RESEARCH RESULTS – 2017
(Summaries of completed research)

CONTENT

I. RESEARCH PROJECTS IN THE MAIN FIELDS OF RESEARCH

THE SECOND MAIN FIELD OF RESEARCH: SECURITY, PUBLIC SECURITY

Szilveszter Póczik

Particularly serious culture-specific offences in Muslim migrant communities in Europe

Research *method*: identification of sources and comparison and analysis of research results.
Research *output*: the conclusions included in the final study.

Taharrush jamai is the Arabic name for group – and sometimes mass – sexual harassment and rape committed against women in public. It was first described in Egypt, in 2005, where it is also called a 'circle of hell', but the concept has been known since the 1950s. A precondition of perpetration is a bigger crowd gathered in a public space, which makes it possible to encircle and isolate women and to keep their companions at a distance. The perpetrators pretend to be polite and offer their help under some pretext, and confuse the person they have picked out to be their victim. Presumably, it was Egyptian undercover agents who first used this method systematically in Tahrir Square, Cairo, on 25 May 2005. Their goal was to intimidate the female protesters in the crowd gathered because of the referendum relating to the amendment of the constitution in connection with the direct election of the president (Black Wednesday). It was probably surprising to everyone that after such precedents in the Middle East, this form of sexual barbarism could also appear in Europe. The events in Cologne on New Year's Eve in 2015 shocked Germany and the whole of Europe, destroying the hopes and illusions placed in immigration. According to the opinion of the *Bundeskriminalamt*, what we are facing is a new method of committing crimes: 'a series of violent sexual acts committed in groups and accompanied by robberies and offences against property, [...] violent acts that are fundamentally different from the offences against property committed using a dancing trick, which have been persecuted by the police for a long time'. Everything suggests that the incidents of mass sexual aggression occurring in Cologne and other German and European cities – all taking place according to the same script – were the results of detailed planning, and those behind them also expected to rely on spontaneous group dynamics. In my opinion, this series of events was a 'tensile test' arranged by extremist Islamist groups, a sort of mobilisation practice, the purpose of which was to test the tolerance of society and the reactivity of the law enforcement bodies. At the same time it sent the following message to Europeans: 'you cannot protect your women and daughters, and even your police will not protect you from us'.

László Tibor Nagy – György Vókó:

Current security issues for sporting events, the enforcement of bans from visiting sporting events

The aim of our research was to explore the current issues of security at sporting events, with a particular focus on the enforcement of the ban from visiting sporting events sanction, which has an important role in this context. *In general, security at sporting events has improved recently*

in Hungary, not least because of the infrastructural developments; however, negative events still tend to occur. Of administrative offences, the *misuse of explosives for civilian use and of pyrotechnics products* is the most frequent, whereas in the case of criminal offences, it is *disorderly conduct* that occurs the most often. However, in many cases nuisances and affrays are not reported, and therefore they do not come to the knowledge of the authorities, in particular in the case of matches of lower-ranked teams. It can be considered a good sign that *the proportion of sporting events that are classified as events of a higher security risk (important events or events with an increased risk) by the Committee for the Classification of Sporting Events in Terms of Security is decreasing.*
Further technical developments are needed for *increasing the security of sporting events* (high resolution camera systems, access control systems, finding solutions for the separation of groups supporting rival teams within sports facilities, etc.). It would be advisable to *clearly define the events that fall within the scope of Government Decree 54/2004 (III. 31) on the security of sporting events, and, if possible, to reduce the number of sports that hardly present any security risk, as well as to consider reforming the three-grade classification system of security.*

In the academic literature, the subject-matter of this research report, i.e. the criminal sanction of the ban from visiting sporting events – which is new to Hungary – is often classified as a sanction consisting in the deprivation of rights, that is, a sanction that does not result in deprivation of liberty but only the limitation of a right or temporary deprivation of a right; the literature also discusses the administrative offence form of this crime. The research project involves a rather ambitious systematic analysis of the general and dogmatic history of the relevant regulations as well as the interpretation of their complexity and special features, relying on the idea of prerequisites in the theory of scientific development. The problems of enforcement in practice and of monitoring can be seen most clearly after carrying out this analysis; the research project has managed to reveal these problems, thereby contributing to the practical enforcement of the new sanction. We have shown the scale of the problems using the currently available data. No method has been established yet for obtaining information about the enforcement of the sanction or the relevant records, or about cases where the convicted person exercises the right affected by the ban outside the jurisdiction concerned. It is an aspect of legality – and it is also the convict's personal interest – that the bans included in the punishment are enforced throughout the statutory period. There is much room for improvement in terms of the clarity of the enforcement regulations relating to the periods that can or cannot be counted in the periods of punishments involving the deprivation of a right. The notices about judgments are sent from the court through the court's group dealing with the enforcement of criminal sanctions to the records of the sports security service of the National Police Headquarters. Sometimes the notices were inaccurate and incomplete, and in some cases they were not sent to ORFK (the National Police Headquarters). For example, the content of the ban or its expiry date was not indicated accurately; in cases where the notice was not received, this even resulted in a failure to record the punishment. In some instances, the court's notice was sent out with a delay of several months. Local police stations have no records about the persons who have been punished by a ban from visiting sporting events by the court in their jurisdiction. There were also cases where effective enforcement became difficult due to the scope of the operative part of the judgment. The time of deleting the data from the records cannot be established subsequently. Effective enforcement can be facilitated by specifying the exact location as well. In practice, the sanctions are not enforced by the representatives of the authorities (but by sports clubs), and further reflection is necessary on their monitoring.

We provide a summary of the gaps, proposals and suggestions with the aim of achieving effective enforcement, so that this type of punishment can also achieve its purpose.

Tünde A. Barabás – Gergely Koplányi – Ákos Szigeti:

MargIn – Tackle Insecurity in Marginalized Areas
(participation in an international project)

A consortium led by the University of Barcelona participated in a call for applications announced within the framework of the EU Horizon 2020 programme. In addition to the researchers of the National Institute of Criminology (OKRI), Italian, English, French and Spanish researchers also took part in the consortium, involving the cooperation of seven partner institutions.
The research conducted between 2015 and 2017 examined four dimensions of the feeling of insecurity:

1) the *objective dimension* (victimisation);
2) the *subjective dimension* (fear of crime);
3) the *socio-economic dimension* (social vulnerability); and
4) the *socio-geographical dimension* (the impact of the physical environment).

During 2017, we evaluated the results of the qualitative fieldwork carried out in two selected areas of Budapest, in parts of District II and District X. In February 2017, we organised meetings with focus groups, involving experts – employees of the council, the police and NGOs – working in the districts concerned, and we prepared proposals on how to solve the local problems that determine the feeling of insecurity.
On the whole, our results – and the nature of the proposed solutions – support the suggestion according to which socio-economic and socio-geographical factors significantly contribute to people's feelings of insecurity, in addition to victimisation and the fear of victimisation. Although the sense of insecurity experienced in urban areas is clearly linked to the appearance of crime and antisocial behaviour, it is perhaps even more closely linked to social exclusion and the lack of cohesion in the community, as well as to the deprivation and marginalisation of the area and population concerned.
It was the task of the researchers of OKRI – as the partner in charge of the dissemination and exploitation activities of the project – to organise and conduct the international closing conference of the project in Budapest. ***The closing conference of the MARGIN project*** was held in Budapest between 3 and 5 of April 2017, and it was attended by 130 persons, of whom 80 were foreign participants. Our researcher gave a lecture on behalf of the Hungarian partner at the conference.
After the conference, we organised a two-day workshop at OKRI to close the research project, which was attended by the researchers of the partner institutions. At the meeting, we shared our results, evaluated the closing conference and prepared the further documents necessary for closing the project. During the weeks following the meeting, we finalised the exploitation plan we had prepared previously and which was binding on all partners of the MARGIN research project; the plan specifies the methods of promoting the research project and disseminating the results also in respect of the period following the completion of the research project. Furthermore, we documented the communication activities we monitored during the project (evaluation of dissemination and exploitation activities) and the lectures of the closing conference (final event minutes). The final research reports were prepared by 30 April, as well as the English version of the closing study, which was sent to the EU. The last report on the project was presented to the European Council in Brussels in May 2017.
The evaluators of the EU Horizon 2020 programme accepted the scientific report and the statement of costs, and thus the project was officially and successfully completed.

THE THIRD MAIN FIELD OF RESEARCH: CRIME CONTROL

Katalin Parti:

The practical implementation of the Digital Child Protection Strategy in schools, focusing especially on bullying in a virtual environment

The action plan of the *Digital Child Protection Strategy* adopted by the government in 2016, by Government Decision 1488/2016 (IX.2), lays special emphasis on the examination of intimidation and bullying between children in the digital space (*cyberbullying*). According to the Strategy, the cooperation between educational institutions and NGOs engaged in awareness-raising and harm-reduction activities needs to be strengthened. The aim of the research project is therefore to identify Hungarian NGOs that provide support to schools in connection with cyberbullying by peers, to perform the thematic classification of the services they provide to schools and to identify the deficiencies.

During the research project we identified the NGOs that are involved in *anti-bullying* activities using Internet search engines and the websites of NGOs. In addition to this, we made in-depth interviews with the directors of the educational institutions and the persons who developed the relevant school programmes, who use the help of the NGOs on a daily basis. The sample also included citizens' *ad hoc* initiatives whose purpose is to discuss certain emerging social issues in the community or to provide information about such issues. The sample also includes a few important Hungarian educational institutions that use alternative methods in their everyday practice.

Although there is a significant number of non-governmental organisations engaged in activities relating to bullying in school and online, these organisations are not visible and their activities are not transparent. Therefore, schools only ask for their help when conflicts have already escalated and the peaceful atmosphere for learning is no longer ensured.

NGOs offer very little training or further training on the development of alternative educational methods or to develop (school) leadership competences that are of great importance when it comes to preventing violence between peers at school. These would be necessary because teachers and other school employees should always be well-prepared and they should enjoy the support of their managers in order to be able to conduct and maintain comprehensive anti-bullying programmes.

We suggest that the representatives of the government, the NGOs, the local organisations and the educational institutions jointly develop a crime prevention strategy. On the one hand, the strategy should be based on the assessment of local needs, and on the other hand on the closer work relationships established during the dialogue between these parties. It is necessary to introduce education about violence between peers at school into teacher training. Additionally, NGOs could be given a greater role in further training and accredited specialist training. Likewise, this also applies to the police officers who perform tasks as crime prevention advisers for schools.

It would be advisable for NGOs to enhance their transparency and online communication. We suggest that NGOs open their doors to assertive adult citizens wishing to volunteer, who may sometimes even have relevant professional experience.

