RESEARCH RESULTS – 2018
(Summaries of completed research)

CONTENT

I. RESEARCH PROJECTS IN THE MAIN FIELDS OF RESEARCH

THE FIRST MAIN FIELD OF RESEARCH: SOCIETY AND CRIME

Tünde A. Barabás

Applied criminology

Criminology is a multidisciplinary science that relies on the bodies of knowledge of many other disciplines. These theories constitute the conceptual framework of criminology that consists of the basic concepts related to crime, becoming a criminal, victimisation and dealing with crime. This framework is continuously changing and expanding as a result of scientific progress and discoveries.
It is important for criminologists that their results become known to broad sections of society and that they can be utilised in everyday life. Getting to know the relationship between criminology and public life is an important aspect of determining the nature of *applied criminology*. Another significant aspect of 'practical' criminology is the support it provides to the participants of the criminal justice system, in particular those who directly deal with offenders and victims.
The purpose of the research was to explore and show where, in which areas and to what extent the results of the science of criminology can be utilised in practice, where the line can be drawn between the subject-matter of theoretical criminology and that of applied criminology, and to propose further areas in which criminology can be applied. During the first year of the research (2017), we collected and reviewed the rather scant Hungarian and international literature of applied criminology, and we also prepared a questionnaire survey.
In the second stage of the research project, during 2018, we conducted a survey using the online questionnaire – after its finalisation – which examined the practical application of the criminological knowledge of high-ranking police officers and their attitudes shown during their work.
The discipline of applied criminology was delimited and its main characteristics and research areas were defined based on the results of the survey, after summarising the results of the literature review.

THE SECOND MAIN FIELD OF RESEARCH: SECURITY, PUBLIC SECURITY

Tünde A. Barabás

Possibilities of measuring security in certain Hungarian towns

It is a basic need of individuals and communities to feel safe in their everyday lives. Our view of security is shaped by several factors, such as our fear of crime, any previous victimisation, the quality of our living environment, how orderly our neighbourhood is, well-lit public spaces with good visibility, a predictable economic environment, fear of unemployment or disease, social relations or a marginalised social situation.
The lack of a sense of security is an important problem in today's European societies. This is particularly true in the case of big cities, where most of the population lives, and where, there-

fore, the problems are also more accentuated. Yet these are the very areas where social and community cohesion is least present, and where the members of communities living in the same area pay the least attention and provide the least support to each other. In turn, in addition to the real social issues and individuals' daily problems, the lack of cohesion further increases the sense of insecurity.

The need for security is becoming increasingly strong these days, while the globalising world continuously presents new, previously unknown situations to both the authorities and citizens. All this has led to a situation in which crime is steadily declining in Europe according to the official statistics, yet according to research, the feeling of insecurity is clearly increasing, instead of improving. This was the starting point for this research, which was based on the secondary analysis of the empirical results of the MARGIN project.

The sense of insecurity is not the same as the fear of crime, although a lot of researchers treat these concepts as synonyms. It is undoubted that although many other circumstances affect people's sense of security, the fear of crime is one of its determining factors.

The sense of insecurity can be measured after exploring its different dimensions. For this purpose, the concept of the sense of insecurity was defined and its components were explored during the theoretical research. Where insecurity was detected, three aspects were taken into account based on the results of the MARGIN research: the *affective component* (the fear related to crime, as a negative mental state); the *cognitive component* (the cognitive evaluation of the risk of victimisation); and the *behavioural component* (changes of behaviour in order to maintain personal security, for example, avoiding a dangerous street at night). We also mapped the indicators that enable the measurement of the sense of security/insecurity of the population of a given area.

The Hungarian and the international results were summarised in a publication issued in English.

Szilveszter Póczik – Eszter Sárik:

Vigilantism against Migrants and Minorities

Due to vigilantism – that is, the activities of unlawfully operating aggressive groups disguised as law enforcement units – arising as a result of the intensifying waves of migration, the law enforcement of developed countries have to face increasingly important tasks. The international research project started on a Norwegian initiative (of the University of Oslo) attempted to compare and analyse these tasks.

During our research, we used primary and secondary sources, among other things historical and sociological studies, media interviews, reports and videos, as well as empirical scientific results and surveys. We have found that the phenomenon of vigilantism can be observed in Hungary today in several forms:

- there are national top-down organisations supported and governed by a political party, working based on a strict hierarchy;
- there are local, regional and sub-regional vigilant groups that are supported by local administrative leaders;
- there are decentralised organisations consisting of more or less independent sub-groups;
- and finally, there is a fourth type that is very difficult to classify, because in the case of such groups, the local administrative leaders use the administrative organisations that provide property security services for unlawful purposes.

The political and social embeddedness of the above-mentioned more or less decentralised organisations varies greatly; they regularly appear during real or perceived crises related to

national identity. These (quasi) violent movements use the hidden energies arising from social dissatisfaction for increasing their own force. Vigilant movements express the protest of young people from the (lower) middle class. Far-right political efforts resonate with people, in particular in the regions of Hungary where (permanently) unemployed, poor and segregated Roma groups live, whose population is nevertheless increasing. According to DEREX, the index measuring the need for right-wing extremism, sympathy for right-wing extremism increased from 10% to 21% among citizens in the period between 2002 and 2009. The 2015 migration crisis helped extremist groups to find new enemies. They launched initiatives that meet the needs of a wide range of social groups. As the 2008 economic crisis ended, and due to the conservative government, today these groups are feeding on the migration wave of 2015-2017. Their role is much more symbolic than effective in anti-Muslim and anti-migration politics.

THE THIRD MAIN FIELD OF RESEARCH: CRIME CONTROL

József Kó:

Changes in criminal statistics. Why does the number of registered crimes decrease?

The study analyses the changes in Hungarian criminal statistics. The number of registered crimes significantly decreased in the past few years. After an analysis of the reasons, it can be established that this is the result of the joint effect of several factors. The most significant decrease was caused by the amendment of legal regulations. The amendment of the statutory definition of the misuse of official documents resulted in approximately 60,000 fewer cases annually, and increasing the value limit of petty offences resulted in another annual decrease of approximately 60,000. The modification of the value limit entered into force in the middle of the year, and therefore its effect was less pronounced in the first year.
Furthermore, there is an international tendency that can also be observed in Hungary, namely that *the number of cases have been decreasing* in the statistics of both developed industrial countries and EU member states since the millennium. This international trend started in Hungary somewhat later, but this could also contribute to the decrease in the number of cases by approximately 15-20%. We can add to this the hundreds of thousands of people permanently living or working abroad – as estimated by the Central Statistical Office – who are of the age of criminal liability and who belong to the age groups most involved in crime.

Ildikó Ritter:

‘Addicted to’ traffic. Characteristics of traffic offences committed under the influence of illegal drugs

The aim of the study performed in 2006 under the title ‘*Drug use and driving motor vehicles’* was to understand the characteristics of driving and causing traffic accidents in Hungary under the influence of drugs. Back then we examined and analysed the case files of six years (1999-2005), but there were only 53 relevant cases in the period under review. The purpose of

this study – in addition to the previous purposes – was to compare the results with the results of the 2006 study.
The sample consisted of the case files of persons registered in ENyÜBS (Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution) for committing the offence of driving under the influence in 2016 (a total of 282 case files). Main results:

- The prevalence of the phenomenon and the frequency of its detection by the authorities do not correlate with each other, and likewise, the territorial distribution of the detection of drug crimes *per se* and of the offence of driving under the influence also do not correlate with each other.
- The authorities usually detect – or are able to detect – 20-30 offences per month of driving under the influence in the country.
- In the majority of cases, the authorities detect such crimes after sunset and before sunrise.
- Most of the offences of driving under the influence were committed using some kind of illegal drugs. This was followed by commission of the crime using medicine (every fourth case; 27%) and new psychoactive substances (every sixth case). It must be noted that alcohol was also involved in practically every sixth case in addition to illegal drugs or medicines.
- The proportion of the acts committed under the influence of a medicine in the 2006 study was a fifth of the rate measured in the current sample.
- In the group of those involved in accidents, the proportion of illegal drug users was 20% lower compared to their proportion measured in the entire sample, whilst the proportion of those driving under the influence of a medicine more than doubled. The medicine most frequently found was Xanax, followed by Rivotril. The frequency of finding Xanax and Rivotril significantly exceeded the proportions of all other medicines.
- Latency is very high in the case of the offence of driving under the influence; however, the available data show that driving under the influence of prescription drugs – primarily sedatives, sleeping pills and anxiolytics, and other medicines taken on doctor's orders, having a negative effect on driving ability – and the related accident risk will continue to increase in the future. Ten years ago, persons driving under the influence of sedatives or sleeping pills represented 5.7% of the offenders of driving under the influence, whilst they represent 27% in the current sample!
- The most important result of the research is *the fivefold increase of the proportion of driving under the influence of prescription drugs*, which also shows that a new group has appeared among the perpetrators of the known offences of driving under the influence, the socio-demographic characteristics of which group are different from those of illegal drug users. This population generally consisting of older persons who are of a lower social status than those possessing illegal drugs or driving under the influence of illegal drugs represents an increasingly large number of those committing the offence of driving under the influence, which also has an impact on the general socio-demographic characteristics of these offenders. This can also be seen in their level of education, occupation, age distribution and criminal history.

Ágnes Solt:

Case-law on child endangerment

During this two-year research project, we analysed the final judgments passed in cases of child endangerment, and we wanted to identify the types of cases in which the facts of this criminal offence are typically found; any other criminal offences with which it tends to occur;

the persons usually reporting these crimes; the kinds of penalties imposed for these crimes; and the differences in the case-law and child protection practices of the counties. We analysed the demographic and socio-economic characteristics of the offenders. Furthermore, we also examined the nature of the procedure; who and how many times interview the children during the procedures; the means of evidence that are usually available; the proportion of confessions; and what happens to victims during and after the procedures.
In 2017, we analysed the files of 100 cases, containing all relevant documents from the prosecution service and the courts. The basis of the examination of the case files was a random sample of the final judgments delivered in 2015, which we recorded with the help of a questionnaire created based on variables operationalised from the research questions, using a statistical software.
In 2018, we requested all final judgments made in 2015 in the matter of child endangerment in order to obtain a picture of judicial practices and the operation of the child protection system in the country, broken down by county.
The results of the examination of case files performed in the first year of the research expanded the areas to be examined and called our attention to the way the institutional system of child protection is linked to the cases under review.
As a result of our research, we managed to outline the typical features and the recurrent circumstances of the criminal offence of child endangerment, as well as the related case-law. Thus, we are able to put forward proposals regarding the operation of the child protection system, as well as the relevant issues of the related criminal procedures and sentencing practices. The different practices of the counties have become comparable and can provide insights at the national level.

