RESEARCH RESULTS – 2019
(Summaries of completed research)

CONTENT

A) RESEARCH COMMISSIONED BY THE INSTITUTE

Ádám Mészáros – Bernadett Csapucha:

Theoretical and practical questions on the statutory elements of obstructing contact with minors and child labour (Sections 209–210 of the Criminal Code)

The aim of the research was to review the theoretical and practical questions regarding statutory elements of criminalising the obstruction of contact with minors and child labour. Since it is not yet possible to talk about a proven law enforcement practice in relation to the statutory elements of child labour (a total of one offence has been recorded since 2013), this criminal offence could only be studied from a dogmatic point of view. With regard to obstructing contact with minors, there were 56 criminal documents available. These included final and binding sentences (30), decision terminating proceedings (19) and decisions by the investigating authorities rejecting the complaint (7) for the period between 1 July 2013 and 31 December 2017. Concerning the practice of imposing penalties, it can be stated that, according to the trial courts, the objectives of the punishment are achieved in a considerablet proportion of cases (60%) by the measures taken. Only in one case was the convicted offender sentenced to serve a concurrent sentence, including exclusion from participation in public affairs, and in four other cases the court imposed a suspended sentence. Other sanctions included community service, confinement and fines. As regards the measures applied, half of the final and binding sentences resulted in release on probation and admonitions were applied in three cases. With regard to the circle of perpetrators, it should be emphasised that, in all final and binding sentences, the mother was the perpetrator of the crime. In 90% of the final sentences on the victim's side, the father of the common minor, in addition to the minor themselves, of course, was the party entitled to contact. In the background of the decisions to terminate the proceedings and the decisions of the investigating authorities rejecting the complaint, the main reason is own fault, and the absence of a decision to settle contact, the court's decision in connection with the placement of a minor child, and the guardianship authority's lack of authority to impose a fine.

Ádám Mészáros:

Topical Issues of Liability under Criminal Law IV. Breaking the liability of guilt and underlying liability in criminal law

In its most general interpretation, the principle of guilt-based liability requires the perpetrator to be guilty to establish criminal liability for committing a crime. Under the principle of individual culpability, each of the perpetrators of the crime is to be punished according to his or her own guilt, regardless of the guilt of the other perpetrators. In criminal law, in accordance with the liability based on individual culpability, at least as a general rule, there can be no underlying or collective liability.

After reviewing the levels of interpretation of guilt, the research explores the limits of guilt-based liability. In doing so, it studies cases in which there may be a violation of the principle of guilt and an impairment or even a break in the requirement of guilt-based liability.
The analysis shows that there is no breach of the guilt principle:

a) additional liability,
b) vicarious liability,
c) a clause requiring a secondary (objective) condition of punishment,
d) the range of qualified cases of false accusation,
e) the ability to take action against the legal person, except where the natural person cannot be punished because of the pathological mental state of the perpetrator.

On the other hand, it breaks through the principle of culpable liability and, in fact, establishes objective liability in criminal law:

a) the range of cases under *actio libera in causa,*
b) prosecution for acts of drunkenness or intoxication resulting from own-fault,
c) the case of failure to provide assistance causing death.

Ádám Mészáros:

Foundations of criminal offences in Hungarian criminal law V. Out-of-fact items

The Special Part of the Criminal Code, when formulating certain offences, imposes conditions on criminal liability that are in fact not categorized as elements of facts (general statutory elements). For example, someone who induces someone else to commit suicide is only liable *if suicide is attempted or committed* by the other person; the offender is only charged with coercion *if no other offence is committed*. In other cases, circumstances that modulate liability cannot be classified among general statutory elements. For example, if the false accusation concerns a criminal offence, *the perpetrator of which is also threatened with life imprisonment by law* . A common feature of such circumstances is that although they are included in the statutory elements of the criminal offence (at its basic, qualified, hypothetically privileged level), they cannot be considered as elements of the general legal facts in the criminal sense. These could actually be called *"out-of-fact elements"*. Included in here are the substantive prerequisites for criminal liability (objective conditions for criminal liability), the subsidiarity clause and the so-called ‘qualifying circumstance' clause of other objective criteria (no privileged circumstance of a similar nature is currently included in the Criminal Code).
The majority of the research report is the study of the objective conditions of the criminal offence and, in the process, its terminology prefers the term “secondary condition for criminal liability”. According to the findings, the secondary (objective) condition for criminal liability is:

a) outside the concept of criminal offence,
b) not an element of the facts, even if it is regulated by law in the context of the statutory elements, but it is
c) the substantive condition for culpability, i.e.

