des Vertrags von Lissabon umgesetzt, die die Grundlage für Maßnahmen für Kinder bilden. Infolgedessen wurden eine Reihe von Richtlinien, Empfehlungen und Mitteilungen herausgegeben.[8]

Sie bieten den Mitgliedstaaten umfassende Leitlinien zur Kriminalprävention und zur Reform der Jugendgerichtsbarkeit. Reformbemühungen sind durch Prävention, Ablenkung, restorative Gerechtigkeit und den Einsatz alternativer Sanktionen gekennzeichnet. Die Dokumente machen einen auch auf die Bedeutung von Behörden mit besonderem Fachwissen und besonderen (unabhängigen) Gerichten aufmerksam. Es kann gesagt werden, dass der restorative Ansatz, das Ultima-Ratio-Wesen des Freiheitsentzugs, der Vorrang der Bildung vor der Bestrafung, die Verfahren mit der Teilnahme qualifizierter Fachkräfte in der internationalen und europäischen Strafjustiz bei Jugendlichen Priorität haben.[9]

[7] https://www.echr.coe.int/Documents/Handbook_rights_child_HUN.pdf.

[8] Az Európa Tanács Miniszteri Bizottságának iránymutatása a gyermekbarát igazságszolgáltatásról, „Építsük Európát a gyermekekért, a gyermekekkel” monográfia, 2012. https://rm.coe.int/16806a4541

[9] http://www.europarl.europa.eu/doceo/document/TA-6-2008-0012_HU.html.

2. Inländische Entwicklung des Jugendstrafrechts

Um die heutigen Vorschriften, sowie die Anwendung des Gesetzes zu verstehen, ist es wichtig zu wissen, wo und wie die Entwicklung des Gesetzes begann, wann die Vorkehrungen für die ersten Jugendlichen getroffen wurden, denn ohne Kenntnis der Vergangenheit können Gegenwart und Zukunft nicht aufgebaut werden.

2.1. Strafrechtliches materielles Recht

In der zweiten Hälfte des 19. Jahrhunderts trat in Nordamerika und Europa die Politik der „*sonderen Behandlung*“ auf, d.h. der Grundsatz, dass sich der Gesetzgeber nicht auf die Bestrafung von Jugendlichen konzentrierte, sondern auf ihre Bildung und andere besondere Präventionen.

Zum ersten Mal in der Entwicklung des ungarischen Rechts enthielt Artikel V. des Gesetzes von 1878, der Csemegi-Kodex, eine Bestimmung über Jugendliche, demnach die Untergrenze der strafrechtlichen Verantwortlichkeit im Alter von 12 Jahren festgelegt wurde, wonach eine Person zwischen 12 und 16 Jahren nicht strafbar war, wenn er keine Voraussicht hatte, seine Schuld zu erkennen.

Infolge der Kritik am Kodex hat der Gesetzartikel XXXVI. von 1908. (I. Sn.), die erste Strafnovelle unter anderem den Begriff des Jugendlichen (Personen zwischen 12 und 18 Jahren) definiert, sowie hat sie den präventiven Ansatz bei der Verurteilung Priorität gegeben und änderte das Haftungs- und Sanktionssystem des Csemegi-Kodex: zusätzlich zur Rechenschaftspflicht zeigte sich Diskretion, Betonung der Bildung statt Bestrafung, Einführung von Zurechtweisung, von bedingter Verurteilung, von Justizvollzugserziehung, sowie Nacherziehung für Täter, die die Strafmündigkeit nicht erreicht haben. Darüber hinaus konnte eine gerichtliche Maßnahme gegen diejenigen angewendet werden, die keine intellektuelle und moralische Entwicklung erreicht haben. Die obere Altersgrenze für Jugendliche betrug 18 Jahre, Erziehungsmaßnahmen für Jugendliche konnten als vorübergehende Maßnahme bis zum Alter von 20 Jahren verwendet werden, und ein System zum Schutz von Kindern und Jugendlichen wurde eingerichtet.

Eine wesentliche Regel vom Gesetzartikel XXI. von 1913 über gemeingefährliche Arbeitsvermeidung war, dass unabhängige Strafgerichte für Jugendliche eingerichtet wurden und das Gesetz auch das Verfahren vor dem neuen Gerichtsforum regelte. Nach seinen Bestimmungen war es nicht angebracht, einen Jugendlichen unter 18 Jahren z. B. in ein Arbeitshaus zu verweisen.

Infolge der sozialen und wirtschaftlichen Veränderungen in den 1940er Jahren wurde das „Gesetz II. von 1950 über den Allgemeinen Teil des Strafgesetzbuchs“ erlassen, das keine Regeln für Minderjährige enthielt. Sie wurden in das Gesetz 34. von 1951, dann in dessen Änderung das Gesetz 23. von 1954 aufgenommen. Das Gesetzesdekret hob die I. Sn. auf und legte neue Regeln für die Jugendgerichtsbarkeit fest, weiterhin wurde das Prinzip der moralischen und intellektuellen Entwicklung behoben. Im Rechtsakt tauchte die Möglichkeit auf, falls der jugendliche Straftäter die Gefahr seiner Handlung für die Gesellschaft erkannt hatte, konnte das Strafverfahren eingestellt, unterlassen werden, oder er konnte freigesprochen werden. Für geistig behinderte Jugendliche wurde heilpädagogische Erziehung zur Verfügung gestellt, gegen die Straftäter zwischen 12 und 14 Jahren wurden erzieherische Maßnahmen vorgenommen. Gegen neue Straftäter zwischen 14 und 18 Jahren musste eine Strafe verhängt werden. Die Bedeutung dieser Rechtsvorschriften ist herausragend, da zum ersten und letzten Mal in der Geschichte des ungarischen Strafrechts alle Vorschriften zur strafrechtlichen Haftung von Jugendlichen in einem einzigen Rechtsinstrument festgelegt wurden, das die materiellen und verfahrenstechnischen Vorschriften enthalten hat.

Das Sozialistische Strafgesetzbuch, Gesetz V. von 1961 über das Strafgesetzbuch der Ungarischen Volksrepublik, hob das Ftvr auf, und alle strafrechtlichen Bestimmungen wurden in das Gesetzbuch aufgenommen, so wurden die Bestimmungen über Jugendliche im Kapitel VI. gesondert aufgeführt. Die untere Altersgrenze für das Jugendalter wurde vom Gesetzgeber auf 14 Jahre angehoben. Damit wurde die Bedingung festgelegt, dass dies das Alter ist, in dem eine Person ihre Handlungen bewerten und somit ein angemessenes Verhalten nachweisen kann. Vor dem 14. Lebensjahr hat keiner Schuldfähigkeit, während es nach dem 14. Lebensjahr jedem gegeben wird, sofern nicht anders nachgewiesen wird. Diese Gesetzgebung beseitigte nicht nur die selbständige Regulierung, sondern bewertete bei der Verurteilung auch das Jugendalter als einen Faktor.

Die Dokumente internationaler Organisationen haben das innerstaatliche Strafjustizsystem von Jugendlichen und die Notwendigkeit einer Umbildung klar definiert. Das Gesetz IV. von 1978 wurde im Einklang mit den Empfehlungen der Europäischen Union, des Europarates und der Vereinten Nationen mehrmals geändert. So zeigte sich die Entwicklung des jugendlichen Täters in die richtige Richtung, die Priorität der Maßnahme anstelle von Wiedergutmachung und Bestrafung und die weitere Stärkung des Ultima-Ratio-Charakters der Inhaftierung.

Die wichtigste Änderung im Gesetz C von 2012 über das derzeit für Kinder geltende Strafgesetzbuch besteht darin, dass der Gesetzgeber das Alter

der strafrechtlichen Verantwortlichkeit für bestimmte Straftaten mit besonderer materieller Schwere auf 12 Jahre gesenkt hat. Es gibt keine gesonderte Gesetzgebung, sondern materielle und verfahrenstechnische Regeln für Erwachsene müssen an jugendliche Straftäter angepasst werden. Positiv zu vermerken ist, dass das Institut für aktives Bedauern bei Jugendlichen häufiger anwendbar ist als bei Erwachsenen.

2.2. Strafprozessrecht

Das Jugendgericht ist seit dem 1. Januar 1909 in Ungarn tätig, basierend auf dem IM-Dekret 20.003 von 1908.

Später enthielt das Gesetz VII. von 1913 umfassende Regeln, nach denen das Verfahren von einem Richter und einem Staatsanwalt für Jugendliche durchgeführt wurde, von einem Patron unterstützt, der eine Umweltstudie über die Lebensbedingungen der Jugendlichen durchführte. Untersuchungshaft und Festnahme konnten nicht angeordnet werden, die Haft im Gefängnis durfte bis zu 15 Tage dauern, konnte jedoch in schwerwiegenderen Fällen verlängert werden, das Gericht konnte die Öffentlichkeit vom Prozess ausschließen und ohne Anordnung Maßnahmen ergreifen.

In der Geschichte des ungarischen Rechts wurde mit dem Gesetz XXIX. von 1947 ein einziges und effektiv getrenntes Jugendgericht in Budapest eingerichtet.

Das Gesetz 34. von 1951, geändert durchs Gesetz 23. von 1954 enthielt auch spezielle Verfahrensregeln, unter anderem die Ernennung eines designierten Richters und eines Staatsanwalts, die Teilnahme eines Lehrerbeisitzers, die Anwesenheit eines gesetzlichen Vertreters, die begrenzte Möglichkeit, eine Untersuchungshaft anzuordnen, und keine Möglichkeit einer privaten Strafverfolgung.

Das Gesetz 8. von 1962, verkündet am 5. Mai 1962. (I. Be.) wurde an das materielle Gesetzbuch angepasst. Eine der wichtigsten Bestimmungen des Jugendrechts bestand darin, die Teilnahme eines Anwalts an dem Verfahren zu verlangen, was nicht mit der Anwesenheit gleichzusetzen ist. Es sah vor, dass ein Lehrer bei der Befragung eines Jugendlichen während einer Untersuchung anwesend sein konnte. Die Erziehung des Jugendlichen sollte durch Benachrichtigung der Schulbehörde erleichtert werden. Es war obligatorisch, den gesetzlichen Vertreter als Zeugen zu befragen und einen qualifizierten Sonderschullehrer zu hören, bevor eine Heilerziehung angeordnet wurde. Die Anwesenheit des Jugendlichen musste bei der Verhandlung sichergestellt werden, und eine geschlossene Verhandlung konnte ebenfalls angeordnet werden.

Die wichtigsten Bestimmungen des Gesetzes I. von 1973, das 40 Jahre in Kraft war, wurden im Laufe der Jahre oft geändert und vom Gesetzgeber als Reaktion auf sozioökonomisch-politische Veränderungen geändert. 1995 wurden bedeutende Änderungen vorgenommen, von denen die bedeutendste – auf der Grundlage von Artikel 37. Punkt b der Konvention über die Rechte des Kindes – den Freiheitsentzug auch in einer Justizvollzugsanstalt vollstreckbar machte.

Das Gesetz XIX. von 1998

Vorschriften für Minderjährige wie besondere materielle und verfahrensrechtliche Bestimmungen in alten Strafverfahren und im Strafgesetzbuch standen im Einklang miteinander und mit den Instrumenten zum Schutz von Kindern. Zunächst mussten die Mittel des Kinderschutzes eingesetzt werden, dann konnten im Falle ihrer Unzulänglichkeit strafrechtliche Instrumente eingesetzt werden. Es ist auch heute noch wichtig, dass die Behörden das Verfahren unter Berücksichtigung der altersspezifischen Merkmale von Jugendlichen und auf eine Weise durchführen, die die Einhaltung der Jugendgesetze fördert.

Ab dem 1. September 2011 hob der Gesetzgeber die ausschließliche Zuständigkeit der örtlichen Gerichte am Sitz des Bezirksgerichts und die Zuständigkeit des Pester Bezirksgerichtes im Hoheitsgebiet des Hauptstadtsgerichtes auf, um die Arbeitsbelastung zu verringern und die Aktualität zu gewährleisten.

Es gab auch eine Garantie dafür, dass in Gerichtsverfahren in erster Instanz gegen Jugendliche einer der Ratsmitglieder ein Lehrer ist und in zweiter Instanz der Vorsitzende des Rates (Einzelrichter) ist, und – mit Ausnahme des Obersten Gerichtshofs (Kurie) – in dritter Instanz ist eines der Mitglieder des Rates vom Nationalen Justizrat ernannter Richter, aber weder im Strafverfahren noch im Gesetz über den Status der Richter wurden keine Benennungskriterien angegeben.

Gesetz XC. von 2017

Bei der Kodifizierung des neuen Strafverfahrens stellte sich die Frage, ob auch in Ungarn ein gesondertes Strafjustizsystem für Jugendliche erforderlich ist, oder ob das Vorhandensein von Sonderregeln in den materiellen und verfahrenstechnischen Vorschriften des Strafrechts ausreicht. In Bezug auf die Anforderungen an Transparenz, Einheitlichkeit und Rechtssicherheit, rechthistorische Traditionen und den Hinweis darauf, dass ein separates Jugendstrafrechtsgesetz in europäischen Ländern nicht als allgemein angesehen werden kann, lehnten die Verfasser des neuen Verfahrensgesetzes auch die Idee eines separaten Gesetzes ab. Sie wurden in der Gesetzgebung berücksichtigt, so dass besondere Regeln für Jugendliche in die allgemeine Verfahrensordnung aufgenommen wurden. In diesem separaten Kapitel werden Sonderregeln durch Professio-

nalität und spezifische Aspekte der Erziehung und des Kinderschutzes geregelt.

Als Neuerung kann nur ein vom Präsidenten des Landesrichteramtes ernannter Richter in erster Instanz als Untersuchungsrichter, in zweiter Instanz als Vorsitzender des Rates fungieren. Nach der Anklage kann in erster Instanz ein vom Präsidenten des Landesrichteramtes ernannter Berufsichter, in zweiter Instanz und in dritter Instanz – mit Ausnahme des Obersten Gerichtshofs (Kurie) – als Mitglied des Rates fungieren. Die Festlegung der Kriterien für den ernannten Richter ist eine der Verwaltungsaufgaben des Präsidenten des Landesrichteramtes.

In der Regel ist ein Beisitzender nicht mehr an dem Verfahren beteiligt. Angesichts der besonderen Situation von Jugendlichen bleibt ein Beisitzender jedoch Mitglied des Rates. Es gibt spezielle Regeln für Beisitzende, da neben einem Lehrer ausschließlich ein Psychologe oder ein Diplomkinderschutzspezialist an der Arbeit des Rates teilnehmen kann.

Die Kinderschutzbehörden spielen weiterhin eine wichtige Rolle, nicht zuletzt, weil die Jugendlichen aufgrund ihrer Benachteiligung oder durch Strafjustiz zum ersten Mal mit diesen Institutionen in Kontakt kommen.

Im Gegensatz zum europäischen Modell der selbstsändigen Regulierung verfügt Ungarn über ein einheitliches Straf- und Verfahrensrecht, was bedeutet, dass die Bestimmungen des Allgemeinen Strafgesetzbuchs und der Strafprozessordnung auch für Jugendliche gelten, mit einigen typischen privilegierten Ausnahmeregelungen, zu denen es keine Jugendstrafverfolgung und kein Jugendgericht gibt. Die Regeln für Strafverfahren gegen Jugendliche sind somit im geltenden Verfahrensgesetz verankert, unterliegen jedoch gesonderten Verfahren. In Strafverfahren gegen Jugendliche gelten mit bestimmten Ausnahmen die allgemeinen Bestimmungen der Strafprozessordnung, und in Jugendfällen entscheiden die mit Erwachsenen befassten Gerichte, aber die Zusammensetzung der Beiräte – die Person des Beisitzenden – besonders ist.

Es gibt Argumente für und gegen eine eigenständige und einheitliche Regulierung. Die Einhaltung der in internationalen Standards festgelegten Erwartungen, die der Praxis einiger europäischer Länder und der Position vieler ungarischer Juristen folgen, kann als Argument für die Schaffung eines Jugendgerichtsgesetzes dienen. Ein weiteres Argument ist, dass das Jugendgesetz in einer auch von Jugendlichen verstehbaren Sprache abgefasst werden sollte, die den Anforderungen einer kinderfreundlichen Justiz besser entsprechen könnte. Andererseits sprechen die in den letzten Jahrzehnten etablierten ungarischen Traditionen wie die Argumente für Rechtssicherheit gegen die Schaffung eines Jugendgerichtsgesetzes.

3. Fachanwaltstudium für Jugendagelegenheiten

Nach Prüfung des Bildungszwecks von Hochschuleinrichtungen, die die Ausbildung von Fachannwälten für Jugendangelegenheiten organisieren, kann eindeutig festgestellt werden, dass das Ziel der Ausbildung einerseits darin besteht, „einen komplexen Ansatz für den Kinderschutz zu entwickeln“, auf der anderen Seite sollten aber „Anwälte, die auf dem Gebiet der Strafverfolgung tätig sind, in der Lage sein, in einer Vielzahl von Verfahren auf multidisziplinäre Weise das bestmögliche Ergebnis zu erzielen, wobei das Wohl des Kindes und des Jugendlichen berücksichtigt wird.”[10]

Im Rahmen der Ausbildung erwerben die Studenten Kenntnisse des Strafrechts (Strafrecht; Strafprozessrecht; Vollstreckung der Bestrafung; Kriminalprävention; Opferschutz), Verwaltungskenntnisse (Kinderschutz; Strafverfolgung; Einwanderung), zivilrechtliche Kenntnisse (zivilrechtliche Grundsätze, Persönlichkeitsrechte, Familienrecht) und verwandte Paralellwissenschaften (internationale Rechtsgrundlagen; Kinderpsychologie; Kinderpsychologie). In der Abschlussprüfung am Ende der Ausbildung vermitteln die Studenten auf komplexe Weise Wissen über ihr erworbenes Wissen – zu den Themen Sonderregeln für Straf- und Bürgerrechte, Kinderschutz, Sozialisation von Minderjährigen.

Die folgenden allgemeinen und beruflichen Kompetenzen werden vor allem im Rahmen der Schulungen entwickelt: Allgemeine Kompetenzen umfassen Problemerkennung und Fähigkeit zur Problemlösung; Verhandlungs- und Kommunikationsfähigkeiten; Konfliktmanagementfähigkeit; Organisations- und Überprüfungsfähigkeit.

Zu den beruflichen Kompetenzen gehören fundierte Kenntnisse der einschlägigen Literatur, der Berufsgesetzgebung, verwandter Rechtsbereiche und anderer Bereiche der Grenzwissenschaft; die Fähigkeit, das betreffende Fachwissen und die betreffenden Informationen anzuwenden und zu nutzen; die Fähigkeit, die sich ändernden Fachkenntnisse und Gesetze in den Fach-, Grenz- und Sozialwissenschaften des jeweiligen Fachgebiets unabhängig zu verarbeiten und anzuwenden.

Elemente des Wissens und das zu erwerbende Wissen: Vertiefte Kenntnis des Systems der materiellen und verfahrenstechnischen Regeln aller amtlichen Verfahren, mit denen das Kind in einer bestimmten Verfahrensposition in Kontakt kommen kann; Kenntnis einschlägiger internationaler Dokumente; Theorie und Praxis des Kinderschutzsys-

[10] http://www.uni-miskolc.hu/files/4392/fiatalkor%C3%BAak%20%C3%BCgyeinek%20szakjog%C3%A1sza%20SZT.pdf

tems; Kinderpsychologie und Opferschutz – unter Einbeziehung des Staates und von zivilgesellschaftlichen Organisationen.

Die oben detaillierten, erworbenen Kenntnisse können nicht nur im Bereich der Strafjustiz, sondern auch im Bereich des Zivil- oder Verwaltungsdienstes maximal validiert werden, da man nicht nur strafrechtliche Kenntnisse erwirbt und sich nicht nur im Strafrecht, sondern auch im Zivil- und Verwaltungsrecht mit Jugendlichen befasst.

3.1. Über die Erfahrung des Studiums von Anwalt für Jugendangelegenheiten in Strafverfahren

Es muss betont werden, dass das Jugendstrafrecht nicht streng auf strafrechtliche Normen beschränkt sein kann und dass das Ziel der Integration von Jugendlichen in die Gesellschaft kein einfaches Konzept ist. Eines der wichtigsten Elemente des einen Teil des Grundgesetzes bildenden Nationalen Glaubensbekenntnisses ist, dass wir glauben, dass unsere Kinder und Enkelkinder Ungarn mit ihrem Talent, ihrer Ausdauer und ihrem Geist wieder großartig machen werden. Die Förderung und Entwicklung des Talents, der Ausdauer und des Geistes von Kindern ist eine große Herausforderung für uns. Nur eines von vielen Elementen ist es, verlorene junge Menschen auf den richtigen Weg zu bringen, dabei die Justiz eine herausragende und verantwortungsvolle Rolle spielt.

Es ist aber auch ein Element in Zivilverfahren, hauptsächlich in familienrechtlichen Angelegenheiten, in Verwaltungsklagen, sei es als Vormundschaft oder sogar im Fall der Kinder oder Jugendlichen, die als Student oder Familienmitglied in arbeitsrechtliche Klagen verwickelt sind.

Um ein umfassendes Verständnis der zugrunde liegenden Ziele und des zusätzlichen Rechtsmaterials zu haben, um eine komplexe Vorstellung davon zu haben, warum und wie eine Rechtsinstitution funktioniert, muss ein Jugendrichter über ein besonders hohes Maß an Fachwissen und Erfahrung verfügen.

In Ungarn gibt es kein organisatorisch unabhängiges Jugendgericht, und die ausschließliche Zuständigkeitsregel gilt nicht mehr, da die ausschließliche Zuständigkeitsregel zum 1. September 2011 abgeschafft wurde, um die Gerechtigkeit den Parteien näher zu bringen, sie kostengünstiger zu gestalten, die Belastung gleichmäßiger zu verteilen und das Verfahren zu beschleunigen. All dies war Gegenstand einer Reihe von Kritikpunkten, und es stellte sich das Problem, wie Richter, die bisher ausschließlich mit Erwachsenen zu tun hatten, die im Verfahrensgesetz festgelegten besonderen Ziele für Jugendliche sicherstellen und es ist fraglich geworden, inwieweit sich die Praxis der Verurteilung ändert, weil der Richter, der sich nicht ausschließlich mit Jugendlichen befasst, seine Strafe nach seinen bisherigen Erfahrungen und seinen eigenen Maßstäben verhängen wird.

Die Abschaffung der ausschließlichen Zuständigkeitsregeln und das Fehlen spezialisierter Gerichte hat die Verfahren jedoch weder unprofessioneller noch strenger gemacht. Es besteht keine Zweifel, dass die Jugendgerichtsbarkeit einen spezifischen und komplexen Ansatz erfordert, aber es ist nicht erforderlich, dass die Richter, die auch in Angelegenheiten von Jugendlichen vorgehen, über eine umfassende Schulung verfügen, um die mit Jugendlichen in Kontakt stehenden Mitglieder der Justiz auf eine besondere Kommunikation mit Jugendlichen gemäß internationalen Standards vorzubereiten. und ihnen andere spezielle Kompetenzen vermitteln, die erforderlich sind, um Kindern zuzuhören. Die Bezeichnung einer solchen Qualifikation könnte jedoch ohne nachzudenken zu einem zweischneidigen Schwert werden, da die jahrzehntelange Erfahrung, das Fachwissen und die Einsicht eines Richters auf diesem Gebiet schwer mit der jüngsten Qualifikation in Jugendangelegenheiten zu vergleichen sind, die die aktuelle Gesetzgebung und die aktuelle Forschung abdeckt. Die beiden schließen sich jedoch nicht gegenseitig aus, sondern ergänzen sich. Jahrzehntelange Erfahrung kann immer aktuelles Wissen liefern, und eine effektive Anwendung eines neueren Abschlusses erfordert immer Erfahrung, die durch die Durchführung mehrerer Fälle gesammelt wurde. Der Absatz 63. in der Präambel der Richtlinie 2016/800. bestätigt das.