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

Orsolya Bolyky– Eszter Sárik:

Balkan Homicide Study (BHS) – Legal and criminological comparison of murders committed in the Balkan countries, Hungary and Romania

The Balkan Criminology Network (BC), founded in 2013 as the partner group of the Max Planck Institute of Freiburg, provides an opportunity for the cooperation of the Balkan countries (Croatia, Macedonia, Serbia and Montenegro, Bosnia and Herzegovina and Slovenia), Hungary and Romania in the field of legal and criminological research.
The working group organised within the framework of the BC – the Balkan Homicide Study – was established to conduct research into the legal and criminological background of murder. The purpose of this study is to find out more about the legal and criminological characteristics of murders committed in Hungary, as well as the sentencing practices relating to such acts, and also to compare these results to the data of the Balkan countries and Romania. (The comparative study is conducted by the lecturers of the Faculty of Law of the University of Zagreb, led by professor Anna-Maria Getos Kalac. The comparison is expected to be completed by the beginning of 2019.) Furthermore, by finding similarities and differences between the data of the different countries, we intend to identify the underlying potential social and cultural differences, as well as the differences of legal regulation and procedures.
The Hungarian sample included all criminal cases of murder, attempted murder and voluntary manslaughter initiated in 2013-2015 and closed by a final judgment of conviction or acquittal

due to mental incapacity. The sample also included the cases that were terminated because of the perpetrator's death.
During the research, we used the method of the examination of case files; for this, we reviewed and processed the criminal documents of the *prosecution* – including the judgments delivered in the cases concerned – based on the standard structured questionnaire created by the University of Zagreb. The questionnaire discussed the classification of homicide, the sentence imposed and the circumstances of sentencing, the data related to the procedure, as well as the socio-economic background of the perpetrator and the victim, and their criminal history.
The data thus obtained confirmed the previous research results. The most common form of homicide committed in Hungary is the extreme form of domestic violence, where the criminal offence is preceded by a relationship that had been fraught with conflicts for a long period. The commission of this crime for financial gain against a stranger typically occurs in younger age groups. Sexual motivation hardly occurred in the Hungarian sample. The situational commission of this crime is also common; in these cases it is committed in or around pubs or public spaces. In these cases, as well as in family disputes, alcohol has a huge role both in becoming a perpetrator and a victim. Finally, mental problems already existing before the crime is committed can also be regarded as an important risk factor.

Katalin Parti:

Preparing students participating in police officer training for dealing with victims of violent crimes, with special regard to victims of sexual violence

The rate of reporting the crime of sexual violence is low throughout the world; victims are afraid that the authorities will not believe them if they report this crime. In the long run, the willingness to report such crimes would also be improved by the appropriate preparation and training of police officers, including on harm reduction.
Within the framework of the research, the fourth-year students of the Faculty of Law Enforcement of the National University of Public Service attended targeted sensitising lectures on topics focusing on the victims of sexual violence. Before the start of the semester, we conducted a questionnaire survey among the students, using a supplemented version of the RABS (*Rape-Supportive Attitudes and Beliefs*, 2007) questionnaire developed by Burgess.
According to the data, the students also tend to blame the victims – which is an attitude characteristic of Hungary's population – and think stereotypically about gender roles. Although the legitimising of gender-based violence occurred extremely rarely, we were able to observe micro-aggression aimed at certain social groups and gender-based discrimination. We have found significant differences based on the gender of the respondents: female students showed a more in-depth knowledge as regards the impact of such traumas. By contrast, men were more uncertain in forming an opinion of conducts relating to social genders and gender roles. The materials of the sensitising lectures developed within the framework of this research can widen the scope of the curriculum of the training of police officers and may contribute to the expansion of the knowledge of sexual violence, which in the long run can lead to an increase in the rate of the reporting of these crimes.
The other part of the research project involved the assessment of the impact of the lectures and seminars. At the end of classes held in small groups, every student present completed a short paper-based questionnaire, in which we asked the respondents about the material covered in class. We will use the results of the impact assessment to develop the curriculum ac-

cording to the needs of the students. In the future, the curriculum supplemented in this way can serve as a basis for designing a course specifically dealing with the victims of sexual violence and with proving sexual crimes.
The evaluation of the sensitising lectures and the seminars, and the recommendations of the students highlighted the shortcomings of the current training of police officers. In the future, the special treatment of victims and the personal circumstances relating to violent sexual crimes should also be included in the curriculum. This could not only equip students with new knowledge but can also prepare them for practical challenges – and for the explanation of anomalies in evidence within that – as well as for the need for mental health care arising from personal involvement and trauma transference. We propose teaching how to deal with special victims and how to investigate sexual violence as a separate subject, and the introduction of seminars related to the respective specialisations of the students.

Katalin Parti– Robin A. Robinson:

Opinions of legal practitioners on the latency of violent sexual crimes

We examined the opinions of legal practitioners about the possible causes underlying the low reporting rate of sexual violence in an interview-based qualitative research project. We conducted a total of 13 in-depth interviews.
Gender stereotypes and gender-based discrimination are present in all classes of society, even at the level of institutions. The interviewees were also aware of this. They emphasised that these prejudices should be addressed primarily at the levels of society, communities and institutions (schools and workplaces). This could create a climate in which violent acts would be reported in increasing numbers.
The interviewees highlighted the fact that criminal procedures were focused on the perpetrator, but they did not think this was the fault of the persons acting in the procedures. Blaming victims is prevalent in society, and people working in the justice system are not immune to this either.
The interviewees all agreed that the criminal procedures do not serve the interests of victims, but are rather aimed at special prevention, that is, preventing perpetrators from repeating criminal offences by imposing a sentence. During the criminal procedure, victims must participate in procedural acts that prevent them from starting to process the psychological trauma they suffered. Moreover, the procedure causes further traumatic experiences. Such experiences may include interviewing the victim as a witness several times; the examination of the victim's credibility; fear of the perpetrator's revenge or the opinion of the victim's family or close environment; confrontation with the suspect/accused; a permanent feeling of humiliation; or a court hearing open to the public.
The goal of the criminal justice system is to prove the criminal offence and culpability, and it is only a secondary requirement that procedures should be conducted by treating victims and witnesses with as much consideration as possible. Although the interviewees are aware that the memory of a victim can become fragmented and that interviewing the victim many times may result not only in finding out new details but also in the risk of questioning the victim's credibility, usually they still decide to conduct repeated hearings.
The new Code of Criminal Procedure provides an opportunity to declare a victim to be in need of special treatment in the case of sexual crimes, and underage victims are mandatorily regarded as victims in need of special treatment during criminal procedures; however, the circumstances of interviewing such victims are still unclear.

It varies how much legal practitioners – especially the courts – trust the credibility of the opinions prepared by experts. This may lead to the appointment of further experts, which will require another hearing of the victim.
Often the courts adhere to the principle of immediacy also because the written minutes taken by the police do not contain exactly what happened during the interrogation. The minutes taken by the police could be important primarily if they described nonverbal gestures and in cases where a victim did not wish to repeat the testimony in court, or if based on the repeated testimony, the victim's credibility were questioned in court.
As one of the causes of latency, the interviewees mentioned the issue of confidence in the police, which varies greatly according to the different levels of economic development of the different parts of the country.
The interviewees expressed their concern that regardless of how much the new Code of Criminal Procedure – effective from 1 July 2018 – would improve the situation of victims, nobody informed the public about the newly introduced provisions.
According to the interviewees, confrontation with the perpetrator is not advisable in cases of sexual violence, because such acts are the expression of the abuse of power or a dominant position, and the perpetrator retains this dominant position towards the victim also during the procedure.
The new Code of Criminal Procedure also provides that in the investigation stage, victims of sexual violence must be interrogated by a person of the same gender. But on the one hand, it cannot be ensured that there is a person of the same gender as the victim who is appropriately trained and prepared to conduct the interrogation, and on the other hand, there is no legal provision about the gender of persons interrogating the victim after that stage during the procedure.
The undergraduate programmes of practitioners do not contain any special training on the protection of victims, either in police officer or deputy police officer training programmes, or at the faculties of law and political science. Police officers and deputy officers are not trained on how to interrogate or how to take evidence in the case of violent sexual crimes. The prevention and treatment of the mental stress and burn-out of professionals are also inadequate. The continuing professional training of practitioners does not cover all areas that would be necessary for them to conduct the procedures in a manner that is as considerate to the victims as possible. Mental health care and supervision, as well as the discussion of cases only occurs on an *ad hoc* basis in all organisations concerned.