d) an essential condition for criminal liability,
e) being a condition for culpability, it can only be interpreted in relation to the basic fact, not as a qualified case (through modulation of liability),
f) its objectivity is highly questionable as it cannot be independent of the offender's knowledge,
g) therefore, it does not result in objective criminal liability.

The assessment of the subsidiarity clause is determined by its impact. If it excludes formal accumulation with another offence (the set of offences), then the accumulation is only apparent by law and is in fact a statutory unit. This case can be called absolute subsidiarity (alternativity). In this case, alternativity is complete, and there can never be a formal accumulation of the sealed and other crimes. As long as the clause does not exclude formal accumulation with other crimes of the same or la less serious nature, this is a matter of relative subsidiarity. In this case, formal accumulation is excluded only if the other offence is more serious. However, if it is of the same severity or less serious, the formal accumulation is real between the two crimes.

The qualifying circumstance is a result based on the guilt requirement, so-called '*other objective criteria'* or other subjective criteria. The qualifying circumstances covered by other objective criteria cannot all be classified as elements of the facts. This makes it necessary to discuss them separately from the factual elements. Knowledge of the circumstance, or the possibility of the circumstance occurring, is a prerequisite for their criminal liability. The forms of guilt (willfulness/negligence) cannot actually be interpreted in these cases, but because of this 'minimum of consciousness', there can be no break in the responsibility based on guilt.

Renáta Garai:

Questions for the detection and investigation of domestic violence

Last year, delimitation, classification and accumulation issues of domestic violence and other crimes between relatives were studied in cases concluded with final and binding court rulings, while in 2019 complaint denials, terminations of investigations, and diversions (postponement of indictment / conditional suspension of prosecution) were also analysed on a nationwide full sample (171 cases that became final and binding in 2017).

Key findings of the research project:

- the investigating authority does not pay sufficient attention to the correct classification, so investigations are ordered into the underlying crime (typically bodily harm, harassment, etc.);
- the whole of the crime is considered to be private motion and subsidiary, although it is only true for the first paragraph; as a result unlawful victim information appears in the investigation file;
- the investigating authorities are mistaken about the essential characteristics of a private motion;
- in most cases, the grounds for refusals and terminations of investigations are unlawful because, while there is a private motion available, they refer to the 'absence of a private motion' in the event of a criminal offence that would otherwise be pursued *ex officio*;

- the conceptual assessment of regularity varies widely between individual counties of the country;
- initial documents, police reports and summary reports contradict the decisions concluding the proceedings;
- the law enforcement dilemmas are often based on misconceptions and past records/habits;
- the assessment of criminal offences related to domestic violence as accumulation (typically endangering a minor, harassment, invasion of privacy, sexual acts) is missing;
- the operational problems of the child protection signalling system are a major complicating factor.

Whatever the evolution of the future practice as a result of the new Act on Criminal Procedure, the Prosecutor's Office must pay particular attention to the work of the police and detect and report offences. The results obtained from the analysis of criminal records and the conclusions drawn from them can, in the long run and to a great extent, determine the national practice, not least the aim of unification, thus enabling all counties to follow the same lines of investigation of and indictments for domestic violence.