Diese Probleme können durch den Empfehlungsentwurf des Präsidenten des Nationalen Gerichtsamtes im Oktober 2020 zu den Aspekten gelöst werden, die im Fallzuweisungssystem zu berücksichtigen sind, wonach Strafsachen der jugendlichen Straftäter, Straftaten mit jugendlichen Opfern, Zeugen und Zivilverfahren als eine Angelegenheit angesehen werden, was besonderes Fachwissen erfordert. Diese Fälle sollten in erster Linie einem Richter zugewiesen werden, der über besondere Qualifikationen verfügt (Jugendanwalt, Familienrechtsanwalt, Kinderanwalt) oder über Erfahrung und Fachwissen in solchen Verfahren verfügt und sich für die Durchsetzung der Kinderrechte in Gerichtsverfahren einsetzt.

Das Gerichtsverwaltungssystem fördert die kontinuierliche Ausbildung von Richtern und die Unterstützung ihrer autodidaktischen Bildung, in deren Rahmen immer mehr Richter den Titel eines Spezialisten für Jugendangelegenheiten erhalten. Das Justizsystem versucht daher, die Rechte des Kindes zu gewährleisten, indem es die internationalen Erwartungen[11] und gesellschaftlichen Bedürfnisse

[11] Siehe darzu Vereinte Nationen Wirtschafts- und Sozialausschuss

berücksichtigt und vollständig erfüllt und zusätzliche Ziele festlegt, und für die es notwendig ist, die strafrechtlichen Vorschriften für Jugendliche kontinuierlich zu überwachen, ihre Vor- und Nachteile zu prüfen und mögliche Änderungen der Gesetzgebung in Abhängigkeit von ihren Ergebnissen einzuleiten.

3.2. Möglichkeiten zur Weiterentwicklung der gesetzlichen Bestimmungen für Minderjährige auf der Grundlage der gesammelten Erfahrungen

Gegenwärtig sind die Bestimmungen über Jugendliche daher nicht getrennt, sondern Teil des Besitzstands für erwachsene Straftäter. Die materiellen und verfahrenstechnischen Bestimmungen, sowie die Durchführungsbestimmungen enthalten spezifische Bestimmungen über Jugendliche. Natürlich steht diese Gesetzgebung in engem Zusammenhang mit anderen Bestimmungen, z. B. mit solchen, die für Ermittlungsbehörden, Staatsanwälte, Vormundschaftsbehörden, andere Kinderschutzinstitutionen, Gesundheitseinrichtungen verbindlich sind, aber auch der Schutz der Rechte des Kindes, das Jugendrecht, das Zivilrecht, das Familienrecht und das Verwaltungsrecht sind Elemente des Komplexen.

Um die gesetzlichen Bestimmungen für Minderjährige weiterzuentwickeln, müssen zunächst Entwicklungsziele festgelegt werden, die Folgendes umfassen können:

– Geschwindigkeit, Einfachheit[12]

Auf dem Weg zur Gerechtigkeit durchlaufen Kinder und Jugendliche fast die gleiche Anzahl von Verfahrensschritten wie Erwachsene, treffen auf die gleiche Anzahl von Fremden, warten die gleiche Zeit und sind für dieselbe Zeit in der gleichen Unsicherheit, während es das Ziel wäre, das alles aufgrund ihrer Altersmerkmale zu verringern. Es sollte auch berücksichtigt werden, dass in den meisten Fällen die Täter selbst Opfer sein können. Die Kindheit / Jugend ist eine sehr kurze, aber entscheidende Lebensphase. Die Verzögerung durch die Behörden in dieser Zeit betrifft nicht nur das ganze Leben des Kindes, sondern auch seine Familie, seine Umwelt und letztendlich die Gesellschaft insgesamt. Ziel ist es daher, das tägliche Leben des Kindes so schnell wie möglich durch die begangene oder gelittene Handlung zu bestimmen und so schnell wie möglich nach wirksamen Lösungen zu suchen, um das Kind in die Gesellschaft zu integrieren und richtig zu entwickeln. Dieses Ziel profitiert nicht von der starren Trennung der diversifizierten Rechtsvorschriften und der handelnden Stellen, der Minimierung informeller Kanäle und der sperrigen Bürokratie. Um die Verfahren zu beschleunigen, erfordert die Kontakthaltung im Internet und durch elektronische Kommunikation im 21. Jahrhundert das Umdenken der internen Regulierungsbehörden der amtierenden Stellen und Behörden, die Vereinfachung der Verfahren und die Entwicklung effizienter Verfahren, jedoch mit Garantien. Eine der Richtungen der Gesetzgebung besteht daher darin, ein System zu schaffen, das ein schnelleres und einfacheres Verfahren auf der Grundlage der gesammelten Erfahrungen ermöglichten kann.

– Effizienz

Eine der wichtigen Errungenschaften des 20. Jahrhunderts ist, dass die soziologische und psychologische Forschung den Schlüssel in alternativen Lösungen sieht, die für jedes Kind entwickelt werden. Darüber hinaus benötigt das Kind bei „Fehlern", auch wenn es die Folgen des Fehlers annimmt, die Sicherheit, dass der gemachte Fehler behoben werden kann. In vielen Fällen ist es jedoch schwierig, einen wirksamen und zielgerichteten Weg der Wiederherstellung zu finden, denn die oben bereits erwähnten Maßnahmen müssten so schnell wie möglich ergriffen werden.

Unter Berücksichtigung dieser Umstände bei der individuellen Erziehung können personalisierte Verhaltensregeln, Strafen und Maßnahmen die Wirksamkeit der Bemühungen zur Integration von Jugendlichen erheblich steigern. Die Wirksamkeit wird dadurch beeinflusst, dass das Wesentliche des Falls erfasst, die Ursachen entdeckt und so schnell wie möglich die am besten geeignete Lösung für die Persönlichkeit des Kindes gefunden und ausgeübt wird. In den meisten Fällen sind diese Lösungen in der Gesetzgebung nicht eindeutig enthalten, da die geltenden Sanktionen für jugendliche Straftäter tatsächlich nur „leichtere" Versionen der für erwachsene Straftäter konzipierten Rechtsinstitutionen sind.

Es ist besonders wichtig, die Wichtigkeit von der Rückkopplung hervorzuheben. Der Richter kann wirksame Mittel einsetzen, wenn er Rückmeldung zu deren Wirksamkeit erhält. Der Richter hat keine Vorstellung von der Einhaltung der im Urteil vorgeschriebenen Verhaltensregeln, ihrer kurzfristigen und langfristigen Ergebnisse. Es ist auch eine motivierende Kraft für den Richter und bestätigt die Bedeutung der Individualisierung, wenn er sie für wirksam hält. Zu diesem Zweck sollte erwogen wer-

Handlungsrichtlinien (21.07.1997.) und Europäisches Parlament Resolution 2007/2093(INI) – (16.01.2008.). https://www.ohchr.org/EN/Professional Interest/Pages/CriminalJusticeSystem.aspx.

[12] Siehe hierzu Artikel 7. der Europäischen Konvention zur Ausübung der Rechte des Kindes, der unter der Schirmherrschaft des Europarates geschlossen wurde und besagt, dass das Gericht in Verfahren, die Kinder betreffen, unverzüglich handeln und eine unangemessene Verzögerung vermeiden muss. Darüber hinaus die Empfehlung R (2003) 20. des Europarates, wonach ein neues Prinzip darin besteht, dass die Reaktion auf Jugendkriminalität schnell und konsequent erfolgen sollte. Darüber hinaus das Modellgesetz über die Jugendgerichtsbarkeit des Internationalen Zentrums für Kriminalprävention der Vereinten Nationen vom September 1997. (Model law on Juvenile Justice).

den, einen Informationskanal einzurichten und zu regulieren, um den Prozessrichter zu unterstützen.

– Entwicklung der institutionellen Infrastruktur

Ein institutionelles System ist erforderlich, das für die Durchführung eines speziell auf Kinder und Jugendliche zugeschnittenen Verfahrens sowie für die Schaffung geeigneter Bedingungen geeignet ist. Die Entwicklung und der Bau von Verhörräumen für Kinder ist bereits eine gute Richtung, aber in vielen Fällen sind jugendliche Straftäter noch nicht ganz gewachsen, aber sie sind auch keine Kinder mehr, die in Verhörräume für Kinder „passen". Wenn die Umstände des Einzelfalls dies rechtfertigen, ist für sie keine Lösug ein ausgehandeltes Verfahren, das durch strenge Einschränkungen, eine größere Kanzel und größere Entfernung gekennzeichnet ist, sondern lieber wäre ein vermitteltes Verfahren unter Verwendung geeigneter Mediationstechniken wünschenswert.

– Möglichkeit zur Zusammenarbeit mit verwandten Institutionen[13]

Einige alternative Lösungen erfordern alternative Beziehungen. An der Integration der jugendlichen Straftäter können mehrere Institutionen, staatliche, kirchliche, schulische und nichtstaatliche Organisationen teilnehmen, deren tatsächliches Engagement für eine wirksame und schnelle Lösung von wesentlicher Bedeutung ist.

Gegenwärtig kontaktiert die Justiz während der Vollstreckung von Strafen keine anderen Organisationen (kirchlich oder zivilrechtlich) außerhalb der Bewährungsorganisation und der Strafvollzugsorganisation, obwohl die Beteiligung anderer Organisationen und Stiftungen bei der Vollstreckung von Strafen wirksam sein könnte. Es kann auch notwendig sein, die Möglichkeiten der Bewährungshilfe zu erweitern, um wirksame alternative Regeln zu finden und anzuwenden. Es könnte erwogen werden, diese Beziehungen und Beziehungsformen in der Gesetzgebung zu verankern, wobei der Schwerpunkt auf der gegenseitigen Zusammenarbeit der Parteien im Interesse des Kindes liegen würde.

– Rechtssicherheit, Transparenz

Es wurde bereits oben erwähnt, dass die Gesetzgebung über Jugendliche nicht in einem gesonderten, einheitlichen Gesetz enthalten ist, deshalb könnte es sich lohnen, zu prüfen, ob die Rechtstraditionen und die Forschungen, sowie das Wissen im 21. Jahrhundert nicht rechtfertigen würden, ein eigenes Gesetz zu schaffen, das sich vom Strafrecht der Erwachsenen unterscheidet.

Bezogen auf das Erfordernis der Transparenz hat man das Recht auf Information, was im Artikel Nr. 4. der Richtlinie 2016/800 benannt wird.

(1) „Die Mitgliedstaaten stellen sicher, dass Kinder im Einklang mit der Richtlinie 2012/13/EU umgehend über ihre Rechte und über allgemeine Aspekte der Durchführung des Verfahrens unterrichtet werden, wenn sie davon in Kenntnis gesetzt werden, dass sie Verdächtige oder beschuldigte Personen in einem Strafverfahren sind.

Die Mitgliedstaaten stellen außerdem sicher, dass Kinder über die in dieser Richtlinie festgelegten Rechte unterrichtet werden. Dies erfolgt wie folgt:

(2) Die Mitgliedstaaten stellen sicher, dass die in Absatz 1 vorgesehenen Informationen mündlich, schriftlich oder in beiden Formen in einfacher und verständlicher Sprache erteilt werden und die Tatsache, dass die Informationen erteilt wurden, im Einklang mit dem im nationalen Recht vorgesehenen Verfahren für Aufzeichnungen festgehalten wird.

(3) Wird Kindern eine schriftliche Erklärung der Rechte gemäß der Richtlinie 2012/13/EU ausgehändigt, stellen die Mitgliedstaaten sicher, dass diese Erklärung einen Hinweis auf die in dieser Richtlinie vorgesehenen Rechte enthält."

– Priorität der restaurativen Gerechtigkeit[14]

Bei Jugendlichen kann die Beseitigung des verursachten Schadens eine erzieherische Wirkung haben. Daher kann es wichtig sein, die restaurative Gerechtigkeit genauer zu definieren und zu priorisieren und die „Art der Sanktion" bei der Beurteilung zu berücksichtigen. In vielen Fällen ist die Reparatur des verursachten Schadens an sich eine ausreichende „Bestrafung" für den Jugendlichen. Dabei muss er offen die Konsequenzen seiner Handlungen akzeptieren, und die Kenntnisnahme, seinen Fehler zu korrigieren, kann pädagogische Wirkung haben. Abhängig von der Situation kann die Wiederherstellung während eines meditationsartigenVerfahrens entschieden werden, wenn eine Maßnahme akzeptiert wird, die für das Opfer akzeptabel ist und die auch die Erziehung des Jugendlichen fördert.

4. Zusammenfassung

Die Entwicklung des internationalen und nationalen Rechts unterstützt auch die Tatsache, dass die Durchsetzung der Rechte von Kindern und Jugendlichen ständig auf der Tagesordnung stehen muss. Die sich gegenseitig unterstützende Wirkung der sich ständig bildenden Ergebnisse und der For-

[13] Siehe dazu Europäische Kommission Ministerkomitee R. (87) 20. Emphelung.

[14] Siehe zum Beispiel die Empfehlung R (2003) 20. des Europarates, in der es heißt, dass ein neues Prinzip darin besteht, dass Interventionen für jugendliche Straftäter, soweit möglich und gegebenenfalls, eine Wiedergutmachung für ihre Opfer und die betroffene Gemeinschaft beinhalten sollten. Siehe auch den Punkt 27. der UN-Erklärung zu El Salvador.

schung der verwandten Disziplinen ermöglicht eine kontinuierliche Entwicklung und erfordert sie sogar.

Aber erst nach Festlegung der Entwicklungsziele können spezifische Gesetzesänderungen entwickelt werden. Darüber hinaus sollten Schulungen und Konferenzen organisiert werden, damit die an Urteilen, Ermittlungen und anderen Rechtsbereichen im Zusammenhang mit Kinderrechtsstreitigkeiten Beteiligten wirksames Wissen entwickeln können. Zu einer der naheliegendsten Möglichkeiten gehören die Ausbildungen und ein Abschluss im Jugendrecht, die von den Rechts- und Rechtsfakultäten der Universitäten organisiert werden.

Dóra Ripszám

Child trafficking and child labor

I. Introduction

Nowadays, one of the lucrative businesses of organized crime is kidnapping, human trafficking, which is the basis of slave labor, sexual exploitation, prostitution, human organ trafficking and other serious crimes.[1]

Trafficking in human beings is a cross-border problem that affects countries of origin, destination and transit. Its most important feature is that it is an extremely highly organized, rapidly spreading crime, which makes it very difficult to fight. Trafficking in human beings is one of the most serious violations of human rights, and it is therefore the duty of every state to take decisive action to prevent it and punish the perpetrators. Its main purpose is prostitution or forced labor, organized begging, illegal adoption and organ trafficking. The cause is rooted in poverty, a tradition of subordination of women and children, and a lack of respect for and protection of human rights.[2]

Human trafficking can be seen as a modern version of slavery. It is estimated to be the second most lucrative branch of international organized crime. According to the International Labor Organization (ILO), the profit from forced labor reaches $ 32 billion a year.[3]

One of the most vulnerable groups targeted by human traffickers is children.[4]

1. Human trafficking

Directive 2011/36/EU of the European Parliament and of the Council (on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA identifies intentional crimes related to human trafficking. These are „The recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."[5]

According to the directive 2011/36/EU of the European Parliament and of the Council „Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs."[6]

Exploitative behavior cannot be exhaustively listed, so the list in the Directive is not exhaustive. The Proposal defines the concept of exploitation with the appropriate abstraction that exploitation is the pursuit of an advantage by exploiting that position of a victim who has been placed or held in a vulnerable position.[7]

The essence of exploitation is to obtain income from sexual services, begging and other named activities provided by others, the amount of which exceeds, in particular, disproportionately the assistance or service provided by the perpetrator. It would also be exploitative for someone who, in order to gain profit, to determine for others to perform (tolerate) the above-mentioned activities, which entails afflicting the victim, provided that the resulting damage to interests is not offset by adequate financial compensation.[8]

[1] Száraz Krisztina, Kényszermunka a modern gazdaságban. (Forced labor in the modern economy) file:///C:/Users/admin/Downloads/520-Article%20Text-1777-1-10-20200819.pdf 04.10.2020.

[2] Emberkereskedelem.kormany.hu, Emberkereskedelem elleni küzdelem – védtelen áldozatok (Fight against trafficking in human beings – vulnerable victims) https://emberkereskedelem.kormany.hu/akadalymentes/emberkereskedelem-elleni-kuzdelem-vedtelen-aldozatok 21.12.2020.

[3] Száraz Krisztina, Kényszermunka a modern gazdaságban (Forced labor in the modern economy) file:///C:/Users/admin/Downloads/520 Article%20Text-1777-1-10-20200819.pdf 01.11.2020.

[4] A Bizottság Jelentése az Európai Parlamentnek és a Tanácsnak az emberkereskedelem megelőzéséről, és az ellene folytatott küzdelemről, az áldozatok védelméről szóló 2011/36/EU irányelv 20. cikkében előírtak szerinti jelentés az emberkereskedelem elleni küzdelem terén elért eredményekről (2016) www.ipex.eu/IPEXL WEB/dossier/files/.../082dbcc554c619fa0154c83f0dc50084.do, letöltés:2018. szeptember 10. quote: Dr. Hatvani Erzsébet – Sebhelyi Viktória – Vaskuti Gergely: Gyermekprostitúció visszaszorítása, gyermekkereskedelem, (Reducing child prostitution, child trafficking) Szociális és Gyermekvédelmi Főigazgatóság, Budapest, 2018. p. 106.

[5] Directive 2011/36/EU of the Europen Parliament and of the Council Article 2.

[6] Ibid.

[7] Czine Ágnes, Az új Btk. és a kapcsolódó jogforrások, bírósági iránymutatások. (The new Criminal Code and related sources of law, court guidelines) Második, aktualizált kiadás. Budapest, HvgOrac Lap- és Könyvkiadó, 2016. p. 338.

[8] Hollán Miklós, Emberkereskedelem. A kizsákmányolás büntetendő estei

2. Child trafficking

According to the Council of Europe convention on action against trafficking in human beings „„Child" shall mean any person under eighteen years of age".[9]

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines the concept of child trafficking. „Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration"[10]

A child, regardless of how it is recruited, removed, handed over, concealed or taken over, is considered a victim of trafficking if the purpose is exploitation.[11]

II. Child labor

The Charter of Fundamental Rights of the European Union sets out certain rights that are of paramount importance to workers moving within or entering the EU, the most important of which are human dignity (Article 1), the prohibition of slavery and forced labor (Article 5).), freedom to choose an occupation and the right to engage in work (Article 15), non-discrimination (Article 21), the right of access to placement services (Article 29), protection in the event of unjustified dismissal (Article 30), fair and just working conditions (Article 31), prohibition of child labor and protection of young people at work (Article 32), Consumer protection (Article 38) and the right to an effective remedy and to a fair trial (Article 47).[12]

According to the high-income countries often seems to hold that child labor in developing countries is nearly always a form of child abuse, in which children work in hazardous conditions in run-down factories for callous businesses. But it's not that clear. In fact, the broad term "child labor" covers a considerable diversity within and between countries in the types of activities in which children participate. Abhorrent images of children chained in factories or forced into prostitution stand out for their relative rarity. Most children are working at home, helping their family by assisting in the family business or farm and with domestic work.[13]

Fundamentally, child labor is a symptom of poverty. Low income and poor institutions are driving forces behind the prevalence worldwide of child labor. As a result of this, some economic events or policies can have ambiguous effects on child labor; for example, a country that experiences an increase in labor demand, perhaps because of globalization, may experience greater demand for both adult and child labor. At the same time, the greater demand for adult labor can raise family incomes in a way that tends to reduce child labor.[14]

According to the ILO (the International Labor Organization, a specialized organization founded in 1919 to protect the fundamental labor and social rights of workers), some 218 million children aged 5 to 17 are currently employed at work worldwide. Of these, about 152 million are victims of the exploitative practice of child labor; and almost half of them (73 million) do dangerous work. Not all forms of child labor are considered child labor. According to the internationally accepted conventions of the ILO, child labor to be eliminated is defined as an economic exploitation that endangers a child's education, health and physical, mental, spiritual and moral development. According to ILO statistics, almost half of those affected by child labor live in Africa; but there are nearly as many in Asia. Nearly half of the 152 million child labor victims are aged 5-11. 42 million (28%) aged 12-14; and 37 million (24%) aged 15-17. Life-threatening child labor practices hit 15-17-year-olds hardest, but so do many children under 12. Regarding the gender differential, we find that out of 152 million children, 88 million are boys and 64 million are girls. Thus, 58% of those involved in child labor and 62% of those affected by hazardous work are boys. From this, it may appear that boys are more affected, but this is not clear, exploitation in domestic work is contributes to the latency of the phenomenon, which mainly affects girls. Sectorally, it is mainly present in agriculture worldwide (71%), followed by services; then industry, including mining.[15]

III. Connection between child trafficking and child labor

1. Becoming a victim

In the following environment, the worst forms of child labor would not emerge in equilibrium unless they are better remunerated than the 'good' forms.[16]

és a büntetőjogi szabályozás határai. (Human trafficking. Criminal evenings of exploitation and the limits of criminal law.) Budapest, HvgOrac Lap- és Könyvkiadó, 2012. p. 310.

[9] Council of Europe convention on action against trafficking in human beegins Article 4.

[10] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography Article 2.

[11] https://rm.coe.int/16805d41ee 09.01.2021.

[12] The Charter of Fundamental Rights of the European Union (2012/C 326/02).

[13] Eric V. Edmonds – Nina Pavcnik, Child Labor in the Global Economy Journal of Economic Perspectives, Volume 19, Number 1, Winter 2005, pp. 199–220.

[14] Ibid.

[15] UNICEF Magyarország, Gyermekmunka elleni küzdelem. A gyermekmunkáról általában (Combating child labor. About child labor in general), https://unicef.hu/gyermekmunka-elleni-kuzdelem 10.01.2021.

[16] Sylvain E. Dessy – Stéphane Pallage, A Theory of the Worst Forms of Child Labour, *The Economic Journal*, Volume 115, Issue 500, January 2005, Pages 68–87, https://doi.org/10.1111/j.1468-0297.2004.00960.x.