Cooperation is needed between industry and civil society in order to develop smartphone applications suitable for reporting cases and recording evidence. Although there are several applications of this kind in the world that support schools, only a very small number of such applications have been developed in Hungary until now.

Our research sample contains five schools operating with special educational programmes which use the methods of participatory conflict resolution on a daily basis, not only during intervention but also during prevention. It would be advisable to introduce the aforementioned educational institutions' restorative processes and practices that can prevent and resolve conflicts in the community also in the everyday practice of other educational institutions.

THE FOURTH MAIN FIELD OF RESEARCH: OUTSTANDING OR DANGEROUS CRIMES AND PERPETRATORS

Ágnes Solt:

Suicide among criminals sentenced to actual life imprisonment

More than 10% of criminals sentenced to actual life imprisonment committed suicide successfully. Almost all of the suicides were committed by detainees accommodated in the Long-term Special Regime (*Hosszúidős Speciális Rezsim, HSR*) sector in Szeged; the last three cases occurred within the past two years. Although the somewhat higher proportion of suicides and attempts compared to the suicide rate among the total population of detainees can be explained by the sentence and its length, it is still unreasonably high. In particular, it needs explanation why these extraordinary events are concentrated in a single sector. The aim of the research project is to explore the specific reasons leading to suicide, to establish the causal relations, and to identify the conditions required for preventing the occurrence of further suicides.
We have conducted in-depth interviews with detainees sentenced to actual life imprisonment 3 or 4 times a year since April 2011 in order to observe their attitudes, mentality, life in prison and adaptation to prison life. We monitor the relationship networks, communication, the relationship between the staff and the detainees, the effects of changing regulations and measures, and the viable coping strategies. Currently there are HSRs at three places in the country; we can compare these with each other and examine the efficiency and effects of their various practices.
On the one hand, we used the interviews conducted during the many years of research as a basis for the data analysed during this research project. On the other hand, we obtained the internal documents of the official inquiry that analysed suicide among detainees sentenced to actual life imprisonment from the Hungarian Prison Service Headquarters (BVOP). This enabled us to learn and analyse the reasons, conclusions and measures explored in the course of the internal examination of extraordinary events, as well as the detailed facts of these cases.
By revealing the reasons leading to suicide and exploring the protective factors, we make suggestions for the prevention of further suicides.
In the research report, we provide a brief description of the history of suicides and the specific features of suicides committed in prison. After that, we outline the legal institution of actual life imprisonment, and we also mention some of the dilemmas arising from this institution. Finally, we turn our attention to former detainees whose stories we wanted to discuss in more detail, in the hope of showing the superficiality of the apparently clear primary explanations to this problem in the context of the topic at hand. In this part, the detainees describe the events leading up to what happened, as well as the relevant causes and correlations; then we highlight the most important findings and conclusions from the materials of the inquiry of the Headquarters. The summaries of the two approaches provide a comprehensive view of the internal operation of the prison system, and the entirely dissimilar approaches and viewpoints of the detainees and the system.

Ildikó Ritter:

Drug couriers in Hungary II

The purpose of the study was to explore what individual and social (mainly social, economic and health-related) circumstances, environments or influences play a role in whether someone becomes involved in illegal drug trafficking as an employee, to perform work in this prospering industry producing significant profits for a small amount of pay, undertaking a significant amount of criminological, and oftentimes health risks. We used the method of in-depth interviews to conduct the qualitative study. The sample consisted of persons detained in the Hungarian prison system during the study, who were convicted in a final judgment for importing or exporting a significant amount of drugs to or from Hungary (smugglers or couriers). The study sample consisted of 48 persons.

Last year, during the first part of the study, which is designed to last for two years, we provided an explorative description of the phenomenon under review by processing the literature and making in-depth interviews. This year, we have prepared a detailed analysis, as well as a documentary about drug smugglers in Hungary, using the interviews recorded on video.

According to the results of the study, the Hungarian drug market remains fragmented. Drug trafficking is done by smaller groups, i.e. teams of 2 or 3 people, and it is not infrequent for private businesses consisting of a single person to engage in this activity. Within certain limited geographical areas (cities or villages), the groups or 'businesses' are aware of each other's activities, but they operate separately from each other. The special feature of groups consisting of only a few members is that one group member may fulfil several roles in the market. We were able to observe several variations in the organisations included in the sample.

There are two main reasons for the merging of roles: one is distrust and/or the mitigation of the risk of becoming known to the authorities, and the other is profit maximisation.

This is the reason why in the sense of organisational sociology, there are no distinguishable roles and activities in this organisational structure, in contrast with cartels or traditional organised crime groups. There are only flexible role structures that may quickly change depending on the actual situation. The operation of the organisation is based on these role structures. The flexible role structures and the diffusion of roles on the supply side maintain a rather idiosyncratic market that has several participants and monolithic features but is basically competitive and fragmented. A market that shows the signs of market organisation and behaviour that are characteristic of Hungarian small businesses.

There is a significant relationship between a person's position in a specific subculture and their role in drug trafficking. Those from families of a lower social status appeared in the lower-level roles on the supply side of the drug market (couriers; retailers assuming all kinds of roles; 'caretakers' who oversee for example a cannabis plantation, drug stocks, etc.), whereas those from the middle class or higher social classes typically appeared in higher-level roles on the supply side, regardless of their drug careers (wholesalers, marketing managers, smugglers [people supplying their own drugs in large quantities], organisers). Among those interviewees who already had problems with drugs, it was not necessarily their belonging to a specific subculture that led to their habit of consuming drugs and, as a result, to drug trafficking or drug smuggling, but traumatic events in their childhood that they could not process.

György Virág – Katalin Parti – Judit Szabó:

Current characteristics of violent sexual crime in Hungary (section III)

In this research project we were looking for answers to questions about violent sexual crimes and on popular opinion concerning such crimes. On the one hand, we wanted to explore the characteristics of these crimes (subjective and objective elements), including in particular the relationship between the perpetrator and the victim, the place and time of perpetration, and the characteristics and behaviour of the victim. On the other hand, we wanted to find out to what extent societal misconceptions about sexual violence, i.e. the so-called rape myths were present in the general population, and to what extent they influenced criminal proceedings initiated for rape and the delivery of judgments. We also examined what visual materials have been published over the past 15 years for crime prevention and public service purposes concerning sexual violence, what problems they aimed to solve, what message they wanted to communicate to the target group and what social group their target audience was. In connection with all this, we also analysed the appearance of violence and sexuality in popular music culture. In accordance with this complex set of goals, our research was designed on the basis of a comprehensive methodology. In addition to processing the relevant literature, we studied case files, performed an online questionnaire survey and analysed the content of visual and music materials, statistics and legislation.
In 2015, we gathered data through a web-based questionnaire; we collected visual materials and analysed them based on a set of targeted questions; we also analysed the sex and violence-related content of certain music videos popular among young people, reviewed the international literature and its background and collected the relevant court decisions. In 2016, we processed the cases that were decided by final judgments in 2015, and based on the results we found it reasonable to extend the study to include cases involving the crimes under review which were suspended or finally terminated in the investigation stage. Based on this, in 2017 we studied the files of criminal cases initiated in matters of rape, indecency, sexual violence and sexual exploitation and terminated or suspended during the investigation stage in 2015.
Our results provided additional data on both the characteristics of cases involving sexual violence as perceived by the authorities and the characteristics and difficulties of the criminal proceedings initiated for such crimes.
We continuously present the results of the research project at international and national conferences and publish them in specialist journals.

László Tibor Nagy:

The characteristics of and trends in homicides according to criminal statistics

Homicide, being the most serious violent crime, is of particular importance: despite its relatively low proportion, the public and the media are more concerned about it, it disturbs public peace to a greater extent, and it has a significantly stronger effect on public safety and citizens' sense of security than other criminal offences. Thus, the effective persecution of these cases is an extremely important task of law enforcement and judicial authorities. When evaluating the situation and conditions in a country, area or region in terms of criminality, the indicators of crimes against life committed in the area concerned are always among the primary data. These data are emphasised and they serve as a benchmark also because in countries characterised by stable conditions, homicide is a crime with low latency. In this respect, citizens' sensitivity to

criminality and the preparedness and the investigation activities of law enforcement agencies are also at a uniquely high level. Crimes against life are usually much more likely to become known than other criminal offences; however, exceptionally, there may be offences even in this category that are successfully concealed and remain undetected.
In Hungary, the number of intentionally committed homicides was gradually decreasing until the democratic transformation (on average, 560 intentional homicides became known per year in the 1960s, 515 in the 1970s and only 395 in the 1980s); however, after the democratic transformation the situation worsened in this field too: on average, 424 homicides occurred in the 1990s. However, after the millennium, we have observed improving trends; in the 2010s there were only 122 completed homicides per year on average, and in 2015 (185) and 2016 (199) fewer than two hundred (completed or attempted) homicides were registered, which levels have never been seen before.
The proportion of completed acts and that of acts that remained an attempt are of special importance in the case of homicides. The proportion of completed homicides were always below 50% before 1979; however, after that it was almost constantly above 50%, so much so that it even exceeded 70% in 1994 and 1995. In recent years this rate was approximately 50%. In 2015, the number of registered completed homicides was below 100 (99), lower than ever before, and in 2016 it was only slightly higher than that (101). Of the aggravated cases, homicide committed with particular cruelty is the most frequent, with a ratio of approximately 15%.
The registered number of offenders committing homicides is usually somewhat higher than the number of crimes that become known, which on the one hand is due to the highly efficient crime detection, and on the other hand it is not infrequent that murder is committed jointly by several perpetrators. There have been no child offenders since 2008; the proportion of juvenile offenders is 5% and that of female perpetrators is about 16%. As for the relationship between perpetrators and victims, the data clearly show that the majority of victims of homicides are people known to the perpetrators, and only about 20% are complete strangers.
The research project also revealed that in contrast with public opinion, the data of homicides are more favourable than ever before and show a clearly improving tendency, and the victims are primarily relatives and acquaintances. However, the proportion of acts committed with particular cruelty is high, and alcohol still plays a significant role both on the side of perpetrators and on the side of victims.

Orsolya Bolyky:

Difficulties of applying the law in the case of manslaughter and the criminological characteristics of manslaughter

The primary purpose of the research project was to explore the difficulties of applying the law in the case of manslaughter, in particular the legal problems of classification, through the detailed analysis of the statements of reasons included in the relevant judgments. The aim of analysing the criminological aspects of cases of manslaughter is to learn about the nature of these acts, the characteristics of the perpetrators and the victims, as well as the circumstances of and the events preceding the crime.
The sample included the documents relating to all manslaughter cases that ended with a final judgment between 2013 and 2015, including the police and the prosecution documents. Thus, in total 33 cases were analysed in detail. We used structured questionnaires for the criminological analysis and for filtering out the criminal law data, which contained pre-defined possible answers. The dogmatic problems of negligence were studied by means of text analysis, using qualitative methods.