Eszter Sárik – Orsolya Bolyky:

Understanding the road leading to crime among adult recidivists

In 2019, the final phase of the three-year investigation took place.
In 2017, we conducted a pilot survey, in which we held interviews with 10 male convicts, all multiple recidivists, primarily to refine the questionnaire.
In 2018, a qualitative study was conducted to learn in detail about the life of 20 convicted persons, according to the above parameters. The life course analysis provided an opportunity to gain insight into the family background, educational "career" and professional development of those who become long-term offenders, which highlighted the shortcomings that characterise multiple recidivists. These disadvantages were analysed in the context of Maslow's hierarchy of needs.
In the final part of the research, we searched for resilient people and examined the nature and causes of resilience and coping. The previous research question was "reversed": we closely examined what qualities/abilities are exhibited by those who have suffered from similar disadvantages and deprivation yet stayed on their feet. We sought to present the life courses of people who grew up in orphanages but successfully integrated into society, despite their material and emotional deprivation and the dangers of hospitalisation and institutionalisation. Using the thinking and conceptual framework of Maslow's theory, our basic question was how, and by what factors, it can happen that, by jumping over the lower sections of the pyramid, the need to "acknowledge others" becomes the primary need, and middle-class values, or "success" within the legitimate framework, also become appealing. Based on their life stories, we found that resilience depends on a number of intra- and interpersonal factors, as supported by the literature data. Most important was a high intellect and motivation to learn, but it was far from synonymous with the intelligence (logical and linguistic skills) typically

measured by the intellectual school: it could be visual, movement-related or musical intelligence; however, intrapersonal and interpersonal skills were the most decisive. In addition to learning motivation and school success, which are partly based on intellectual advantages, it is also worth noting the deliberate absence from substance use and, as an interpersonal factor, the constant emotional and financial support of a mentor.

Szilveszter Póczik – Eszter Sárik:

PoMigra – Political motivated crime in the light of current migration flows – Retrospection to trends, researches, findings and practical experiences concerning the PoMigra-relevant research fields until today

Eight countries (Czech Republic, Belgium, Greece, Netherlands, Austria, Italy and Hungary) participate in the international research cooperation, which began in earnest in 2016. The purpose of the PoMigra project is to provide a scientific comparative study of migration and migration-related crime. In their country reports, the project participants report on the development of crimes committed by migrants arriving in their countries, and partly on other law enforcement and wider social experiences in the field. The focus of the research is on hate crimes in the field of *politically motivated crime.*

In 2017, we prepared and published the chapters summarising the three parts of the research separately, which were a statistical analysis of the relevant crimes according to the Hungarian Criminal Code, as well as the statistical presentation of immigration and immigration in Hungary and an analysis of the data.

The project's programme committee has identified the completion of an extensive media study as an additional task due by the end of the project. The final version of the three chapters was submitted on time.

In June 2018, at the request of the German, Federal Criminal Police Office (BKA), the project's programme committee extended the PoMigra project until 31 December 2019 and defined three new research tasks:

1) exploration and presentation of previous research findings on hate crimes against migrants and minorities based on an extensive literature review,
2) review and analytical processing of the migration concepts of each parliamentary political party, and
3) exploration and presentation on a country-by-country basis of migration-related charity NGOs.

The research was completed in 2019 and non-final versions of the national summary reports were completed, so a Hungarian report in English was also sent to the Programme Committee.

Ágnes Solt:

Criminological Investigation of the situation of women who killed their newborn baby II.

The research and its results of the same title, conducted in 2000, can be found in the monograph written by Judit Cseres, published by BM Publishing House. The reason that we are seeking answers to the important questions previously raised in a new study with the same title is basically due to the change in the examined populations and the social environment of perpetrators. Hence, the basic question presented by Judit Cseres, i.e. whether the criminogenic effects that force a girl or a woman to kill her newborn baby have changed as part of the historical social changes.

The number of neonatal homicide offences has fallen significantly, to about one-third, over the past twenty years. The primary reason for this is that our society has undergone important changes: a series of NGOs have emerged providing opportunities and real-world solutions for vulnerable mothers in the event of an unwanted pregnancy, without revealing their shameful secret. In order for these girls and women to be able to use their help, it was necessary to open up new information channels: with the spread of the Internet, previously unknown helpers, organisations, methods and practical guides became available to pregnant women in need of help.

The same trend was observed in the investigation and throughout the criminal proceedings that, as during the months of concealed pregnancy, blame is solely passed on to the female parent, thus absolving her environment, her family and social professionals and authorities from responsibility. It is also food for thought that the investigative practice in such cases simplifies the social problem affecting the whole family and ultimately resulting in a tragedy to the analysis of the direct circumstances of the act of killing.