- The environment features household poverty, which puts pressure on children to help their family to make ends meet.
- Also parents are altruistic towards their children and make decisions on their behalf.
- The worst forms of child labor compromise the human capital prospects of children involved, for example, by reducing their learning ability in school, or by causing their endowment of human capital to depreciate._

Trafficking systems target primarily socially and economically disadvantaged families. One of the most vulnerable groups targeted by traffickers is children. In many cases, organized criminal groups choose to trafficking children because they can be easily recruited and quickly "exchanged".[17]

In many cases, young girls and children are lured with false promises from their homeland, reassuring them that they will be able to support their families, but in reality, this work means only and exclusively prostituted work.[18]

Victims of trafficking can be anyone, but certain social groups – women, children, members of ethnic minorities, people with disabilities, children on the move (migrants), survivors of various abuses – are more vulnerable to becoming victims. Children in child protection care are particularly at risk, and the risk of prostitution is increased during authorized departures and escapes.[19]

Young people are potential victims of increasing pedophile violence, brutal abuse, street kidnappings, child homicides, widespread sex tourism and, last but not least, the child trafficking that serves it. Violence no longer lurks in them in the harsh outside world, it is also there in the family, within the walls of homes and in schools and educational institutions. The crisis of the traditional institution of the family is characterized by divorces, the break-up of families, the loneliness and neglect of children within the family, and the number of children with mental and behavioral problems is significantly increasing.[20]

Zsuzsanna Vidra, Kitti Baracsi, Viktoria Sebhelyi establish the following vulnerability factors in relation to child trafficking[21]

- criminalized environment
- dysfunctional family background
- children in public care
- the role of "dependence" on emotional connection

With regard to victims of child trafficking, we can talk about the following backgrounds[22]

- Socio-economic background of the victims
- Age of victims
- Ethnic and ethnic profile of the victims
- Gender identity of victims

People with low levels of education, little work experience, an inadequate family background and adults in public care are at risk of becoming victims. Perpetrators are constantly searching for and recruiting new victims, mostly from the simplest "source", namely their family, living environment, whose personal and property backgrounds they know. Sometimes families sell their own child to the perpetrator. In connection with sexual exploitation, in the recruitment phase, Hungarian perpetrators rarely use violence, but rather associate their later victims with believing and pretending love relationships, so the "dependence" on the emotional relationship appears.[23]

The main risk factors for a child's vulnerability are related to the child's socioeconomic status, socialization, and social and cultural environment. Poverty, especially deep poverty, is one of the most important factors in becoming a victim. However, victimization usually stems from the combined effect of several risk factors and not solely from poverty. Children living in poverty and / or in segregated ghetto-type settlements or in segregated parts of towns and villages, as well as in public care, are more likely to be victims of child trafficking. A segregated environment, public care, and living in an orphanage create an environment in which the likelihood of a child becoming a victim is multiplied. Risk factors (e.g., child abuse, substance use, dysfunctional families, etc.) are equally found in less segregated and less impoverished environments.[24]

2. Volume of child trafficking and child labor

There is a big difference between boys and girls in

[17] A Bizottság Jelentése az Európai Parlamentnek és a Tanácsnak az emberkereskedelem megelőzéséről, és az ellene folytatott küzdelemről, és az áldozatok védelméről szóló 2011/36/EU irányelv 20. cikkében előírtak szerinti jelentés az emberkereskedelem elleni küzdelem terén elért eredményekről (2016) www.ipex.eu/IPEXL WEB/dossier/files/.../082dbcc554c619fa0154c83f 0dc50084.do, letöltés:2018. szeptember 10. Quote: Dr. Hatvani Erzsébet – Sebhelyi Viktória – Vaskuti Gergely, Gyermekprostitúció visszaszorítása, gyermekkereskedelem (Reducing child prostitution, child trafficking), Szociális és Gyermekvédelmi Főigazgatóság, Budapest, 2018. p. 106.

[18] Kállai Krisztina, Az emberkereskedelem kiskorú áldozatait érintő kizsákmányolás sajátosságai. (Peculiarities of exploitation of minor victims of trafficking in human beings.) http://www.kodolanyi.hu/kv/cikk/az-emberkereskedelem-kiskoru-aldozatait-erinto-kizsakmanyolas-sajatossagai- 864 27.10.2019.

[19] UNICEF Magyarország, Gyermekkereskedelem elleni küzdelem (Combating child trafficking) https://unicef.hu/gyermekkereskedelem-elleni-kuzdelem 09.01.2021.

[20] Gyurkó Szilvia – Virág György, A bűn és a gyermekek ábrázolása a médiában (Representation of sin and children in the media), Kriminológiai Tanulmányok 46. kötet (Editor.: Virág György) OKRI, Budapest, 2009., pp. 250-276.

[21] Vidra Zsuzsanna – Baracsi Kitti – Sebhelyi Viktoria, Gyermekkereskedelem Magyarországon: Szexuális kizsákmányolás, koldultatás és zsebtolvajlásra kényszerítés (Child trafficking in Hungary: Sexual exploitation, begging and coercion), CEU, Budapest, 2015. p. 264.

[22] Ibid.

[23] Belügyminisztérium, Európai Együttműködési Főosztály, Emberkereskedelem elleni küzdelem Magyarországon (Fight against human trafficking in Hungary) https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/thb_overview_hungary_hu_pdf.pdf 09.01.2021..

[24] Vidra Zsuzsanna – Baracsi Kitti – Sebhelyi Viktoria, Gyermekkereskedelem Magyarországon: Szexuális kizsákmányolás, koldultatás és zsebtolvajlásra kényszerítés (Child trafficking in Hungary: Sexual exploitation, begging and coercion), CEU, Budapest, 2015. p. 264.

the form of work. While "physical" work is done mostly with boys, housework and tasks in restaurants are done with girls. Among agricultural workers and those working in the clothing industry, we can find girls and boys alike.[25]

Forms of child labor can also vary by region.[26]

Estimates suggest that about 25 million people are subjected to "modern slavery" in the form of forced labor or human trafficking. These children, women, and men are often migrant workers who are exploited in diverse sectors, such as agriculture, mining, fishing, factory work, domestic work, and forced sex work. Although the eradication of modern slavery is among the 2030 Sustainable Development Goals, development of effective responses for assistance for victims and trafficking prevention remains elusive in this nascent field of health research. The intensified efforts against trafficking require a greater understanding of modifiable factors and the causal pathways that lead to trafficking in different contexts and for individual populations.[27]

No one knows the real numbers, but even conservative estimates suggest that at least 2.5 million children, women and men are lured or forced into international borders every year – and many are trafficked in their own countries – and, against their will, often subject themselves to deplorable and unfortunate in captivity to secure conditions, physical, psychological or financial threats. While transnational trafficking pays most of the attention of civil society, exploitation in the broadest sense – including child labor, forced labor, forced labor, forced prostitution, etc. – it becomes clear that exploitation affects many more people than just victims of trafficking.[28]

Commercial exploitation of children is a global problem for which reliable statistics are difficult to find. In the world, according to most estimates, well over a million children become a victim on the sex market each year, with one in five children being present in the labor market in some form (typically from third world countries). Approximately 170 million children work as "worst forms of child labor" by the International Labor Organization, engaging in armed struggle, being forced into prostitution or becoming a victim of pornography, being involved in crime, being trained as a drug dealer, or being employed as a "domestic worker.[29]

3. Forms of child labor

Child labor is still a common phenomenon in some countries around the world and covers many areas. Children work as factory workers, in mines, quarries, 1 in diamond mines, as an agricultural worker, helping their parents "business", as a casual worker, or even in their own "business" such as a street food vendor or shoe polish. But it is common for children to be classified as soldiers, forced into prostitution, drug trafficking, or sold as "slaves". Of course, these often very dangerous jobs are done for a minimal wage, if they get paid for it at all. But as long as families are forced to live in poverty as much as in underdeveloped parts of the world, it is impossible to abolish child labor.[30]

Worst Forms of Child Labour Convention (No. 182) Article 3 states term the worst forms of child labour comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.[31]

It is conservatively estimated that about forty percent of the world's total armies, armed forces, rebel groups, and terrorist organizations[32] employ children for military, religious, ethnic, or other military purposes[33]. Although child soldiers, like other forms of child exploitation (child labor and child prostitution), occur on all continents, there is still a great deal of ignorance about the phenomenon and even some indifference on the part of the international community. The negative connotation of the child

[25] Reinisch Réka, A gyermekek jogai és a valóság – gyermekmunka a világban (Children's rights and reality – child labor in the world) https://btk.ppke.hu/uploads/articles/6414/file/reinischreka.pdf 14.02.2021.

[26] Ibid.

[27] Ligia Kiss – Cathy Zimmerman, Human trafficking and labor exploitation: Toward identifying, implementing, and evaluating effective responses https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002740 10.01.2021.

[28] Johannes Koettl, Human Trafficking, Modern Day Slavery, and Economic Exploitation https://www.researchgate.net/profile/Johannes_Koettl/publication/241768755_Human_trafficking_modern_day_slavery_and_economic_exploitation/links/0c9605287ab6497485000000/Human-trafficking-modern-day-slavery-and-economic-exploitation.pdf 10.01.2021.

[29] Gyurkó Szilvia, A gyermekek kereskedelmi célú szexuális kizsákmányolása–különös figyelemmel a gyermekprostitúcióra. (Commercial sexual exploitation of children – with a special focus on child prostitution.) In: OKRI: „Adás–Vétel" Konferencia a prostitúcióról https://okri.hu/images/stories/konyvajanlo/Adasvetel_2011/adasvetel_konferenciakiadvany.pdf 27.12.2019.

[30] Reinisch Réka, A gyermekek jogai és a valóság – gyermekmunka a világban (Children's rights and reality – child labor in the world) https://btk.ppke.hu/uploads/articles/6414/file/reinischreka.pdf 14.02.2021.

[31] Worst Forms of Child Labour Convention (No. 182) Article 3.

[32] See more on the typology of terrorism in: Dávid Tóth – Melánia Nagy, The types of terrorism – with special attention to cyber and religious terrorism. In: Jura 2019/1. pp. 413–422. Dávid Tóth, A terrorizmus típusai és a kiberterrorizmus (The types of terrorism and cyberterrorism). In: Rab Virág (Editor), XII. Országos Grastyán Konferencia előadásai. PTE Grastyán Endre Szakkollégium, 2014. pp. 286–296.

[33] Vid.: Nagy, Melánia, Gyermekek a terrorizmusban (Children in terrorism) =In: Németh, Katalin (Editor.) Tavaszi Szél Konferencia 2019 : Nemzetközi Multidiszciplináris Konferencia : Absztraktkötet , Budapest, Magyarország : Doktoranduszok Országos Szövetsége (DOSZ) 2019. pp. 120–120.

soldier, as well as the "soft issue" nature of the topic, in many cases results in the marginalization of the issue on the part of politics.[34]

By recruiting child soldiers, we can learn about the new face of terrorism. The Islamic State, which owns a significant part of Syria and Iraq, gives a new interpretation to the phenomenon, as it seeks not only to strengthen its current position by involving children, but also to achieve long-term goals – the expansion of the Caliphate. Ensuring its effectiveness is only possible if the organization not only survives but also "prepares" its own future generation. The main means of doing this is to recruit children so that, after proper mental, psychological and physical training, they can organize a future, loyal and self-sacrificing army that will carry forward the ideology of the Islamic State even if the terrorist organization ceases to exist in its current form.[35]

According to the list established by international organizations, the sexual exploitation of children includes, in the broadest sense, the following forms of abuse[36]

- prostitution: the sexual exploitation of a child, usually organized through an intermediary (parent, family member, fence, etc.), for money or other consideration
- pornography: making, distributing, distributing (through any medium) video, film, photo or sound recordings of child pornography (showing sexuality for one's own purposes)
- coercion to marriage, sale
- sex tourism
- traditions, customs, mutilation that violate the physical integrity and gender identity of children (eg clitoral excision [devadasi]).

4. Intertwining with other phenomena

Nowadays, one of the lucrative businesses of organized crime[37] is kidnapping, human trafficking, which is the basis of slave labor, sexual exploitation, prostitution, human organ trafficking and other serious crimes.[38]

Human trafficking is a high-profit, but low-risk business. The huge amount of money that comes from, it allows criminal groups to gain economic, social or even political power and influence the way the world works.[39]

Human trafficking and related prostitution are one of the biggest sources of revenue for organized crime. Prostitution and human trafficking for the purpose of sexual exploitation are closely linked. Victims are treated as commodities, private property, with restrictions or outright deprivation of their fundamental rights.[40]

Human trafficking is not only a fundamental crime of money laundering , but can also play an important role in terrorist financing[41]. Money laundering[42] is needed to make the proceeds of other crimes a legitimate economic activity.[43]

One of the worst and most invisible forms of human trafficking is child trafficking for labor exploitation. This specific form of human trafficking is intertwined with other phenomena ranging from forced child labor to broader concepts like child labor and child work. The convergence of factors related to child trafficking for labor exploitation not only complicates efforts to regulate child work and criminalize forced child trafficking for labor exploitation and child labor, but it also hampers attempts to establish adequate and effective preventive measures.[44]

Sexual exploitation is typically an international, organized crime in which various forms of abuse appear together. The ILO has classified prostitution and child pornography as the worst forms of forced labor, with special emphasis on the fact that almost a quarter of child victims of trafficking are forced into slavery (domestic, agricultural or artisanal),

[34] Szijj Dóra, Az „új" háborúk hozadéka: a gyerekkatonaság modernkori formái (The product of "new" wars: modern forms of childhood), http://www.nemzetesbiztonsag.hu/cikkek/szijj_dora-az___34_uj__34__haboruk_hozadeka__a_gyerekkatonasag_modernkori_formai.pdf 14.02.2021.

[35] Gál Csilla Emese, Elrabolt ártatlanság – az Iszlám Állam gyerekkatonái (Kidnapped innocence – child soldiers of the Islamic State) Évf. 18 szám 5 (2018) In= Magyar Rendészet.

[36] Gyurkó Szilvia, A gyermekek kereskedelmi célú szexuális kizsákmányolása–különös figyelemmel a gyermekprostitúcióra. (Commercial sexual exploitation of children – with a special focus on child prostitution.) In: OKRI: „Adás–Vétel" Konferencia a prostitúcióról https://okri.hu/images/stories/konyvajanlo/Adasvetel_2011/adasvetel_konferenciakiadvany.pdf 27.12.2019.

[37] Vid.: Dávid Tóth – László István Gál – László Kőhalmi- Organized Crime in Hungary, Journal of Eastern-European Criminal Law No. 1/2015, pp. 22–28.

[38] Tóth Mihály – Nagy Zoltán (Editor), Magyar büntetőjog. Különös rész. Budapest, Osiris Kiadó, 2014. p. 112.

[39] Száraz Krisztina, Kényszermunka a modern gazdaságban (Forced labor in the modern economy) file:///C:/Users/admin/Downloads/520-Article%20Text-1777-1-10-20200819.pdf 14.02.2021.

[40] Kovács István, Az emberkereskedelem, valamint az ahhoz szorosan kapcsolódó prostitúciós bűncselekmények áldozatai jogainak érvényesülése, illetve azok meghiúsulása, csorbulása hazánkban (Enforcement of the rights of victims of human trafficking and closely related prostitution crimes, as well as their failure or impairment in Hungary) = Műszaki Katonai Közlöny 2014/1 pp. 213–230.

[41] Vid.: Gál István László, Új biztonságpolitikai kihívás a XXI. században: a terrorizmus finanszírozása (A new security policy challenge in the 21st century: terrorism financing) =Szakmai szemle: A Katonai Nemzetbiztonsági Szolgálat tudományos-szakmai folyóirata 8, 2012, pp. 5-15., Gál István László, A terrorizmus finanszírozása: Die Terrorismusfinanzierung (terrorism financing) Pécs, Magyarország : PTE Állam- és Jogtudományi Kar Gazdasági Büntetőjogi Kutatóintézet 2010., p. 63.

[42] Vid.: Gál István László, A pénzmosás szabályozásának régi és új irányai a nemzetközi jogban és az EU-jogban. (Old and new directions in the regulation of money laundering in international law and EU law) = Európai jog: Az Európai Jogakadémia Folyóirata 7 (2007), pp. 12–23., Gál, István László, The Techniques of Money Laundering. In: Gál, István László – Kőhalmi, László (Editor) Emlékkönyv Losonczy István professzor halálának 25. évfordulójára, Pécs, Magyarország : Pécsi Tudományegyetem, Állam- és Jogtudományi Kar, 2005., pp. 129–138., , Gál István László – Tóth Mihály, The Fight against Money Laundering in Hungary = Journal of money laundering control 2 2004 pp.186–192.

[43] Felméry Zoltán, A súlyos és szervezett bűnözés általi fenyegetettség értékeléséről szóló Europol jelentés ismertetése (Presentation of the Europol report on the assessment of the threat posed by serious and organized crime) = Nemzet és Biztonság 2019/1. pp. 105–119.

[44] Luz María Puente Aba, Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-63058-8_18 10.01.2021.

sexually assaulted, forced into slavery. mentally and physically abused.[45]

IV. Hungary

There is no special victim support system for children in Hungary. Child victims are treated under the Child Protection Act and the child protection alert system is responsible for signaling in the event of a nuisance, however, the child protection system is not fully prepared to support victims of trafficking. Cases of trafficking in children remain latent, mainly because the police do not initiate proceedings until the victims report. The annual number of reported cases of child trafficking is extremely low, with only a few cases per year, and no data are available on individual forms or the ethnicity of the victims. Nevertheless, it can be stated that the majority of the victims are Roma. Criminalized environment (in a close family or community), dysfunctional family background, child abuse, parental and / or child substance use, public care, and emotional neglect are considered critical factors in becoming a victim.[46]

Due to the global nature of child prostitution, Hungary is also greatly affected, Hungary is not only a transit country but also an issuing country. Accurate data or even estimates regarding Hungarian statistics are extremely incomplete, so it is difficult to establish the number of child victims in any part of child trafficking.[47]

V. Conclusion

Harmful forms of child labour have an economic role: by maintaining wages for child labour high enough, they allow human capital accumulation in poor countries. Until appropriate mechanisms are designed to mitigate the decline in child labour wages caused by reduced employment options for children, a ban on harmful forms of child labour will likely prove undesirable.[48]

Even if Legislation against child labor could be enforced, is not the only (or even the best) way to tackle the issue. Legislation must be combined with targeted social and economic incentives (such as for schooling) together with equitable economic growth.[49]

Children, due to their age and development, may need special protection – and certain groups of children should also receive special attention and increased protection. These include:

- children with disabilities,
- victims of commercial sexual exploitation and trafficking in children,
- minors seeking asylum and unaccompanied children,
- children belonging to the Roma minority,
- children fleeing and missing,
- children who have dropped out of the education system and school-age children;
- children who have been victims of abuse[50]

The Council of Europe Convention on Action against Trafficking in Human Beings sets out the main objectives in relation to trafficking in human beings, and in particular children;[51]

a) to prevent and combat trafficking in human beings, while guaranteeing gender equality
b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
c) to promote international cooperation on action against trafficking in human beings.

Close cooperation is needed in the following areas to reduce child labor – and thus child trafficking[52]

- education
- agriculture
- "Neglected" forms of child labor
- Forced and slave labor
- Children working in the household (domestic workers)
- Children affected by war conflicts
- Prohibited activities – Migration
- Children with disabilities and other special educational needs
- Global economic and employment crisis.

[45] Gyurkó Szilvia, A gyermekek kereskedelmi célú szexuális kizsákmányolása–különös figyelemmel a gyermekprostitúcióra. (Commercial sexual exploitation of children – with a special focus on child prostitution.) In: OKRI: „Adás–Vétel" Konferencia a prostitúcióról https://okri.hu/images/stories/konyvajanlo/Adasvetel_2011/adasvetel_konferenciakiadvany.pdf 27.12.2019.

[46] Vidra Zsuzsanna – Baracsi Kitti – Sebhelyi Viktoria, Gyermekkereskedeleme Magyarországon: Szexuális kizsákmányolás, koldultatás és zsebtolvajlásra kényszerítés (Child trafficking in Hungary: Sexual exploitation, begging and coercion), CEU, Budapest, 2015. p. 264.

[47] Kállai Krisztina, Az emberkereskedelem kiskorú áldozatait érintő kizsákmányolás sajátosságai. (Peculiarities of exploitation of minor victims of trafficking in human beings) http://www.kodolanyi.hu/kv/cikk/az-emberkereskedelem-kiskoru-aldozatait-erinto-kizsakmanyolas-sajatossagai-864 27.12.2019.

[48] Sylvain E. Dessy, Stéphane Pallage, A Theory of the Worst Forms of Child Labour, *The Economic Journal*, Volume 115, Issue 500, January 2005, Pages 68–87, https://doi.org/10.1111/j.1468-0297.2004.00960.x.

[49] Grootaert, Christian and Kanbur, Ravi, Child Labor: A Review (May 1995). Available at SSRN: https://ssrn.com/abstract=620526.

[50] Gyurkó Szilvia, Gyermekbarát igazságszolgáltatás (Gyermekbarát igazságszolgáltatás), Kriminológiai Tanulmányok 49., Országos Kriminológiai Intézet, Budapest, 2012, pp. 107-117.

[51] Council of Europe Convention on Action against Trafficking in Human Beings.

[52] Reinisch Réka, A gyermekek jogai és a valóság – gyermekmunka a világban (Children's rights and reality – child labor in the world) https://btk.ppke.hu/uploads/articles/6414/file/reinischreka.pdf 14.01.2021.

Márton Tibor Serbakov

Trends in terrorism in 2021

Introduction [1]

Experts list several possible trends in terrorism in 2021. In his article titled "Trends in Terrorism: What's on the Horizon in 2021?" Clarke identifies several factors that could influence terrorism in 2021: the assassination of Islamic Revolutionary Guard Corps Quds Force (IRGC-QF) commander Qasem Soleimani in January 2020, the COVID-19 pandemic, lockdowns, protests, and a bitterly contested presidential election in the U.S.[2] Clarke lists several developments that could increase terrorism in certain parts of the world: potential openings and power vacuums, the activities of the Islamic State (ISIS)[3] and Al-Qaeda and their affiliates, terrorists' growing reliance on emerging technologies, the growing threat of the far-right and domestic terrorism, ideologies that could impact trends in terrorism, including conspiracy theories, and the potential deprioritization of counterterrorism, as countries focus inward on dealing with the fallout from the COVID-19 pandemic.[4] The 5 terrorism trends to watch in 2021, according to Johnson: conspiracy theory extremism, violence against faith-based institutions, domestic extremism, complex coordinated attacks, ISIS and Al-Qaeda moving forward.[5] Terrorism and security threat trends in 2021, according to Crump: the likelihood of states testing the resolve of the new U.S. administration, and increasingly polarized populations are factors that will influence 2021. Terrorism is experiencing a resurgence globally, due to the consequences of the pandemic.[6] The situation offers opportunities to would-be threat actors. 2021 will see a revival in risk levels. In the West, particularly in Europe, the controversy between France and the Muslim world will be the immediate concern going into 2021. While jihadists will remain the most obvious threat, since 2015 the growth of the right wing has been much more concerning.[6] According to the Royal United Services Institute (RUSI), the threat of Islamist terrorism has disappeared, and the pandemic offers space to regroup and radicalise. COVID-19 and government responses to it have created opportunities for identifying and highlighting political, social, economic and racial grievances. Against this backdrop, the re-emergence of right-wing extremism is gathering pace, fuelled by social division and, in the U.S., a stridently partisan politics. And meanwhile on the Left, anger and frustration about climate change threaten a more violent activism.[7] It would be a nearly impossible task to introduce every possible new trend in every type[8] of terrorism in 2021. The goal of my article is to shed light on the most alarming present and upcoming trends.

The structure of my paper is loosely based on the structure of Clarke's article:[9] the COVID-19 pandemic's impact on terrorism, trends in jihadism[10], the growing threat of the far-right, domestic terrorism in the U.S., terrorists' use of emerging technologies, ideologies that could impact trends in terrorism. Finally, I examine the attack on the U.S. Capitol, which demonstrates the rise of domestic terrorism in the U.S., and the dangers of conspiracy theories.

[1] Serbakov, Márton Tibor, PhD student, Department of Criminal Law, University of Pécs Faculty of Law.

[2] Colin P. Clarke: Trends in Terrorism: What's on the Horizon in 2021? https://www.fpri.org/article/2021/01/trends-in-terrorism-whats-on-the-horizon-in-2021/ (26/02/2021.).

[3] The Islamic State merged with part of the Al-Nusra Front in 2013, and after that, the organization used the Islamic State in Iraq and the Levant (ISIL) designation, and finally, the term Islamic State. In Syria the name al-Davlat (The State) has spread. Western media uses the term ISIL or ISIS, to indicate that it is an armed organization and not a state. This is highly debatable, false even, because the organization emphasizes the creation of a state. Source: József Kis-Benedek: Az Iszlám Állam által támasztott kihívások a terrorizmus elleni küzdelemben. In: István Resperger – Lóránd Ujházi (Eds.): A vallási elemek jelentősége napjaink fegyveres konfliktusaiban és biztonsági kihívásaiban. Dialóg Campus Kiadó-Nordex Kft, Wolters Kluwer, Budapest 2019. p. 31.

[4] Clarke, Op. cit.

[5] Bridget Johnson: 5 Terrorism Trends to Watch in 2021. https://www.hstoday.us/subject-matter-areas/infrastructure-security/5-terrorism-trends-to-watch-in-2021/ (26/02/2021.)

[6] Justin Crump: Terrorism and security threat trends in 2021. https://www.securitymagazine.com/articles/94219-terrorism-and-security-threat-trends-in-2021 (26/02/2021.).