RESEARCH OUTSIDE THE MAIN DIRECTIONS

Judit Szabó:

Analysis of criminal procedures initiated for quackery

The aim of the research is to explore the characteristics of criminal procedures initiated in the matter of quackery and the underlying criminal offences, and to perform their quantitative and qualitative analysis. The study mainly focuses on the basic characteristics of perpetrators and victims, as well as the manner and circumstances of the commission of the crime among the criminological characteristics of the criminal offence under review, and among the procedural characteristics it primarily focuses on the means of evidence used and the criminal penalties imposed by the courts. Although the number of criminal procedures launched for quackery is low, there are some serious cases among them. In light of the public health indicators of Hun-

gary, the examination of the criminal offences endangering the trust in professional medical care and the effectiveness of health care, as well as public health and the health of individuals is justified even if according to the official statistical data the number of such crimes is negligible compared to total crime.
In accordance with the study objectives, the research is based on the empirical data collection method of the examination of case files. According to the initial plan, the study would have covered all criminal procedures initiated for the felony or misdemeanour of quackery and closed by a final judgment since 1990; however, only the files of the criminal cases of the last fifteen years were available, and therefore the study sample eventually consisted of only 45 criminal cases. The data of these cases were recorded electronically, according to certain predefined criteria, and they were processed using the SPSS statistical software package.
The majority of the criminal offences meeting the statutory definition of quackery are acts of a relatively small weight, but there are some that are really serious due to the danger they pose to society and also in terms of basic moral standards. About a third of the criminal offences studied were related to acts falling within the category of dental practice, and the majority of the remaining cases were related to general medical practice. More than half of the offenders committed the crime by pretending to be entitled to provide medical care, which was also accompanied by other criminal offences in several cases – mostly fraud or criminal offences against public confidence. It was also established during the research that the sample of offenders differed from the general population of criminal offenders in terms of some fundamental demographic variables. In the vast majority of cases initiated in the matter of quackery, the authorities do not face significant problems of legal interpretation; the subject-matter of the evidentiary procedure usually consists in the need to prove that the criminal conduct was implemented through activities falling within medical practice, as well as the causal relation between the criminal conduct and its possible consequences.

Ádám Mészáros:

The foundations of the theory of crime in Hungarian criminal law IV Culpability

The 2018 phase of the research project that has been ongoing for several years deals with the last conceptual element of the criminal offence, namely culpability. During this phase we had to define culpability and the elements of its definition. It was also necessary to examine the scope of the principle of culpability-based liability, and in connection with this, the problems of so-called praeter-intentional criminal offences, as well as the cases of the so-called *actio libera in causa* also had to be discussed.
In its widest sense, *the principle of culpability-based liability* requires the culpability of the perpetrator for liability for the commission of the crime. The study examines this basic principle at the level of the theory of crime (*nullum crimen sine culpa*), at the level of the theory of legal consequences (*nulla poena sine culpa*) and at the level of sentencing.
Before defining culpability under substantive law, the research reviews the current criminal law textbooks to find out how they discuss culpability and its role in the definition and theory of crime. According to the conclusion of the study, culpability must be defined as such a complex concept within the concept of crime that includes the subjective criteria required for perpetrators' liability under substantive law because of the acts they committed in accordance with the statutory definition of the offence (or the disposition), in violation of criminal law. According to its definition, *culpability* means the imputable mental relation between the offender's act violating criminal law and the consequence(s) of such act.

Strictly speaking, this *mental relation* is the intent/negligence that expresses the perpetrator's attitude to his act and its consequences: whether he wants the consequences or acquiesces in them, or carelessly believes that they will not occur (in the case of ordinary negligence, this mental relation is missing). All this, however, says nothing about the question of blameworthiness. *Imputation* will be the evaluative (normative) conceptual element that can provide an answer to this, and it includes the appropriate age, criminal capacity, ordinary negligence and the duty of care. An act otherwise committed with intent or – where appropriate – with gross negligence will be imputable to the perpetrator if he is of an appropriate age and if he has criminal capacity; in the case of ordinary negligence, imputation is based on the lack of reasonable care or caution, and the act will not be imputable if the perpetrator cannot be expected to abstain from the unlawful conduct.

Based on the results of the research, the following are the elements of culpability:

a) volitional capacity; b) appropriate age; c) criminal capacity; d) intent/negligence; e) duty of care; and f) motivation and purpose.

The order of the elements of culpability is not random, as these elements are built on each other.

The research project specifically discussed *mixed culpability*, which applies to cases where the perpetrator commits the crime with intent in respect of some of the factual circumstances and negligently in respect of some other factual circumstances. According to the classification applied, there are criminal offences that may *potentially* be committed with mixed culpability, and there are others that can *necessarily* only be committed with mixed culpability according to the theory of statutory definitions. The study calls the latter *criminal offences with mixed culpability in the narrow sense.*

It must be noted that *praeter-intentional criminal offences* are not the same as mixed culpability in the narrow sense. The science of criminal law had already known praeter-intentional crimes when there were no criminal offences with mixed culpability in the narrow sense yet. The former essentially means that the perpetrator's liability is determined by a result that occurred beyond his intent.

After defining mixed culpability, we had to discuss the issue of whether such criminal offences should be classified as intentional or negligent acts, and the consequences all this has in terms of the different stages of committing a crime (mainly in terms of attempts) and of crimes committed by more than one person (accomplices and co-actors).

The researchers' opinion is that a criminal offence must be treated as a unit, and it should be decided whether the criminal offence itself was committed intentionally or negligently. This is the only possible solution. A criminal offence in respect of a part of which the perpetrator was negligent – and in certain cases there are parts that cannot be committed intentionally at all – cannot be an intentional crime. Consequently, such a criminal offence must be classified as negligent. In view of all this, there is no difference as to whether the question is related to the horizontal elements of a basic statutory definition or vertical elements (basic statutory definition and aggravating result). Since criminal offences with mixed culpability cannot be intentional crimes, they are in conflict with the statutory provisions that require intent. Accordingly, attempts, co-actors and accomplices are excluded in the case of criminal offences with mixed culpability, regardless of whether those criminal offences can be potentially committed with mixed culpability or they involve mixed culpability in the narrow sense, and whether mixed culpability arises in the basic case or in respect of the basic case plus an aggravating result.

Ádám Mészáros:

The institutions of French criminal law II

It has arisen within the Institute on several occasions that we should examine the legal institutions of the substantive criminal law and/or the law of criminal procedure of European countries – 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 closed the first year of the research work intended to last for several years first described the chapters of the general part of the French criminal code, then it presented certain institutions from the general part. The majority of the work was based on the translation of the code containing the substantive law; the need for using additional sources arose only in the case of one sanction (*contrainte pénale*).
In 2018, we compared some of the institutions of the Hungarian and the French criminal codes. During this, the research project discussed the following topics: the principle of legality (*le princpe de légalité*), the statutory definition of criminal offences (*l'infraction*), the classification of criminal offences according to their gravity (*la classification fondée sur la gravité des infractions*), the commission of multiple offences (*le concours d'infractions*), intent (*l'intention*), negligence (*l'imprudence*) and finally, liability for the result as an aggravating circumstance (*la responsabilité du résultat comme circonstance aggravante*). The greatest challenge during the work was finding equivalents for the various forms of culpability. The French system uses a different terminology in this regard. It does not set negligence against intent but uses the concept of *faute pénale* for this purpose, which also includes negligence and is very difficult to translate into Hungarian. In the end – although not definitively – the researchers decided to translate this term into Hungarian as '*vétkesség*' (culpability).

Anna Kiss:

The changing role of victims in criminal procedures

It is one of the most noble goals to conduct research into the role of the victims of crime. The road that the legislator should follow has been paved by many studies on criminology and criminal law, as well as empirical observations. Today's legal policy no longer focuses only on punishing perpetrators but it also wants to understand the more in-depth aspects of crime relating to the perpetrators, victims and communities.
The book written based on the research project analyses the role of the victim appearing in the criminal procedure as an aggrieved party, and it raises several other questions in connection with this: in addition to describing the difficult situation of the victim, it briefly discusses the legislative changes, by comparing the relevant current and previous solutions.
The book also reviews the procedural systems that are based on the principles of legality and expediency. This is important because the choice between these two systems also determines what rights the legislator provides to victims. The next part presents previous and current international and Hungarian documents that are significant in terms of this topic, and after that the book outlines the opportunities offered by restorative justice in the 21st century. Of

course, the main theme of the book is the procedural position of victims as determined by the laws. Here the book mentions issues arising during the application of the law that provide further opportunities for lawfully limiting the rights of victims.

György Vókó:

The enforcement of the sanctions regime of the new Criminal Code

The fight against crime is always a timely issue. In this research project, we examined the complex ways of exploring the causes of crime in order to prevent such causes, and to find the most efficient methods of prevention.
According to the theory of scientific progress, all human knowledge is based on pre-existing paradigms and can be truly interpreted only on this basis. People have been interested in crime as a social phenomenon, the commission of criminal acts as a personality-related problem, and the causes and the background of becoming a criminal as a conflict between individuals and their environment from the beginning of time. The conflict between the 'freedom of criminals' and the freedom of others worries societies everywhere in the world. The following questions are also important today: what crime prevention measures are necessary, what theoretical bases we should build on, which measures can be the most efficient, and how we can provide the appropriate conditions for this. It is always necessary to review the relevant methods and means in order to enhance the effectiveness of this fight.
We examined the path from the commission of a criminal act – that is, the violation of the law – to restoration as a whole and as a process, in which the activities of several different bodies are linked to each other. The analysis of the processes is more comprehensive and complex than the system-based analysis, and it is rather unique in the whole world. This makes it easier to take into account the many factors involved in the emergence of criminality – in particular recidivism – as well as the complicated relationships of those factors.
During the research, exploration and examination of the causes performed in order to eliminate them, we paid a great deal of attention to restoring the law and order violated by the criminal offence, to the negative consequences, the perpetrator's reintegration into society and the different roles in the process of criminal prosecution in the broad sense; thus, we also discussed that the effectiveness of penalties or penal measures greatly depend on their application, i.e., how they are used, and the quality of the activities of the competent bodies.
Although the number of offenders have decreased in the past few years, unfortunately, the number of repeat offenders has not. This is also shown by the fact that a high proportion of the offenders commit crimes repeatedly after a certain period in the case of all penalties, even if they cannot be regarded as recidivists according to the Criminal Code.
Punishments have an 'afterlife' that in the case of some people is not temporary but permanent. Without proper attention and a supportive environment, it is difficult to achieve the mitigation of the risk of re-offending and the reintegration of convicts into society. The enforcement of the punishment is closely related to the perpetrator's personality, and therefore the objective conditions of social integration cannot be ignored.