The criminal offences analysed led to the conclusion that a significant number of manslaughters were accidental events, and in these cases the true punishment for the defendants was losing their relatives, mainly their children. In many cases the courts also mention this fact, and they usually impose a more lenient penalty – a suspended sentence of imprisonment – on the parents or the other persons who failed to fulfil their supervisory obligation. In several cases, the investigation was terminated by the prosecutor because the act hardly presented any danger to society, in which cases the prosecutor gave a warning to the suspects.
Based on our previous research projects conducted into homicide, we have found that acts committed out of gross negligence could also be classified as homicide committed with foreseeable intent. It only depends on the court concerned which classification is selected, since the courts have already opted for establishing the commission of homicide in cases with similar facts.
Traffic offences – where the perpetrator is only negligent in respect of the result of the offence – are often considered as potential criminal offences in connection with cases relating to traffic and public roads, resulting in a person's death. In such cases the court must decide whether the person responsible for the deadly outcome was subject to the Highway Code at the time of committing the act or not. If not, the defendant will be accountable for manslaughter.
The question of delimiting professional misconduct from manslaughter is also similar. If the defendant performs an activity that is subject to certain special professional rules, then – regardless of his or her qualifications – he or she will be accountable for the misdemeanour of professional misconduct. Nevertheless, it can be seen from the analysed cases that in practice, this provision is not always applied consistently.
Finally, respecting the governing and the traditional dogmatic considerations, we think it would be worth reflecting on the following: it is obvious that most of the cases are classified according to the less severe form of negligence, that is, ordinary negligence. Often the defendant is not even close to the place of deadly event, and in many cases the requirement of the relevant duty of care is also very remote in respect of the result of the crime – as also mentioned by the courts in their judgments. In such cases a question may arise – setting aside the traditions of criminal law – as to whether these acts should at all be called homicide or manslaughter. Would it not express the nature of the act better if we talked about negligence resulting in death? Of course, in terms of content, this category would include the statutory definitions of the same offences, but the parents, grandparents or foster parents who suffered a tragedy would not be called 'murderers'.

RESEARCH OUTSIDE THE MAIN DIRECTIONS

Ádám Mészáros:

The foundations of the theory of crime in Hungarian criminal law III The classification of criminal offences according to the objective elements of their statutory definitions

The task for 2017 of the research project that has been ongoing for several years was to classify criminal offences according to the objective elements of their statutory definitions. Therefore, the project work covered the examination of the different meanings of the facts (statement of facts, statutory definition and general statutory definition); the significance of distinguishing the definition of the offence and the disposition; the delimitation of the criminal offence, the statutory definition of the offence and the realisation of all elements of the statutory definition

of the offence; the levels of the statutory definition (basic, aggravated and privileged cases); and the definition of the elements of the general statutory definition. The cornerstones of the elaboration of one's own position are the following: the interpretation of the realisation of the elements of statutory definitions on an objective basis; the determination of the protected legal interest's place in the system; the exclusion of subjective elements from the discussion of the realisation of the elements of crimes; and transferring the criteria for recognition as the perpetrator of a crime to the category of objective elements. Based on all this, the category of the objective realisation of the elements of a statutory definition (compliance with the disposition) is devoid of all subjective elements. Thus, the objective elements are the following: a) the criminal conduct; b) the object of the crime; c) the result of the crime; d) causation; e) the situational elements; and f) the criteria for recognition as the perpetrator of a crime. The elements of the objective compliance with the disposition are a) the criminal conduct; b) the result; and c) causation.

The research task was to explain each conceptual element in detail.

The issue of *criminal conduct* was considered in detail during the previous year of the research and it was discussed in detail in the 2016 report. According to the result of the research, criminal offences can be classified into the following categories *according to the object of the crime, the passive subject and the victim*:

a) there are criminal offences which have no object at all;
b) there are criminal offences the object of which is a thing, and which have no passive subjects;
c) there are criminal offences the object of which is a passive subject, and not a thing;
    ca) there are criminal offences the passive subject of which can be anyone;
    cb) there are criminal offences the passive subject of which can only be a person with certain personal characteristics;
d) there are criminal offences the object of which is neither a passive subject nor a thing;
e) there are criminal offences in which both a thing and a passive subject are mentioned as the objects of the crime;
f) there are criminal offences that have a passive subject who is also the victim;
g) there are criminal offences that have a passive subject but this person is not necessarily the victim;
h) there are criminal offences without passive subjects which also cannot have any victims;
i) there are criminal offences without passive subjects which however, can have victims.

According to their result, criminal offences can be classified as follows:

a) formal or immaterial criminal offences (their statutory definitions contain no result)
b) substantive or material criminal offences (their statutory definitions contain a result); within these, we can differentiate between the following, based on the nature of the result:
    ba) material crimes involving violation;
    bb) material crimes involving endangerment;
    bc) material crimes involving violation and endangerment;
    bd) material crimes involving violation or endangerment.

In this context, the topic of risk, danger and harm had to be paid special attention.

On the basis of the criteria for recognition as the perpetrator of a crime, crimes can be classified as follows:

a) common crimes (*delictum commune*), which can be committed by anybody;
b) special crimes (*delictum proprium*), which can only be committed by persons with certain personal qualities required by the Act. There are two types also within these crimes:
    ba) special crimes which can only be established if committed by a person with the required personal qualities; and

bb) special crimes which cannot be established if not committed by a person with the required personal qualities, but the person concerned must be held liable for another crime;

c) crimes the commission of which requires the participation of several persons.

Ádám Mészáros:

The institutions of French criminal law I

Within the Institute, the idea that we should examine the legal institutions of the substantive criminal law and/or the law of criminal procedure of European countries have arisen on several occasions – as part of the work schedule, outside the work schedule or as an *ad hoc* task during the year – and compare them with the Hungarian solutions.

It would be ideal if we had the Hungarian translations of the criminal law Acts of the most important European countries; this would make the work of both OKRI's researchers and the prosecutor service significantly easier. For the time being, we cannot realistically expect this; however, this research project attempts to take steps towards achieving the above-mentioned ideal state. The material that closes the initial year of the research work intended to last for several years first describes the chapters of the general part of the French criminal code, then it presents some institutions from the general part. The majority of the work is based on the translation of the code about the substantive law; the need for using additional sources arose only in the case of one sanction (*contrainte pénale*).

The closing material of the research project outlines the following in respect of the *Code pénal:*

a) its general principles, including the definition of crime and the classification of crimes according to their severity;
b) the fundamental institutions of criminal liability, including the criminal liability of legal entities, the main rules applicable to the various forms of culpability, as well as the definitions of accomplices and attempts;
c) the grounds for the exclusion of criminal liability, including the rules of coercion, duress, mistake, self-defence and necessity;
d) the purpose of punishment;
e) the penalties and the secondary penalties that can be imposed on the perpetrators of felonies, misdemeanours and petty offences.

József Kó:

Review of crime

Within the framework of this research project, we studied the methods that can be used to measure crime (in addition to the official criminal statistics, we also studied procedures applying sociological methods). Unfortunately, there is only little research in Hungary on this topic, and therefore we examined the effectiveness of the different methods and the problems arising during their application and comparison mainly on the basis of international experiences.

The study examines the possibilities of measuring crime. Based on the analysis it can be established that the official criminal statistics are not directly suitable for examining the actual extent of crime. Although long-term time series make it possible to describe the tendencies, the internal structural characteristics can be significantly different in the case of latent and registered criminal offences. The actual extent of crime can only be revealed by performing additional empirical studies. Victimological research is already carried out regularly in several countries, comparing the results of such projects with the data of the official statistics. However,

traditional victimology studies enable researchers to explore criminal offences related only to natural persons. This means approximately 60% of criminal activity. In order to assess the total extent of crime, it is necessary to conduct victimological surveys in the corporate and organisational sectors. It would be recommended to supplement these studies by self-assessment surveys in the interest of exploring the criminal offences without victims. The joint application of these four methods can provide an appropriate basis for finding out the actual extent of crime.

Katalin Tilki:

Lessons learned from criminal proceedings initiated for cruelty to animals between 2012 and 2016

During the research entitled *'Protection of Animals in Criminal Law'*, carried out at the Institute in 2016, we concluded, among other things, that there was no contact between the legislators and animal rights protection activists. In order to achieve this, research would be needed to explore and comprehensively present the actual judicial practice. This is what the current study has set out to do.

According to the definition of the Animal Protection Act, cruelty to animals means the unnecessary and painful maltreatment of an animal, or any intervention or treatment or any limitation of the animal's needs to the extent that it causes persistent fear or health impairment, and/or the breeding of any animal that suffers from a hereditary disease for a purpose other than experimental goals.

The study briefly outlines the history of animal protection, the important documents on the treatment of animals and the foreign regulations of cruelty to animals. In connection with the Hungarian regulation, we describe the prohibition of cruelty to animals and the general rules of keeping animals, and we also analyse the statutory definition of cruelty to animals, in relation to which we outline the relevant rules of confiscation.

The basis of the empirical research conducted in 2016 and 2017 was a set of 197 criminal cases. Based on these cases it can be established that the crimes were usually reported by citizens, the police and animal protection or animal rescue organisations because of the inappropriate keeping, neglect or killing of animals. The subjects of the largest number of the cases studied were dogs. According to the final judgments of the courts, cruelty to animals is typically performed by the unnecessary abuse of animals, and by causing particular suffering to the animals. The perpetrators were usually men between 31 and 50 years of age whose highest level of education was primary school and who lived in the countryside, at places where some customs that are no longer accepted are still prevalent. It causes problems during the investigation that it is difficult to obtain objective evidence. It is particularly important in these cases to conduct an on-site inspection and to have a veterinarian officer present. Most problems arise in connection with the seizing and guarding of live animals. Early detection is particularly important because the later a case is found out about, the more serious are its consequences. It would be reasonable to introduce expedited procedures in criminal cases involving crimes committed against animals. This would be necessary because losing time could determine the outcome in the case of cruelty to animals in progress. It would be practical to decide on the ownership or permanent placement of the animals in a different procedure. Administrative proceedings could produce better results in a shorter period of time than criminal proceedings, because the fine imposed can sufficiently deter the owner of an animal who treats the animal badly from committing the act again.