[7] Terrorism – Old Threats Returning, New Threats Emerging: What Are The Key Longer Term Trends Business Needs To Worry About? https://rusi.org/event/terrorism-%E2%80%93-old-threats-returning-new-threats-emerging-what-are-key-longer-term-trends (26/02/2021.).

[8] Terrorism can be classified in many different ways. See: Dávid Tóth: The history and types of terrorism. Law Of Ukraine: Legal Journal: Scientific-Practical Professional Journal. 2015. Vol. 11. No. 1. Paper: UDC 343.326 pp 1-24.

[9] Clarke, Op. cit.

[10] More on the topic of religious terrorism: László Kőhalmi: Gondolatok a vallási indíttatású terrorizmus ürügyén. Belügyi Szemle, 2015. Vol. 63. No. 7-8. pp 52-71.

1. The COVID-19 pandemic's impact on terrorism

Regarding the expected impacts of the pandemic, Gál states the following: "1) the coronavirus is expected to claim more deaths worldwide than international terrorism has so far collective in world history, 2) the global economic crisis generated by COVID-19 will be comparable with 2008, and with the 1929–33 crisis. The current situation can be even more severe than the other two downfalls. 3) Like any economic crisis, this will also have an impact on crime, and the number of known crimes in specific categories of crimes will be increased at least temporarily."[11] According to Gál's conservative predictions based on the experiences of the past centuries, his initial hypothesis is that criminality is likely to increase from the second half of 2020, and this increase will continue for at least 1- 2 years, after that. The only question is the extent of the rise and how we can slow or moderate the rise.[12] According to Gradoń, one of the impacts of the pandemic is the rise in cyber-enabled crime, terrorism, and information warfare including – but not limited to – disinformation campaigns and fake news propagation, that are undermining social fabric, causing civil unrest, and increasing the emotional consequences: fear, anxiety and uncertainty. This means increased challenges for the law-enforcement agencies and institutions.[13] The pandemic has a significant impact on terrorism in a variety of ways. The impact on the level of attacks in the short-term is mixed. Lockdown measures will tend to inhibit attacks, but terrorist propaganda calling for attacks will incite some incidents. Much propaganda – and particularly that connected to far-right extremism – is focusing on conspiracy theories connected to COVID-19, and this has already inspired plots and attacks. Islamist extremist propaganda is focusing more on the vulnerability of governments distracted by the pandemic and the opportunity this presents for attacks. There is a significant increase in online extremist activity, which raises the risk of increasing short-to-medium term radicalisation. There are strong long-term concerns that states weakened by the serious economic consequences of the pandemic will be more vulnerable to the emergence/resurgence of terrorist groups in many parts of the globe.[14] COVID-19 has accelerated a variety of global trends. Some are ultimately positive, for example moves towards more investment in AI and automation, or a growing focus on making lasting changes to benefit the environment. Many other trends are concerning. Terrorism is experiencing a resurgence due to the consequences of the pandemic on a global level. 2021 will see a revival in risk levels. This increase will be catalyzed by the consequences of the pandemic, with the situation offering opportunities to would-be threat actors. Drivers include increased economic hardship in many countries most impacted by terrorism; international distraction mitigating effective responses to threats; the ability to exploit and benefit from inter-state rivalries, for example Turkey employing former Syrian fighters in Nagorno-Karabakh; and over-stretch of domestic security services. Lockdowns have also given people time to research and radicalize, with societal divisions and stress hardening mindsets.[15] As countries remain focused inward on dealing with the fallout from the pandemic, counterterrorism could be deprioritized, further compounding the challenges of an increasingly complex and diverse terrorism landscape.[16]

2. Trends in jihadism

Regarding the threat of ISIS and Al-Qaeda, the United Nations Security Council states the following: During the second half of 2020, developments within ISIS showed a high degree of continuity from trends earlier in the year. Regarding its leadership and strategic direction Al-Qaeda faces a new and pressing challenge, following a period of attrition of its senior leaders in various locations. The pandemic continued to have an effect on the threat posed by ISIS and Al-Qaeda. In conflict zones, the threat continued to rise as the pandemic inhibited forces of law and order more than terrorists. In non-conflict zones, the threat remained relatively low, despite a series of attacks in Europe that illustrated the resilience of radical ecosystems strengthened by online propaganda and ineffective disengagement programmes. The economic and political toll of the pandemic, its aggravation of underlying drivers of violent extremism and its expected impact on counter-terrorism efforts are likely to increase the long-term threat everywhere, according to the UN Security Council. Iraq and the Syrian Arab Republic remain the core area for ISIS, and the Idlib area, where Al-Qaeda also has affiliates, a source of concern. The trajectory of ISIS activity in this arena is unclear, with periodic surges that have not been sustained. There is no indication that ISIS will be able to take and hold territory in the short

[11] László István Gál: The Possible Impact of the COVID-19 On Crime Rates in Hungary. Journal Of Eastern-European Criminal Law, 2020. No. 1. pp 166–167.

[12] ibid. p. 167.

[13] Kacper Gradoń: Crime in the time of the plague: fake news pandemic and the challenges to law-enforcement and intelligence community. Society Register, 2020, Vol. 4, No. 2, p. 134.

[14] Andrew Silke: COVID-19 and terrorism: assessing the short-and long-term impacts. Cranfield: Pool Re Solutions, 2020. p. 2.

[15] Justin Crump: Terrorism and security threat trends in 2021. https://www.securitymagazine.com/articles/94219-terrorism-and-security-threat-trends-in-2021 (26/02/2021.).

[16] Clarke, Op. cit.

to medium term, although the group will certainly exploit its capacity to remain in a region with limited stabilization and reconstruction prospects. Afghanistan remains important to both ISIS and Al-Qaeda, and the peace process key to suppressing the long-term threat from both. The Taliban's fulfilment of its commitments stands to aggravate Al-Qaeda leadership difficulties. Consolidation of ISIS and/or Al-Qaeda in other conflict zones would likely lead to the revival of external attack plans that would eventually have an impact on non-conflict zones. The arenas where the groups have made recent progress in this regard are located mainly on the African continent. Terrorism continues to spread in West Africa. The region of Cabo Delgado in Mozambique is among the most concerning areas. The fragile consensus between Al-Qaeda and ISIS to fight a common enemy is over, as both groups are now involved in violent confrontations in all conflict zones apart from Libya. Neither ISIS nor Al-Qaeda is assessed to have made significant progress regarding the abuse of technology by terrorists, especially in the fields of finance, weaponry and social media in late 2020.[17] On February 29, 2020 the Trump government and the Taliban made a historical deal agreeing on the withdrawal of the U.S. troops from Afghanistan. The troops have been fighting in the country for almost 20 years, and nowadays it is hardly imaginable, that in 1996 the Washington government came close to recognise the Taliban as the legitimate ruler of Afghanistan.[18] With the U.S. drawing down forces in the Middle East, South Asia, and throughout Africa, Al-Qaeda, ISIS, and their respective affiliates could make a renewed push to capture new territory and destabilize countries and regions. 2021 could be a successful year for Al-Qaeda as it seeks to reassert itself through affiliates around the globe. There could be openings for terrorist and insurgent groups to take advantage of potential power vacuums, as the U.S. continues to shift resources and redeploy troops in various scenes. The pandemic did little to slow the operational tempo of ISIS attacks in Syria. 2021 may present more opportunities for terrorists to recruit and launch strikes throughout the Levant. U.S. forces are scheduled to be reduced to 2,500 troops in Iraq and Afghanistan, presenting serious advantages to the enemies of the U.S. In Iraq, Iran has already moved to increase its influence by supporting various Shia militias groups. Encroaching Iranian influence could push Iraqi Sunnis back to ISIS. As a state sponsor of terrorism, Iran may also look to increase its support to various proxies. With the U.S. drawdown in Afghanistan, there are growing concerns that the Taliban will dominate the country once again. In West Africa and the Horn of Africa, jihadist groups are gaining momentum, which will likely continue in 2021. Many of the countries most at risk of terrorist attacks are now located in Africa, a shift in the counterterrorism center of gravity from the Middle East.[19]

Although statistics show that the spread of COVID-19 in Africa was far from the same as in China, Europe or the Americas, the world's strictest restrictions had to be put in place to stop the pandemic. At the same time, Africa has cut itself off from its main supporters, making its economic situation more difficult and risking the already weak stability of African societies.[20]

Even as the physical caliphate of ISIS has been destroyed, the organisation continues to expand through affiliates, especially throughout Africa, where it now maintains provinces in West Africa (ISWAP), the Greater Sahara (ISGS), and Central Africa (ISCAP). Al-Qaeda- and ISIS-linked jihadists have destabilized countries that had previously escaped terrorism, including Cameroon, Burkina Faso, and Mozambique. These groups will intensify their operations in 2021. Their efforts could increase in 2021, especially if resources from counterterrorism are diverted to other pressing needs, including public health.[21] Africa has seemingly taken on the mantle of the Middle East as the cradle of jihadism. Endemic government failures have seen long-running insurgencies escalate over 2020 and many now threaten to spread into new theatres. Mozambique has seen the most significant development in militancy over the last year, with the Islamist insurgency in Cabo Delgado threatening to establish territorial control over urban centres and launch more frequent operations into neighbouring Tanzania. While this is not likely to spread fully along the continent's east coast, networks run from north to south, and link into criminal interests. This has long been the trend in the north-west of the continent, where Nigeria and the Sahel countries remain unable to rein in Islamist and tribal militants that have basically displaced state authorities in rural areas. Levels of activity are increasing and this is drawing attention from Western countries, with military action gradually escalating in an attempt to contain the threat. Long-running militant violence in South Asia threatens to spike in 2021, especially on the Afghanistan-Pakistan border and in Kashmir. Narendra Modi's bullish approach to the latter will provoke militant groups to launch new campaigns, with any backlash among Hindu nationalists threatening

[17] Letter dated 21 January 2021 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities addressed to the President of the Security Council. S/2021/68. United Nations Security Council, New York, 2021. p. 3. https://undocs.org/pdf?symbol=en/S/2021/68 (26/02/2021.)

[18] Péter Wagner: „A tálibok is fundamentalisták, de nem olyan Amerika-ellenes éllel, mint Irán – inkább a szaúdiakhoz állnak közel." („The Taliban Does Not Practice the Anti-U.S. Style of Fundamentalism Practiced by Iran – It Is Closer to the Saudi Model.). KKI-elemzések: A Külügyi és Külgazdasági Intézet időszaki kiadványa, E-2020/52. p. 3.

[19] Clarke, Op. cit.

[20] János Besenyő – Marianna Kármán: Effects of COVID-19 pandemy on African health, poltical and economic strategy. Insights into Regional Development, 2020. Vol. 2. No. 3. p. 630.

[21] Clarke, Op. cit.

to the spread of politicised sectarian violence in India more broadly.[22] ISIS has evolved out of necessity and it is still evolving. Their strongest parts are the network of supporters and recruiters and propaganda artists deeply ingrained online, ultimately posing a greater threat in the long term than a physical caliphate in Syria and Iraq, as they recruit, inspire, and teach homegrown violent extremists anywhere in the globe. ISIS still publishes their weekly newsletter al-Naba, but some of the most consistent media reaching out to an English-language audience in 2020 came from supporters in India, underscoring how the terrorist organisation is reliant on its geographical diversity for recruitment and distance learning. ISIS laid down a framework of borderless jihad and a blueprint for growing a terror movement both on the dark web and the surface web that is impossible to control.[23]

To date, no violent non-state actor has harnessed social media as effectively as the Islamic State.[24] COVID-19 has had ISIS thinking more about bioweapons and unconventional attacks. Their provinces are still active, particularly through attacks in West Africa and Afghanistan. The relationship between the Taliban and al-Qaeda seems good since the Taliban inked a deal with the U.S. on February 29. As First Vice President Amrullah Saleh said, trying to separate the deeply intertwined groups "is harder than desalination." Yet, as the Taliban self-identified as a jihad-centered political entity, they traded a promise for U.S. withdrawal for a promise to behave. Taliban propaganda has long boasted that they would bring "to their knees" American "crusaders," and as their headlines scream that they essentially accomplished their goal it can serve as a shot in the arm to other terror groups operating with the same aims. A victory against a common enemy is viewed at its core a victory for all, and that is feeding the ever-growing and accessible ideological marketplace of terrorist ideas, methods and inspiration – in addition to the physical assistance the Taliban and their terror allies share. Al-Qaeda and al-Shabaab also have been using current events to recruit and inspire attacks, as the latter group watches the pullout of U.S. forces that had been training Somali forces to battle the terrorist group. In response to the attacks in France, Al-Qaeda in the Islamic Maghreb and al-Shabaab issued statements urging followers to emulate the attacks, with the latter declaring that the terrorists were "gallant knights". The terrorist group then advised others to follow in those footsteps as well in a "war" against secularism, naming recent attackers in France "and the other unknown soldiers of Allah." Al-Qaeda had previously issued a statement declaring France to be a target and inciting attacks after French President Emmanuel Macron said in an October 2 address that "Islam is a religion which is experiencing a crisis today, all over the world," and said there is a need to build an "Islam des Lumières," or Islam of Enlightenment. These groups will be using perceived gains in 2021 to recruit, inspire, and move into their next era.[25] In the West, particularly in Europe, the controversy between France and the Muslim world will be the immediate concern going into 2021. As seen in the last few months, lone wolves will continue to launch attacks in Western cities, although media corporations and social media platforms will also be vulnerable if perceived to be promoting anti-Muslim sentiment. More established terrorism risks will continue to impact the energy and mining sectors in Africa and the Middle East, with the former overtaking the latter and even South Asia as a center for activity. In particular, an intensifying insurgency in Mozambique is increasingly threatening its gas industry, while in Iraq, Shia militia violence and anti-government protesters will threaten to disrupt the country's oil sector. Disruption is particularly likely during the first half of the year as Iran seeks to test U.S. resolve. The 20th anniversary of the 9/11 attacks is also a possible trigger, and this will certainly focus public attention on jihadism around that time.[26] The close of 2020 has demonstrated the capacity for cultural and religious fault lines to generate tensions, either inadvertently or deliberately, following hostile rhetoric towards France and French interests from leaders in the Muslim world, which arose as a consequence of Macron's assertion of the right to freedom of expression in the wake of Islamist terrorist attacks, but exemplifies the differences in societal values and norms that have the capacity to provoke violence when sensitivities are either misunderstood or ignored. The response both in the form of a public embargo of French goods in Islamic countries and, of concern, violent attacks was swift and highly impactful – showing how serious such issues can be. This will likely be a lasting problem.[27]

3. The growing threat of the far right

Violence committed by individuals and groups inspired by far-right ideologies is increasingly seen as a transnational threat. This type of terrorism has be-

[22] Justin Crump: The evolving terror threat in 2021. Counter Terror Business Magazine, 2020. No. 45. p. 23.
[23] Johnson, Op. cit.
[24] Daveed Gartenstein-Ross – Colin P. Clarke – Matt Shear: Terrorists and Technological Innovation. https://www.lawfareblog.com/terrorists-and-technological-innovation (26/02/2021.).
[25] Johnson, Op. cit.
[26] Justin Crump: Terrorism and security threat trends in 2021. https://www.securitymagazine.com/articles/94219-terrorism-and-security-threat-trends-in-2021 (26/02/2021.).
[27] Justin Crump: The evolving terror threat in 2021. Counter Terror Business Magazine, 2020. No. 45. p. 23.

come more frequent. Far-right groups operate within and across borders. David C. Rapoport argued that the emergence of distinctive types of terrorist activity in different historical periods could be explained by new underlying political and ideological forces. Rapoport identified four "waves" of terrorist activity since the late 19th century.[28] According to Auger, considerable evidence and analysis support an argument, that a fifth, far-right wave of global terrorism may be underway.[29] Observers have signalled the decline of violent Islamic movements and the rise of far-right extremist activities. According to Spence, if right-wing violent extremism is the new fifth wave of modern terrorism, the negative societal impacts of the pandemic will only help accelerate the radicalization of its adherents, and if the duration of the previous four waves have taught us anything, this new wave could be around for many more years to come.[30] According to the 2020 Trends Alert published by The United Nations Security Council Counter-Terrorism Committee Executive Directorate (CTED), CTED has been alerted by Member States to their increasing concern at the growing and increasingly transnational threat posed by extreme right-wing terrorism. Ten of the 31 States in which CTED conducted assessment visits on behalf of the CTC in 2018 and 2019 raised this threat as an issue of concern. Research indicates that there has been a 320 per cent rise in attacks conducted by individuals affiliated with such movements and ideologies over the past five years. Most such attacks have been carried out in Western States.[31] According to Europol's European Union Terrorism Situation And Trend Report 2019 (TE-SAT), the number of arrests linked to right-wing terrorism remained relatively low, but increased for the third year in a row. Right-wing extremists prey on fears of perceived attempts to Islamicise society and loss of national identity. With regard to terrorism trials concluded in 2018, jihadist terrorism convictions remained the highest in number; but there was a noted increase in leftwing and right-wing terrorism convictions.[32] The trend continues: According to the European Union Terrorism Situation And Trend Report (TE-SAT) 2020 in 2019 three EU Member States reported a total of six right-wing terrorist attacks (one completed, one failed, four foiled), compared to only one in 2018. Additionally, two attacks not classified as terrorism under national law but committed by right-wing extremists were reported by Germany and claimed the lives of three people. In 2019 the right-wing attacks in Christchurch (New Zealand), Poway (USA), El Paso (USA), Bærum (Norway) and Halle (Germany) were part of a wave of violent incidents worldwide, the perpetrators of which were part of similar transnational online communities and took inspiration from one another. Both jihadist and right-wing extremist propaganda incite individuals to perpetrate acts of violence autonomously and praise perpetrators as 'martyrs' or 'saints', respectively.[33] The far-right is becoming a greater threat both transnationally and domestically in specific countries, including the U.S. and Germany. The lag effect of COVID-19, the growing anxiety among large segments of the population, severe economic malaise, increased firearms sales may make 2021 a banner year for domestic terrorism. An election is added to the mix, that Trump has repeatedly attempted to delegitimize, and many counter-terrorism analysts are predicting a sharp rise in domestic terrorism, especially attacks conducted by anti-government extremists and others on the far-right.[34] Issues such as migration, global trade, global security, and support for international organizations have driven polarization in the political landscape and any such shift always feeds a fringe extremist element. Unlike jihadism, the far right is harder to identify, especially in liberal democracies. Far right threat actors also tend to be both more aligned with the security services that are tasked to counter them, and more decentralized, making networks far harder to counter – as shown by the fact that 60% of successful terrorist attacks are carried out by unaffiliated individuals, whether they be jihadist or right wing. This threat will remain most evident in Europe, with Germany, Greece, Italy, and the U.K. arguably being the countries most likely to see incidents. While solo actors have the highest chance of landing a successful attack, a number of complex plots have been only narrowly prevented in the last few years, some even being linked to members of the respective country's armed forces. Migration is a significant catalyst, and increased protectionism[35] is likely in 2021, as a consequence of the economic impacts of COVID-19. In addition to the countries previously mentioned, Hungary, Austria, and Sweden have also seen mass migration[36] and so it is not

[28] Vincent A. Auger: Right-Wing Terror: A Fifth Global Wave? Perspectives on Terrorism Vol. 14. No. 3. p. 87.

[29] ibid. p. 93.

[30] Sean Spence: The New Wave of Global Terrorism Is Right-Wing Extremism. https://www.usnews.com/news/best-countries/articles/2020-10-22/right-wing-extremism-the-new-wave-of-global-terrorism (26/02/2021.).

[31] CTED Trends Alert: Member States Concerned By The Growing and Increasingly Transnational Threat of Extreme Right-Wing Terrorism. United Nations Security Council Counter-Terrorism Committee Executive Directorate, 2020. p. 3. https://www.un.org/sc/ctc/wp-content/uploads/2020/04/CTED_Trends_Alert_Extreme_Right-Wing_Terrorism.pdf (26/02/2021.).

[32] European Union Terrorism Situation And Trend Report 2019 (TE-SAT). pp 6–7.

[33] European Union Terrorism Situation And Trend Report (TE-SAT) 2020. pp 5–6.

[34] Clarke, Op. cit.

[35] Border control also plays an essential role to protect the Schengen border-free area from threats to public health, especially those related to pandemics. 2020 in brief – Frontex. p. 1. https://frontex.europa.eu/assets/Publications/General/In_Brief_2020/20.0147_inbrief_2020_11th_web_fixed4.pdf (26/02/2021.)

[36] Migration can be both a tool and a catalyst for acts of terrorism. See: Zoltán Hautzinger: A terrorizmus elleni küzdelem idegenjogi eszközei. In

surprising that these countries will continue have an active far right threat. Lockdown has to some extent mitigated incidents, but far right groups have been particularly active in anti-stringency protests. Identification with this cause and, increasingly, the anti-vaccination movement is being fueled by deliberate disinformation campaigns on social media, offering increasingly bigger pool for recruitment. Larger scale economic issues, international tensions, government policy failures, and societal tensions coupled with emerging triggers such as a new wave of threatened migration via Turkey will further fuel this trend. Mental health is also a driver particularly for "lone wolves", and the risk of people being influenced by social media echo chambers is very high. The U.S. has experienced a similar uptick in far right activities, which drew particular attention ahead of the elections in November 2020, and this also risks catalyzing the left wing as well as part of a violent cycle. Despite few successful attacks, the general level of activity has already particularly impacted the tech sector, where de-platforming of those involved in spreading far right views has become an imperative. Corporations increasingly feel unable to take a neutral position on touchstone issues, with not making a statement being seen as a statement. When executives are motivated speak out, either in a personal capacity or for their company, a negative reaction will seriously risk attracting isolated acts of violence.

The far right will likely become much more technically agile as a result of the measures forced by the pandemic. Messaging has also changed, away from more obvious neo-Nazism towards a more sophisticated national identity message, particularly driven by an influx of younger recruits. The various disparate elements have failed to find a common cause, particularly in Europe, although the "stop the steal" issue in the US risks providing a more coherent narrative there. The coalescence of messaging is a major indicator we are watching for in the coming months, as economic impacts of COVID-19 are becoming more severe.[37]

4. Domestic terrorism in the U.S.

In the U.S. the is a "considerable amount of ambiguity over domestic terrorism, what it means precisely, [and] how it's charged."[38] This ambiguity arises from the lack of a standalone criminal offense outlawing domestic terrorism.[39]

How is domestic terrorism defined in the U.S.? "Domestic Terrorism for the FBI's purposes is referenced in U.S. Code at 18 U.S.C. 2331(5), and is defined as activities: Involving acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; Appearing to be intended to: Intimidate or coerce a civilian population; Influence the policy of government by intimidation or coercion; or Affect the conduct of a government by mass destruction, assassination or kidnapping; and Occurring primarily within the territorial jurisdiction of the United States."[40]

According to Johnson, in 2021 we may see more reactionary violence from domestic extremists, either by multiple members of a group or movement or lone attacks with manifestos like the 2019 El Paso Walmart shooting, in response to real or perceived policy shifts that come with a new administration — or even in reaction to how a newly led Justice Department may address and confront domestic extremist movements. Political and social tensions will also likely influence recruitment and growth in some domestic extremist movements.[41] The FBI warned the U.S. about the growing dangers of domestic violent extremists and called it the number one terrorism threat in 2021.[42]

5. Terrorists' use of emerging technologies

Terrorists take advantage of technological advances in many ways.[43] As Cronin points out: "The worldwide dispersal of emerging technologies, such as commercial drones, cyber weapons, 3D printing, military robotics, and autonomous systems, is generating gaping fissures in the ability of conventional

Gyula Gaál – Zoltán Hautzinger (Eds.): Pécsi Határőr Tudományos Közlemények XVI.: Modernkori veszélyek rendészeti aspektusai, Magyar Hadtudományi Társaság Határőr Szakosztály Pécsi Szakcsoportja, Pécs 2015. p. 203.

[37] Justin Crump: Terrorism and security threat trends in 2021. https://www.securitymagazine.com/articles/94219-terrorism-and-security-threat-trends-in-2021 (26/02/2021.)