Changes in age and marital status show that, in our society, the group that is mostly left behind in this situation has changed. It is no longer the teenage girl, but the woman who is the slave, or at most a tolerated person in a closed, taboo-and-love-filled family who is in the worst position. This change has occurred because the help that is already available is more accessible to independent women than to a family mum who is afraid of losing her child and is in constant need of caring for her children. As one of the main motives for mothers with children is the fear of losing their own children, we should review the judicial practice where, in cases of child abuse for years, the courts do not affect parental supervision rights, yet in these cases, the mother's parental authority over her living children is virtually automatically abolished, thereby severely traumatising innocent and vulnerable children.

Ildikó Ritter:

Tightening of sentencing practices in cases of drug trafficking

The research is based on a sample of nationwide supply-side drug-related crimes based on 2017 crime statistics. According to the results, the average imprisonment term per case was 4 years and 2 months. The shortest sentence is 5 months, the longest is 13 years; the standard deviation was 26 months, i.e. 2 years and 2 months. As a reference

system, we used the data set and results of our 2012 study on procedures investigating supply-side drug-related crime between 2007 and 2011. In this investigation, the average length of imprisonment per case was also 4 years and 2 months on average. In the sample, the shortest sentence is one year, the longest is ten years and the standard deviation was slightly lower than in the current study (23 months).
In the judgments included in this year's research, the material gravity of the offence and the criminal history and personality of the perpetrator also played a decisive role, as did the interpretation of the law by the authorities, which contributed to the highly differentiated practice of punishment. On the basis of all these, it can be stated that in the last 10 years the overall detention rate for drug trafficking has not tightened, but the pattern of detected drug crimes differs on a national level. On the one hand, because of the geographical, social and economic characteristics of specific counties, specific types of drug crime are widespread and, on the other hand, the investigating authorities detect supply-side drug offences of different types because of economic, human resources, or different law enforcement interests or purposes. This is accompanied by different interpretations of the law by the proceeding authorities, the working relationship between the prosecutor and the judge, and their knowledge and attitudes regarding the drug market and its players.
One of the disadvantages of the variety of penalties imposed may be that it jeopardises the unity of law and legal certainty. At the same time, there are additional benefits for both society and the legal system as a whole: case-law and the decisions of the Curia's legal unit "adapt" and shape the application of the law, both indirectly, and in the long term, influence legal thinking and legislation on the phenomenon. Overall, differentiated legal application serves as a necessary development of law adapted to social changes.

László Tibor Nagy:

Security issues at sporting events, with special attention to the preparations for the UEFA EURO 2020 European Football Championship

The research looked at current security issues at sporting events, with a particular focus on the 2020 European Football Championship, as well as the consultative visit to Hungary of the Council of Europe Standing Committee on Spectator Violence and Misbehaviour.
During the 2020 European Football Championship, four matches (expected to be played in front of full houses) will take place at the new Ferenc Puskás Stadium, opened on November 15 2019, in a facility suitable for hosting the largest sports and music events in Hungary. The presence, transport, location and operation of a very large number of supporters, often with opposite emotions, poses a serious security challenge for the organisers and the law enforcement agencies.
Security at sporting events has improved a lot in recent years as a result of changing legislative environments, infrastructural investments, technical improvements and, last but not least, the new security philosophy. By amending the Sports Act, the Criminal Code, the Police Act and the acts on misdemeamours and lower-level legislation, there was comprehensive regulation aimed at addressing previous shortcomings, within the

context of which the Hungarian Football Association has also established its security strategy in accordance with the Hungarian legislation in force and with FIFA and UEFA requirements. In the triad of safety-security-service, the new approach addresses the issues of stadium security, prevention, communication and the infrastructure conditions essential for the safety of people and property in an integrated system. As a result, the quality of organisation improved, the number of security incidents did not increase, and the degree of their severity decreased, despite the fact that the number of security personnel at sporting events was reduced by about a quarter.
However, in some areas, further development and reconsideration of the regulations seem appropriate. These include more effective and rational enforcement of bans, disqualifications and entry to sports events, reforming the three-level security rating of sports events, improving the functioning of spotters (police liaison officers), and more effective prevention of the illegal use of pyrotechnic articles.