Anna Kiss:

Criminal proceedings in theory and practice I

Last year the Hungarian government accepted the proposal of the Minister of Justice regarding the reform of criminal proceedings. The new Act on Criminal Proceedings was adopted by the Parliament in June 2017, and it was planned to enter into force in 2018.
In the absence of relevant practice, the first part of the research project analyses the first part of the Act on Criminal Proceedings, and it describes the changes that will characterise the criminal proceedings of the future. The study prepared about the first part of the research does not focus exclusively on the new legal institutions but on the one hand it analyses the concepts underlying the reform using scientific methods, and on the other hand it provides a clear analysis of the changing roles.
The research relied on the conferences that analysed the draft and the proposal of the new Act on Criminal Proceedings before its adoption. The person who performed the research attended all of these conferences, and even organised one of them herself. The presentations of these conferences were published in *Ügyészek Lapja* (Prosecutors' Journal), which is edited by the researcher.

The study prepared about the first part of the research project deals with the following topics:

- The relationship between the procedural stages
- The new role of the stage preceding the court proceedings (*the basis and purpose of the preparatory procedure, the crime detection and the inquiry; the preparatory procedure; the new role of the investigation; the changing role of the prosecutor; the stage of filing formal charges*)
- Court stage
- Coercive measures
- The changing role of the victim
- Persons belonging to vulnerable groups
- The protection of victims and witnesses
- The role of the defendant
- The role of the defence counsel

On the one hand, the research project explores the problems of the application of the law performed on the basis of the Act on Criminal Proceedings in force, and on the other hand it discusses the issues that may arise in the criminal proceedings of the future based on the new Act on Criminal Proceedings.
One important question is what kind of difficulties may arise during the preliminary procedure if the investigation is not performed but only supervised by the prosecutor. Since this supervision is not homogeneous but includes several types of tasks, the analysis of the different tasks cannot be left out from the study. If the prosecutor orders the investigation, supervision will not mean the same thing as in cases where the investigative authority investigates on its own. Moreover, the Act on Criminal Proceedings in force misleads legal practitioners in this regard, because in the provision where it details the tasks that can be performed by prosecutors during the supervision of the investigation, it provides such wide powers to the prosecutors that entitle them to take measures in a much wider scope than what would be required for the supervision of the investigation. This is probably because this part of the Act was inserted in 2009, which meant that the previous legislative will relating to the cornerstones of the Code was broken.
The so-called enhanced supervision by the prosecutor differs from the two types of supervision. This, in fact, means control. However, it can also be seen that prosecutors' interventions take place in real life, depending on the specific cases at hand, and the depth of such interventions

can be different in each case. As for the content of these interventions, they can constitute either supervision or control. Where the prosecutor continuously instructs the investigative authority in a case – regardless of the fact that the prosecutor does not exercise enhanced supervision in the case – then in fact this act will be considered control instead of supervision.

II. RESEARCH COMMISSIONED BY THE PROSECUTOR'S OFFICES

1. Research initiated by the Chief Prosecutor's Office

Tünde A. Barabás – Judit Szabó:

Theoretical and analytical review of criminal cases launched for the criminal offence of the illegal use of the human body

The purpose of this research project – started on the initiative of the Chief Prosecutor's Office – is to explore the criminal proceedings launched for the illegal use of a human body – that is, organ or tissue trafficking – and the main features of the criminal offences underlying these criminal proceedings, and based on all this to assess how this issue is being dealt with in Hungary, as well as to examine the possible legal and other anomalies. Although Hungary is less exposed to the risk of tissue trafficking, it is affected by globalisation and migration, and therefore studying the criminal cases meeting the statutory definition of the illegal use of a human body seems to be justified in light of the international developments.
In line with the objectives of the research project, we mainly used methods of empirical data collection. We planned to answer the research questions by means of the essential review of the normative background and the scant relevant literature as well as by using the method of the analysis of case files. We intended to perform the quantitative and qualitative analysis – based on a predefined set of criteria – of all criminal cases initiated in Hungary for the illegal use of a human body, but on the basis of the ENYÜBS system (*Egységes Nyomozóhatósági és Ügyészségi Bűnügyi Statisztika* – Unified System of Criminal Statistics of the Investigative Authorities and of the Prosecution Service), which we used as a basis for the research, we only found four such cases. This sample did not allow us to answer the research questions, and therefore we formulated additional research questions and resorted to another method of empirical data collection. As a result of the need for a credible and detailed study on this topic, and in particular due to the strongly interdisciplinary nature of the topic, we found it necessary to conduct group interviews with experts of the criminal justice system who are experienced in criminal cases of this kind – i.e. police officers and prosecutors – and with experts in medicine and those well-versed in scientific aspects of such cases.
It has been established that the application of the statutory definition under review as a framework disposition requires the intense and effective cooperation of several areas of expertise, which makes the application of an interdisciplinary approach essential. However, the interdisciplinary nature and the complexity of the criminal proceedings launched for the illegal use of a human body are not the only difficulties legal practitioners have to face during the application of the statutory definition of this crime; they also have difficulties arising from the legal dogmatic problems formulated in relation to the text of the relevant legal provisions and the protected legal interest. Some proposals have also been made as a result of the research, not only

regarding the general need for amending the background legislation – primarily the Healthcare Act – but also for solving some specific practical problems by legal means.

Anna Kiss:

The role of the aggrieved party and the victim in criminal proceedings

In the course of the development of criminal law, victims lost their former role and were pushed out to the periphery of the administration of justice. These days, more and more people insist that this is unfair to victims. The European documents also call the legislators' attention to the fact that the poor situation of victims must change. The study discusses the role of victims, including their rights and obligations, from the Acts of the 19th century until today; in other words, it describes the victim's right to initiate criminal proceedings not only on the basis of the Act on Criminal Proceedings currently in force, but it also analyses the legislative changes that affected the situation of victims. In addition to this, it mentions the changes that reinforce the position of the passive subjects of crimes in the criminal proceedings of the future; however, it also points out that we still have much to do in respect of such changes.
During the reform of criminal proceedings, the legislator paid special attention to the interests of victims, and thus in addition to the previously achieved rights it strived to ensure conditions that in the future would make it possible for every victim to be treated differently on the basis of their individual characteristics. The continuous extension of victims' rights is not a random occurrence. The legislator itself recognised that the administration of justice in criminal cases cannot be limited to the establishment of the defendant's criminal liability but must consider other issues as well, such as some kind of reparation of the damage caused to the victim and the strengthening of victims' autonomy regarding their will during the procedure; furthermore, it is also important to remember that the extension of victims' rights cannot take place at the expense of defendants' rights.
The code of criminal proceedings that entered into force in 2018 contains a new provision regarding victims' rights; according to this, unlike before, on the one hand victims will have the opportunity to declare whether they request the punishment of the defendant, and on the other hand the legislator will also enable them to make a statement on the harm they suffered. This latter opportunity is rooted in the recognition of the fact that if the victims of crime are heard, they are better able to deal with what happened to them.
Another welcome change is that victims' need for compensation will also receive a greater role in the procedure, and that it will be easier for them to exercise their rights in the future. For example, this is also supported by the rule according to which in most cases of probation ordered by the prosecutor, the compensation of the damage caused or the restoration of the original condition must be included among the rules of conduct of the probation. Thus, from next year, victims will have more rights in criminal proceedings. Of course, it is not mandatory for victims to exercise these rights or to use the opportunities available to them; these are merely rights that a person who has been the victim of a crime may exercise but may also decide to waive them. Therefore, instead of insisting on the enforcement of rights, the new Act on Criminal Proceedings – taking into account the requirement of being considerate – leaves it to the victim to decide which rights to exercise.
The legislator created the category of vulnerable groups in the new Act on Criminal Proceedings. The phrase 'vulnerable group' does not appear in the Act; instead, the legislator provides the rules applicable to these persons by devoting a separate chapter to the topic of special treatment. Thereby individualisation can be ensured in practice.

2. Research commissioned by the County Prosecutors' Offices

Eszter Sárik:

Review of the theoretical issues and the practice of restorative work

During the research project, which was initiated by the Heves County Prosecutor's Office, we considered the definition of the relevant concepts and the historical outlook to be the most important. In the study, we discussed the theoretical relationship between restorative justice and restorative work in detail, and we also pointed out that there have been many changes in the form of restitution and the participants of the restitution process during the past decades. While the original idea of restoration only presupposed the existence of a relationship between the defendant and the victim, by now, this has been expanded to include compensation by the state and symbolic forms of community restitution. However, the symbolic forms of community restitution could only come into existence because the meaning of the concept of the victim has been widened in the past few decades in a unique way; the concept of the indirect victim appeared besides the direct victim, and the role of the entire community also became accepted within the topic of victimisation.
In the empirical part of the research project, we were trying to determine the kinds of defendants and crimes in whose case legal practitioners consider it appropriate to apply restorative work. According to the study data, the defendants concerned were young men living in cities, whose average level of education was higher than that of offenders in general. We examined the following two issues in more detail in the analysis: the relationship between the misdemeanour of harassment and restorative work, and the extent of the application of this measure in the case of juvenile offenders.

Klára Kerezsi:

The application of the penalty of community service in practice

The penalty of community service has been available in Hungary since 1988. Thirty years ago, the prevailing mood of criminal policy tended to emphasise the restorative element of punishments consisting in the performance of work. In recent years, there have not been any changes either in legislation or in practical enforcement in respect of this legal institution that could hold out a promise of revelatory academic findings. Nevertheless, it is not unnecessary to reinforce our existing knowledge by a new research project.
It is noteworthy that the application of the penalty of community service has doubled in the past 10 years, while the understanding of the application of this sanction is moving in a direction that is opposite to the ideological content of work punishments. The restorative characteristics of this sanction are the ones that are least emphasised by the current criminal policy. The increase in the number of cases in which this sanction is applied has made community service an integral part of the sentencing repertoire.
We relied on two complementary guiding principles during the sampling process: 1) every element or member of the population must have an equal chance of being included in the sample; 2) the sample must reflect – with a certain accuracy – the population's characteristics, composition and variability according to the criteria under review.
We have selected a sample of 100 elements from the available framework sample. We used two stratification criteria: the place where the crime was committed (by county) and the type of

criminal offence serving as a basis for criminal liability, based on the relevant statutory definitions.
The courts typically apply the penalty of community service to sanction three types of criminal offences: 1) theft, 2) disorderly conduct and 3) driving under the influence of alcohol. These acts are relatively simple to adjudge – in terms of the statement of the facts – which is also shown by the fact that coercive measures (pre-trial detention or house arrest) are not applied in the case of 87.3% of offenders.
It can be established from the data of the study sample that where community service is imposed, the judgment becomes final already at the first instance in 93.4% of the cases. This suggests that both the prosecutors and the defendants were 'satisfied' with the application of community service. In 73% of the cases the accused was present when the judgment was delivered, and in 18% of the cases the work punishment was imposed without holding a trial.
It is not a new development – it was already mentioned by previous Hungarian studies – that the proportion of re-offenders is higher among those sentenced to community service than among all known perpetrators. It seems that the courts tend to apply work punishments in the case of persons who had already committed a criminal offence before.
The courts prefer a period of 'medium severity' in the case of work punishments. According to a study conducted in 2005 (when the duration of work punishments was still calculated in days) 'the most frequently imposed period was 26-30 days (20.3%), followed by penalties of 16-20 days (20.0%)'. It is surprising how often the courts impose the maximum period of work punishments: almost every seventh judgment contained 50 days (14.3%). It is also interesting to note that the courts prefer to use 'round' penalty periods.
The level of the qualifications of those sentenced to community service is far behind the level of education of the total population, and it is worse even compared to other convicts.