[38] James Cullum: No Domestic Terror Charge? Lack of Law Reflects 'Considerable Ambiguity,' Says DOJ Official. https://www.hstoday.us/subject-matter-areas/counterterrorism/no-domestic-terror-charge-for-domestic-terrorism-lack-of-law-reflects-considerable-ambiguity-says-doj-official/ (26/02/2021.) Cited by: Amy C. Collins: The Need for a Specific Law Against Domestic Terrorism. Program on Extremism, George Washington University, 2020. p. 3. https://extremism.gwu.edu/sites/g/files/zaxdzs2191/f/The%20Need%20for%20a%20Specific%20Law%20Against%20Domestic%20Terrorism.pdf (26/02/2021.).

[39] Ibid. p. 3.

[40] Domestic Terrorism: Definitions, Terminology, and Methodology. p. 1. https://www.fbi.gov/file-repository/fbi-dhs-domestic-terrorism-definitions-terminology-methodology.pdf/view (26/02/2021.).

[41] Johnson, Op. cit.

[42] Sarah Schulte: FBI warns America about domestic terrorism following attack on US Capitol. https://abc7chicago.com/domestic-terrorism-fbi-us-capitol-building-the-internet/9634442/ (26/02/2021.).

[43] Dávid Tóth: A pénz- és bélyegforgalom biztonsága elleni deliktumok büntetőjogi és kriminológiai aspektusai. Pécsi Tudományegyetem Állam- és Jogtudományi Kar, Pécs 2020. p. 121.

armed forces to combat lethal capabilities of non-state actors, most notably terrorists, but also rogue lone actors, insurgent groups, and private armies."[44] According to Clarke, another trend likely to continue in 2021 is violent non-state actors' growing reliance on emerging technologies. ISIS, Houthi rebels in Yemen, and the Taliban have demonstrated willingness and capability to deploy unmanned aerial systems for combat and reconnaissance purposes. The barriers to entry for acquiring and skillfully maneuvering drones have decreased drastically, and commercial off-the-shelf drones are readily available and easy to obtain. After observing drones' successful employment in conflicts in Libya and Nagorno-Karabakh, terrorists may be encouraged to acquire them, viewing them as a force multiplier in any asymmetric conflict. In 2021, there could also be further interest from terrorists in homemade 3D printed firearms, as witnessed in a 2019 attack by a far-right extremist in Halle, Germany. Far-right extremists have shown a particular interest in 3D printed firearms.[45] The internet: The digital space has become a new battleground for ideological warfare; radical groups are actively using it for recruitment, propaganda, and radicalization. Especially, during the pandemic, internet became the latest weapon in the hands of violent radicals who used it to spread hatred against the government and civil bodies.[46]

6. Ideologies that could impact trends in terrorism

According to Clarke, there are a number of ideologies that could impact trends in terrorism in 2021, including traditional left-wing grievances related to economics and the environment and conspiracy theories like QAnon and the associated campaigns to push back against everything from vaccines to 5G technology. There are also threats emanating from extreme misogyny and the so-called "Incel" movement.[47] Coronavirus conspiracy theories have had serious public health consequences by encouraging people to not take the threat seriously, compounded by vaccination opponents claiming Bill Gates wants to microchip people or asserting other claims about the goals of inoculation programs. Conspiracy theories that have warranted the attention of homeland security also include those pushed by QAnon supporters alleging "deep state" conspiracies and more, the 5G conspiracy theories that allege the technology is used to track people and/or spread COVID, and the white supremacist "great replacement" theory that claims there is an organized plot against whites and has been cited by mass shooters in Christchurch and El Paso.[48] The FBI for the first time has identified fringe conspiracy theories as a domestic terrorist threat. The FBI intelligence bulletin from the bureau's Phoenix field office, dated May 30, 2019, describes "conspiracy theory-driven domestic extremists," as a growing threat, and notes that it is the first such report to do so. It lists a number of arrests, including some that have not been publicized, related to violent incidents motivated by fringe beliefs. This document specifically mentions QAnon.[49]

Feminist researchers believe the rise of disenfranchised middle-class white males is leading to increased toxic masculinity within society, as evidenced by the increased popularity of the so-called manosphere to share extremist ideas and vent their grievances. Law enforcement agencies are concerned that the manosphere and similar online communities are radicalizing young men to commit violence to achieve their goals.[50]

7. Attack on the U.S. Capitol – domestic terrorism and the dangers of conspiracy theories

A group of Trump supporters stormed the U.S. Capitol on January 6, 2021, and clashed with police in violence that left four people dead. They were attempting to prevent the confirmation of Joe Biden's election victory. They descended on the Capitol after Trump made a speech to his supporters, imploring them to „fight" to stop the „steal"' of the election. Police officers shot one woman dead, while three more Trump supporters died of „medical emergencies." U.S. Capitol Police later released a statement confirming one of their officers had also died of injuries sustained during the riots.[51] A leader in the

[44] Audrey Kurth Cronin: Power to the People: How Open Technological Innovation is Arming Tomorrow's Terrorists. Oxford University Press, New York 2020. p. 1.

[45] Clarke, Op. cit.

[46] Soumya Awasthi: Annual Review of Islamic State and Al Qaeda. What is on the Horizon in 2021? https://www.vifindia.org/article/2021/january/21/annual-review-of-islamic-state-and-al-qaeda-what-is-on-the-horizon-in-2021 (26/02/2021.).

[47] Clarke, Op. cit.

[48] Johnson, Op. cit.

[49] Jana Winter: Exclusive: FBI document warns conspiracy theories are a new domestic terrorism threat. https://news.yahoo.com/fbi-documents-conspiracy-theories-terrorism-160000507.html (26/02/2021.).

[50] Sean Spence: The New Wave of Global Terrorism Is Right-Wing Extremism. https://www.usnews.com/news/best-countries/articles/2020-10-22/right-wing-extremism-the-new-wave-of-global-terrorism (26/02/2021.).

[51] James Franey: US Capitol storming: What you need to know. https://

QAnon conspiracy theory movement was one of the rioters storming the Capitol: the so called "Q Shaman" or "QAnon Shaman" aka "Jake Angeli" (or Yellowstone Wolf[52]), whose real name is Jacob Anthony Chansley. The movement has played a big role in organizing nationwide „Stop the Steal" protests in the two months since President-elect Joe Biden won the 2020 election.[53]

Joe Biden called the pro-Trump mob that sieged the Capitol „domestic terrorists". The offenders should not be called protesters, rather „a riotous mob, insurrectionists, domestic terrorists," Biden said.[54] Sacco in the report titled "Domestic Terrorism and the Attack on the U.S. Capitol. CRS INSIGHT, 2021." discusses whether or not participants and their actions may be categorized as domestic terrorists and domestic terrorism, and issues around designating domestic fringe groups, such as the Boogaloo Bois and Proud Boys who were allegedly involved in the attack, as terrorist organizations.[55] The federal definition of domestic terrorism describes domestic terrorists as "Americans who commit ideologically driven crimes in the United States but lack foreign direction or influence."[56] The Federal Bureau of Investigation (FBI) generally relies on two sources to define domestic terrorism. First, the Code of Federal Regulations characterizes "terrorism" as including "the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."[57] Second, 18 U.S.C. §2331(5) more narrowly defines "domestic terrorism." This definition comes from Section 802 of the USA PATRIOT Act (P.L. 107-56). According to 18 U.S.C. §2331(5), domestic terrorism occurs primarily within U.S. territorial jurisdiction, and involves "(A) acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; (B) appear to be intended– (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping..."[58] According to Sacco, the participants' actions seem to fit both definitions.[59] While the participants' actions on January 6 may be consistent with the definition of domestic terrorism, Sacco notes that domestic terrorism is not a chargeable offense on its own. While individuals involved in the attack may belong to extremist groups such the Proud Boys and Boogaloo Bois or adhere to their ideology, Sacco states that the federal government declines to designate these groups as domestic terrorist groups and instead focuses on the violent criminal acts of individuals, whether members of these groups or not.[60] U.S. President Joe Biden ordered law enforcement and intelligence officials to investigate the risk of domestic terrorism following the attack on the U.S. Capitol.[61]

Conclusion

The aim of my paper was to call attention to the most alarming present and upcoming trends in terrorism in 2021. I agree with Resperger, that we have to ensure that our security agencies, law enforcement and defence organizations are alert, and their staff are trained to be ready to face the newest challenges. In addition to offensive operations by terrorist organisations, their media activities on multiple social media platforms which they use to spread their propaganda to their sympathisers and to intimidate their opponents must be countered.[62] Law enforcement agencies should be aware of the latest trends in terrorism, to be able to successfully prevent future attacks more efficiently.

www.dw.com/en/us-capitol-storming-what-you-need-to-know/a-56154560 (26/02/2021.).

[52] Rich Schapiro – Michael Kosnar: Capitol rioter in horned hat gloats as feds work to identify suspects. https://www.nbcnews.com/news/us-news/capitol-rioter-horned-hat-gloats-feds-work-identify-suspects-n1253392 (26/02/2021.).

[53] Rachel E. Greenspan – Haven Orecchio-Egresitz: A well-known QAnon influencer dubbed the ‚Q Shaman' has been arrested after playing a highly visible role in the Capitol siege. https://www.businessinsider.com/q-shaman-qanon-influencer-capitol-siege-washington-dc-protest-riot-2021-1 (26/02/2021.).

[54] Joe Biden slams pro-Trump mob as ‚domestic terrorists'. https://www.dw.com/en/joe-biden-slams-pro-trump-mob-as-domestic-terrorists/a-56163969 (26/02/2021.).

[55] Lisa N. Sacco: Domestic Terrorism and the Attack on the U.S. Capitol. CRS INSIGHT, 2021. p. 1. https://crsreports.congress.gov/product/pdf/IN/IN11573 (26/02/2021.)

[56] ibid. p. 1.

[57] ibid. p. 1.

[58] ibid. pp 1–2.

[59] ibid. pp 1–2.

[60] ibid. p. 2.

[61] Joe Biden orders review of US domestic extremism threat. https://www.dw.com/en/joe-biden-orders-review-of-us-domestic-extremism-threat/a-56321162 (26/02/2021.).

[62] István Resperger: Methods of militant Islam in the Islamist State and the Book Haram terror organizations. In: Lóránd Ujházi – József Kaló – Ferenc Petruska (Eds.): Budapest Report On Christian Persecution 2019. Háttér Kiadó, Budapest 2019. p. 72.

Judit Szabó

Ne bis in idem as the cornerstone of a fair trial

Abstract

The right to a fair trial belongs to the first-generation human rights. The individual rights that belong here from, in other words, the group of freedoms, as they ensure that people have an undisturbed life, activity and social status, a freedom that can only be restricted by state intervention in exceptional and justified cases. In other terms, ensuring the principle of a fair trial is essential for the exercise of liberties: the state may restrict people in exercising their freedoms only through a fair trial.

For a proper analysis of the ne bis in idem principle, it is essential to describe the significant and parallel case law of the supranational judicial forums determining European criminal law. Within the framework of this dissertation, for reasons of space, I present the relevant decisions in a table. In the grouping, I use the "usual" division of the legal literature, supplementing it with the fact that I outline the case law of the ECtHR and the CJEU in parallel.

1. The nature of the „fair trial" principle

The right to a fair trial belongs to the first-generation human rights. The individual rights that belong here, in other words, the group of freedoms, as they ensure that people are provided with an undisturbed life, activity and social status, they have a freedom that can only be restricted by state intervention, and only in exceptional, also justified cases. In other terms, ensuring the principle of a fair trial is essential for the exercise of liberties: the state may restrict people in exercising their freedoms only through a fair trial.[1]

The framework of fair trial is filled with a multitude of guarantees. The right to a fair trial is declared by several major international human rights conventions. For example, Article 6 of the European Convention on Human Rights enshrines the right to a fair trial and its components, also Articles 47 to 50 of the Charter of Fundamental Rights of the European Union and Article 14 of the International Covenant on Civil and Political Rights deal with this fundamental right. In Hungary, this principle is declared in Article XXVIII section 1 of the Fundamental Law of Hungary.

However, defining the principle of fair trial is not an easy task. It may be a matter of debate what the term "fair" shall mean, as well as the scope of rights must be granted in proceedings in order to fair.[2]

The result of which is that in most cases usually it is not the observance or non-observance of one of these rights that determines whether or not the prosecuting authorities acted fairly, but the whole procedure shall be examined.[3] The criminal human rights and guarantees mentioned above belong to the so-called second group of absolute rights: in this case, it is not a question whether the rights are falling within that scope might not be opposed to other rights, however, these rights already reflect a situation after consideration.[4]

The principle of ne bis in idem is one of the strongest procedural guarantees, part of a fair trial, part of effective legal protection. In this respect, I agree with Erika Róth's statement that procedural rights play a decisive role in the development of individual legal protection[5] – the recent evolution of criminal law also trends to this direction.

Ne bis in idem, or on the other hand, the prohibition of double jeopardy as a constitutional fundamental right, is found in the legal systems of almost all Member States, thus strengthening the cornerstone of criminal cooperation between EU Member States, also the principle of mutual trust and mutual recognition.

The principle of mutual recognition means that an institution of law is accepted by another entity independent of the creator or adopting entity, in

[1] Halmai Gábor - Tóth Gábor Attila: *Az emberi jogok rendszere* In: Halmai Gábor - Tóth Gábor Attila (ed).: Emberi jogok 2003. p 82

[2] Farkas Henrietta Regina: *A tisztességes eljárás főbb részjogosítványainak érvényesülése a büntetőperben* ujbtk.hu 01.12.2019.

[3] Róth Erika: *A tisztességes eljáráshoz való jog* In: Halmai-Tóth cited work p 703

[4] Halmai Gábor - Tóth Gábor Attila: *Az emberi jogok korlátozása* In: Halmai-Tóth cited work p 111

[5] Róth Erika: *Eljárási jogok* In: Halmai-Tóth cited work p 669

the way and as it comes from the creator or adopting entity. Its enforcement is based on the fact that Member States trust each other's criminal justice systems.[6] The essence of mutual recognition in international criminal cooperation is that a decision adopted by the judicial authority of one Member State is recognized by the other Member State and implemented as if it had been taken by its own judicial authorities.[7]

The principle of mutual recognition in criminal matters, the mutual recognition of judicial decisions, also means the extension of state criminal power, with the free movement of judicial decisions ultimately leading to the restriction and non-fulfillment of individual rights. In other words, this segment of the effects of the recognition of a foreign judgment is therefore essentially a voluntary restriction of criminal jurisdiction [8]. It should be stressed, that the principle of mutual recognition is also a major challenge to the sovereignty of the Member States, since in the single European area, national judicial decisions that are not based on generally (recognized) legislation across Europe and on the same guarantee provisions will be enforceable.

The Court has recalled "that the principle of mutual trust between the Member States is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained. That principle requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognized by EU law."[9] "Thus, when implementing EU law, the Member States may, under EU law, be required to presume that fundamental rights have been observed by the other Member States, so that not only may they not demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, but, save in exceptional cases, they may not check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU".[10]

Following the entry into force of the Treaty of Amsterdam[11], the ne bis in idem principle has become increasingly important as a partial right of a fair trial - owing to the EU's so-called III. pillar legislative 'dumping', which was the result of the opening of borders and the free movement of workers (including criminals). After 2006, this issue arose in connection with conflicts of jurisdiction at European Union level. [12]

Since 2003, the Court of Justice of the European Union (hereinafter: CJEU) has consistently stated in its judgments that the principle of ne bis in idem is both a constitutional and a defense right within the area of freedom, security and justice.[13] It is part of the right of defense, as closer cooperation between Member States in criminal matters implies stronger protection of the rights of individuals, especially as Member States have so far failed to recognize the importance of a single, binding mechanism at EU level for avoiding the conflicts of criminal jurisdiction. [14] The guarantee nature of the principle of ne bis in idem can be traced to several foundations of the rule of law, including legal certainty, equality and justice.

2. The appearance of the „ne bis in idem" principle

Despite the importance of the ne bis in idem principle, it appeared relatively late in the European criminal law. The Commission's Green Paper[15] on the procedural rights of suspects and accused persons in criminal proceedings and the Stockholm Program of 2009[16] do not even mention only the traditional elements of fair trial, such as interpretation, effective legal representation and rights of liaison and information. The Hague Program of 2004[17] explicitly stated that the protection of the security of the European Union and its Member States became urgent – especially in the light of the terrorist attacks of 11 September 2001 in the United States and 11 March 2004 in Madrid.The Hague Program underlined that the fundamental rights guaranteed by the European Convention on Human

[6] Kondorosi-Ligeti cited work [7-03] – on this topic for more details also see Farkas Ákos: *A kölcsönös elismerés elve az európai büntetőjogban* I. Ügyészségi Szemle, 2016/1. http://www.ugyeszsegiszemle.hu/hu/201601/ujsag#88 19 Oct 2017.

[7] About the negative function of mutual recognition in international criminal cooperation for more detail see Karsai Christina: *The principle of mutual recognition in the international cooperation in criminal matters*. https://heinonline.org/HOL/LandingPage?handle=hein.journals/zborrado45&div=57&id=&page= 17 July 2020. At the same time, it points out that the principle of mutual recognition also allows the determining authorities to apply the so-called forum shopping without a common judicial review mechanism. On mutual recognition as a method of negative integration, see also Werner Schroeder: *Limits To European Harmonisation of Criminal Law* Eucrim 2020-008 https://eucrim.eu/articles/limits-european-harmonisation-criminal-law/ August 11, 2020

[8] Fejes Péter: *A külföld ítélet érvényének elismerése – corpus alienum in iure criminali?* Ügyészségi Szemle, 2016/2. p 26.

[9] Opinion No 2/13, point 191, referring to the411/10 and C493/10, N.S. and M.E. Melloni-judgment 63.

[10] Opinion No 2/13 of CJEU, point 192.

[11] 1 May 1999.

[12] COM/2005/0696 final - Green Paper on Conflicts of Jurisdiction and the Principle of ne bis in idem in Criminal Proceedings.

[13] Teresa Bravo: *Ne bis in idem as a defense right and procedural safeguard in the EU* New Journal of European Criminal Law Vol. 2. Issue 4., 2011.393–401. p 395.

[14] Teresa Bravo cited work p 39.

[15] COM(2003) 75.

[16] 2009/C 295/01 30 Nov 2009 OJ C 295 p. 1–3.

[17] 2005/C 53/01 OJ C 53, 3 March 2005, p. 1–14.

Rights shall be fully respected[18]; furthermore the comprehensive program of measures to implement the principle of mutual recognition of judicial decisions in criminal matters shall be completed. It shall also include judicial decisions taken at any stage of criminal proceedings or otherwise relevant to such proceedings, such as gatherings and admissibility of evidence, conflicts of jurisdiction, principle of ne bis in idem, and final decisions sentencing imprisonment or other (alternative) sanctions. Attention must be paid to any further suggestion in this relation.[19] The Hague Program emphasized that the further implementation of mutual recognition as a cornerstone of judicial cooperation entails the development of uniform rules on procedural rights in criminal proceedings, based on studies of the current level of safeguards in the Member States, with due respect for Member States' legal traditions.[20]

From the point of view of fundamental rights, it is "worthwhile" to mention that the Hague Program also stated that, in order to achieve its objectives, EU should accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Therethrough the EU – by their institutions in addition to the Charter of Fundamental Rights – could undertake a legal obligation not only to respect fundamental rights in all areas of EU's activity, but also to actively promote them.[21] As it is well known, this has not happened until now, In this context, after 10 years (!), the CJEU, acting upon the initiative of the European Commission, concluded[22] that the accession would bind the EU institutions and the Member States the same as other international agreements concluded by the Union, therefore would become an integral part of law. In that case, the Union, like all the other contracting parties, would be subject to external control to ensure the respect for the rights and freedoms enshrined in the ECtHR. Thus, the Union and its institutions would be subject to the control mechanisms provided for in this Convention, and in particular subject to the decisions and judgments of the ECtHR.[23, 24]

Nevertheless or even strengthening, conventions drawn up under the auspices of the Council of Europe in the field of criminal cooperation between the Member States of the European Union play an important role[25] as the legal basis for EU cooperation, despite the specific nature of cooperation within the Council of Europe.[26]

3. The relevant case law of CJEU and ECtHR

Returning to the principle of ne bis in idem, it was initially reflected in the case law of the CJEU, first published in Case 7/72. Boehringer Mannheim GmbH v Commission of the European Communities of 14 December 1972, but at that time it was not yet a criminal rather in the field of competition law. The subject was a violation of U.S. competition law, so the concerned was fined $ 80,000 on 3 July 1969, for participation in an international cartel, which was paid on 11 July 1969, by the company concerned. However, the applicant was also fined 180,000 units of account (EUA)[27] by the Commission of the European Communities on 16 July 1969 for participating in the same international cartel. By letter of 3 September 1969, the applicant requested the Commission to comprise in the amount of the fine imposed the amount of the fine already paid in the United States, which was rejected by the Commission.[28]

For a proper analysis of the ne bis in idem principle, it is essential to describe the significant and parallel case law of the supranational judicial forums determining European criminal law. Within the framework of this paper, for reasons of space, I present the relevant decisions in a table. In the grouping, I use the "classical" division of the legal literature, supplementing it with the fact, that I outline the case law of the ECtHR and the CJEU in parallel aspects. The table highlights the key words of the international practice developed by each decision, the relevant international conventions and their relevant legal provisions, as well as all the decisions made on this legal issue until the conclusion of this study. [29]

[18] Point II.1 of the Hague Program..
[19] point III.3.2 of the Hague Program.
[20] point III.3.3.1 of the Hague Program.
[21] point II.2 of the Hague Program.
[22] Opinion 2/13. of the Court (Full Court) 18 December 2014 [ECLI:EU:C:2014:2454].
[23] Press release No. 180/14 18 Dec 2014.
[24] About the interaction between EU law and the ECtHR see for more details Mohay Ágoston: *A nemzetközi jog érvényesülése az uniós jogban* Pécs, Studia Europaea 2019 p 55-81 and Paul Craig – Grainne de Burca: *EU law – text, cases and materials* Oxford University Press Sixth Edition 2015. p 419–423.

[25] Villányi József: *Az EU kölcsönös bűnügyi jogsegélyéről szóló egyezményhez kapcsolódó jogalkotási feladatok* http://acta.bibl.u-szeged.hu/7535/1/juridpol_doct_003_209-252.pdf 10 July 2020. p 210.
[26] E.g. the range of ET Member States is much wider than EU Member States; the CoE, as an international organization, does not have an independent legislative capacity independent of the Member States; the Member States of the CoE are making greater use of declarations of assurance during the ratification process, thus international treaties under the auspices of the CoE become part of the domestic law of the Member States to varying degrees.
[27] See judgement no 45/69. of CJEU.
[28] For more information on the impact of the Court's judgment in the field of competition law see Alessandro Rosano: *Ne Bis Interpretatio In Idem? The Two Faces of the Ne Bis In Idem Principle in the Case Law of the European Court of Justice* German Law Journal, Jan2017, Vol. 18 Issue 1, pp 39–58. p 44–45., also Gerard Conway: *Ne Bis in Idem in International Law* International Criminal Law Review, Jul2003, Vol. 3 Issue 3, pp 217–244 pages 230–231.
[29] Sources:
– ECtHR Guide on Article 4 of Protocol No. 7. to the European Con-

KEYWORD	ARTICLE	CASE TITLE & NUMBER[30]
1. *Criminal nature*	Article 50 of Charter Article 4 of Protocol No. 7.	Engel *and others v. The Netherlands* No. 5100/71., 5101/71. 5102/71.; 5354/72.; 5370/72. 8 June 1976 *Ruotsalainen v. Finland* no. 13079/03. 16 June 2009 *Akerberg Fransson* C-617/10. 2013.02.26. *A and B. v. Norway* no. 24130/11. and 29758/11. 15 Nov 2016 *Johannesson and Others v. Iceland* no. 22007/11. 17 May 2017 *Menci* C-524/15. 20 March 2018 *Garlsson Real Estate* SA C-537/16. 20 March 2018
2. *Duplication of administrative punitive and criminal proceedings*	Article 50 of Charter Article 4 of Protocol No. 7.	*Sergey Zolotukhin v. Russia* no. 14939/03. 30 Dec 2008 *Ruotsalainen v. Finland* no. 13079/03. 16 June 2009 *Akerberg Fransson* C-617/10. 2013.02.26. *Grande Stevens and others v. Italy* nos. 18.640/10., 18.647/10., 18.663/10. 04 March 2014 *A and B. v. Norway* no. 24130/11. and 29758/11. 25 Nov 2016 *Johannesson and Others v. Iceland* no. 22007/11. 18 May 2017 *Šimkus v. Lithuania* no. 41788/11. 19 June 2017 *Menci* C-524/15. 20 March 2018 *Garlsson Real Estate SA* C-537/16. 20 March 2018 *Di Puma and Zecca* C-596/16. and C-597/16. 20 March 2018
3. *Enforcement condition:* – *compatibility with Charter* – *out-of-court settlements* – *pre-trial detention* – *suspended sentences* – *partial enforcement* – *unenforceable sentence*	Article 50 of Charter Article 54 of CISA Article 4 of Protocol No. 7.	*Gözütök and Brügge* C-187/01. and C-385/01. 11 Febr 2003 *Kretzinger* C-288/05. 18 July 2007 *Bourquain* C-297/07. 11 Dec 2008 *Spasic* C-129/14. 27 May 2014 *Kadusic v. Switzerland* no. 43977/13 9 Sept 2018

vention on Human Rights – Right not to be punished twice, updated on 30 April 2020 https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_7_ENG.pdf 10 May 2020.