György Vókó:

The comparative analysis of the institutions of the Belgian, the French and the Hungarian laws of criminal enforcement

The evaluation of the Hungarian results and the definition of development tasks cannot be done without knowing the results achieved and the practices followed by other countries in this field. Today, there is a natural need for studying and researching the institutions and experiences of other countries – of course, also taking into account their special features – and to introduce and try in the Hungarian legal environment those that are compatible with our legal culture. However, no institution can be evaluated on the sole basis that it proved to be useful in a certain country. The approximation of laws cannot prevent the observance of a country's internal requirements.

There are similarities in particular between the Belgian and the French regulations, institutions and practices of the enforcement of criminal sanctions, but similarities can also be found between these and the Hungarian system; however, there are differences as well. Prisons are overcrowded in many countries of Europe, and this is also the case in the three countries under review, in particular in Belgium. A considerable part of the infrastructure is more than a hundred years old.

The 'enforcement of criminal sanctions' and 'safety' are inseparable concepts in the three countries.

Both the French Act on the enforcement of criminal sanctions of 24 November 2009 and the Belgian Act of 2005 received mixed reviews. They introduced reforms regarding the recognition of the rights of detainees, the mitigation of punishments, disciplinary cases, internal controls and the research of prison living quarters, but there are several criticisms because certain decisions (on individualisation or mitigation) are made at an administrative level instead of the level of the judiciary, and because the provisions on work performed by convicts are conservative. In both countries, instead of an employment relationship, work is performed based on a criminal enforcement relationship, in the same way as in Hungary.

In these two Western European countries, sentences can be enforced in a half-closed system or by means of external accommodation, setting certain alternative conditions for using this opportunity (performance of work, participation in education or training, traineeship or temporary work etc.).

In 2013, a ministerial circular ordered in Belgium that electronic supervision should be the general rule in the enforcement of imprisonment if the remaining period does not exceed three years. On the other hand, the rules of enforcement have become stricter as regards recidivists.

The time, personal and other conditions of spending the remaining period of a sentence under electronic supervision are also similar to this in France and Hungary.

The regulations of the order of enforcement are very similar: all three countries used the recommendation on the European Prison Rules as a basis for these. The right to submit internal complaints is available and it is possible to seek legal remedies in court.

In France, the function of the judge in charge of the prison programme has changed: on the one hand, he has retained his role in respect of the legal cases of detainees, and on the other hand he obtained an important new role in the enforcement of so-called community sanctions, which had already existed in Hungary for a long time. (For example, where a French supervisory judge holds a hearing during the taking of evidence, the participation of the defence lawyer has been mandatory since 1 July 2018. In Hungary, this has been the case since Legislative Decree 11 of 1979 entered into force.

Belgium has both supervisory judges and courts dealing with the enforcement of criminal sanctions; the latter were introduced in 2006. The jurisdiction of the supervisory judge in-

volves a large number of issues in all three countries, such as: parole, limited detention and electronic supervision, deportation, changing and supervising the mode of enforcement, setting rules of conduct for convicts etc.
The convict and the prosecutor may appeal against decisions made by the supervisory judge and the supervisory court on several issues. The system of remedies available against the decisions of the supervisory judge has been in place in Hungary since 1979, and it expressly mentions the defence lawyer's right of remedy.
The French Act on the enforcement of criminal sanctions provides as follows in Section 1: *'The regime of the enforcement of imprisonment reconciles the protection of society, the punishment of the convict and the interests of the victim with the necessity of the detainee's integration or re-integration into society, in order that the person concerned can live a responsible life and that the commission of another criminal offence can be prevented.'* This declaration is also discussed in detail by Sections 13 and 83 of the Hungarian Code on the enforcement of criminal sanctions (Act CCXL of 2013).
Probation consists of measures supervised by the judge both in Belgium and France. The rules of probation with supervision are very similar, but the rules on obligations are significantly stricter than the Hungarian rules. The most common obligations are treatment in a medical institution and providing compensation to the victim.
Whereas mediation is used in Belgium throughout the criminal procedure and enforcement (that is, even during the investigation and after the conviction), in France and Hungary, this legal institution is applied only during the criminal procedure in the narrow sense.
Community service work and fines can be changed into imprisonment by the supervisory judge in all three countries, but in Belgium, fines must be paid off upon the request of the Treasury.
Penalties involving the limitation of rights (driving ban, ban on carrying weapons and prohibitions on exercising certain activities etc.) also exist in the two Western European countries studied, but the relevant periods are shorter than in Hungary.
The enforcement of pre-trial detention takes place in so-called pre-trial houses. In Belgium, this is where the persons arrested by the immigration authority are detained as well. France is regularly condemned by the ECtHR for applying excessive periods of detention, since such periods are not limited by sufficiently precise rules (the investigating judge, the prosecutor, the detention judge and the follow-up committee are all entitled to take measures).

Anna Kiss:

Criminal procedures in theory and practice II

The 2018 research continued the analysis of theoretical issues started last year, and it also studies new procedural stages and legal institutions. It is based on two methodologies:

- comparative law and
- international outlook.

One of the main focuses of the research project is the examination of settlements reached before the indictment, and the other is the analysis of the dual role of preparatory meetings.
The study prepared about the research project compares the consensual agreements entered into with defendants that make it possible to close the criminal procedure without a trial. Furthermore, it points out the differences between the settlement reached before the indictment and the confession of the accused made at the preparatory meeting after the indictment. In the former case of a formal settlement – which is conditional on the confession of the suspect – the prosecutor and the defence lawyer make an agreement. The judge will not interfere in the

process of reaching a settlement and may not dispute its content: he either approves the settlement or not. In the latter case, the procedure will continue in the normal course. In exchange for the confession, the defendant will receive a less severe punishment as a result of a simpler and shorter procedure.
In the other case, i.e. in the case of the statement of confession made by the accused after the indictment, the study on the research project points out that no settlement can be reached during the preparatory meeting, yet many also mistakenly consider this a kind of agreement. In essence, this is a decision of the judge that requires the approval of the accused. The prosecution service does not participate in this process in the same way as in a real settlement process, because in this case the prosecution has already expressed its opinion about the case and indicted the suspect. After that, the court informs the accused already in the summons that at the preparatory meeting, he may plead guilty of the criminal offence with which he was charged, and that he may waive his right to trial in relation to the criminal offences concerned by the confession. If the court accepts the guilty plea, it will not examine the issue of culpability or whether the facts in the indictment are well-founded. Nevertheless, the prosecution service still has a distinct role in relation to this legal institution, as the prosecutor is not entirely left out of this process either. During the preparatory meeting, when the prosecutor presents the essence of the charge, he may make a proposal for the level and the duration of the penalty or measure in case the defendant admits the commission of the crime at the preparatory meeting. If the accused does not plead guilty, the other function of the preparatory meeting will prevail, namely that of the concentration of trials.
The research project analyses these two legal institutions by differentiating them based on their differences, but also pointing out their common features. It applies to both of them that the establishment of the facts or the legal classification of the criminal offence cannot be the subject-matter of the agreement. Another common feature is that no public hearing is held in either case.
The research project also explores the international roots of the new legal institutions. Although the Hungarian legal institution of settlement is not identical to the plea bargain used in common law procedures, because in Hungary, neither the establishment of the facts nor the classification of the criminal offence can be included in the agreement, it cannot be disputed that the legal institutions of civil law systems based on settlement also have certain common law roots. The study also mentions that there are an increasing number of consensual elements also in the judicial systems of other European countries. The paper based on the research project describes the Spanish, the Italian and the French solutions.

II. RESEARCH COMMISSIONED BY THE PROSECUTOR'S OFFICES

1. Research initiated by the Chief Prosecutor's Office

Klára Kerezsi – József Kó – Krisztina Farkas:

Difficulties in the classification of corruption offences in the light of the relevant guidelines of the Chief Prosecutor's Office; the latency of these crimes and challenges in detecting and proving them

There is no uniform and comprehensive definition for corruption. The literature usually contains approaches the problem of corruption in two ways: 1) some examine behavioural

patterns and try to distinguish conducts within those that can be regarded as corrupt behaviour; and 2) some are thinking of developing concepts based on which corrupt and non-corrupt acts can be distinguished from each other. There is no generally accepted legal definition of corruption, and since this phenomenon can be defined according to a wide range of criteria, there are moral, ethical, political and criminological approaches to it.
The empirical research started in 2017 studied the criminal cases closed by final rulings (by a judgment or by a decision terminating the procedure) in 2016. The criteria of selecting the study sample enabled the inclusion of the corruption acts defined in both the new and the old Criminal Code. During the research conducted by using the method of document analysis, we explored the characteristics and causes of cases where the classifications were changed and we examined the enforcement of the guidelines of the Chief Prosecutor's Office.
The sample under review contained the files of 205 criminal cases initiated on suspicion of the commission of corruption crimes. Initially, we did not plan to separately measure corruption in the law enforcement agencies during this research project. However, perpetrators working in law enforcement were involved in a quarter (26.3%) of the corruption cases included in the sample. This also means that the use of covert investigation methods is clearly necessary in order to bring such cases to light: approximately 25% of the cases were initiated as a result of the procedure of a police body.
Based on the research conducted, we identified problems in the following areas:

- The classification of corruption-related offences often changes during the procedure;
- Procedures are often terminated due to incomplete and inaccurate reports;
- In corruption cases, evidence is primarily based on witness testimonies;
- The work performed by investigative authorities when investigating corruption cases varies greatly;
- There are several suspects in most of the cases;
- There are no standard practices for using the method of secret data collection in open procedures;
- Some cases are significantly prolonged, and it can take several years until they are finished by a final judgment;
- The socio-cultural background of the perpetrators often makes the procedure more difficult.