Ádám Mészáros – Krisztina Farkas – Renáta Garai:

The application of situational self-defence in practice

The purpose of the research project, which was initiated by the Chief Appellate Prosecutor's Office of Debrecen, is to explore the practical problems arising in connection with the application of situational self-defence.
In recent years, research on self-defence was conducted at OKRI in 2010 (*'Topical issues of liability under criminal law 2. Preventive self-defence')* and in 2014 *('The theoretical and practical problems of self-defence'*).
The research initiated in 2017 specifically reviewed the practical experiences relating to situational self-defence. The study included the statistical examination of the cases involving situational self-defence. One of the important conclusions of the research project in this context is that under the current circumstances it is almost impossible to select the cases of situational self-defence, because ENYÜBS contains no data on situational self-defence, the data recorded on self-defence are incomplete and the prosecutors usually have to rely on their memories.
The following should be highlighted from the practical characteristics:

a) The most typical situations involve attacks against a person at night (Section 22(2)(aa) of the Criminal Code); and attacks against a person committed carrying a weapon (Section 22(2)(ac) of the Criminal Code).
b) According to the criminal cases examined, the attack was aimed at human life only in 15.2% of the cases.
c) The court classified the defensive behaviour as the basic case of homicide only in four cases, and it classified it as the aggravated case of homicide only in one case. Bodily harm

causing danger to life amounts to 12.9% of the cases, but the most frequent are the basic and aggravated cases of actual and grievous bodily harm, which account for 43.6% of the cases. The proportion of the basic and aggravated cases of disorderly conduct is also high (20.8%), as well as the share of cases where bodily harm and disorderly conduct are committed by the same person (10.9%). This is important because the defence itself is the behaviour described in the statutory definition of self-defence, which would be regarded as a criminal offence in the absence of a ground for the exclusion of unlawfulness. According to the rule of situational self-defence, if during the unlawful attack one of the situations specified in the Act exists, the attack shall be regarded as if it had been also aimed at taking the life of the person defending himself or herself, the consequence of which is that if the defence results in taking the life of the attacker, the person exercising self-defence cannot be held liable under criminal law. It follows from this that the rule of situational self-defence can be applied in this case, and this case only. In other words, if the case – although it is performed when a statutory situation exists – can be resolved in accordance with the 'basic case' of self-defence, that is the one that should be applied.

d) Based on the above, disorderly conduct arises in several cases, on the side of both the attackers and the persons exercising self-defence. The 2014 research discussed the role of this criminal offence in self-defence at length. Sadly, the problems formulated during that research are still valid today.
e) The prosecution service does not follow a uniform practice in terms of the assessment of necessity and proportionality.
f) It can be seen from the cases studied that such fictitious examples as for example the one in which a disabled person is shooting at children with a rifle because they are stealing fruit from the apple tree that can be found in his garden are still not typical. The case of a lunatic appearing from nowhere and running towards the attacked person with a knife in his hand, or the case of the bread thief who is tortured for hours and then killed, or the case of the hunter who walks over the boundaries of a plot also does not occur. However, there are cases involving disorderly conduct as a crime against public peace, either as an offending or a defensive behaviour.

Katalin Tilki:

Sentencing for animal cruelty in practice

The purpose of the project initiated by the Vas County Prosecutor's Office and the Szabolcs-Szatmár-Bereg County Prosecutor's Office was to review the sentencing practice in cases of animal cruelty. The basis of the study consisted in the criminal cases provided to us by the county prosecutor's offices; altogether we reviewed 197 cases during the project.

The study outlines the criminal law regulations in force on animal cruelty and the results of the empirical research conducted in 2017. Based on the cases, it can be established that according to the final judgments, the most typical perpetration behaviour was 'unjustified abuse'. This typically happened when the perpetrators hit dogs, deer or pigs using various tools, or when they shot at cats with an airgun. Of the aggravated cases, the court established the commission of animal cruelty causing particular suffering most often, mainly in cases where the animals were beaten or hit on the head or where the chain became ingrown in the neck of a dog.

The court usually evaluated it as a mitigating circumstance if the defendants entered a guilty plea and if they had no criminal record. Aggravating circumstances mostly included the fact that similar types of acts were very widespread, having a criminal record and committing the crime with coactors.

In the majority of cases the prosecution service motioned for the imposition of a suspended sentence of imprisonment, and it only proposed the application of a sanction or measure more lenient than that in a small number of cases.
The court imposed suspended sentences of imprisonment, penalties of community service and fines in the final judgments. The duration of the imposed suspended sentences of imprisonment was 6 months or less, or between 6 months and 1 year. The duration of the penalties of community service was 120, 150, 180 or 300 hours. The amounts of fines were between one hundred thousand and two hundred thousand forints. The judges rarely applied mandatory imprisonment; they usually only applied it for the felony of cruelty to animals, in the case of re-offending defendants or in cases where several crimes were committed.
Animal cruelty was usually found to have been committed along with the felony or misdemeanour of theft or the misdemeanour of disorderly conduct.
Problems of evidence usually arise in connection with the application of the provision on treatment capable of causing permanent damage to animals or the destruction of animals.
The court judgments seemed to be much less strict in the appalling cases of cruelty to animals shown in the media than what the general public would have considered to be fair. This is one of the reasons why it has been suggested that an additional penalty of a ban on keeping animals should be introduced and that community service relating to animals could be an alternative sanction, which could be performed at animal shelters.

Gabriella Kármán:

Practical experiences of the asset recovery procedure since the introduction of the institution

The asset recovery procedure has been in force since 1 July 2013; it is primarily a special procedure supplementing the investigation as defined in Act XIX of 1998 on criminal proceedings (Section 554/Q of the Act on Criminal Proceedings). Asset recovery procedures can also be conducted after the court's decision on the merits of the case has become final (Section 554/R of the Act on Criminal Proceedings). The purpose of the research project initiated by the Csongrád County Prosecutor's Office was to examine the experiences relating to this relatively new legal institution, and to observe how asset recovery and the recovery of damages works.
Asset recovery is an increasingly recognised strategic purpose and consequence in relation to crimes involving the causing of damage to property; moreover, it is a legal institution that is prescribed by a law and whose application is mandatory. These acts usually affect several countries, and therefore asset recovery has been one of the motives for creating international and then European criminal cooperation from the outset. One of the latest authoritative international professional sources states that assets from criminal activity and their 'management' are not new problems in practice, in strategic thinking or in academic research. This approach has been part of the fight against crimes aimed at profit-making for at least three decades.
The asset recovery activity can be basically divided into three stages: the first is the stage of finding and identifying the asset; this is followed by measures securing the asset (coercive measures); and finally, the application of financial sanctions, whereby the actual recovery of the assets takes place.
Based on the research project it can be stated that this legal institution is indispensable in complicated criminal proceedings of high importance that require investigation for which financial and economic knowledge is necessary. The professional, quick and effective asset-finding activity of the Asset Recovery Authority also meets the goals formulated on the international level.

However, several as yet not elaborated questions have been raised due to the lack of regulation on the activities and procedures of the Asset Recovery Authority; on the one hand, this lays a duty on the legislator, and on the other hand it can be remedied by means of guidance from the authorities applying the law. It would be necessary to provide a more specific definition of the range of the criminal offences in whose case the procedure of the Asset Recovery Authority is justified based on their vulnerability and severity. This mainly includes the cases where assets are detected during the investigation. In other cases, the Asset Recovery Authority's activity could serve as a useful guidance for the general investigative authorities.
In addition to the above, there are recurrent problems in connection with the application of measures to secure assets (mostly the coercive measures ensuring the confiscation of property). Since all of the cases involving 'real' asset detection or asset securing procedures conducted during the investigation are still in progress, it may be justified to repeat this research in two years; it can be expected that by then at least the cases discussed here will have been closed by a final judgment.

Renáta Garai:

Delimitation issues in the case of violation of waste management regulations

In connection with the description of the areas of law aimed at the protection of the environment, the research project explored the means available within each relevant branch of the law, it described the rules of liability, and it also discussed prevention, the mitigation of damage and compensation; these can be regarded as the foundations necessary for the promotion of sustainable development and environmental protection at the highest possible level.
The criminal law regulation of the violation of waste management regulations has been analysed in detail during the study, discussing the results of Hungarian legislative work together with the law of the European Union. The research project found answers regarding the difference between the basic and the aggravated case of the crime and the obvious and sometimes difficult options of delimitation; furthermore, it analysed the administrative offence and the criminal offence forms of the act both separately and in comparison with each other. After the presentation of the criminal statistics data, the research project describes the difficulties, dilemmas and anomalies of applying the law in the relevant chapter, which does not only discuss the investigative authority and the prosecution service but also every organisation that can be linked with environmental protection in any way.
The chapter of the report on the analysis of case files required more space than what was originally envisioned; the reason for this was that several questions arose during the examination of the case files that had to be addressed in detail, discussing every relevant aspect. First, the main tendencies relating to the phenomenon under review were defined in this chapter, then it discussed the importance of the cooperation between the relevant specialised fields and the special features of parallel procedures, through the description of the relevant instruction and cases.
After outlining the circumstances related to the presentation of evidence, the chapter typifies the persons reporting the crimes, that is, the research project examines how these procedures are initiated and who or what influences whether a case becomes a criminal case. The investigations and the investigative actions are among the most important cornerstones of the detection of crimes, and therefore they are also paid due attention; after that the study provides a detailed discussion of expert opinions and the presentation of evidence by experts. The court rulings show the final outcomes of the cases; after that, the chapter ends with the description of the characteristics of the crime and the perpetrators.

The annex of the research report contains further thought-provoking findings:

- it describes the objects of the crime and the relevant criminal conducts as well as the classifications applied by the investigative authorities, the prosecution service and the courts in every case under review; furthermore, the practice of motioning for punishment and of sentencing can be monitored in each case;
- in order to make it easier for prosecutors to apply the law, the list of the laws in force has been included in one place among the annexes;
- finally, the initiatives of NGOs, photos taken on the spot and the reasonable options of using, recycling or reusing waste have also been included.