- Eurojust *Case law by the Court of Justice of the European Union on the principle of the ne bis in idem in criminal matters* April 2020 http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/caselawanalysis/Case%20law%20by%20the%20Court%20of%20Justice%20of%20the%20European%20Union%20on%20the%20principle%20of%20ne%20bis%20in%20idem%20in%20criminal%20matters%20(April%202020)/2020-04_Case-law-by-CJEU-on-NeBisInIdem_EN.pdf 10 May 2020

[30] Chronologically ordered.

KEYWORD	ARTICLE	CASE TITLE & NUMBER
4. *„Bis"* *(final decision)* – *decision barring further prosecution* – *decision on merits of the case* – *decision by a public prosecutor*	Article 50 of Charter Article 54 of CISA Article 4 of Protocol No. 7.	Gözütök and Brügge C-187/01. and C-385/01. 11 Febr 2003 *Miraglia* C-469/03. 10 March 2005 *Van Straaten* C-150/05. 28 Sept 2006 *Turansky* C-491/07. 22 Dec 2008 *Sergey Zolotukhin v. Russia* no. 14939/03. 30 Dec 2008 *Mantello* C-261/09. 16 Nov 2010 *M.* C-398/12. 5 June 2014 *Kossowski* C-486/14. 29 June 2016 *Ramda v. France* no. 78477/11. 18 Dec 2017 *AY* C-268/17. 25 July 2018 *Mihalache v. Romania* no. 54012/10. 8 July 2019
5. *„Idem"* *(same facts)*	Article 50 of Charter Article 54 of CISA Article 4 of Protocol No. 7.	*Gradiner v. Austria* no. 15963/90. 23 Oct 1995 *Oliveira v. Switzerland* no. 25711/94. 30 July 1998 *Franz Fisher v. Austria* no. 38275/97. 30 May 2002 *Van Esbroeck* C-436/04. 9 Sept 2006 *Van Strateen* C-150/05. 28 Sept 2006 *Gasparini* C-467/04. 28 Sept 2006 *Kretzinger* C-288/05. 18 July 2007 *Kraaijenbrink* C-367/05. 18 July 2007 *Ruotsalainen v. Finland* no. 13079/03. 16 June 2009 *Sergey Zolotukhin v. Russia* no. 14939/03. 30 Dec 2009 *A and B. v. Norway* no. 24130/11. and 29758/11. 25 Nov 2016 *Johannesson and Others v. Iceland* no. 22007/11. 18 May 2017 *Ramda v. France* no. 78477/11. 18 Dec 2017 *Mihalache v. Romania* no. 54012/10. 8 July 2019 *Korneyeva v. Russia* no. 72051/17. 8 Oct 2019
6. *National remedies*	Article 50 of Charter Article 54 of CISA	*XC and Others* C-234/17. 24 Oct 2018
7. Same person	Article 50 of Charter	*Orsi and Baldetti* C-217/15. and C-350/15. 15 Apr 2017 *AY* C-268/17. 25 July 2018

During the detailed analysis of the above mentioned cases, it has to be mentioned that both international courts follow the approach of applying the most favorable interpretation for the accused person.[31] The case law of the CJEU – also according to the chronological order analysis – is based primarily on the Strasbourg's conception of fundamental rights, and has merged it. Later, the development of the case-law of the CJEU had a reaction on the decisions of the ECtHR, thus creating a de facto mutual recognition between the two courts, we could say, the trust.[32] Acknowledging the fundamentally identical dogmatic solutions of the two law enforcement institutions, some authors stated while the case law of the ECtHR can be considered mature, the CJEU's one does not.[33] However this finding cannot be applied to criminal law at my point of view, as the cases cited above also strengthen that CJEU case-law is consistent and cumulative regarding this issue. [34]

[31] Norel Neagu: *The Ne Bis in Idem Principle in the Interpretation of European Courts: Towards Uniform Interpretation* Leiden Journal of International Law, Dec 2012, Vol. 25 Issue 4, pp 955–977 p 957.

[32] For details on differences of interpretation between the Court of Justice of the European Union, the European Court of Human Rights, Supreme Court of the United States see Norel Neagu cited work.

Michiel Luchtman also points out that the identical wording of Article 50 of the Charter and Article 4 of the 7th Additional Protocol to the ECHR does not cover the same "legislative intention", since the Explanations relating to the Charter of Fundamental Rights [*OJ C 303, 14.12.2007, p. 17–35*], the prohibition rule applies to a set of two sanctions of the same nature, in the field of the criminal law (both in the English and Hungarian language versions).

– Michiel Luchtman: *Transnational Law Enforcement in the European Union and the Ne Bis In Idem Principle* Review of European Administrative Law, 2011, Vol. 4 Issue 2, pp 5–29. p 11.

[33] Alessandro Rosano cited work p 58.

[34] Darius-Dennis Pătrăuș, in the context of Romanian law, takes the opposite view in part, arguing that in the Gasparini case the CJEU deviated from its own doctrine by opening the door to forum shopping on the one hand and the institution of obsolescence on the other. At the same time, it acknowledges that the CJEU's practice is fully in line with the ECtHR's interpretative guidelines and is, in principle, more consistent. Darius-Dennis Pătrăuș: *The Non Bis in Idem Principle in the Case Law of the Court of Justice of the European Union - Consistency or Inconsistency?* AGORA International Journal of Juridical Sciences, 2018, Issue 1, pp 25–34. p 31 & 34.

Krisztián Szabó[1]

10 years in the history of pre-trial detention in Hungary (2010–2019)

Introduction[2]

One of the most difficult parts of criminal procedure law is to regulate pre-trial detention. The most serious form of coercive measures is to break through the guarantees of personal liberty in order to ensure the success of the proceedings.[3] In Hungary, the regulation on pre-trial detention has been significantly amended on several occasions in the past ten years. This study will determine the content and directions for the development of these amendments.

The necessity of detention prior to criminal conviction has always been evident. Consequently, the Constitutional Court in the Decision no. 26/1999. (IX. 8.) ruled that pre-trial detention as a coercive measure does not preclude the rule of law and constitutional rights such as the presumption of innocence.[4]

In this lecture I would like to analyse the relevant procedural rule changes regarding pre-trial detention between the years 2010-2019. Over the past decade, there have been several significant changes in the legal framework for pre-trial detention, with statistically well-demonstrated results. In the year 2010 investigating judge ordered the most serious coercive measure in 5885 cases on prosecutor's motions ordering for pre-trial detention, this number was more than 6000 in 2013, and 3085 in 2018. 2019, the first full year of the new Criminal Procedure Act shows is around 3300. I believe this is a significant reduce:[5]

Year	Pre-trial detention ordered on prosecutor's motion
2010.	5885
2011.	5712
2012.	5334
2013.	6098
2014.	4836
2015.	4453
2016.	4199
2017.	3997
2018.	3085
2019.	3330

Important footsteps of the regulation on pre-trial detention in the last decade were the following:

1. Ensuring the Impartiality of the Court

In 2011 the decision 166/2011 (XII. 20.) of the Constitutional Court declared it unconstitutional for the investigating judge to take into account investigative tactical purposes when making decisions on pre-trial detention. It stated that introducing the institution of the investigating judge domestically, the legislator followed the continental solution, the main function of which was to enforce the procedural guarantees and the protection of the fundamental rights in particular. The responsibilities that fall within the jurisdiction of the investigating judge

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[2] A tanulmány megírása az Igazságügyi Minisztérium jogászképzés színvonalának emelését célzó programjai keretében valósult meg. In the framework of the Ministry of Justice's programs to improve the quality of legal training.

[3] Irk Albert: *A magyar büntető perjog vezérfonala.* Dunántúl Pécsi Egyetemi Könyvkiadó és Nyomda R.-t., Pécs, 1931, 96. o.

[4] Decision no. 26/1999. (IX. 8.) of the Constitutional Court, II.1.

[5] Official statistics by the Prosecution Service of Hungary: *Ügyészségi Statisztikai Tájékoztató – Büntetőjogi Szakág.* Legfőbb Ügyészség, Budapest, 2020, 57. p.

are mainly there to ensure fair criminal proceedings and this is guaranteed by the impartiality and independence of the judge. It must be made clear that the investigating judge is not obliged to take into account tactical factors of the investigative authority and the public prosecutor that can only be enforced during the investigation phase, therefore avoiding any suggestion of bias. Not only an actual partiality but also the mere appearance of partiality makes it impossible for the investigative judge to make decisions around the legality of the defendant's detention, in line with Article 5.3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Other decisions of the Constitutional Court based on the objective test to exclude all judges involved in decision-making on pre-trial detention from later proceedings. These were Decision no. 34/2013. (XI. 22.) and Decision no. 21/2016 (XI. 30.). According to the Constitutional Court, Article 6.1. of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article XXVIII./1. of the Constitution ensures that every person has the right to have any charge against him or her, or any right and duty in litigation, adjudicated by a legally established independent and impartial court in a fair public trial within a reasonable period of time.[6] "*The independence and impartiality of the judiciary established by law is a general principle of law inherent in all major universal and regional international conventions for the protection of human rights.*"[7] The mere fact that the presiding judge took part in proceedings prior to indictment does not in itself place their impartiality in jeopardy, the European Court of Human Rights has confirmed in several of its decisions. Rather, it has to be examined whether the presiding judge needed to evaluate evidence, take a position on the defendant's involvement or the degree of involvement in the alleged crime during-making.

When considering pre-trial detention, the presiding judge has to consider whether there is reasonable suspicion that the accused has committed the alleged crime. The judge's position taken over the matter of reasonable suspicion indicates a belief that it is "highly likely" that the alleged crime was in fact committed by the accused or such evidence is available that supports the existence of a crime.

As with ascertaining guilt, examining the matter of reasonable, however, is not possible without evaluating the evidence available. The Constitutional Court therefore ruled that it is a constitutional requirement that a judge taking part in proceedings with regard to the arrest in the investigative phase shall be excluded from further judicial proceedings. This rule applies to both trial and appeal courts.

[6] The Fundamental Law of Hungary

[7] Decision no. 34/2013. (XI. 22.) of the Constitutional Court, IV.1.1.

Accordingly, as of 19th April 2017. the imposition of pre-trial detention or the extension of it is decided by the investigating judge prior to filing for indictment. Both the investigating judge and a judge presiding over a potential appeal is subsequently excluded from the proceedings of a trial court.

2. File access regarding pre-trial detention

The Criminal Procedure Act has provided file access for the defence to question the basis of pre-trial detention since 1st January 2014. This means, that the defence should learn about all evidence that supports the special reasons for the detention, according to the prosecutor. Before this, the Constitutional Court of Hungary explained in the Decision no. 166/2011 (XII. 20.), that if "*the investigating judge does not allow the counsel to access certain documents that could offend the Convention requirements in other ways in the habeas corpus proceedings*" according to the Nikolova-judgement from 1999 by the European Court of Human Rights. The violation of this rule was observed in cases against Hungary by the European Court of Human Rights, almost identically, word by word[8]. In the cases of XY versus Hungary[9], Hagyó versus Hungary[10], A.B. versus Hungary[11], and Baksza versus Hungary[12] the European Court of Human Rights condemned Hungary for the violation of art 5 of the Convention, with similar arguments.

In accordance with par (1) art 7 of the Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings (hereinafter referred to as the Directive), "*Where a person is arrested and detained at any stage of the criminal proceedings, Member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to* challenging *effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers*." After implementing the Directive, and 16 years subsequently the Nikolova-judgement, we have finally reached what we could have a decade and a half ago: the possibility to effective defence is ensured for the defendant and his counsel regarding decisions on detention.

[8] *'Equality of arms is not ensured if counsel is denied access to the investigation file in so far as it is essential in order effectively to challenge the lawfulness of his client's detention.'* [*XY versus Hungary*, resolution of 19 March 2013, point 50; *Hagyó versus Hungary*, resolution of 23 April 2013, point 68; *A.B. versus Hungary*, resolution of 16 April 2013, point 36; *Baksza versus Hungary*, resolution of 23 April 2013, point 47]

[9] *XY versus Hungary*, resolution of 19 March 2013 (case no.: 43888/08)

[10] *Hagyó versus Hungary*, resolution of 23 April 2013 (case no.: 52624/10)

[11] *A.B. versus Hungary*, resolution of 16 April 2013 (case no.: 33292/09)

[12] *Baksza versus Hungary*, resolution of 23 April 2013 (case no.: 59196/08)

3. New Act on Criminal Procedure – a new approach

The Act XC of 2017 on Criminal Procedure (hereinafter referred to as the Criminal Procedure Code), entered into force on 1st July 2018, introduced a significant change in the system of coercive measures affecting personal liberty. Under our previous criminal procedure law, the (pre-) arrest-centric approach required the court to justify why it is applying a less coercive measure instead of arrest. The new act on criminal procedure breaks through this regulation. The court now has to justify why the aims of the coercive measure can only be achieved by the most serious one. Why it is not enough to "merely" order house arrest or injunction to stay away. The imposition of the requirements of necessity, proportionality and graduality implies that the court, when assessing coercive measures affecting personal liberty, must justify in its decision how the general and special conditions for ordering coercive measures are met or why they are missing.

"The principle of gradation means that coercive measure requiring higher restrictions can be applied by the authorities only when the objective of the proceedings could not be attained by other action requiring less restrictions."[13]

The aims of pre-trial detention are inserted by the legislator under the Sec. 277. Par. (4) of the new Code:

The detention shall be made to ensure the presence of the defendant, to prevent the imposition

or refusal of evidence, or to prevent crime-repetition, if, in particular

a) the nature of the offense,

b) the status and interests of the investigation,

c) the personal and family circumstances of the defendant,

d) the relationship between the defendant and the person involved in the criminal proceedings or another person,

e) the behaviour of the defendant presented before and during the criminal procedure regarding the personal liberty with an affecting judicial licenced compulsory provision desired aim restraining and criminal supervision cannot be ensured.

However, in my view, Section 277 para (4) point (b) of the Criminal Procedure Code conflicts with the 166/2011. (XII. 20.) decision of the Constitutional Court, as it prescribes that the investigating judge must take into account the circumstances and interests of the investigation when ordering pre-trial detention, which is clearly unconstitutional and contrary to an international treaty.

The detention of the defendant may take place under the under-mentioned conditions under the Sec. 276. Par. (2):

a) to ensure to presence of the defendant, if

aa) the defendant has escaped, or has attempted to escape, or absconded from the court, the prosecutor, or the investigating authority, or

ab) there is reasonable cause to believe that the defendant will be inaccessible during the criminal procedure, especially the defendant would escape or abscond;

b) to prevent the obstructing and jeopardising the evidentiary procedure, if

ba) for the reason of frustrating the evidentiary procedure, person involved in the criminal proceedings or another person was intimidated or influenced, or evidences and documents and electronic data was destructed, falsified or secreted by the defendant, or

bb) there is reasonable cause to believe that the defendant would endanger the evidentiary procedure, especially the defendant would intimidate or influence person involved in the criminal procedure or another person, or would destruct, falsify or secrete evidences, documents and electronic data;

c) to prevent the crime-repetition, if

ca) the defendant continued to commit the criminal offence made the subject of the investigation after the defendant was suspected, or the defendant was suspected of another criminal offence punishable by imprisonment, or

cb) there is reasonable cause to believe that the defendant would accomplish the attempted or planned criminal offence, or would continue to commit the criminal offence made the subject of the investigation, or would commit another criminal offence punishable by imprisonment.[14]

Summary

In conclusion, it might be said that the much-criticized practice has been significantly affected by several decisions of the Hungarian Constitutional Court, the adoption of an EU directive and a new Criminal Procedure Code with EU compliant legislation. The General Explanations on the new Act on Criminal Procedure states that "*Meeting the requirements of the Fundamental Law of Hungary and the obligations of international law and EU law obviously mean a safeguarding minimum.*" In Hungary the case law of the European Court of Human Rights is reflected more and more both in the judgements of Hungarian courts and in the guidelines of higher courts but the difficulties of establishing interpretations in harmony with the case law of the European Court of Human Rights are common.

[13] Robert Bartko – András Payrich: *Comparative Study on the Pre-trial Detention with Reference to the New Hungarian Code on Criminal Procedure.* International and Comparative Law Review, 2017, vol. 17, no. 2, p.171.

[14] *Id.* p.173.

Dávid Tóth*

Identity crimes on the darknet and the social media

Abstract

Cybercrime is a relatively new phenomenon. There are several ways we can categorize crimes which are committed in the cyberspace. There are some crimes which can exist without the internet, but the cyberspace gives more opportunities for offenders to commit these crimes with more effective methods like child pornography. There are some cybercrimes which cannot exist without the internet (e.g. misuse of cryptocurrencies). In my current research I aim to analyze the misuse of personal information (identity crimes). I try to explore the ways perpetrator commit these crimes and how they use the social media and the darknet as a gateway to obtain and sell personal information. My aim is to give suggestion in the fight against identity fraud.

1. Introduction – generally about cybercrime

As technology advances and Internet-enabled devices become more widespread, new opportunities have emerged for criminals. The result of this that cybercrime became an independent area which is analysed by criminal law sciences. Research on cybercrime seeks to provide up-to-date answers to this area of sui generis.

The concept of cybercrime is not easy to define as it is a controversial concept. In 1991, Martin Wasik published a book titled Crime and the Computer. Back then, even the internet wasn't present in people's lives.[2] According to Walden, cybercrime is a shoulder of computer crime. A computer is needed to connect to cyberspace (the Internet) and commit abuses there. According to Walden, cybercrime is narrower than computer crime.[3] In the opinion of Gillespie it could be questioned whether the differentiation between computer crime and cybercrime continues to be relevant nowadays. We can easily access the internet even on the streets with Wi-Fi hotspots, and mobile technology is rapidly advancing.[4] On the other side we have to mention that the use of smartphones has created also many dangers as well.[5]

David Wall in his book explored why we use this term cybercrime. William Gibson coined and in his book called Neuromancer popularized the term cyberspace which is a virtual environment where networked computer activity takes place. Therefore, cybercrime describes crimes that committed in the cyberspace, and it symbolizes the dangers of the internet.[6]

Several types of cybercrime can be distinguished. Gillespie classifies cybercrime into the following categories:

- crimes against the computers, where the computer is the target of the crime.
- Crimes against property. Here the goal of the criminals is to obtain property (financial or intellectual.
- crimes involving illicit content. In this case the crime is connected to posting, hosting, or accessing of objectionable content.
- crimes against the person. Here technology is used like a weapon against individuals with possible harm to the victim.[7]

Identity theft in this categorization can be classified as a (cyber)crime against property or a crime against the person depending on the exact way and form it is committed. In the case of illegally obtainment of credit card information (credit card fraud) it can be considered as a crime against property. While in another example when the offender aims to destroy the reputation and freedom of the victim with criminal identity theft this can be considered

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[1] „Supported by the ÚNKP-21- 4-II-PTE-962 New National Excellence Program of the Ministry for Innovation and Technology from the source of the National Research, Development and Innovation Fund."

[2] Wasik, M. Crime and the Computer. Oxford: Clarendon Press, 1991.

[3] Walden, I. Computer Crimes and Digital Investigations. Oxford: Oxford University Press, 2007.

[4] Alisdair Gillespie, Cybercrime: Key Issues and Debates (London ; New York: Routledge, 2016). 1–3.

[5] Andrea, Kraut, László, Kőhalmi, Dávid, Tóth, Digital dangers of smartphones. Journal of Eastern-European Criminal law 7 : 1 pp. 36-49. , 14 p. (2020).

[6] David S Wall, Cybercrime. (Polity, 2007). 8–10.

[7] Gillespie, Op. cit. 7–8.

as a (cyber)crime against the person. In the following chapter my aim is to discuss what forms of identity theft exist today.

2. The origins and the concept of identity theft

The original form of identity theft was the impersonation of another person with fraudulent intent. An example of a crime can be found in the Bible in the history of Jacob and Esau, where Isaac's firstborn son Esau relinquished his prerogatives for a bowl of lentils in favor of Jacob, but their father was unaware of this. (Genesis 25: 19-34) Later, Jacob went to his already blind father to receive the blessing of the inheritance. He did this in the clothes of Esau and in goatskin so that Isaac would not notice the deception. Among the historical examples we could highlight the case of John Ylmer. Aylmer was practicing medicine in the middle of the 15th century, and in 1449 he escaped to France because he was charged with a murder committed against his wife. Around one year later he went back to England with the Jack Cade pseudonym. He began to organize an army of dissidents against King Henry. He then claimed to be John Mortimer, a relative of Prince Richard of York. Aylmer's army defeated the royal soldiers at Kent. Despite initial success, his army later disintegrated, and Aylmer was killed by Kent Sheriff.[8]

In the modern age, identity theft is an increasing worldwide phenomenon due to the development of information technology. The growth has several reasons. On one hand, more personal information is available on the Internet as people voluntarily share information about themselves on social networks. On the other hand, government, and business agencies store huge amount personal data in large databases. Third, perpetrators constantly attack accessible or hackable sites, cloud services, computers with various techniques (such as hacking, sending viruses) to gain access to this personal information. In addition to cybercrime, we must not forget the physical crimes (theft, fraud), which also increase the scale of this special form of crime.

There is no uniformly accepted definition of identity theft in the literature. In the foreign literature, several names are used for the same phenomenon. On one hand, it is commonly referred to as identity theft (or in German: identitätsdiebstahl), which is more prevalent in the United States[9] and Germany.[10] On the other hand, in the United Kingdom[11] this form of crime is being apostrophized as identity fraud.

According to Charles M. Kahn and William Roberds, in the case of identity theft offender fraudulently uses another person's personal information.[12] Katie A. Farina›s also emphasizes fraudulent element when she refers to the Identity Task Force definition: "the misuse of another individual's personal information to commit fraud"[13] According to Biegelman, who wrote a handbook on the subject, gives a simple definition: „identity theft is the stealing of your good name and reputation for financial gain."[14]

Erin Suzanne Davis[15] has a more specific and concrete definition. According to her opinion identity theft occurs when criminals use personal or financial information about the person to obtain to create a fake identity for themselves in order to obtain money from either the victim or from an institution.