The study initiated by the Chief Prosecutor's Office revealed the problems of classification occurring in practice – primarily on the basis of the relevant guidelines of the Chief Prosecutor's Office. In the sample under review, the classification of the offences was changed in 19% of the procedures. The majority of these changes resulted from one of the special features of corruption offences, namely the long periods of the procedures, the reason for which was that the classification of the criminal offences had to be changed in many cases after the entry into force of Act C of 2012, having regard to the more lenient rules of the Criminal Code that was in force at the time when the cases were adjudicated. Meaningful changes were usually made between the different subsections, paragraphs or clauses within the statutory definition of a criminal offence, or were related to the counts of the offence. The right to the application of a measure on its own was interpreted and the classification of the offence was changed accordingly in several cases. Of the guidelines issued by the Chief Prosecutor's Office, five apply to the classification of corruption offences; these occurred in the reviewed sample only in a few cases. Two of these should be highlighted: the views on facilitation payment [so-called 'gratitude money'] paid to doctors and the views on the conduct of persons requesting unlawful advantages referring to a non-existent public official.
The research results show that although the questions of classification are constantly present in the reviewed sample, they mean a central problem only in a small proportion of the cases.

Orsolya Bolyky – Eszter Sárik:

The practical enforcement of the legal consequences under substantive law relating to the commission of a premeditated crime in a criminal organisation

The aim of the research project was to find out whether the mandatorily applicable legal consequences prescribed by the Criminal Code in relation to the commission of crimes in a criminal organisation are enforced during sentencing in practice. Based on certain preliminary questions asked of prosecutors, it was assumed that despite the finding that an offence was committed in a criminal organisation, the punishments imposed were rather lenient, and therefore the study mainly focused on the sentencing practices aimed at the exclusion of the possibility of parole and at doubling the upper limit of the punishment related to the criminal offence concerned. Special attention was paid to the application of the provisions on mitigation and to mitigating circumstances.

The research project examined statements of reasons about whether the statutory criteria of commission in a criminal organisation could be established in certain specific cases: it explored arguments concerning the perpetrators' mental state; the problems relating to the degree of organisation, coordinated operation and organisation for a longer period; and the questions of distinguishing criminal organisations from criminal associations.

Several judgments of the appeal courts contained a rectification that removed the reference to commission in a criminal organisation from the operative part and placed it in the statement of reasons of the sentence imposed, because commission in a criminal organisation is not part of the classification of the crime but is only relevant for sentencing.

By analysing the selected judgments, the study attempted to explore the background of a phenomenon clearly perceived by the prosecutors, namely that judges tend to be unwilling to establish that a crime was committed in a criminal organisation. On the one hand, this may be caused by criminological factors, and on the other hand, it may be the result of the reasonable consideration of the events. As to the possible legal explanations, it can be stated that in many cases the date of the criminal offence was before the introduction of the rule of median term (2007), which usually resulted in the imposition of more lenient punishments. In the case of establishing that a crime was committed in a criminal organisation, the following can be mentioned as important mitigating circumstances: the passing of a significant amount of time, the commission of the crime as an accomplice, an accused with no criminal record, the payment of any damage caused, and the defendant's deteriorated health. Often the courts also relied on subjective criteria in their judgments; for example, it typically resulted in less stringent punishments if the defendant led an orderly lifestyle or had higher qualifications.

The research project also considered the dogmatic and practical problems of the separate criminal offence of participation in a criminal organisation, regulated in Section 321 of the Criminal Code. Participation in a criminal organisation is a *sui generis* offence whose criminal conducts show the characteristics of preparation, but there is no criminal offence to which it is linked, such as for example the preparation of homicide as a separate statutory offence to homicide.

The final study discusses the distinction between criminal organisations and organised crime, the development of the concept of criminal organisations and the changes of the related legal consequences in separate chapters.

Judit Szabó:

The criminological study of sexual violence committed against persons younger than twelve years of age

The research project initiated by the Chief Prosecutor's Office was aimed at exploring the criminological characteristics of sexual violence committed against persons younger than twelve years of age. Another purpose of the research was to examine and analyse the main features of the criminal procedures initiated for these criminal offences, with particular regard to the means of evidence, the aggravating and mitigating circumstances and the level of the penalty imposed. This issue is always topical, since sexual crimes committed against children pose serious challenges to the criminal justice system, the social services and health care systems and the child protection institutions all over the world due to their frequency and serious consequences.

The research was based on the empirical data collection method of the examination of case files. The sample consisted of criminal cases closed in 2016 and 2017 by final court judgments, initiated for sexual violence, rape or indecency committed against victims younger than twelve years of age.

The research results have confirmed the conclusions of the Hungarian and international studies with a similar subject. It is an important characteristic of the criminal offences under review that in the majority of these cases, a long period – often years – passes between the commission of the offence (for the first time) and its reporting. It is worth highlighting among the results that the victims and the perpetrators knew each other in 98% of the cases; and the crime was committed by a close or distant relative in the case of 58% of victims, and by a close acquaintance in the case of another 36%. Among family members, the proportion of biological fathers was 27% and stepfathers made up 29%, which called attention to the fact that serious dysfunctions within families are not rare at all. 95% of the perpetrators were men, and almost 20% of them committed the crime as a juvenile offender. It is alarming that 55% of the sample of victims were younger than nine when the criminal offence was committed. In addition to the characteristics of the criminal offences, the perpetrators and the victims, the research report also discusses the expert opinions of forensic psychiatrists and psychologists on perpetrators and victims, the outcomes of the criminal procedures and the relevant circumstances taken into account in the course of sentencing.

It can be established based on the research results that sexual violence committed against persons younger than twelve years of age is a complex social phenomenon, the emergence and continued existence of which are the result of the complicated interaction of several social, social psychological and individual psychological factors.

Krisztina Farkas – Renáta Garai – Bernadett Csapucha:

The typical difficulties and good practices relating to the detection and proving of budget fraud committed regarding financial support received from European Union funds

The research reviewed the European Union's system of financial support, the mechanisms aimed at the protection of financial interests, as well as the regulation of budget fraud in criminal law and the related dogmatic questions. After laying such theoretical bases, we were able to explore the difficulties of detecting and proving this crime, which involved the empiri-

cal study of 200 criminal cases. Our general and detailed findings describe the Hungarian case-law, from the inclusion of the crime in the Criminal Code, that is, from 2002, until 2017. The typical difficulties of detecting and proving budget fraud committed regarding financial support received from European Union funds are as follows:

- proving intent (deliberateness), investigations lasting a long time;
- the facts are not established in full;
- the tender documents are not obtained in full;
- significant delays in performing the checks related to tenders;
- checks carried out in an unprofessional manner;
- recording assumptions as if they were facts;
- assessment of the factors that increase the prices in public procurement procedures;
- proving that the funds were not used for an appropriate purpose;
- parallel procedures;
- anonymous/unfounded reports sent to several authorities;
- the content of invoices issued by contractors;
- problems of overpricing and over-invoicing;
- a failure to interrogate witnesses or finding relevant witnesses;
- controversial determination of market values;
- the sale or 'theft' of machinery and equipment concerned by the tender (the impossibility of follow-up);
- the impossibility of subsequent checks because of the lack of built-in components;
- the impossibility of identifying the marks indicating the types of built-in equipment;
- missing accounting documents;
- abuses relating to training programmes organised within the framework of SROP projects;
- company managers being aware of questionable quotes;
- tenders duplicated under the names of different companies;
- incomprehensible financial guides;
- the dilemma of whether the attachment of certain documents is mandatory or only recommended for obtaining the support;
- amended budgets of indispensable and technically justified works (the functional implementation of projects);
- authorisations with names other than the names of the tenderers;
- difference in the data of the authentic land register (in Hungarian: MEPAR, in English: LPIS or Land Parcel Identification System), or differences in the classification of lands and the related registration data.

Any effective methods can only bring results by eliminating the above errors and defects.

Katalin Parti:

Internet use during criminal activity, with special regard to the role of international cooperation in detecting cross-border computer-related crimes and the problems of evidence

The research examined the conditions of recording and transferring electronic data during criminal procedures. It examined the rules according to which electronic data are transferred in practice upon the request of a foreign authority, and it also examined how the investigation of serious computer-related crimes could be made more effective based on this, without the unjustified restriction of civil liberties.

Therefore, the following were reviewed in detail:

- the data retention obligation of application service providers;
- sanctions that can be imposed on service providers;
- the service providers' obligation of confidentiality;
- the protection of the integrity of the transferred data;
- the right to issue dynamic IP addresses;
- refusal to comply with data requests;
- the service providers' obligation to unlock encryption;
- the use of mutual legal assistance in the case of data transfers; and
- the service providers' ability to directly comply with the requests of foreign investigative authorities.

The second main research question was whether electronic data can be used as evidence during criminal procedures. This part explored the following:

- whether the traffic, subscription and content data can be transferred for the purpose of a criminal procedure;
- the legal obstacles to electronic house searches;
- the conditions of impounding electronic mail (e-mail);
- whether it is allowed to get to know the content of electronic mail;
- whether it is allowed to get to know data stored in an information system; and
- how electronic data can be made temporarily inaccessible (internet blocking) in Hungary.

The third main research area was the conditions of intercepting electronic data and the practical implementation of this, having regard to the following:

- the conditions of the interception of electronic data according to substantive law and procedural law, and its practical implementation;
- remedies against monitoring;
- the obligation of confidentiality of telecommunication service providers; and
- the possibility of transferring intercepted electronic data to foreign authorities.

Finally, the fourth main question examined the statutory and constitutional guarantees that provide protection to users from the state practice of collecting data without a specific purpose, that is, for stockpiling. In this part, the research showed through the most important milestones of European case-law to what extent these principles were enforced in the Hungarian practice and what shortcomings had to be dealt with in the future.

The developments that occurred in recent years in relation to data protection, as a result of which the conditions of collecting, intercepting, recording and transferring users' data have become stricter – applicable to both the Hungarian investigative authorities and between the investigative authorities of the member states – present new challenges to the legislator. The new Code of Criminal Procedure effective from 1 July 2018 in part addresses these challenges; in order to protect the fundamental rights of citizens and to ensure that these rights can only be limited if it is necessary and proportionate, the Code terminates the difference between the secret collection of information and the secret acquisition of data, and it introduces the legal institution of covert means, which requires the conducting of an authorisation procedure by the prosecution service in all cases. On the other hand, telecommunication (internet) service providers are still obliged to cooperate, and in fact, their obligation to record and transfer data has been extended since the entry into force of the convention. As for the investigative authority, it must ensure – in response to the technological challenges and the data protection provisions – that all data are recorded and stored appropriately. There are appropriate legal and constitutional guarantees against data collection for the purpose of stockpiling, but their practical enforcement remains to be examined.