Anna Kiss:

Issues of illegal migration in terms of substantive law and procedural law

This research project studies the legal issues of illegal migration and is aimed at two large areas: the analysis of the issues of substantive law and those of procedural law. The start of the research dates back to 2016 when the collection of materials began.
Last year we organised two events the results of which have been processed this year. Namely, illegal migration was the topic of the roundtable discussion held in Kecskemét, which was organised with the support of *Ügyészségi Szemle* (The Prosecutors' Journal), and the event 'Kriminálexpo', where several lectures were given on the topic of migration in one of the sections organised by OKRI, also took place in 2016. After the events of last year, this year the meeting was also hosted in Kecskemét, where the invitees tackled questions of substantive law and procedural law in relation to illegal migration, thereby supporting the research being conducted at OKRI. The editing of the lectures given has been finished, and they will be published this year.

In addition to the above-mentioned three events, the summary opinion compiled by one of the case-law analysing teams of the Curia was also a source of the research. Thus, besides the opinions of prosecutors, the analysis of how judges apply the law was also included in the research. In addition to the above, we also obtained the opinion of experts on theory who are interested in this topic.

György Virág – Katalin Parti – Judit Szabó:

Difficulties in proving sexual crimes committed by juvenile offenders

The research began upon the initiative of the Pest County Prosecutor's Office in 2017. Somewhat deviating from the originally proposed topic, the research mainly focuses on violent sexual crimes, instead of all sexual criminal offences. Furthermore, although our research project's title narrowed down the topic, the project does not only aim at studying the difficulties of evidence but it also intends to explore the general characteristics of these acts committed by juvenile and child offenders. Criminal proceedings initiated in the matter of sexual crimes are usually – and not only in the case of juvenile perpetrators – characterised by difficulties relating to evidence, which arise from the nature of these acts and not from the age of the perpetrator. For this reason, we discussed the obstacles to evidence in general and not only in terms of the perpetrators analysed by us.

Within the framework of the research carried out in 2017, we examined the criminal proceedings initiated on the basis of violent sexual crimes and terminated or suspended in 2015 during the investigation; in the course of this research project, in addition to juvenile offenders, children were also included in the sample of suspects and persons reported to the police. We analysed the data of 138 criminal offences during the examination of case files. In contrast with our expectations, the number of juvenile suspects and offenders reported to the police was rather low (only eight), and the number of child perpetrators in the sample was thirty-five. Due to the small number of juvenile offenders and the scarcity of the data available in the files, we based our research regarding the topic of evidentiary difficulties of sexual crimes on the database gained from the cases closed by a final judgment, and not only in the case of sexual crimes committed by juvenile offenders but also in the case of all – mainly violent – sexual crimes.
The examination of the case files has corroborated the well-known fact that confessions – in particular guilty pleas – are rare among the perpetrators of violent sexual crimes, and therefore the court can only rely on what the parties and the witnesses say. The police could invoke the help of eyewitnesses only in a negligible number of the examined cases. It is apparent from the questions asked of the eyewitnesses that in the majority of the cases they too only have indirect information about the act to be proven. In procedures initiated for sexual crimes, there are many difficulties arising from the paucity of the available means of evidence, especially objective evidence. The means of evidence used in the cases studied, in the order of their frequency, are the following: witness testimonies (including the victim's testimony), expert opinions, inspections, medical reports, documentary evidence, physical evidence and confrontations. Often, the court only accepts those parts of the testimony of a child victim that are fully corroborated by some other, objective data of the procedure. Medical reports on marks of injury are often made too late, on the day following the reporting of the crime, and it also happened that in the absence of a medical report the images taken by the police officer who took the minutes of the reporting of the crime were used as evidence in court. Experts have an important role during the presentation of evidence in criminal cases initiated for violent sexual crimes. The courts appoint experts in the case of victims under 18 years of age – in particular in the case of victims who are children – more often than in the case of adult victims. It must be noted that both the practices of experts (psychologists) and the related judicial practice are characterised by inconsistency.
Victims' credibility and the consistency of their testimonies are important questions during the criminal proceedings conducted in the matter of sexual crimes, owing to the special nature of such criminal offences. However, we would like to point out that in the case of violent sexual crimes many years may pass between the crime and its reporting, or between the start of the procedure and the adoption of the final decision, during which victims' memories can significantly fade; moreover, their memories can also be affected by their traumatic experiences, post-traumatic stress or the closeness of their relationship with the perpetrator, and if the crime is suffered in childhood.

György Virág – Katalin Parti – Ágnes Solt:

Interviewing children at certain stages of the criminal proceedings

We conducted the research based on the proposal of the Pest County Prosecutor's Office. One of our main questions was aimed at the special problems raised by the interviewing of children during criminal proceedings, whether they are victims or perpetrators (suspects, accused persons or defendants).

The research project contains a theoretical part and a practical part. The theoretical part explores the Hungarian legal regulations and the international documents adopted on the topic of interviewing children. In the practical part we mention good practices from the international scene, and we present the results of our qualitative research conducted by means of interviews.
In 2011, the European Commission adopted a model of *child-friendly justice,* in which 'child' means the definition included in Article 1 of the UN Convention on the Rights of the Child of 1989: a child means every human being *below the age of 18 years* unless under the law applicable to the child, majority is attained earlier.
To check whether the tasks required for a *child-friendly justice system* have been performed, we enlisted the help of the case file research conducted by OKRI in 2015 and 2016 (*The characteristics of violent sexual crimes in Hungary today. Phase II, 2016 [I.T.A/IV/8.]*). It can be established from the examination of the case files that children's interview rooms are currently not used routinely either by the investigative authorities or by the courts, even in cases where they are otherwise available. The first interviews of girls under legal age were conducted by men twice as often as by women. Adhering to the principle of immediacy, the courts summoned to and heard at the trial victims under legal age in 45% of the cases – although in half the cases the courts considered the testimonies of minor witnesses which were recorded in the minutes during the investigation sufficient for proving the act concerned.
Among the international best practices, the research project describes the 'Children's House' (*Barnahus*) model originating from Iceland. The *Barnahus* is a child-friendly and interdisciplinary centre that is based on the cooperation of the authorities and organisations concerned: it is based on the partnership cooperation between the police, the prosecution service and the healthcare and child protection organisations.
During the empirical data collection of the research project, in total we made 14 in-depth interviews with expert practitioners – investigators, prosecutors, judges and a forensic psychologist who expressed his opinion during the interviewing of children – in the form of semi-structured interviews about the enforcement of the laws in practice and the problems, difficulties and deficiencies arising in this context.
It is necessary to ensure the institutional training and regular further training of legal practitioners about the interviewing of children during criminal proceedings and about the possible means of preventing further traumatisation. There is a need for introducing fundamental changes in the field of interviewing children during criminal proceedings. If possible, children should be interviewed in their own usual environment. The *ad hoc* guardian must be an adult whom the child knows and trusts. Children should only be interviewed by persons who received special training and who meet the required professional criteria. It must be determined in detail how the video recordings of the interviews can be used and exact procedural rules should be developed regarding the trial stage. The forensic psychological opinion should be provided by an expert committee of three psychologist members, in accordance with the methodological recommendation of psychologists. The legislator should adopt provisions on the rules of the special qualifications required for interviewing children.

Szilveszter Póczik:

Examination of the perpetrators of offences related to the closing of borders with regard to citizenship, country of origin and age, and the related procedural issues

The procedural issues of offences related to the closing of borders were presented by *Dr Zsolt Kopasz*, the chief prosecutor of Csongrád County, on the basis of discussions with OKRI and the researcher in charge of the project.
The research project was initiated by the Csongrád County Prosecutor's Office. During the preparation of the project, we requested 165 case files from Csongrád County from the national records, using an electronic randomiser. We received fewer files than requested, by about thirty. Thus, we studied 668 perpetrators of 137 cases, who crossed the closed borders 'illegally'. The analysis was performed on the basis of eight criteria (sex, age, citizenship or country of origin, mother tongue, level of education, marital status, criminal record and previous occupation). We also attempted to carry out separate studies of the social characteristics of some of the more important nationality groups. We established that 93.4% of the persons against whom proceedings were initiated were men, and only 4.8% of them were women. The average age of men was 25.5 years, whereas that of women was almost 30 years; altogether, their average age was 26 years. The youngest person was 16 and the oldest was 61. The examination of citizenship (countries of origin) has confirmed that a significant number of those intending to cross the border (in this case, their majority) do not come from war zones, and the 32 persons of Syrian origin are only 4.7% of all the people concerned. We can add to this the 181 people whose country of origin is Afghanistan, Eritrea, Iraq, Libya, Nigeria or the area of the Palestinian self-government, and thus the number of those coming from war zones or partial war zones is altogether 213, which is 32% of all. The most significant areas producing migrants are Pakistan (162 persons) and Afghanistan (153 persons), that is, areas where in addition to poverty, Islamic fundamentalism has also taken root. The next area with 77 persons is the politically abandoned Kosovo with its uncertain status, where poverty, unemployment, corruption and organised crime have made it difficult to live in the country. The third group contains Iran, Syria and Somalia with 36, 32 and 35 persons, respectively. The strict Islamic administration of Iran probably significantly contributes to the outflow of people, similarly to the war in Syria and the extreme poverty in Somalia that is striking even in a global comparison. The other partial conclusions that can be drawn from the research data can be read in the final report of the research project.

Ildikó Ritter:

Difficulties in proving offences related to the misuse of new psychoactive substances

As part of the series of research projects aimed at the longitudinal study of the application and applicability of the legal provisions relating to new psychoactive substances, this year we planned to explore the other difficulties and problems of evidence besides the questions of quantity. The purpose of the study was to learn what the prosecutors applying the law think about the regulation, how they can apply the relevant provisions and what problems of evidence they have to face during the procedures.
The – national – sample included questionnaires completed by 83 prosecutors.