Several technical terms have appeared in the Hungarian legal literature as well. In a joint study by Dániel Eszteri and István Zsolt Máté, the term identity theft is used in connection with the conducts committed in software called *"Second Life", which* simulates virtual reality.[16] Hámori also uses this term, and his definition focuses on the unlawful acquisition of personal data.[17]

In contrast to the above, Zsolt Haig uses the personality theft terminology. Referring to Scwhartau's book[18] , he classifies personality theft in the category of information warfare. If the crime is committed, their victim may suffer damage to their material and human dignity.[19]

Kinga Sorbán uses the term identity theft.[20] According to her, this form of crime has two moments. In the first phase, the offender steals the vic-

[8] Sandra K. Hoffman and Tracy G. McGinley, Identity Theft: A Reference Handbook (Santa Barbara, CA: ABC-CLIO, 2010), 5–7.

[9] Biegelman, M T.. Identity theft handbook: Detection, prevention, and security: John Wiley & Sons, 2009. 2.

[10] Borges, G, J Schwenk, C F. Stuckenberg and C Wegener. Identitätsdiebstahl und Identitätsmissbrauch im Internet: Rechtliche und technische Aspekte: Springer-Verlag, 2011. 9.

[11] https://www.actionfraud.police.uk/a-z-of-fraud/identity-fraud-and-identity-theft (retrieved August 18, 2019).

[12] Kahn, C M. and W Roberds. „Credit and identity theft." Journal of Monetary Economics Vol. 55 (2008): 251–264.

[13] Katie A Farina, "Cyber Crime: Identity Theft," International Encyclopedia of the Social & Behavioral Sciences., 2015, pp. 633–637, 633.

[14] Biegelman, M T.. Identity theft handbook: Detection, prevention, and security: John Wiley & Sons, 2009. 2.

[15] Erin Suzanne Davis, „A World Wide Problem on the World Wide Web: International Responses to Transnational Identity Theft via the Internet," Washington University Journal of Law & Policy 12, no. 1 (2003): 201–228.

[16] See further in: Dániel Eszteri and Máté István Zsolt, "Identity Theft in the Virtual World," Belügyi Szemle, no. 3 (2017): pp. 79–107.

[17] Balázs Hámori, "Bizalom, Jóhírnév És Identitás Az Elektronikus Piacokon," Közgazdasági Szemle, no. 9 (2004): pp. 832–848, 840.

[18] Schwartau, W. Information warfare: Chaos on the electronic superhighway (pp. 3-13). New York: Thunder's Mouth Press, 1994.

[19] Zsolt Haig, "Az Információs Hadviselés Kialakulása, Katonai Értelmezése.," Hadtudomány, a Magyar Hadtudományi Társaság Folyóirata., no. 1-2 (2011): pp. 12–28, 14.

[20] Kinga Sorbán, "Az Informatikai Bűncselekmények Elleni Fellépés Nemzetközi Dimenzió," Themis, no. 1 (2015): pp. 343–375.

tim's personal information (e.g., the Social Security Number). The second phase is about the misuse of data. She points out that the Hungarian Criminal Code does not contain any special statutory provisions, and in her opinion this is not necessary, because the related behaviors establish existing crimes.[21]

In my view, all the technical terms are correct and cannot be ranked among them.

There is also an example of a legal definition in the United States. Section 1028 of Chapter 47 of the 18th title of the U.S. Code states that

"Whoever...

- *knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;*
- *knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;*
- *knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents;*
- *knowingly possesses an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;*
- *knowingly produces, transfers, or possesses a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used in the production of a false identification document or another document-making implement or authentication feature which will be so used;*
- *knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States or a sponsoring entity of an event designated as a special event of national significance which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority;*
- *knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or*
- *knowingly traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification... shall be punished..."*

If we analyze the definitions, all of them have common elements. All definitions include:

- the object of offense, which is information related to identity;
- a punishable act that can range from acquisition, to misuse;
- a subjective element that typically contains some form of intent (e.g., fraudulent intent),
- lastly, all authors agree that a crime occurs when the victim has not consented to their personal information being accessed and used.

The Hungarian Penal Code does not penalize identity theft as a separate crime, but the conducts related to it can lead to several criminal offenses (fraud, information system fraud, misuse of personal data, misuse of documents, forgery of public documents, misuse of a cash substitute payment instrument).

3. The social media and identity theft

Social media is growing rapidly in the recent years. Webpages, applications, software, which are used to build connection between the people (creating social network) can be considered as are social media. Social media allows its users to create and or share content with the public or private circles. (like friends). Many types of social media exist like:

- social networks. The primary purpose of social networks is to connect their users with each other and allow them to share their thoughts and content with friends, friends, family, or even the public. The most recognized social networks are Facebook and twitter.
- Media networks. These services as it names suggests focuses on the media element and not on the connection between users. The best example for these types of platforms is YouTube where the media element is the video. Instagram can be also mentioned where the pictures are in the center. Although on Instagram you can have followers and on YouTube you can have subscribers but still the focus is on the media with these networks.
- Discussing networks. Here users can bring up a topic or a question which they can discuss among themselves. These sites are similar to forums although they usually offer more social features for them. A good example for this is Reddit.

[21] Ibidem

As of 2021 October, almost three billion people are active users of the Facebook. Around 2.91 billion monthly active users as of the third quarter of 2021, Facebook is the biggest social network worldwide. In 2012 Facebook was the first social network to surpass the one billion active monthly users. Active users are those who have logged into their social media account during the past 30 days. During the first quarter of 2021, Facebook stated that 3.51 billion people were using at least one of the company's core products (Facebook, WhatsApp, Instagram, or Messenger) each month.[22]

Many of the available information on the internet of people are personal, financial or biographical. Especially personal data became valuable recent years, and this is one of the reasons why the European Union adopted the General Data Protection Regulation (GDPR) (EU) 2016/679, to create protection of these data.

There are many daily cases of identity theft on the social media. For example, a woman was prosecuted in the United States after creating a fake Facebook profile that depicted her ex-boyfriend as a drug addict and a narcotics detective. In this case defamation was a motive for committing identity theft. In another case in California an offender stole his classmate's Facebook password to post sexually explicit material about the victim. The perpetrator was found guilty and was sentenced to a period not to exceed one year in a juvenile detention center.

With the growth of the social media, it is much easier to commit online identity theft, and often it is very hard to detect as well if the victim is not registered in a certain social media platform where they created the fake account of him, he may never know about it. In the US many states are attempting to prevent online impersonation and to propose a federal statute to prevent online impersonation.[23]

4. Ways of commission on of identity theft

Without being exhaustive, I will focus on the most common techniques committed for identity theft. According to Zeno Geradts, phishing is most often done by sending fake emails to different accounts. In these they ask to provide their personal information on behalf of the bank. These are usually easy to filter out because they are often sent from free email addresses (gmail, hotmail).[24]

Phishing emails can include a link that can take the user to a cloned page. They typically copy the pages of banks or online stores where the victim can type in their personal information. This phenomenon is called pharming in jargon.[25]

A similar technique to phishing is smishing.[26] In such attacks, the perpetrator sends a short text message (SMS) containing a link to a fake website where the victim can provide its personal information. Criminals usually send text messages asking for a credit card number, personal information, to solve problems that do not otherwise exist (e.g., avoiding blocking a customer's bank account).

There have also been examples of criminals setting up a wireless network (Wi-Fi) to which, if unsuspecting users connect, they expose their personal information. This so-called Wi-phising.[27]

Vishing is also a similar phenomenon to phishing. In such cases, the perpetrators try to obtain data related to bank accounts through a telephone call with psychological manipulation (so-called social engineering). In this case, it is not the technology, but the credulity, naivety of the people that will be the main weapon of the attacker.[28]

Skimming is another common technique nowadays. The essence of this is that the perpetrators install miniature data recording devices in the opening of ATMs and thus obtain our credit card data.[29]

Raznik highlights two form of identity crime:

- Creating a Fake Social Media Site Profile
- Stealing a password information of the social media account.[30]

The latter can be obtained by a classic technique of identity theft is unauthorized intrusion (hacking). An example of this was the attack on the DSW shoe store network in 2005, which resulted in the theft of 1.4 million card traffic data from 108 stores.[31]

[22] https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/

[23] Maksim Reznik, „Identity Theft on Social Networking Sites: Developing Issues of Internet Impersonation," Touro Law Review 29, no. 2 (2013): 455–484.

[24] Geradts Zeno, "Identity Theft," in Encyclopedia of Forensic Sciences, ed. Siegel Jay (Amsterdam: Academic Press, 2013), pp. 419–422, 419.

[25] Whitson, J R. and K D. Haggerty. „Identity theft and the care of the virtual self." Economy and Society 37 (2008): 572–594.

[26] Tajpour, A, S Ibrahim and M Zamani. „Identity theft methods and fraud types." IJIPM: International Journal of Information Processing and Management 4 (2013): 51–58.

[27] Ibidem.

[28] Biegelman, M T.. Identity theft handbook: Detection, prevention, and security: John Wiley & Sons, 2009. 37.

[29] See further in: Dávid Tóth, "A Készpénz-Helyettesítő Fizetési Eszközökkel Kapcsolatos Bűncselekmények Büntetőjogi Szabályozása." in Doktori Műhelytanulmányok, ed. Gábor Kecskés (Győr: Széchenyi István Egyetem Állam- és Jogtudományi Doktori Iskola, 2015), pp. 226-237, 252.

[30] Maksim Reznik, „Identity Theft on Social Networking Sites: Developing Issues of Internet Impersonation," Touro Law Review 29, no. 2 (2013): 455-484

[31] Chawki, M and M Wahab. „Identity theft in cyberspace: Issues and solutions." Lex Electronica 11 (2006): 14.

5. The darknet and Identity theft

It's true that many personal data can be accessed through the so-called indexed sites just like the social media platforms but more than one billion webpage also exists on the darknet as well. The illegally obtained personal data can be transferred, exchanged, bought, sold, and marketed in the hidden part of the internet which can increase the latency of this crime from. Identity theft can aid in the commission of many more serious crime forms like organized crime and terrorism. Erich Holm gives an example where pseudonym "Charles", the offender collected the names of deceased children from cemeteries, and established illegitimate identities in those names, and the connected crimes occurred over a 9-year period.[32]

There were also many reports in the United States that on darknet sites American children's social security number is used and sold regularly.

Overall the darknet is another place in the cyberspace where identity theft can grow in the future and could be a facilitator for many crimes.

6. Crime prevention suggestions and summary

In my opinion, three actors have a big role to play in crime prevention of identity theft: the state, financial organizations, and individuals.

It is the duty of the state to criminalize the related crimes (even considering a separate statutory provision facts). Law enforcement agencies, however, must enforce the state's criminal power in practice. Finally, there are models abroad for victim support services that deal specifically with victims of identity theft.[33]

Financial organizations have several responsibilities in the context of identity theft, I would highlight the following:

- confidential handling of personal data
- compliance with the law,
- setting up up-to-date security systems against potential attacks.

There are several helpful tips for individuals as well:

- share as little information as possible on social media, and only with friends,
- do not take photographs of personally identifiable documents,
- do not store credit card information online, etc.

If trouble has occurred, it is important for victims to be proactive:

- file a report to the police,
- if credit card details have been stolen, it is advisable to block the card and freeze the account,
- and contact financial institutions and victim support services.

Identity theft is dangerous because there are many ways it can be committed, and it can the catalyst for other crimes like terrorism, terrorism financing[34] fraud, organized crime and terrorism. Identity theft when is committed in the cyberspace has often no borders, so a coordinated inter-state action against offenders is important. This can be particularly effective at the regional level. This requires harmonized legislation and coordinates cooperation between criminal authorities. In this respect, there are positive developments in the European Union. Previously, the Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems dealt with this phenomenon only. Another development in this field is the Directive (eu) 2019/713 of 17 April 2019 of the European Parliament and of the Council. This regulation reforms the criminal law regulation of cash substitute payment instruments and deals with the misuse of virtual currencies.

[32] Eric Holm, "The Darknet: A New Passageway to Identity Theft," International Journal of Information Security and Cybercrime 6, no. 1 (June 29, 2017): 41–50, https://doi.org/10.19107/ijisc.2017.01.04.

[33] https://victimsupportservices.org/help-for-victims/crime-types/identity-theft/ (retrieved August 18, 2019).

[34] László István Gál, Some Thoughts About the Fight Against Terrorist Financing in Hungary and in the European Union In: Alan, Brill; Kristina, Misheva; Metodi, Hadji-Janev: Toward Effective Cyber Defense in Accordance with the Rules of Law. Amsterdam: IOS Press, (2020) pp. 71–80.

Andrea Noémi Tóth[1]

The changes and challenges of the rules on review proceedings

Introduction

In Hungary, the new Code of Criminal Procedure (Act No. XC of 2017, hereinafter CCP) entered in force on 1 July 2018. This Code has brought a lot of changes in the criminal procedure. 2019 and 2020 were the first whole calendar years during which the CCP was in force, and we can draw inferences based on these two years. I would like to introduce some new rules of the judicial review proceedings: the new and the abolished causes of judicial review procedure; the basis of the proceedings and the obligation of publishing the decision of the Curia.

I. The new cause of the judicial review proceeding

In the judicial review proceedings, we can state the breach of criminal law, criminal procedure law by the final decision. The decision of Hungarian Constitutional Court or the European Court of Human Rights can be the cause of the judicial review proceedings, too. The new CCP contain a new cause[2] of the judicial review procedure: if there is a difference between the final decision of the court and a decision, that is published in the Compilation of Hungarian Court Decisions, and as a result rules of criminal procedure or criminal law are violated. The Curia is the highest judicial authority of Hungary. It guarantees the uniform application of law, its decisions on uniformity decisions are binding on all courts, according to Article 25 of the Fundamental Law. Based on the Act on the Organisation and Administration of Courts[3] (hereinafter AOAC) it reviews final decisions if they are challenged by a petition for an extraordinary remedy. The new cause of the judicial review procedure follows from these obligations. It must be noted: not only the difference between the two court decisions is required, but a violation of rules of criminal procedure or of the criminal law must be demonstrated as well.

II. Abolished causes of review procedure

In the previous Code of Criminal Procedure (Act No. XIX. of 1998), there were several causes which we cannot find anymore in the new CCP, among the causes of judicial review procedure. The structure of the Code was changed and many causes were dropped out, such as cases where the decision cannot be reviewed due to its incomplete reasoning and the cases where the public was excluded from the hearing without any lawful cause Earlier these cases constituted an absolute ground for annulment, but now they constitute relative ground only. There are some decisions wherein the Curia take up this line, too. After 1st July 2018, Curia shall pass over the judgement in the case where the petition was founded to the incomplete reasoning of final decision of court.[4] In the new CCP, the incomplete reasoning of the final decision is a relative ground for annulment and that's why we cannot reference it in a petition of judicial review proceeding.[5]

III. The basis of the review proceedings

Both the previous and the new CCP provided that the review proceedings shall be based on the facts estab-

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[2] CCP 648. § d) and 649. § (6)

[3] Act No. CLXI of 2011 on the Organisation and Administration of Courts

[4] Decision of Court 2019.1.6.

[5] Decision of Court 2019.7.196. and Decision of Court 2019.10.261. III. point.

lished by the court which previously heart the case. The new CCP details and specifies those rules: it is forbidden to compare or evaluate evidences again. Neither it is possible to present new elements of evidence.

All this follows from the principle of the binding nature of conclusions of fact. Even if a conclusion of fact is unfounded, the Curia may not change or correct it. If any conclusion of fact is unfounded, the Curia shall base its decision upon that conclusion. This conclusion is a matter of principle, because the Curia may not analyse if the conclusion of fact of the final decision is complete or not.[6] Judicial review proceedings may be requested in questions of law only, taking the earlier established facts as a basis. It's a strict rule: if the earlier established facts are incompletes, Curia shall use these facts to decide the case.[7] If the petitioner challenges the facts, the Curia shall refuse it.[8]

We can confirm the binding nature of conclusions of fact with the defence of the legal force. "In many occasions, such values emerge as the goals of criminal procedures that are in a strained relation with each other and hard to reconcile. As an example, one can mention the notions of justice, legal security or legal peace. The society has a good reason to assume that a definitive judgment suits the requirements of justice. This is represented by the legal theorem of "Res iudicata pro veritate habetur", that is, a definitive judgment must be held just. If we accept that, based on its structure, the procedure has a defined end-point, then the procedure ends permanently with the arrival of a procedural event, as the ideal goal could not be reached otherwise."[9] There are many ways to abating legal force, for example judicial review, but in the judicial review proceedings, we have to accept the facts in the final decision of the court and we cannot challenge these facts.

All this raises the question: what are the facts of the case exactly? If there are two court decisions (first and second instance), in which decision the facts can be found? Shall we read them together? Or it is the decision by the court of first instance where we can actually find the facts, because the court of first instance is "the court of facts". There are many decisions of Curia, in which the highest judicial authority specifies the nature of the conclusion of fact. More than 15 years ago, the Curia declared: all establishment of facts - those are the basis of the judgement of criminal responsibility - are part of the conclusion of fact, anywhere in the opinion of the court.[10] The review proceedings concerns the conclusion of fact of the final decision, including the other facts in another place in the judgement (because of error of committing a judgement to writing).[11] Data of the previous convictions aren't part of conclusion of fact.[12]

Furthermore, it is disputed whether the question of guilty or not guilty can be challenged, i. e. whether it is part of the facts or not? According to the established case-law of the Curia, we cannot dispute the facts relating to the guiltiness. Challenging the guiltiness in itself is not allowed in the judicial review proceedings.

IV. Publishing the decisions of the Curia

From 1st January 2021, the Curia shall publish its decisions concerning the merits of the case, delivered in review proceedings, in the Compilation of decisions of Curia of Hungary, in accordance with the AOAC.[13] The Curia strives for transparent and predictable judgements, and thus for uniform application of law. The Curia shall publish a short summary about the case and the applicable law. (For transparent and predictable judgements, other courts shall publish their decisions concerning the merits of case, not only the Curia is obliged.)

Summary

From 1st July 2020, the decisions of the review proceedings can be challenged by uniformity complaints, if the decision of Curia is different from a decision, that is published in the Compilation of Hungarian Court Decisions. Curia hears and determines uniformity complaints and thus provide the uniformity of the justice.

I tried to give a brief insight into the changes and challenges concerning the review proceedings. All these mentioned elements are based on the Article 25 of the Fundamental Law, on the CCP and on the AOAC: the obligation of uniform application of law. The transparent and predictable judgements are very important because of rule of law and of the international obligations, too.

[6] Decision of Curia Bfv.II.62/2020/6.
[7] Decision of Court 2004.102., Decision of Court 2016.264., Decision of Court 2010.324.
[8] Decision of Court 2014.72.
[9] Balázs Elek: *A jogerő a büntetőeljárásban*, Debreceni Egyetem Állam-és Jogtudományi Kar Büntető Eljárásjogi Tanszéke, Debrecen, 2012, 279.
[10] Decision of Court 2006.392., Decision of Court 2015.216.
[11] Decision of Court 2005.89.
[12] Decision of Court 2015.30.
[13] AOAC § 163.

Bettina Zsiros[1]

The Relation between Truth and Justice in Criminal Proceedings

The more we examine the duality of truth and justice, the more paths need to be crossed and diving deep into the relevant literature we may inevitably find ourselves evaluating them abstractly, on their own. From a criminal procedural point of view, however, I believe we are moving on the wrong track when assessing these concepts abstractly. Instead, it is worth examining the relationship between them, through the regulated system of the criminal justice system as a filter, keeping in mind the primary function of it. Criminal justice systems are not operating in a "vacuum", they have a function, namely to ensure social order. If this harmony was infringed by committing a crime, then the goal is to somehow deliver justice in broken human relationships. This is possible with a fair and satisfying result at the end of the criminal procedure, based on an attempt to establish what happened in accordance with the criminal offence.

Therefore, I do not wish to take a position for either justice or truth in itself; my paper does not address this issue on a philosophical, ethical, or theological approach. Instead, through the various types of criminal justice systems, I attempt to outline the interference between justice and the methods seeking for truth. After that, I will examine what guarantees are to be followed in each system to achieve the ultimate, just goal. The question necessarily arises as to whether one of the solutions can be better, can serve the primary function of the criminal justice system more effectively, then the other?

I. Theoretical Basis

I.1. Search for the Truth in Criminal Proceedings

There is consensus in legal literature that the basic concepts of criminal proceedings are structured along with different principles, actually on two paths; which the authors refer to by different names based on their special characteristics: Anglo-Saxon and Continental; accusatory and inquisitory; adversarial and non-adversarial systems, or cooperative and hierarchical systems.

It has to be emphasized that these models do not appear clearly internationally. The Anglo-Saxon model can be considered closer to the accusatory system, while the Continental model is most similar to a mixed system, but in each case the characteristics of the originally inquisitory and accusatory models are mixed.[2] According to Károly Bárd, the relationship between these two systems was originally characterized by "resistance", which is otherwise acceptable, since the essence of the regulation is to distribute power between and within constitutional institutions, legislature, courts or administrative institutions. Consequently, some transposal attempts would all destroy the structure already in place.[3] Today, of course, the situation is much more nuanced, and as a result of its comparative examination, Bárd also emphasizes that the two systems have converged and the scepticism about the transplantation of procedural solutions has not been confirmed. Moreover, several authors reiterate that the

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[2] Vida József: Kibékíthető ellentétek a büntetőeljárásban. Belügyi Szemle, 2019/5, 104.

[3] Bárd Károly: Az eljárási rendszerek közelítése. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 24–25.

presence of "foreign elements" is also beneficial, as they may provide an adequate counterweight to the weaknesses of the systems.[4]

Regulating the administration of criminal justice is the responsibility of the state, in connection with which, however, the state can decide what part it wishes to take part in. One of the possible ways in which the state undertakes to enforce and decide a criminal claim. This is the continental, professional approach to the procedure. The other is when the state only undertakes to enforce the criminal claim, but the final decision rests with its citizens - this is the Anglo-Saxon, the half-professional solution.[5] I do not wish to analyze the various systems in all procedural aspects, I am merely outlining the different ideas in terms of the search for truth in criminal proceedings, the fundamental principles behind each procedural system; and I make general conclusions in this regard. According to the procedural traditions of the Anglo-Saxon systems, the criminal proceedings are controlled by the parties, while in the Continental systems the procedures are managed by the state authorities. Lippke captures the difference in the primary function of these systems, as the former attempts to settle the conflict that has arisen by committing a criminal offence. While the latter highlights the importance of finding the truth about the charge against individuals.[6]

Mirjan Damaska points out that in criminal proceedings, where only the participants are shaping the proceedings, as in the Anglo-Saxon solution, there is, in fact, a "competition" between prosecution and defence. While, if primarily the authorities are managing the proceedings, as in the Continental solution, then the focus of this process is on to investigate the circumstances of the crime. Based on these characteristics, he also describes the former theory as cooperative; while systems based on the latter principles as hierarchical; which concepts I intend to use hereinafter.[7]

I.1.1. Search for the Truth according to the Hierarchical Systems

Professionalism

In procedural systems organized by the hierarchical principles, the justification of state criminal power is provided by its professionalism, which is why there is no jury, and therefore the professional judge, the investigative procedure and the "common file" in determining evidence is decisive.[8] It, therefore, focuses on the investigation by the authorities and the execution of the state's criminal policy. However, this requires to establish the real facts in connection with the criminal offence at the end of the procedure.[9]

These systems, therefore, impose the obligation to investigate on impartial authorities and the courts. Given that the final decision on guilt or innocence is in the hands of the latter, is committed to the full disclosure of the evidence and accurate findings of the facts. This consideration is intended to serve the professionalism of the evidentiary procedure[10], and it follows that the final judgment is primarily legitimized by a properly proved result.

To sum up the aforementioned, criminal proceedings are acceptable and justified if they make it presumable (or at least increases the possibility) that the content of the result is as accurate as possible, that is to say, that the facts established are adequate to what happened.