Renáta Garai:

The crime of domestic violence in judicial practice

The research focused on the questions of distinguishing the unprecedented, new, independent statutory definition of the offence of domestic violence (Section 212/A of the Criminal Code) from other criminal offences committed in the relationship of persons related to each other (relatives), as well as on the related questions of classification. The research results show the experiences gained from the examination of case files, which involved 556 criminal procedures initiated for the criminal offence of domestic violence and closed by final ruling, in respect of three full years (1 January 2015 - 31 December 2017). To ensure the accurate exploration of the judicial practice, we also randomly selected 95 cases classified as grievous bodily harm committed against a relative, and thus a total of 651 files were processed. In addition to the examination of case files, the comments received from the prosecution service in transcripts and in other forms also greatly contributed to the success of the research project; the aggregated results of the questionnaires sent to prosecution services and prosecutors (90 prosecutors assisted in the research focused on the application of the law) also highlighted the difficulties of classification and evidence in the individual cases; and finally, the study ends with some thoughts that were expressed during the professional discussions.
The main findings of the research are as follows:

- the investigative authority does not pay sufficient attention to the correct classification, and therefore the investigations are ordered regarding the underlying criminal offences (typically assaults, harassment, etc.);
- the entire statutory definition of the offence is regarded as a subsidiary offence to be prosecuted upon private motion, despite the fact that this is only true of subsection (1);
- the investigation documents included information provided to victims contrary to the law;
- the dilemmas of practitioners are often based on misconceptions and outdated habits and practices;
- the concept of ‘regularity’ is understood extremely differently in certain counties of the country;
- there is confusion about the question of multiple counts in the national practice;
- subsection (2) of domestic violence is a new type of cumulative offence, which causes difficulties for practitioners;
- the problems inherent the operation of the child protection signalling system are significant factors that make the situation more difficult.

In summary, it can be stated that regardless of how practice will turn out in the future based on the new Code of Criminal Procedure, the prosecution service must pay special attention to the work of the police, and any errors must be detected and reported. The results received during the analysis of criminal case files and the conclusions drawn from them may significantly determine the national practice in the long run, and last but not least, they may set standardisation as an aim, thereby providing the opportunity for all counties in Hungary to investigate and prosecute domestic violence along the same guidelines.

László Tibor Nagy:

Characteristics and trends of violent crimes against property

In our Criminal Code currently in force, as a novel solution, offences against property are regulated in three separate chapters based on the manner of the commission of the crime and the protected legal interest: violent crimes against property (Chapter XXXV), offences against property (Chapter XXXVI) and crimes against intellectual property rights (Chapter XXXVII). The Chapter on violent crimes against property contains four criminal offences: robbery (Section 365 of the Criminal Code), plundering (Section 366 of the Criminal Code), extortion (Section 367 of the Criminal Code) and private justice (Section 368 of the Criminal Code). The research project intended to explore the general characteristics and the trends of this group of criminal offences.

These criminal offences belong to the special cases of violent crimes, because when they are committed, violence against a person is not an end but a means, since the final goal is the obtainment of financial gain or values. In the case of violent crimes against property – unlike in the case of offences against property – the value limit based on which the offence can be judged more severely has a limited importance, as it will be relevant only under certain specific conditions, and it is much rather the manner and nature of the commission of the crime that are relevant as well as the special characteristics of the passive subjects. It shows the severity of the crimes falling within this category that they have no petty offence or misdemeanour form but are regulated only as felonies. From a criminological perspective, of the two categories of crimes aimed at the resolution of conflicts on the one hand or the meeting of needs on the other hand, violent offences against property typically belong to the crimes aimed at meeting needs, based on the circumstances of their commission.

In 2017, 2990 violent crimes against property and 1919 offenders were registered, which correspond to 1.32% of all registered crimes and 2.12% of all offenders. The most common crime was plundering (1534), followed by robbery (853), private justice (348) and extortion (255). The proportion of the group of criminal offences under review to all registered crimes was about 1% until the millennium, which since then has increased to 1.3-1.5%, as total crime decreased at a greater rate than the number of violent crimes against property. Some interesting and significant changes have occurred in respect of the categories of these crimes: whilst robbery was clearly predominant for decades, compared to which the other three criminal offences occurred in a negligible number of cases, today the situation is different, and plundering has become almost twice as common as robbery. On the one hand, this is attributable to a significant decrease in the number of robberies, and on the other hand it has been caused by a legislative change concerning plundering, namely that Act LXXX of 2009 penalised the appropriation of things from individuals incapable of self-defence also as plundering. Therefore, the number of cases of plundering increased by several hundred after 2010. The cases of private justice proliferated in the second half of the nineties to such an extent that in 1997 and 1998 their number rose above 1000; however, after the millennium, we could observe a significantly decreasing trend, not least because of the stricter regulations and more consistent law enforcement practices.

In recent years, extortion has been the least common violent crime against property; its proportion remained steady, and it usually stayed below private justice, but before 2010, it significantly exceeded the rate of the incidence of plundering. Nevertheless, there are doubts as to the consistency and homogeneity of the structure of this chapter, because, on the one hand – as a result of the amendment of the legal regulation – perpetrators do not perform the majority of the cases of plundering by a violent behaviour but by taking a thing away from a person

incapable of self-defence, and on the other hand, the larceny of a motor vehicle committed violently or by direct threat against life or bodily integrity does not fall within this category.
The National Institute of Criminology conducted detailed empirical research into private justice and plundering, and in the near future, we intend to examine robbery and extortion in the same manner.

Katalin Tilki:

The typical reasons for rejecting reports of crimes and terminating the investigation in criminal cases relating to cruelty to animals

OKRI's previous research projects on the protection of animals and nature have pointed out that there are no papers and no studies are in progress on this topic describing and analysing the criminal offences related to animal cruelty. The purpose of this research project initiated by the Chief Prosecutor's Office was to review the typical causes and cases of rejecting reports about animal cruelty and of terminating the related investigations.
The work was based on criminal cases occurring between 2014 and 2016, which were provided to us by the county prosecutor's offices according to certain specified criteria, on the basis of case numbers. As a result, we included a total of 117 cases in the study sample.
The study discusses the statistical data related to the topic, the current regulation of animal cruelty in criminal law, the provisions of the procedural code on the circumstances hindering procedures, and finally, the results of the empirical research conducted by examining the case files.
Based on the relevant cases, it can be established that the investigation was terminated by the prosecution service in 72% of the cases and by the police in 21% of the cases. Reports of the crime were rejected in 7% of the cases.
The authorities acting in these cases usually rejected the reports on the basis of Section 174(1)(c) of the Code of Criminal Procedure (minor age as a ground for the exclusion of criminal liability). In most cases, the investigation was terminated for the following reasons:

a) it could not be established whether the criminal offence was committed by the suspect;
b) a warning was given because of finding that the act committed by the suspect presented no danger to society or presented only a negligible degree of danger;
c) there was a ground for the exclusion of criminal liability – minor age or mental incapacity.

Criminal procedures were most often initiated for animal abuse; the mistreatment or neglecting of animals; or shooting or wounding animals with an airgun. Furthermore, there were cases in which children of mostly 10 to 13 years of age were cruel to defenceless animals, mainly by abusing them, hanging them or pelting them, but procedures could not be conducted against the children concerned because of their age. On the one hand, difficulties are caused during the investigation by the fact that the persons reporting the crime may misjudge the situation they saw – as they are not aware of the specific circumstances – or on the other hand, problems may arise due to the lack of witnesses. Sometimes it is anonymous reports that present difficulties, or the allegations included in the reports are not corroborated by any data.
It is essential in these cases to conduct an on-site inspection, to have a veterinarian officer present – ensuring that the veterinarian officer can thoroughly examine the condition of the animals and the place where they were kept – and to document the data.
It would be particularly important to prevent these crimes, to provide instruction to children on animal protection, and to provide extensive information to the public about the acts that meet the statutory definition of animal cruelty as well as about the sanctions attached to such acts by the Criminal Code.

2. Research commissioned by the County Prosecutors' Offices

Anna Kiss:

The place and role in criminal procedures of persons requiring special treatment

The research project and the final study based on that provide an in-depth analysis of the relevant issues included in the Code of Criminal Procedure. The legislator created the category of persons requiring special treatment in the new Code of Criminal Procedure, and by creating this category, it has provided additional guarantees to this group. These groups are a certain kind of vulnerable group, but this designation 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; at least this is the promise of the legislator.
The old Code of Criminal Procedure had also contained rules on special treatment because the deadline set by the EU directive had already expired by the time the new Code of Criminal Procedure was completed. Therefore, in 2015, the legislator had to incorporate the rules required by the EU directive of member states into the old Code of Criminal Procedure. As opposed to the previous scattered provisions, the new (currently effective) Code of Criminal Procedure contains a separate chapter on these norms.
Chapter XIV of the Act is based on the requirements that the aspects of individualisation must receive a greater emphasis and that the unique needs of persons in need of special treatment must be better met.
Firstly, the rules placed in this chapter determine who may receive special treatment; secondly, they contain additional provisions with which the practitioners acting in the cases concerned must comply during the criminal procedures besides the general guarantees; and thirdly, the chapter also discusses how a person can become part of this so-called vulnerable group.
The research also points out that only because they become part of this vulnerable group, the persons requiring special treatment do not necessarily all have the same additional rights. The provisions on special treatment are mostly applicable to victims and witnesses; of course, only if they meet the criteria specified by Chapter XIV of the new Code of Criminal Procedure. In the case of others (defendants, defence lawyers, experts, aids etc.), the investigative authority, the prosecution service and the court are only required to apply a few rules applicable to special treatment.
The research also mentions that persons requiring special treatment may waive the additional guarantees, except for those whose application is mandatory according to the Act.
It is an important part of the research project to call attention to the requirement that the application of measures falling within the category of special treatment may not result in the violation of the procedural rights of other persons involved in the criminal procedure.