According to the study results, one of the critical points of drug-related crimes and thus of the application of the law is the issue of quantity.
In connection with this, it is not the determination of the drug content of the NPS that primarily causes difficulties but that of the designer drugs that have been transferred to the list of drugs from the NPS list. This is because by including them in the 'drug list', the legal status of these substances changes and along with that the classification of the acts committed using them. Therefore, the provision included in Section 184/D(2) of the Criminal Code determining the lower limit of the drug content shall no longer apply to them, instead, Section 461(4) shall be applicable. This is how the legal question of determining the drug content of a substance becomes again a question to be decided by experts.
A regulation that is fraught with anomalies will lead to detection and evidence fraught with anomalies.
According to the prosecutors interviewed, it is a serious problem that

- there is no agreement between the legal practitioners as to whether in the case of drug-related crimes and the crime of the misuse of new psychoactive substances the quantity of the drug content of the seized substances should be a question to be determined by law or by the experts, or by law and the experts. This indicates that the law is not interpreted uniformly in this regard, and therefore there is no uniform procedural practice either, as a result of which legal certainty is compromised;
- the 'dumbed down doubling' of the regulation – as described by one of the prosecutors interviewed – renders the procedures and the presentation of evidence more difficult. Many think that the scientifically 'differentiated' but in fact 'dumbed down' double regulation of crimes relating to drugs and new psychoactive substances should be terminated;
- the regulation is complicated and it is not transparent. According to legal practitioners, simpler statutory definitions that are easier to apply would be necessary instead of the current overcomplicated regulation. 'By simplifying the underlying legislation, the concepts of substantive criminal law could also be simplified' and the relevant legislative environment could be made more transparent even to laypeople.

Those applying the law should enforce the legislator's intention, but their hands are tied to such an extent that they are unable to do so. Legal uncertainty is almost inevitable.
An adequate regulation adjusted to the special characteristics of these crimes would not only support the application of the law and legal certainty, but it would also send a clear message to society. However, to this end, it should be understood that the drug market does not operate with drug content quantities but gross quantities, and that instead of different conducts, there are market roles that often merge: one person can be present in the drug market in several roles at the same time.

Ildikó Ritter:

The relationship between drugs and crime – the causes of reoffending

Last year, within a macro research project entitled '*The relationship between drugs and crime*', we conducted a study with the title '*Drugs and the etiology of crime*' on the basis of the drug-related crimes registered in Hungarian criminal statistics during the past ten years. We outlined a detection matrix regarding indirect drug-related crimes and determined what targeted studies would be necessary for learning about the Hungarian characteristics of the actual relationship between drug consumption and criminal activity.
As a first step, this year we have performed a multivariate analysis of data based on the criminal statistics database, using the method of document analysis, on the full sample from Budapest,

in order to answer the question of whether the group of re-offenders committing drug-related criminal offences is any different from the population committing the same crimes for the first time in terms of social, socio-demographic and criminal markers and their relationship with drug use, and if so, in what regard.
The study results showed that in the case of criminal careers starting early, the commission of crimes precedes drug use; at first, drug use has no or hardly any effect on criminal activity, then in many cases, as the criminal career progresses, the drug career 'catches up with it'. However, in the case of criminal careers beginning in adulthood, the criminal career either goes hand in hand with the drug career or the drug career precedes it. Therefore, crimes are often committed as a result of drug use or under the influence of drugs.
Based on the results it can be presumed that in the subculture of drug users the proportion of violent crimes increases as the drug career advances. Furthermore, it can also be presumed that *in a criminal subculture or among those who commit crimes against property the proportion of crimes committed under the influence of drugs is continuously increasing, which increases the risk of committing violent crimes, or the proportion of those who have drug problems is increasing among the perpetrators of violent crimes.* It is impossible to give a more specific explanation on the basis of the analyses, but it is certain that the mutually reinforcing effects of drug use and criminal activity can already be seen and detected in Hungarian society as well. This suggests that we should expect that violent acts (against property and against a person) will be increasingly common in Hungarian criminality.
Thus, *the risk of non-drug-related crimes committed under the influence of or in order to obtain drugs increases in the case of re-offenders, in particular habitual recidivists.* The magnitude and extent of the risk could be determined by means of further studies and a mathematical and statistical analysis, and an algorithm could also be developed for measuring it.

III. OTHER RESEARCH ASSIGNMENTS, COMPLETED OUTSIDE THE PLAN

Krisztina Farkas:

Opportunities of accelerating proceedings in the Austrian criminal justice system

The fact that the bodies of the justice system are overburdened and the protracted criminal proceedings are everyday problems in Hungary and in most European countries. Compared to other countries, the Austrian criminal proceedings are generally not characterised by protracted procedures, but more complicated procedures last for a long time, and therefore there is a need for accelerating them. Consequently, in recent years, the need for increasing the speed and effectiveness of Austrian criminal proceedings has been part of the efforts to reform substantive criminal law and the law of criminal proceedings.
The requirement of conducting procedures within a reasonable period of time is not declared in the Austrian constitution; however, the European Convention on Human Rights is of constitutional rank, and therefore it is directly applicable. The code of criminal procedure declares the requirement of the acceleration of proceedings among the basic principles. The Austrian legal system is traditionally based on the principle of legality, but – as in other European countries with a civil law legal system – it can be seen that the principle has become less stringent.

Several legal institutions are aimed at the acceleration of criminal proceedings. Some are traditional solutions of the Austrian criminal procedure: certain cases of the termination of the investigation, diversion, procedure in the absence of the defendant. The rest of the solutions have been included in the code as a result of the legislator's reform efforts; these are the termination of the investigation based on the defendant's motion, the review of the maximum period of investigations and the provisions on the chief witness. The summary conviction can be regarded as both a new and an old institution. The Austrian legislator does not provide the opportunity of a plea bargain, that is, a procedure that is based on the consensus of the parties.
Several procedures of the Austrian system of legal remedies aim at – in addition to other goals – accelerating the procedures and adjudging cases within a reasonable time, or providing legal remedies against the prolongation of cases.
Based on the research project it can be stated that the Austrian legislator approaches the requirement of deciding cases within an appropriate time limit from several aspects. It takes action against protracted investigations, it provides an opportunity to divert cases in order to avoid the court stage after the completion of the investigations, in the court stage it intends to resolve cases by making decisions in the absence of the defendant and by means of summary convictions, and it provides for several types of appeals procedures to prevent the protraction of the procedures and to protect the rights violated by such prolonged procedures. It can be regarded as a deficiency of the system that the discretionary power of prosecutors is rather limited and that there are no summary procedures or solutions similar to plea bargains. The Austrian system deals with a significant proportion of the cases through diversion; thus, although there is a need for introducing other accelerating methods, and although the legislator satisfies this need, there are no truly novel solutions.

György Vókó:

The judge in charge of supervising the enforcement of criminal sanctions

The option of going to court is an important component of the system of guarantees that surround the enforcement of criminal sanctions; defendants are entitled to this option just like every citizen. In addition, this involves the right to turn to the judge in charge of supervising the enforcement of criminal sanctions (hereinafter: supervisory judge) in issues specifically arising from legal relationships related to the enforcement of criminal sanctions. The supervisory judge adopts real judicial decisions that are binding on all, about the extent and duration of the important limitations of rights, he may change the decision of the court that adopted the sentence by mitigating or aggravating it, and in the case of certain enforcement measures (the disciplinary punishment of solitary confinement) the supervisory judge serves as a forum for seeking legal remedies.
The function of the supervisory judge is completely absent in several European countries (for example in the United Kingdom), which however does not mean that these countries lack control in this regard. The ordinary courts can be used for protecting the civil rights of detainees even in these countries that adhere to the strict separation of powers, and these countries also apply various forms of state, social and international control.
In the other half of European countries, the court exercises control not only over the deprivation of personal liberty applied before the final judgment is made but also has duties during the execution of the sanctions imposed, and it also exercises some form of control over the operation of the system of enforcement.

There are countries where these powers are vested in the court that passes the judgment (e.g. Latvia), while in other countries these powers are exercised by a special judge or court appointed for this purpose (e.g. Spain and Portugal).
The literature differentiates three distinct models of the function of the supervisory judge.
As a result of the direct effect of execution, any change in their legal status has a direct influence on convicts' lives. This in part explains the need that the most important decisions affecting the rights and obligations of convicts that can be made after the final court judgment should fall within the competence of a person who is independent in general and is also independent of the executive power, is part of the justice system and has a high level of legal knowledge. The other reason justifying the assignment to the court of certain decisions on the execution of sentences is of a constitutional nature: the sanctions included in the final decision of the court can only be amended during execution by a person who belongs to the same branch of state power. Although this activity of the supervisory judge is no administration of justice, it consists of decisions that are closely related to it.
In Hungary, the supervisory judge's decision-making power (competence) includes decisions regarding 23 areas. Supervisory judges do not follow a uniform practice; there is no guidance on the promotion of individualisation.

György Vókó:

Traceability in the law of criminal enforcement, with particular regard to the Belgian experiences

In the history of punishments and corrections, *Frédéric Gros*, the Parisian professor of moral philosophy and a Foucault expert, distinguishes three types of punishments. While until the *Ancien Régime* corporeal punishment (selected methods of torture, forced labour etc.) was the most widespread and common way of the retribution of crimes, in the 19th century the prison became the default punishment of a disciplinary society. Humanistic philosophy – the recognition of the fundamental rights and freedoms of every human being – pervaded our societies, and incarceration as a control measure has gradually given space to a different vision of repression: traceability.
The requirement of traceability can be recognised in, among others, the French, the Belgian and the Hungarian (reintegration detention) law of criminal enforcement. In Belgium, where they went the farthest, the ministerial circular issued on 12 March 2013 clearly expresses the will according to which electronic supervision should be preferred in the case of punishments shorter than three years. Electronic supervision and probation (checking compliance with certain conditions) may soon become a separate punishment. Accordingly, most courts dealing with the execution of punishments require in the case of punishments of periods longer than three years that before authorising release on parole the detainees should be first supervised electronically, which is regarded as a provisional and preliminary measure preceding the release on parole. Furthermore, the Act of 17 March 2013 clearly prescribed stricter conditions for authorising and executing release on parole. Finally, traceability is also important because of the situation of convicts who have no right of residence: since the court making the decisions on the merits of their cases denied them all alternatives of imprisonment, it is impossible for them to have access to different methods of punishment. As they have no permanent address in the territory of Belgium, the risk that they will circumvent the control is too high.
However, the idea of 'traceability' cannot be separated from the concept of 'awareness of responsibility'. First of all, similarly to most alternative measures to imprisonment that are imposed by criminal courts, the convicts have to accept the mode of execution of the punishments;

in fact they even have to request it because these modes require the voluntary and active participation of convicts. Furthermore, these modes of execution are linked to conditions that the convicts concerned have accepted and therefore they must fulfil them. The conditions are aimed at the (re)socialisation of perpetrators (avoiding the consumption of alcohol or drugs, ban on visiting certain places or old accomplices, finding accommodation, having a job etc.).
Despite such developments, imprisonment still remains the default (most common) punishment. This is also proved by the use of the phrase 'the alternatives to punishments involving deprivation of liberty' as a general name, which applies to the entirety of sanctions enforced outside prisons.
It is undeniable the 'enforcement of criminal sanctions' and 'safety' cannot be separated. Electronic supervision enables us to satisfy our society's need for traceability, ensuring the constant supervision of some of the offenders.
The alleged 'non-execution' of punishments of shorter periods and the application of electronic supervision to execute punishments of three years or less have not produced the expected result of the vacation of prisons; quite the contrary.
The up-to-date methods of managing the phenomenon of crime that depend on the development of new technologies, including electronic supervision, raise many concerns, in particular as regards the space they leave for probation with supervision and follow-up which are integral parts of reintegration into society.
We can have legitimate concerns that the dehumanisation of the system will contribute to the declassing of convicts (that is, their exclusion from society). While such measures as for example release on parole, community service as an individual punishment, suspension and the deferment of sentencing for a probation period require social investments in the offender's rehabilitation through the participation of various contributors, if the convict is simply 'switched off' under supervision, it will mean that he is left alone with his problems.
While initially the purposes of punishments were deterrence and retribution, today there cannot be any doubt that the final purpose of punishment is the convict's reintegration into society which he is undeniably a part of.

