

**SUMMARIES**

PETRA BÁRD – WOUTER VAN BALLEGOIJ

**Intersections: EU criminal law and fundamental rights**

This article focuses on the case-law of the Court of Justice and the dialogue it conducted with national apex courts when seeking to reconcile the “free movement of judicial decisions”, as facilitated by mutual recognition, and individual rights in its interpretation of the Framework Decision on the European Arrest Warrant. The authors conclude that for the sake of legal certainty, more guidance should be provided under EU legislation to make sure that judicial cooperation does not lead to disproportionate intrusions on individual rights or even violations of absolute rights. This should be accompanied by a permanent mechanism for monitoring and addressing Member State compliance with democracy, the rule of law and fundamental rights. Ultimately, however, according to the authors the Court of Justice will have to play a crucial role in carving out and applying fundamental rights exceptions to the application of mutual recognition and show proper deference to the norms developed by the European Court of Human Rights and national (constitutional) courts.

ERVIN BELOVICS

**Assessment of impartiality in the light of the  
Constitutional Court’s decision 21/2016. (XI. 30.) AB**

The Constitutional Court in its decision 21/2016. (XI. 30.) AB, November 28, 2016 stated that there is a constitutional requirement deriving from the Fundamental Law of Hungary Art. XXVIII Section (1), namely that no judge shall contribute in the follow up of a penal procedure who served as a judge before, in any earlier phase of the criminal procedure, including the investigation, when applying § 21 Section (3) point a) of Act XIX of 1998 on the Penal Procedure. This decision of the Constitutional Court obviously relates to the assessment of impartiality. The current study reviews the decisions of the European Court of Human Rights taken related to the problem at stake, how impartiality is judged by the Supreme Court (Curia) in Hungary and what is the stand of the Constitutional Court in the matter.

PÉTER POLT

**The effect of Hungary’s foreign relations to corrections**

The effectiveness of criminal justice is one of the measures of rule of law. There can be no appropriate legal certainty in a country where there is no adequate and structured execution of sentences, even though there are suitable substantial and procedural rules and the authorities cooperating in criminal procedure operate lawfully. There is no criminal justice without legal judgement, but even the best appropriate sentence is rendered meaningless without proper enforcement.

ORSOLYA BOLYKY – LÁSZLÓ TIBOR NAGY – ÁGNES SOLT – JUDIT SZABÓ

**The practice of life imprisonment**

The National Institute of Criminology has conducted the research project on „*Life imprisonment and conditional release (parole)*” in 2016 upon the request of the Ministry of Justice. This paper presents

the findings of the first part of the research study. Within the frames of the research project we have reviewed the developmental changes, current issues and practical problems of the institution of life imprisonment, with special regard to real life imprisonment. With the method of case file examination we have collected data on 176 perpetrators, their criminal acts and victims, thoroughly analysing the criminal law and criminological characteristics and the legal practice of courts. We also discuss the modus operandi and the motivational background of the studied criminal acts, and the circumstances regarding punishment and sentencing.

ÁGNES SOLT

### **The practice of conditional release in Hungary**

In this paper we were focusing on the practice of conditional release from imprisonment in Hungary. In a qualitative study, we conducted in-depth interviews with incarceration judges throughout the country. We compared the interpretation of legal pieces and the jurisprudential practices accordingly, the reasons and motivations behind the discrepancies, and the practices of different judicial regions of Hungary, and made efforts to synchronise the views all over the country. We summarize the aspects and differences having been most significantly unfolded in the course of the research. Differences are not only have been detected at the level of interpretation of the law, and the jurisprudential practices by county, but also in the everyday functioning of the incarceration institutions, with regard of the relation of the personnel and the inmates, the possibilities of the inmates for release, the content and details of the proposals for release, the workload and the actual tasks of the patronage officers. Consequently, a country wide equal protocol cannot be developed even if standard ways of judging would be maintained by the judges working in the incarceration system. For the elimination of the phenomenon we popularly call “prison tourism” it would be primarily required to develop a common platform of understanding among incarceration prosecutors, incarceration institutions, patronage officers, and incarceration judges.

ANNA KISS

### **The dual nature of private motion**

The study analyzes the dual nature of private motions, with special regard to their role in substantive criminal and criminal procedural law. It also covers the definition of a victim, and deals with this matter in the context of criminal procedural reform as well. The author presents not only the Hungarian situation, but she also opens a window on Europe, and demonstrates how this legal institution works as an operating solution in the EU Member States.

GABRIELLA KÁRMÁN

### **The legal and organizational framework for the expert evidentiary procedure**

Due to the technical and scientific development, nowadays it seems obvious that verification (i.e. the expert proof process), which is gaining increasing significance in the evidence process, should be protected by up-to-date guarantees. Besides laying down the professional rules, scientific grounds, as well as structural (organizational) and legal safeguards are becoming more and more important. In this research, we have primarily examined the functions and responsibilities of the expert, the conditions of gaining proficiency, the monitoring of competence, and the quality assurance of the experts' activity, and last but not least, the legal principles of substantiating the forensic experts' activities and their expert opinion, in the context of the changing rules of criminal procedures and within the context of the Act on Forensic Experts, which took effect in 2016.

ÁDÁM MÉSZÁROS

### **The presumption of innocence and the ban of treating the accused party guilty**

Though the *presumption of innocence* seems to be a well-known and long ago established principle of the criminal procedure, the principle as a guideline was first regulated by the Act I of 1973, and repeated by the Act XIX of 1998. The rule said: “No person shall be considered guilty until, according to the law, finally convicted by the court.” During the process of the codification of the new criminal procedure code the opportunity of re-formulating the principle has emerged. Upon this idea questions have arisen such as: is the presumption of innocence really a presumption, is it a rebuttable presumption, who is the object and the subject of this, and how it is related to moving the procedure. The current study reflects to the abovementioned issues, and the conclusion seems to be absurd: the presumption of innocence is neither about innocence and nor is a presumption.

RENÁTA GARAI

### **The invisible law?**

#### **The dilemmas concerning domestic violence – facts and misbeliefs in practice**

The current study shows and examines the new law on domestic violence, which is regulated by the Hungarian Criminal Code since the July 1, 2013. The purpose of creating an independent crime was to enable more severe sentencing for certain criminal acts related to domestic violence. The study reflects on the 3.5-year old practice of the above mentioned crime, and deals with both the mistakes and the lessons that can be drawn so that a standardized legal practice may be developed in the future.

SZILVESZTER PÓCZIK

### **Some aspects of migration related criminality**

The criminal offences perpetrated by asylum seekers and other immigrants in the period of the mass immigration to Europe in the last decades and the migration crisis of 2015-2016 can be explained partly as cultural conflicts, partly as behaviours targeting the improvement of their social chances. The immigrant's long-lasting instable social status and the disruption of their orientation patterns become the source of identity disturbances and deviant behaviours. According to each position regarding the criminality of immigrants it does not differ essentially from the average crime indicators of the native population. According to the opposite opinion, the immigration extends the entire volume and some particular forms of criminality significantly. Islamist radicalization is a new threat in the societies of Western Europe but beyond that also some other formerly unknown crime variations appeared as robbery combined with sexual harassment, mass sexual assault, and attempted rape. Some forms of crime as female infibulations, children marriage and forced marriage as well as honour killing root deeply in pre-modern social tradition of Muslim families.