Ildikó Ritter – Katalin Tilki – Renáta Garai:

The frequency of permanent driving bans in cases initiated for traffic offences, based on judicial practice

The aim of the study initiated by the Vas County Prosecutor's Office was – as there were no statistical data available – to explore the prevalence, national distribution and causes of permanent driving bans, as well as the characteristics of convicts. Furthermore, we wanted to

explore and understand the enforcement of the relevant court rulings and the related practical obstacles. No targeted study has been conducted in Hungary on the above topic, and criminal statistics collect no data about the relevant case law. The study sample contained 90 cases, which means that only a small proportion, approximately 0.6% of the 14,955 decisions on driving bans registered in 2017 ordered permanent bans.

Main results:

- The application of the punishment of permanent driving ban is not related to the frequency of road traffic accidents in the geographical area concerned or the incidence of known traffic offences.
- 90% of the offenders included in the sample were under the influence of a psychoactive substance (usually alcohol) when their acts were detected by the authorities. In every fifth case, the use of illegal drugs or medicines, or other health and/or mental health issues could be identified as an underlying cause of the commission of the traffic offence.
- Only 42.6% of the cases included in the sample were initiated because of an accident; in the rest of the cases, detection by the authorities resulted in the mitigation or elimination of the risk of accidents.
- There were twice as many 'clean' – that is, not addicted – drivers in the group of those who caused an accident than people addicted to a psychoactive substance. This indicates that in the case of the majority of offenders who caused an accident and were penalised by a permanent driving ban, the reason for their unfitness was not related to any addiction to a substance.
- 16.6% of all offenders included in the sample had a serious health impairment when they were detected by the authorities, and their condition was related to or caused the act committed in the majority of the cases. About double the proportion measured in the whole sample was detected in the sub-sample of those who caused an accident. In these cases, their physical health condition proved to be a risk factor of almost the same magnitude as their addiction to psychoactive substances (1:1), whilst this proportion was 1:4 in the whole sample, 4 being represented by addiction.
- *Every fourth offender who was permanently banned from driving was older than 70 years of age!* And according to expert opinions, the occurrence of the accident was usually related to the health status of the driver who caused the accident.
- The punishment of permanent driving ban is typically applied against middle-aged or older people suffering from serious health or mental health issues (including addiction). These are people in whose case these issues had existed for a long period, but who came to the attention of the authorities only in the cases concerned or only because they committed a serious traffic offence.

The statements of reasons provided by the courts in the cases included in the sample in which the punishment of permanent driving ban was imposed can be classified into four distinct categories:

- addiction to a psychoactive substance;
- personality disorder, mental incapacity;
- health problems related to old age;
- driving without a driving licence on several occasions.

In practice, the application of the permanent driving ban cannot be regarded as an effective deterrent sanction on its own. It can be stated in general that the accused persons were not deterred even by previous punishments of driving bans of longer fixed periods from repeatedly committing traffic offences or from driving under the influence of a psychoactive substance, without a driving licence.

In Hungary – in contrast with several EU member states – it is not possible to confiscate the motor vehicle driven by the perpetrator of the criminal offence of driving under the influence of a psychoactive substance when performing the statutory definition of the offence.
It would be advisable for the Hungarian legislator to consider creating the conditions of confiscation in the cases of habitual and repeat offenders, in the cases of driving under the influence of alcohol and causing a fatal accident, and in the aggravated cases of causing a road accident.
Furthermore, the introduction of an accelerated procedure in the case of driving under the influence of alcohol – already available in several EU member states – would make criminal procedures faster and more efficient.

László Tibor Nagy:

The interpretation of provocative anti-social behaviour in judicial practice, in cases initiated for disorderly conduct

The research project was initiated by the Vas County Prosecutor's Office, because they found that there had been a change in judicial practice in the criminal cases initiated for disorderly conduct, which resulted in uncertainty in the application of the law in relation to the interpretation of provocative anti-social behaviour. During the research, we examined the relevant criminal case documents and the regulatory environment, we processed the relevant literature, and held interactive professional roundtable talks with the active participation of prosecutors and judges experienced in the field, which also included a questionnaire survey.
There is no doubt that the trends of only few criminal offences were and can be dependent on changes in social awareness, public sentiment, the stability of the principles of legal policy and the level of sensitivity to criminality to such an extent as in the case of disorderly conduct. Since its criminalisation in 1955, many significant changes has occurred both in the applicable statutory definition and the enforcement of the relevant provisions in practice, which inevitably reflected the social, political and cultural conditions of the time, and occasionally also resulted in heated debates in the legal literature. Even if we take this into account, it may seem to be surprising that the statutory definition that was a classic product of socialist criminal legislation – which strictly speaking was constructed based on the Soviet example – survived several legislative changes introduced after the democratic transformation, including the enactment of a new Criminal Code. It is clear that during the administration of justice, the most severe dilemma relating to the adjudication of disorderly conduct arises in connection with the establishment of provocative anti-social behaviour. This undefined legal concept can be considered a substantial element of disorderly conduct, because even the petty offence form of disorderly conduct cannot be realised without it. Since the legislator practically left the interpretation of this concept to the judiciary, it is no wonder that it is often explained differently.
The opinions of practitioners also vary on the extent to which provocative anti-social behaviour can be regarded as a factual circumstance that violates legal certainty. It could be suggested that a uniformity decision of the Curia should be requested, but it would also be justified to say that provocative anti-social behaviour is established rather randomly in the judicial practice, in other words, it practically depends on the discretion of the authorities acting in the cases concerned whether criminal prosecution takes place. Therefore, the indefiniteness of this factual circumstance raises problems relating to legal certainty, which also reinforces the approach that these acts should no longer be treated as criminal offences. However, other arguments can also be offered in addition to this apparently radical view. For

example, the termination of the criminal offence form of disorderly conduct and the introduction of disorderly commission as an aggravating circumstance in the case of certain criminal offences; the penalisation of the act only if it is committed in public or in a group; or – and this proposal has the most support – restricting the criminal offence form of the act to violent conducts against a person. This topic cannot be regarded as closed; it is advisable to keep it on the agenda in the future, both during the continuing professional training of legal practitioners and for the purpose of considering codification changes.

Gabriella Kármán – Judit Szabó:

Lessons learned from and problems relating to the use of polygraphs in criminal procedures

The research project was initiated by the Pest County Prosecutor's Office for the purpose of analysing and assessing the experiences relating to the use of a polygraph in criminal procedures and the related problems. The study was aimed at the examination – from the perspectives of criminal statistics and the law of criminal procedure – of the problems practitioners had to face when using a polygraph under the previous regulations, how these problems can be evaluated in view of the provisions of the new Code of Criminal Procedure, and the additional anomalies that may arise in view of the new regulations.

In line with its objectives, the research project mainly used methods of empirical data collection. In addition to the thematic review of the normative background and the available Hungarian and international literature, we used the methods of the analysis of case files and of group interviews.

The new Code of Criminal Procedure defines the verification of testimonies by means of an instrument as an act of evidence that can be used during the investigation and is aimed at obtaining indirect evidence. The research project was induced by the deficiencies in the regulation of polygraph examinations, and the resulting divergent judicial practices that raised a lot of questions. The study confirmed this through the use of several methods, and many questions arose based on the judicial practice followed during the period in which the previous Code of Criminal Procedure (Act XIX of 1998) was in force. The new Code of Criminal Procedure clarified the relevant provisions in many respects by placing the procedures aimed at the verification of testimonies by means of an instrument among the acts of evidence, and by making it possible to question the expert who performed the examination as a witness. At the same time, it abandons the narrow concept of the 'polygraph' designation, thereby providing the opportunity for using other technologies developed for the verification of testimonies by means of an instrument.

The findings of the research project suggest that there are still issues to be solved in connection with polygraph examinations. In order to assess the probative value of polygraph examinations and the evidence collected in this way, and because of the concerns about the scientific validity of this method, the topic requires further examination. The enforcement of the provisions of the new Code and the related practical experiences also encourage further research.

Szilveszter Póczik – Orsolya Bolyky – Eszter Sárik:

Special features of crimes committed in Hungary by foreign nationals, in view of the migration crisis of 2015–2017

According to the data of criminal statistics, the role of foreign offenders has not been significant in view of all criminal offences committed in Hungary after the democratic transformation. The *first part* of the research project examined the activities of foreign criminals in Hungary from the democratic transformation until the economic crisis starting in 2007 and 2008, and it can be established from this study that the trends of this period still determine the current situation. In addition to this, the study also examined the period between 2008 and 2014, as it could be assumed that the economic crisis brought about certain changes in the types and nature of the crimes committed by foreign nationals.
In its *second part*, the research reviewed the acts committed by foreigners in connection with closed borders. Our hypothesis was that the number of the new crimes related to closed borders would somewhat change the previous picture and tendencies. This presumption, however, turned out to be incorrect. The number and proportion of foreign perpetrators still show a downward trend despite the migration wave and the legal closing of the borders. The total number of offenders decreased from 99 thousand to approximately 90 thousand, and the proportion of foreign perpetrators is still 4.5-5%, similarly to the data of the nineties. During those years, 3-4% of all known criminals were foreign, and there have been no significant changes in this respect. For the above-mentioned reasons, the number of those registered because of the illegal crossing of closed borders (Section 352/A of the Criminal Code) was the highest – 2803 – in 2016 (and the number of criminal offences committed was 2843). The drastic decrease in the number of both offences (the illegal crossing of closed borders and causing damage to closed borders) seen in 2017 shows the significant increase in the effectiveness of the guarding of the border fence and the increase of its deterrent effect, since the number of offenders is almost zero. The most reliable picture of the places (countries) of origin of the perpetrators – and the refugees intending to cross the border – are provided by the 2016 data: the majority are from Afghanistan, Syria, Pakistan, Iraq or Iran. This also shows that the residents of these countries are among the most mobile. 85-90% of the people who cross the closed borders illegally are men, 10-15% of them are women and 13-16% are or claim to be juvenile. The number of perpetrators was very low in 2017, and therefore it is not suitable for drawing any conclusions. This also shows that the construction of the technical border fence and its supervision by the law enforcement agencies was successful in controlling the migration pressure, and by 2017, it reduced the number of those who were successful in crossing the closed borders to almost zero.