György Vókó:

The enforcement of human rights during the enforcement of criminal sanctions

The execution of criminal decisions limit fundamental rights; this is the content of the sanctions. The legal status of a person subject to the criminal enforcement system has always been an important question of theory and practice, because it involves a change in civil rights and obligations, and in addition, special temporary rights and obligations are created for a certain period of time.
Certain civil rights are suspended during the execution, others can be exercised only to a limited extent, and still others must be fully exercisable even during the period of execution. Therefore, human and civil rights should only be limited to the extent allowed by the statutory provisions and to the extent that such limitation is inevitable. One of the most important areas of the rule of law and legality is ensuring the enforcement of human rights and humanism in sync with the protection of society. The essence of the state's criminal policy is most clearly expressed in the determination of the legal status of the person held responsible. The extent to which the general citizen status changes depends on the type of penalty or measure being enforced.
The constitutional principles and rights as well as the international human rights standards and requirements must be enforced also during the enforcement of criminal sanctions. Until now,

the theory and practice of the law of criminal enforcement have focused on the legal status of convicts sentenced to imprisonment. The legal status of convicts expresses the essence of the entire system of the enforcement of criminal sanctions and at the same time is a benchmark of the rule of law.
The area of law dealing with the legal status of detainees has a very important role in the European community that pays special attention to the protection of human rights.
It is therefore particularly important to treat these persons who have been deprived of their liberty as human beings throughout their detention, and to ensure that their human dignity is not violated under any circumstances. And although in most states these are guaranteed by internal legal regulations, in practice it seems to be necessary to also regulate these issues by international conventions based on the consensus of independent states.
The international cooperation in the field of detainees' rights has a long history and traditions that are worthy of recognition. Examining the similarities or differences between the relevant written laws can also serve as a link between the different legal systems. It can be expected that the regional European protection of human rights will become even more intense in the future. The latest efforts are characterised by the increased inclusion of organisational and procedural guarantees in order to prevent and control human rights violations occurring during the enforcement of sanctions.

György Vókó:

The comparative analysis of pre-trial detention in Europe

These days, pre-trial detention is followed with great attention in European countries in many respects. Pre-trial detention is part of the European law of criminal enforcement, because it involves deprivation of liberty. This is obvious in most countries of Europe. However, many do not consider it to be part of penology, i.e. the theory of punishment.
During the pre-trial detention, the offender is a suspect or a defendant and is still presumed to be innocent.
Article 6(2) of the European Convention on Human Rights provides that '[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law'. This provision is the European expression of the presumption of innocence, which is the common heritage of the different European legal traditions.
The ECHR is a binding international agreement, which has a partial constitutional status in all 47 member states of the Council of Europe. In most member states the presumption of innocence is also codified in the national law, that is, either in the constitution or in the code of criminal procedure. It is self-evident that there is a tension between this principle and detention on remand. Therefore, it can only be applied as a temporary procedural measure, as a last resort, in order to ensure that the convict cannot abscond or destroy or falsify the evidence during the criminal proceedings. Another argument for pre-trial detention is that it can protect the actual or potential victims from further unlawful acts (although this legal ground is disputed).
Therefore, from the perspective of human rights, detention on remand is primarily a kind of deprivation of liberty, and as such, it is authorised only under strict conditions.
Occasionally, criminologists noticed signs suggesting that often pre-trial detention is not (only) used for the designated, lawfully justified purposes but is misused for example to obtain a confession or – in the case of juvenile offenders – as a 'shock therapy'. The empirical studies of several countries suggest that 'detention on remand tends to be applied as an immediate punishment as a security measure for the purpose of protecting society from "dangerous elements", and not as a means to ensure that the suspect attends the trial' (Belgium).

The ambiguous nature of detention on remand is highlighted by the fact that the relevant laws treat it retrospectively as part of the sentence imposed: the time spent in pre-trial detention is deducted from the term of imprisonment in every Member State of the European Union. The term used in Hungary for this purpose is 'inclusion in the term of imprisonment'.
Although this is indispensable in terms of equity and fairness, it raises concerns regarding the theory of punishment because it may affect the sentencing decision.
The results suggest that detention on remand is used to a disproportionately large extent. However, we could also say that the opposite is true: perhaps because the judges take into account the period spent in pre-trial detention, they consider it sufficient to achieve the retributive purpose of the punishment, and thus they adjust the punishment accordingly.
It is still the case that a significant number of detainees only experience imprisonment in a form that can be regarded as simply incompatible with the 'idea of rehabilitation', that is, they are imprisoned while in pre-trial detention.
Organising the activities relating to the system of detention on remand in the facilities concerned – where the turnover of detainees is rather fast – is no easy task. It is clear that no such individualised treatment programmes can be provided as the ones that can be expected in the institutions where convicts are detained. Nevertheless, detainees cannot be left withering in their cells for weeks or even months, regardless of how good the material conditions are in the cell (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment – CPT).
All things considered, if we use the comparison of different systems as a starting point, it enables us to explore the factors based on which certain criminal justice systems are able to use the institution of detention on remand more circumspectly than others. 'From the pre-trial detention until sentencing there is virtually no decision that can be made without the need for taking into account some future assumptions.'
The concepts and scopes of pre-trial detention or 'detention on remand' are not identical throughout Europe, and therefore any comparison in this area should be performed with great caution, in particular in cases involving statistics. Nonetheless, many European countries are struggling with similar problems: the problems of overcrowded detention facilities, the lack of meaningful daytime activities and too long periods of detention are present in many countries, and foreigners are over-represented in Western European institutions. In the case of EU citizens, 'the EU framework decision on supervision measures' can often serve as a remedy.
Pre-trial detention or detention on remand is a neglected area of criminal law and criminology research in Europe, despite the fact that it has a significant impact on the rights and lives of those concerned, and sometimes even on sentencing. Approaches to the presumption of innocence and accepting detention on remand only as a last resort have a general influence on the size of the population of detainees and can have an impact on the general climate of criminal policy. This is why it is also a topic of the European theory of punishment.

György Vókó:

The enforcement of the sanctions regime of the new Criminal Code

The conditions of the enforcement and efficiency of a criminal sanction include the exclusion – or at least the limitation to the smallest possible extent – of negative side effects relating to the punishment. Therefore, rights should only be limited to the extent allowed by the statutory provisions and to the extent that such limitation is inevitable. Sanctioning is a lawful act; the enforcement of the legal provisions is a fundamental interest not only of the law enforcement and judicial bodies but also of every citizen.

One of the important means of the fight against recidivism is the efficiency and the enforcement of punishments and criminal measures. Strictly speaking, the task of enforcement is to realise the purpose of criminal sanctions. The exact condition of measuring regressive efficiency is to specify the benchmark of the results, that is, the target.
An adequate means should be applied which is capable of changing or influencing the antisocial orientation of an individual in such a way that it only restricts such individual to the extent that is absolutely necessary. The degree of the efficiency of the punishment is determined by the difference between the following two values: the social value of the maximum socially positive results that can be achieved through the punishment and the value spent on the means serving the achievement of this goal.
In addition to the sentences imposed on them, convicts are influenced by many other factors that can have an impact on the changing of their behaviour and conscience. Such a factor is, first of all, the external environment, that is, the external conditions and influences that people absorb in accordance with their moral views and their intellectual, emotional and volitional characteristics, and which influence their behaviour positively or negatively. Different people act differently or often in opposite ways in the same situation, which results from the complexity, inimitable individuality and relative independence of the human mind. It should also be taken into account that the human mind is not a closed system but always picks up new stimuli and effects.
The actions of persons who have served their sentences, after the execution of such sentences, cannot necessarily be explained by the effectiveness or ineffectiveness of the punishment. It is therefore inappropriate to regard every instance of reoffending as a result of the ineffectiveness of the punishment. Thus, there is not necessarily a causal relation between the sanction imposed and the changing of human behaviour; the mechanism of the effects and workings of a punishment is highly complex. Effectiveness essentially means that the intended results are achieved, and its criterion is controlled by the results of the activity determined by the goal.
The research projects conducted so far mostly explored the factors that counteract effectiveness. For example the practice of not paying sufficient attention to recidivism etc.
The criteria of effective operation are shown in the statistical data and they are always in line with the indicators that express the activities of the organisation concerned and that can be understood by the inspection and supervisory bodies as well as by external observers, such as citizens and the general public.
The trend of the total number of persons sentenced in final judgments has been declining in the past five years.
Imprisonment for a definite term is the most commonly applied punishment in practice, and it also showed a downward trend in the past three years. On the other hand, the number of those sentenced to be punished by a sanction without deprivation of liberty – community service, fine, suspended sentence of imprisonment, driving ban, expulsion, banning offenders from visiting sporting events – increased. Of the measures introduced on 1 July 2013, the number of court rulings applying restorative work increased by 43.7%. The more frequent use of the penalty of custodial arrest can also be highlighted among the new sanctions; its application significantly increased also in 2016, almost by 60%.
It can be stated regarding imprisonment that the commencement of its execution became more practical. Occasionally, it can be observed that the court fails to send out the notification or the group dealing with the execution of sentences fails to forward it, and the five years or the other relevant limitation period elapses, and therefore the sentence can no longer be enforced.
The quality of imprisonment was influenced positively by the higher rate of employment, which includes not only work but other activities as well. The success of sanctions without deprivation of liberty also mainly depends on their enforcement, that is, their execution. If the enforcement or execution is not well-organised – or at least it seems to be poorly organised – it will affect

the entire criminal justice system. It should be emphasised in connection with the enforcement of community service that in many cases it meets with difficulties because there are no available workplaces as employers are unwilling to employ convicted persons.
Regarding the effective fight against recidivism and the mitigation of the risk of reoffending, as well as the ensuring of convicts' reintegration into society, several studies and research projects have shown that without an appropriate environment and support system these two objectives cannot be achieved.