Practitioners aiming to get as close to the level of full certainty as possible, so they attempt to base the fairness of their decision on their deepest internal convictions. [11] According to Erzsébet Kadlót, the reason for this is that during the centralization of the state, it took the right to prosecution from the victim. This was proved by the ability of the professional state authorities to discover the objective truth as opposed to laypersons.[12] However, the cooperative methods are strongly emphasizing the contrary, as there is no objective truth that could be achieved by a neutral participant. Since even a genuinely disinterested third party will inevitably make assumptions about the reality he is trying to reconstruct, as the human mind selectively notices information and thereby becomes more sensitive to evidence that supports its assumption. In that regard, there is no difference in whether it seeks to prove or disprove that presumption.[13]

[4] William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 65–66.

[5] Kúria Büntető Kollégium Joggyakorlat-elemző csoport 2012.L.II.E.1/6. szám. A bíróságok hatályon kívül helyezési gyakorlatának elemzése (büntetőügyek) 2012-es összefoglaló vélemény https://kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (letöltés időpontja: 2019. 12. 08.) 9.

[6] Richard Lippke: Fundamental Values of Criminal Procedure. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser (ed.): The Oxford Handbook of Criminal Process. Oxford University Press, New York, 2019, 5.

[7] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 18–38.

[8] See detailed description: Kúria Büntető Kollégium, Joggyakorlat-elemző csoport: A bíróságok hatályon kívül helyezési gyakorlatának elemzése, büntető ügyek. 2012. Összefoglaló vélemény. 2012.EI.II.E.1/6. 9–14. oldal. http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (Downloaded: 2019. 12. 11.).

[9] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 160.

[10] Elisabetta Grande: Dances of Criminal Justice: Thoughts on Systemic Differences and the Search for the Truth. Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 158.

[11] Bencze Mátyás: A bizonyítékok értékelésének összehasonlító vizsgálata a tisztességes eljárás szempontjából. A bírói függetlenség, a tisztességes eljárás és a politika. Összehasonlító jogi tanulmányok. Gondolat Kiadó, Budapest, 2011, 223.

[12] Kadlót Erzsébet: A „vád igazsága". A büntető ítélet igazságtartalma. Magyar Közlöny Lap-és Könyvkiadó, Budapest, 2010, 24.

[13] Mirjan Damaska: The Faces of Justice and State Authority – A

Vertically organized procedure

Generally, in criminal proceedings organized on a hierarchical basis, there is no clear separation between the gathering of evidence during the investigation and trial phase. In Europe, this is only relevant in the English and Italian systems, where a sharp division separates the investigative and trial phases, and where the latter is the main area for gathering evidence.[14]

In a hierarchical system, the phases of criminal proceedings are thus built on each other, with a close connection and cooperation between them. The investigating authorities, the prosecution, the courts of the first instance and the courts of appeal together form a system designed to find out the truth.[15]

The Perception of the Truth in the Hierarchical Systems

According to the hierarchical, continental idea, criminal proceedings should be more determined to find the true facts. It does not mean that hierarchical systems do not have values as a fundamental requirement that might be an obstacle to the discovery of real facts, nor the belief that complete, "objective" truth can be achieved in each case.[16] I believe that it is more appropriate to declare that the system seeks the highest possible level of proof; to maximize the possibility of obtaining real facts, but at the same time accepts that the truth of the law can only be the truth that the law can establish by its own means during the legal proceedings.[17]

These factors are the reasons for that it is inconceivable to control the proceedings in a ‚private' way, and therefore obliges the competent authorities to investigate the truth. According to this consideration, the facts to be established in the proceedings might negatively affect the individual interests of the parties; giving a reason to attempt to hide these facts rather than to reveal them. This, of course, does not mean that this solution would completely exclude the parties from the process of discovering the necessary information and facts, but the control of the fact-finding process is mainly concentrated in the hands of qualified public officials in the proceedings.[18]

I.1.2. Search for the Truth in the Cooperative Systems

Customer Centred Procedure

The most characteristic feature of cooperative procedural systems about the search for the truth is that it gives the parties the right to arrange individual procedural acts. The primary purpose of criminal proceedings in these systems is to resolve the conflict between the parties. This consideration based on the fact that, within certain legal limits, the parties have the sovereign right to decide what form of procedure and resolution is desirable for them in terms of their conflict.[19] Thus, the cooperative procedural system emphasizes the autonomy of private parties in a criminal case. This is accompanied by the decisive role of the lay jury, which embodies the participation of the society, as well as the so-called client litigation, characterized by the fact that the evidence is obtained at the trial through a "battle" between the parties.[20]

However, the question arises as to whether it should be the parties or the trial judge who determines the range of evidence to be taken into account at the hearing. Again, the answer to this question must be interpreted in light of the primary purpose of the proceedings, which is to resolve the conflict between the parties. If the scope of the facts about the criminal offence is not determined by the parties, the focus will again shift away from the primary purpose of resolving the dispute between theindividuals. Although, of course, the trial judge may also have good reason to examine facts or circumstances other than the evidence alleged by the parties; however, this would operate against the basic idea that its role would be limited to resolving the dispute between the parties.[21] In the cooperative systems, the primary intention to resolve the conflict raised by committing a crime is so powerful that it also allows for various forms of plea bargaining. Moreover, criminal proceedings are conducted in this way in most cases and not by holding a trial according to the general rules.[22]

Within the practice of plea bargaining, a lesser, or even completely other criminal offence may form

Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 120.

[14] Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018, 355.

[15] See detailed description: Kúria Büntető Kollégium, Joggyakorlat-elemző csoport: A bíróságok hatályon kívül helyezési gyakorlatának elemzése, büntető ügyek. 2012. Összefoglaló vélemény. 2012.EI.II.E.1/6. 9-14. oldal. http://www.kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_2012iimod2_2.pdf (Downloaded: 2019. 12. 11.).

[16] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 161.

[17] Somogyi Gábor: A bírói igazságkeresés útjai. Az objektív valóság és a processzuális igazság kibékítése. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 337.

[18] U.o.

[19] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 118.

[20] See detailed description: Kúria Büntető Kollégium Joggyakorlat-elemző csoport 2013.El.II.E.1/4. A vád törvényességének vizsgálata. 2013. Összefoglaló vélemény. 11-16. http://www.kuria-birosag.hu/sites/default/files/joggyak/a_vad_torvenyessegenek_vizsgalata.pdf (Downloaded: 2020. 04. 14.).

[21] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 109–113.

[22] In the United States, approximately 98% of the cases are resolved in the so-called form of plea bargaining. In England, this legal institution has a little less relevant, but still, only 2-4% of cases are heard by the jury. (Elek Balázs: Költség és időtartalékok a büntetőeljárásban. http://ujbtk.hu/dr-elek-balazs-koltseg-es-idotartalekok-a-buntetoeljarasban/#_ftn8 (Downloaded: 2019. 12. 09.).

the basis of the charge[23]; thus, in fact, the system sees the role of the prosecutor and the defendant as opposing private parties. Although the judge may refuse to accept their agreement, it is very rare, given that there is still "some factual basis" for admitting guilt.[24] Despite its widespread use, many authors express their concern about this solution and agreement, it causes embarrassment and dissatisfaction in these systems.[25]

About cooperative procedural solutions, several studies point out that the so-called laissez-faire concept can be considered as a special characteristic. Concerning the procedural rules relevant to the present subject, it means limiting the intervention of the state's criminal justice system to the lowest possible level. In this relation, criminal proceedings are thus a confrontation between two opposing parties before a passive public official who has not been involved in the fact-finding process at all, since any judicial - and thus state - intervention in forming the proceedings is inconceivable because it would violate individual liberty. Contrary to John Langbein's proposal to increase the judge's activity in the American system[26], Oscar G. Chase directly envisioned that strengthening the role of the judge and restricting the parties' right of disposition would lead to a further spread of authoritarianism, which is already a serious social problem in American society.[27] According to some authors, furthermore, the creation of a jury (originally a prosecutor's and then a judicial body) helped primarily to strengthen the concepts of cooperative criminal proceedings.[28]

Horizontally Organized Procedure

In the case of a judicial system based on the cooperative consideration, there are no qualified officials whose primary task is to gather evidence and make it part of the „common file"; nor is there, in principle, a higher-level body before which the case could continue after the first judgment has been delivered. The procedure presumably ends before a homogeneous, one-instanced judicial body, and probably decided by a single judge. In short, we can even say that the trial itself can be seen as synonymous with the whole legal process. The historical roots of this highly concentrated procedural model are traditionally rooted in the different structures of the authorities[29], as in these systems the police and prosecutorial functions remained in the hands of private individuals until the middle of the 19th century.[30] For this reason, due to the lack of investigation by the public authorities, this "preliminary phase" of the procedure was not integrated into the subsequent proceedings; not as it has in systems operating according to hierarchical principles. Thus it is still true today that it is very difficult to obtain adequate evidence out of court before a trial.[31]

The Perception of the Truth in the Cooperative Systems

Compared to the principles of the hierarchical model, the cooperative approach emphasizes that there is no objective truth that can be achieved by a neutral participant.[32] This is because even a genuinely uninterested third party inevitably makes assumptions about the reality it is trying to reconstruct[33], therefore the human mind selectively notices information and thereby becomes more sensitive to evidence that supports its assumption.[34] Thus, in the case of fact-finding by the state authorities, a pre-existing presumption may be an influencing factor even before the evidence is presented.[35]

[23] See detailed description: Pápai-Tarr Ágnes: A büntetőeljárás gyorsításáról. Gondolat Kiadó, Budapest, 2012.

[24] Ibid

[25] The existence of the Innocence Project foundation in the United States reveals a lot about the perception of the practice of plea bargaining, as it aims to free the staggering number of innocent people who remain incarcerated and to bring reform to the system responsible for their unjust imprisonment. https://www.innocenceproject.org (Downloaded: 2019. 12. 05.)

Therefore the possibility of a "negotiated truth" as a result of the criminal procedure raises serious concerns and worry, even in Anglo-Saxon countries, including the United States, where the possibility of an agreement with the accused rests on the most solid foundations. (Mirjan Damaska: Negotiated Justice in International Criminal Courts. Journal of International Criminal Justice. 2004/2, 1027.). See detailed description from the american literature: Nancy Amoury Combs: Copping a Plea to Genocide: The Plea Bargaining of International Crimes. University of Pennsylvania Law Review, 2002/1. See detailed description from the british literature: A. J. Ashworth: The Criminal Process: An Evaluative Study. Oxford University Press, Oxford, 1998.

[26] John H. Langbein: The German Advantage in Civil Procedure. University of Chicago Law Review, 1985/52, 823–886.

[27] Oscar G. Chase: Legal Processes and National Culture. Cardozo Journal of International and Comparative Law. 1997/5, 23. Referred by: Bárd Károly: Az eljárási rendszerek közelítése. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 25.

[28] See detailed description: Elisabetta Grande: Dances of Criminal Justice: Thoughts on Systemic Differences and the Search for the Truth. Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 145-150.; John H. Langbein: The Origins of Adversary Criminal Trial. Oxford University Press, Oxford, 2003; William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008; Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018.

[29] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 57.

[30] John Langbein: The Origin of the Public Prosecution at Common Law. American Journal of Legal History. 1973/4, 313.

[31] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 57–58.

[32] The recognition of these cognitive barriers - and other factors that hinder the discovery of the truth - is of course valid in the hierarchical models as well. (See detailed description: Somogyi Gábor: A bírói igazságkeresés útjai. Az objektív valóság és a processzuális igazság kibékítése. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 338.) See also: Finszter Géza: A büntetés igénye – hatalom tudás nélkül? Dolgozatok Erdei Tanár Úrnak. ELTE Állam-és Jogtudományi Kar, Budapest, 2009, 60-99.; Herke Csongor: Megállapodások a büntetőperben. Monográfia Kiadó, Pécs, 2008, 88–92.

[33] Elisabetta Grande: i.m. 145–150.

[34] Mirjan Damaska: Evidence Law Adrift. Yale University Press, New Haven, 1997, 90.

[35] Craig C. Callen: Cognitive Strategies and Models of Fact-Finding. Crime, Procedure and Evidence in a Comparative and International Context. Essays

Cooperative systems do not place the evidence-gathering process in the pre-trial phase[36]; that is why, in most cases, the trial judge knows the least about the case, as there is no "common file" on the case, also known to the judge, the prosecutor and the lawyer, containing the results of the investigation.[37] This solution primarily endeavours to establish the truth within the legal framework, in the courtroom, as its purpose is to resolve the dispute, to establish the truth of the dispute. In the course of the proceedings, they seek the truth only to the extent necessary to resolve the debate between the parties.[38] The emphasis is primarily to ensure compliance with the procedural rules and the fair application of them, not so much the accuracy and validity of the outcome of the proceedings.[39]

I.2. Conclusions on the Relation between Truth and Justice in Criminal Proceedings

To sum up the aforementioned, searching for the truth in criminal proceedings is based on different considerations in the different systems. In methods organized by hierarchical principles, facts relevant to the relation of criminal proceedings are discovered by qualified officials, given that the state takes over the prosecution of the victim. It proves this by the fact that it is thus possible to find the true facts or at least very close to reality.

According to the cooperative concept, in comparison, the facts are presented by the parties, as a criminal offence is considered as a conflict between the parties, which the criminal proceeding attempts to resolve. Jerome Frank captures the focus of the two systems by referring to the „fight theory" as the Anglo-Saxon solution, and „truth theory" as the Continental solution.[40] In the latter case, a search for the truth by impartial authorities is desirable, as a result of which it will be possible to determine what actually happened.[41] In summary, justice in a criminal proceeding is guaranteed by "substantive justice".

In the cooperative system, on the other hand, justice is manifested in passivity on the part of the authorities and in the opposition of the parties by providing the conditions of a fair procedure, therefore achieving "procedural justice". Thus, the state already fulfils its role by ensuring the conditions for the equal "competition" of the parties.[42]

The result of different ideas will be a different perception of the truth established during a criminal procedure. The hierarchical system assumes that the impartial court established the facts that actually occurred in reality, but at least it is really near to it. While in the cooperative system, facts presented by the direct perceivers of reality constitute the truth established in the criminal case.

With regard to the assessment of the relationship between the search for the truth in criminal proceedings and justice, the first step must, in my view, be to determine what the primary function of criminal justice is; and then, in line with the research question raised, to examine whether one solution can be more effective in achieving the final aim than the other. Of course, the various goals of the criminal justice system, criminal law and punishment, as well as their connections could be the subject of an individual thesis. Therefore I will merely point out the differences with only three short definitions here, and refrain from describing the exhaustive literature. Rather, I consider the synthesis of these ideas to be my opening point.[43]

in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 168.

[36] Roberto E. Kostoris (Ed.): Handbook of European Criminal Procedure. Springer International Publishing. University of Padua, Padua, 2018, 355.

[37] William Pizzi: Sentencing in the US: An Inquisitorial Soul in an Adversarial Body? Crime, Procedure and Evidence in a Comparative and International Context. Essays in Honour of Professor Mirjan Damaška. Oxford and Portland, Oregon, 2008, 66.

[38] Erdei Árpád: Mi az igazság? A büntetőítélet igazságtartalma. Magyar Közlöny Lap-és Könyvkiadó, Budapest, 2010. 13. oldal.

[39] Mirjan Damaska: The Faces of Justice and State Authority – A Comparative Approach to the Legal Process. Yale University Press, New Haven and London, 1986. 148.

[40] Jerome Frank: Courts on trial. Princeton University Press, Princeton, 1949, 80-102.Referred by: Bárd Petra: Az angolszász és kontinentális büntetőeljárás eltérő igazságfelfogása. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 40.

[41] At least we are getting close to it.

[42] Bárd Petra: Az angolszász és kontinentális büntetőeljárás eltérő igazságfelfogása. Pusztai László emlékére. Országos Kriminológiai Intézet, ELTE Állam-és Jogtudományi Kar, Budapest, 2014, 39.

[43] Analysing the goals of the criminal justice system, criminal law and punishment

Bibó István: Válogatott tanulmányok. Etika és büntetőjog. http://mek.oszk.hu/02000/02043/html/42.html (Downloaded: 2020. 04. 14.)

Elek Balázs: IX. Fejezet a Büntetés kiszabása, Új Btk. Kommentár (főszerkesztő: Polt Péter), Budapest, Nemzeti Közszolgálati és Tankönyv Kiadó, 2013., 2. kötet.

Elek Balázs: Az igazság és a jogerő összefüggései. https://www.uni-miskolc.hu/~wwwdeak/Collegium%20Doctorum%20Publikaciok/Elek%20Bal%E1zs.pdf (Downloaded: 2020. 04. 14.)

Görgényi Ilona, Gula József, Horváth Tibor, Jacsó Judit, Lévay Miklós, Sántha Ferenc, Váradi Erika: Magyar büntetőjog általános rész, Wolters Kluwel Kft. Budapest, 2014.

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Földesi Tamás: Jog és igazságosság. Közgazdasági és Jogi Könyvkiadó, Budapest, 1989., 131–283.

Bárd Károly: Igazság, igazságosság és tisztességes eljárás. Fundamentum 2004/1.

Criminal justice is essential for the preservation of the order of human and social relations, and therefore its primary task is to protect the coexistence of people in the community.[44] The state, therefore, seeks to promote the smooth coexistence of society by providing for the imposition of a sanction - aimed at general and special prevention - against acts fronting the community. The purpose of the Criminal Code is recalled in the Preamble, which is to protect the inviolable and inalienable fundamental rights of human beings, as well as the independence, territorial integrity, economy and national assets of the country. Finally, the objective of punishment is, in the interest of the protection of society, to prevent the perpetrator or any other person from committing a criminal offence.[45]

These goals are linked: the state (also) seeks to fulfil its obligation to citizens to protect their personal safety and property, thus ensuring the smooth coexistence of society by the administration of criminal justice.

Consequently, one aspect of the realization of the ultimate goal, ie the social order, is that criminal justice prevents committing criminal offences by the means of punishments. The other, to which Bibó very pertinently points out, is that if this social order is violated through committing a crime, the criminal justice system provides a regulated framework for the conduct of the anger caused in society as a result. In other words, it gives a sense of security, that law prevails over disorder.

Restoration of the order violated by a criminal offence is possible with a fair, satisfying result of the criminal proceeding, but the basis for this is that we first take a position on the question of what is the truth, what happened. This is the first major issue in a criminal procedure, the "material justice" dimension emphasized by hierarchical systems. However, this is necessarily accompanied by the requirement of "procedural justice" emphasized by cooperative systems, ie that the proceedings provide equal conditions for the accused to prove his own position. The second main question, therefore, is whether, on the basis of the truth thus established, the defendant is liable for the act and, if so, what sanction is required. This is the question of justice in relation the punishment.

The emphasis must therefore be on making a real effort to find out the truth in order to answer both main questions correctly, but this requires both methods of seeking for the truth (ie the duty of the authorities to seek for it and the possibility for the defence to disclose the facts). Consequently, it is irrelevant whether we call the facts established in the criminal proceedings "procedural" or "material" truth. If the decision of guilt or innocence and the imposition of punishment are ultimately based on a „truth" which is logical, reasonable, clear and meets common sense, ie convincing to an outsider, the ultimate goal will be achieved. István Feleky states in connection with the requirement of common sense that one who thinks in this way is clear to the other party, and is ultimately acceptable.[46] According to Lajos Nagy, at the end of the process of decision-making, the judge should reasonably come to the truth, namely on the basis of facts and assessment that excludes all subjectivity and intellectually causes everyone to make a similar decision.[47]

It is, therefore, necessary to explain the grounds of the judgment, how the decision was reached; and its role is to get the same decision in others, based on the same data.[48] It is exactly the reason why the practice of plea bargaining and a settlement that is completely different from the reality is unable to reach the final goal. Justice as a result of a criminal procedure – or, at least a satisfactory outcome – can not be based on mere assumptions or an agreement based on false facts. The consequence of it is that criminal justice loses its original purpose, as it is not able to restore the social order violated by committing the crime at all. We can also say that the ultimate legal justice can not be imagined without true statements.[49] Besides, it is essential for the realization of the goals of each punishment that the defendant also experiences it as a disadvantage, as a deprivation reaction stemming from the community.[50]

The basic issues of the search for truth and justice are, of course, were raised in connection with creating the new code on criminal procedure[51] in Hungary. From a practical point of view, the difficulty of seeking the truth is primarily related to the principle of the separation of procedural functions, i.e. should the trial judge play an active role or is it merely a duty to the prosecutor and the defence? However, it is not an exaggeration to say that the method on how to seek the truth affects almost every other principle and institution of the criminal justice system.[52] Without further elaboration, I do not consider that it is necessary to quit the continental approach and instead adopt the principles of the Anglo-Saxon system. This, of course, does not mean that it should be impossible to compromise

[44] Belovics Ervin, Nagy Ferenc, Tóth Mihály: Büntetőjog 1, HVG-ORAC Lap-és Könyvkiadó Kft, Budapest, 2014, 80.

[45] Act C of 2012 on the Criminal Code, Section 79.

[46] Feleky István: A józan ész. Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapja alkalmából. Pázmány Press, Budapest, 2018, 106.

[47] Nagy Lajos: Ítélet a büntetőperben. Közgazdasági és Jogi Könyvkiadó, Budapest, 1974, 197.

[48] Ibid.

[49] Földesi Tamás: Jog és igazságosság. Közgazdasági és Jogi Könyvkiadó, Budapest, 1989, 91.

[50] Belovics Ervin, Nagy Ferenc, Tóth Mihály: Büntetőjog 1., HVGORAC Lap-és Könyvkiadó Kft., Budapest, 2014, 460.

[51] Act XC of 2017 on the Criminal Procedure Code.

[52] Tóth Mihály: Hol az igazság mostanában? – szemelvények és reflexiók Király Tibor professzor tiszteletére. Hack Péter, Horváth Georgina, Király Eszter (Szerk.): Kodifikációs kölcsönhatások. Tanulmányok Király Tibor tiszteletére. ELTE Eötvös Kiadó, Budapest, 2016, 24–26.

and either assess the defendant's cooperation or take into account other considerations that limit the search for the truth, as compromise is not necessarily a distortion of the truth.[53]

I merely attempt to point out that although criminal proceedings are formally closed by an agreement, even in any crime or any facts, I believe that to fulfil the primary function and to achieve the punitive goals (special and general prevention, protection of society, restoration, reprisal) an agreement based on facts that completely false is inappropriate for this. It seems reasonable to conclude that the search for the truth within a regulated framework is of paramount importance for the ultimate justice of criminal proceedings.[54] In other words, the search for the truth can be considered as a means to reach justice as a result of criminal proceedings and thus to restore the order of society infringed by a criminal offence.

Authors who emphasize the Anglo-Saxon considerations, take the opposite view. According to some views, the truth is unnecessary to achieve justice, as justice *is* before truth.[55] For my part, I can not agree with this because, in my view, it excludes justice if the facts established during the fact-finding process are not adequately related to reality, but at least we do not seek to do so.

However, that consideration is correct according to the requirement of procedural fairness. The requirement of seeking for the truth – the aspect of substantive justice – does not mean that it can not be restricted in favour of procedural justice. Thus, the requirement of the separation of procedural functions and the principle of the equality of arms is of great importance in these systems as well. It must therefore be emphasized that there have to be values at a fundamental level which, where appropriate, limit the discovery of the truth. It is, therefore, reasonable to conclude that the principles of seeking for the truth emphasized by each system are in fact interconnected and presupposed, and thus neither can be better or more effective than the other.

[53] Ibid.

[54] Lippke emphasizes the importance of seeking for the truth in criminal proceedings in the context of the right to human dignity. He argues that if we attach particular importance to human dignity, especially the human dignity of the person accused of a crime, then a real effort is required to determine whether he has actually committed a criminal offence. (Richard Lippke: Fundamental Values of Criminal Procedure. Darryl K. Brown, Jenia Iontcheva Turner, and Bettina Weisser (ed.): The Oxford Handbook of Criminal Process. Oxford University Press, New York, 2019, 5.).

[55] See detailed description: Ho Hock Lai: A Philosophy of Evidence Law. Justice in the Search for Truth. Oxford University Press, New York, 2008, 64.