Anna Kiss:

The expected impact of the developments of the vehicle industry (e.g. self-driving vehicles, security systems etc.) on traffic offences

The research project intends to explore the world of artificial intelligence, primarily focusing on the development of self-driving vehicles within that. In 2018, self-driving vehicles were already in use in public traffic, and therefore their legal regulation is essential. Accidents caused by self-driving vehicles raise the issue of liability, in particular the question of which area of law should regulate this field.

The list of the questions relating to this topic – the majority of which can be answered by future research projects – was compiled at roundtable talks and conferences within and outside the Institute:

- Who will be liable if a self-driving vehicle causes an accident?
- Is it possible to define the legal capacity, the capacity to act and the criminal liability of artificial intelligence?
- Who should be liable if a road accident or other accident is caused?
- Should this liability be liability under private law or criminal law?

If civil law's rules of liability will apply to these cases, the categories of liability relating to hazardous operations and of product liability can be used as a basis. If criminal law will have a role in this field, we will have to answer the following additional questions:

- obstacles to criminal liability;
- the applicability of the concept of negligence;
- the liability of legal persons;
- the so-called vicarious liability;
- *the issue of the criminal liability of the self-driving vehicle itself (can it be the perpetrator of a criminal offence?).*

According to our current knowledge, the last question must be definitely answered in the negative, as criminal law only considers a conduct a criminal offence if it is culpable, that is, attributable to the perpetrator, and only if it is a human behaviour. Nevertheless, it could be interesting to raise the theoretical issue of the criminal liability of 'robots', which we will only be able to answer later.

Ádám Mészáros:

The role of the impact of duress on the victim, with particular regard to the assessment of self-defence and crimes committed displaying or carrying a weapon [Section 22 and paragraphs 5, 6 and 7 of Section 459(1) of the Criminal Code]

According to the research hypothesis, due to the fact that duress and threat can be included at several places in the system of obstacles to criminal liability, several dogmatic problems may arise in connection with their comparison with other grounds for the exclusion of criminal liability. Thus, if within the definition of criminal act the act is given a separate dogmatic meaning, then, for example, it would be difficult to justify self-defence in the case of an attack coerced by a third person against the person who was attacked. The reason for this is that in such case the unlawful attack lacks the nature of an act, and therefore neither the realisation of the elements of the statutory definition nor unlawfulness can be examined, which would be necessary in respect of the lawfulness of the self-defence.

The research suggests the differentiated interpretation of duress and threat: both should be examined as a ground for the exclusion of volitional capacity and as a ground for the exclusion of criminal capacity. Both of these categories are part of culpability within the definition of the criminal act. According to the result of the research, the following distinction can be made:

a) In the case of involuntary movements (for example, if someone is pushed into a shop window) or being under hypnosis, there is no intentional conduct. In such cases, the possibility of the existence/examination of any ability of recognition or any conduct controlled by one's will is precluded; this type of duress excludes volition mentioned among the elements of culpability.

b) If, however, the person under duress has the ability of recognition (he recognises that his act or omission has unlawful consequences) but is unable to behave in accordance with such recognition and his will, this type of duress can be interpreted as a ground for the exclusion of criminal capacity. Thus, for example, if the perpetrator ties down the lifeguard to prevent him from rescuing the perpetrator's drowning enemy, or he ties down the switchman to cause a train accident, the person tied down will recognise that he should act and he will also have the will to act, but because of the physical duress, he will be unable to act according to his will.
In this approach, the interpretation of unlawful attacks within the framework of self-defence cannot be questioned: duress is related to the subjective side in both cases – it is either a ground for the exclusion of volition or a ground for the exclusion of criminal capacity, depending on the nature of the case. Thus, for example, if a person under hypnosis attacks someone, the latter person will be in a situation of self-defence, because the attack will be considered unlawful.

c) It is a fundamental question in the case of threat whether it can only be a relative threat or whether it can also be absolute. Thus, for example, when someone who applies duress keeps the person used by him in check by threatening to kill that person's child and in exchange for releasing the child forces the parent to kill his enemy, the question to be decided is whether there is a real choice available. If we accept that a threat can only be a relative coercion, then based on the Act, we cannot apply a ground for the exclusion of criminal liability for the benefit of the person under the threat but can only apply a ground for the limitation of his liability. However, the situation is different if the threat is treated as a reason preventing compliance with the duty of care, because this would exclude culpability, which in turn would prevent the realisation of the crime. A question arises in this case, however, as to when duress can be a ground for the exclusion of liability, that is, whether there can be such a concept as limited duty of care. On the other hand, duress modifying one's will cannot be interpreted as a ground for the exclusion of the duty of care, because again, in this case it could not be established that a criminal offence was committed, despite the fact that it was actually committed. Yet if we accept that threat can also be an absolute coercion, in the case of an attack on life it will function as a ground for the exclusion of criminal capacity, since the person under the threat will be able to recognise that his act is unlawful and will not want to perform it, yet he will still perform it because of being threatened.
Whichever interpretation we accept, the unlawfulness of the attack committed by the person being forced to do so cannot be denied, which means that it is possible to use self-defence against such person.

III. OTHER RESEARCH ASSIGNMENTS, COMPLETED OUTSIDE THE PLAN

Gabriella Kármán – Klára Kerezsi – Krisztina Farkas:

Law enforcement measures for the protection of cultural goods

The protection of cultural goods is primarily provided by administrative law; yet in view of the violated and endangered values, the severity of the danger these acts present to society and their direct links to organised crime, the development of the relevant institutional system of criminal law is increasingly necessary. Accordingly, international experience shows that in

addition to the activities of law enforcement agencies, activities aimed at prevention and raising awareness also have a prominent role in this field. Therefore, this research was aimed at the examination of the means of law enforcement involving all of the above. Its purpose was to review the Hungarian organisational and legal framework and to study the relevant activities performed in practice; furthermore, it intended to describe the cornerstones of the Italian model of the protection of works of art – which serves as an example for the whole world – by detailing the solutions that can be adapted to the Hungarian conditions.
Within the category of criminal offences committed with cultural goods as their object, a smaller study was especially focused on exploring the phenomenon and occurrence of the illegal trade of cultural goods – which is the crime that presents the most serious threat to cultural goods and is also closely linked to organised crime – and the related experiences gained during the application of the law. The reason for this study was that by examining several acts, we are able to obtain a general picture of this phenomenon; furthermore, this is the most serious problem that is also closely linked to organised crime. Since the Hungarian Criminal Code contains no statutory definition of 'illegal trade of works of art', based on the concept used as a starting point, the research focused on criminal procedures conducted for the following criminal offences: theft, robbery, dealing in stolen goods, misuse of cultural goods and budget fraud.
According to the study results, the importance of cultural goods and the gravity of the criminal offences committed against such properties are not sufficiently known in the practice of the investigative authorities of general jurisdiction – based on the statistical data provided. In the opinion of the specialised investigative authorities dealing with such cases, it would also be necessary to provide special training for and raise the awareness of investigative authorities of a general jurisdiction, but this is even more necessary in the case of persons working in civilian positions in these areas.
Unfortunately, from the low number of cases that came to the knowledge of the authorities, it cannot be clearly concluded that the illegal trade of works of art only occurs in a negligible number of cases in Hungary. Based on a series of high-profile cases and based on the criminal offences in which Hungary was involved as a transit country and in which the relevant procedures are continued in another country, a question arises as to the extent of latency in this field.
To obtain further data, in addition to the monitoring of legal trade, it would also be essential for fully understanding this phenomenon to perform the in-depth examination of the sale of stolen objects (and of objects obtained during illegal excavations) as well as to analyse this problem and its possible solutions.

Krisztina Farkas:

Law enforcement measures for the protection of cultural goods in Italy

The protection of cultural goods requires complex legal regulations and measures, which includes the approach of the law enforcement agencies. Italy developed such a complex and unique system in this field which can be considered to be one of its kind in the world. Thus, studying the Italian model is essential whenever a country endeavours to protect its cultural values more effectively.
The Italian system of organisations is based on three pillars embodied by the special activities of the Ministry in charge of cultural heritage and activities and of tourism, the Italian Police Headquarters in charge of the protection of cultural goods (TPC) and the Italian Finance Guard. In terms of policing, the activity of the TPC is outstanding: both its structure and operation are unique. The organisation does not only investigate criminal offences committed in relation cultural goods as the objects of crime, but it is equally active in trying to recover

missing cultural goods and cultural goods that have been illegally exported from Italy, mainly by managing the ‘database of illegally acquired cultural goods’ (LEONARDO), and in the field of prevention, education and providing information to the general public. The other law enforcement agency is the Finance Guard, whose jurisdiction mainly covers economic crimes but it also plays a role in the protection of cultural heritage.

The legal regulation of this area is basically divided between two areas of law – administrative law and criminal law – and two codes – the administrative code on the protection of cultural and natural resources and the criminal code. The administrative code also contains definitions of criminal offences. The criminal code provides indirect protection against the more serious forms of offensive behaviour, among the offences against property. However, the relevant provisions of criminal law are incoherent and contradictory, and therefore currently there are two bills aimed at the elimination of these shortcomings.

The research project also gives a brief description of a convention adopted under the auspices of the Council of Europe on 3 May 2017 – the first convention that specifically deals with a subject-matter in the field of criminal law – and places it within the system of previously adopted documents of international law.

Based on the research project, it can be stated that it is the activity of the TPC that offers useful experiences, including in relation to the structure and operation of the organisation. Based on the examination of the activities of this organisation, in addition to its law enforcement activity, its experiences gained during prevention, education and the provision of information to the general public can also serve as an example to the Hungarian system.