József Kó:

Trends in international crime data

The study examines current trends in countries in different regions based on registered crime and available crime statistics. Based on the analysis of the data, it can be concluded that different tendencies prevail in countries and regions at different levels of economic development. Countries with developed economies (USA, Canada, Japan, most EU countries) are on a downward trend. In the US, we have seen declining crime figures since 1990. There is a similar trend in other developed countries, with some variation at the beginning of the decline, but most countries in this group now report declining crime rates. Developing countries are on the opposite trend (China, most African countries, South American and South-East Asian countries). Thus, there are currently two trends: a decline for developed industrial countries and an increase in developing countries. Data on property crimes and violent crimes can behave differently.

József Kó:

The relationship between inflation and property crime

Theories developed in economics can also be used to explain the causes and frequency of crime, especially property crime. The study examines the relationship between inflation and property crime, an important macroeconomic indicator. The first section presents the theoretical context of how price change affects the decisions and strategies of economic agents. The second part provides empirical proof of the relationship between the change in the frequency of property crimes and inflation using Hungarian statistical data.
After the analysis of the domestic data, the results of similar empirical studies in the international literature are presented. Both Hungarian and international results support the idea that there is a strong correlation between inflation and the frequency of property crimes. This means that the inflation rate can be used to predict future crime rates. Higher inflation will generate higher crime rates. On the other hand, crime prevention

policy can be supported by another economic measure. Reducing or maintaining inflation may reduce the frequency of property crimes.

Tünde A. Barabás:

Victimization and attitudes of fear: Empirical research among university students

The research, which examines students' past victimization, fear of crime and their opinions on crime prevention measures, was conducted among students at two higher education institutions: In Hungary with the participation of the students of the Faculty of Law Enforcement of the National University of Public Service, and in the United States with students from California Lutheran University (CLU). The questionnaire was primarily compiled on the basis of the questions of International Crime Victims Surveys (ICVS).

In the voluntary participation study, Hungarian students completed 128 questionnaires and Californians 62 questionnaires. Only a small minority of respondents reported previous cases of victimization and so we did not find it useful to analyse the questions in terms of victimization. Fear of crime has been examined primarily in relation to attitude issues.

Overall, the results of the study showed that American university students have more confidence in the authorities and significantly more satisfied with their university majors than Hungarian students. This kind of positive attitude is reinforced by the fact that they are less afraid to walk down the street in their residential neighbourhood after dark or to stay at home alone after dark. Compared to Hungarian respondents, they would not like to live in another – safer – neighbourhood. However, while examining their attitudes, it is clear that although they are less fearful of crime and have a stronger sense of subjective security, they nevertheless see certain issues of crime and punishment much more severely. As such, they tend to agree with the claim that "*more strict laws and coercive measures should be used to curb disorder"* than Hungarian students, and they tend to agree with the statement that *"perpetrators of violent crime should be sentenced to a very long prison sentence in the event of reoffending",* which also shows that they are more confident in the impact of regulation and punishment. This reflects, on the one hand, the degree of trust in the authorities, as legislative regulation cannot be interpreted without law enforcement, and is also a fear-reducing factor. In their minds, they are considered more punitive. This is also apparent, for example, from the questions relating to juvenile violent offenders and the general deterrent effect of punishment. American students significantly agree with the statement that *"juveniles who commit violent crimes should be punished in the same way as adults, including long-term imprisonment,"* and that *"fear of embarrassment is a major deterrent"*.

Overall, the research showed that, among college students, the more someone is worried in their environment, the less they believe in the police being able to cope with its crime-related tasks (strongest correlation indicator). Those who are more afraid are, to a lesser extent, also sceptical that, for example, a fence erected across borders and the reinforcement of borders will discourage illegal migration or that the state can protect them from terrorism. In addition, they do not trust the effectiveness of rehabilitation,

reintegration and "educational" programmes for offenders. Fear-based attitudes and mistrust tend to be more characteristic of Hungarian respondents than Americans, who are more optimistic. The exploration of the causes of these relationships is particularly important for the Hungarian education system and its development.

Tünde Barabás – György Virág – Ákos Szigeti:

Characteristics of and trends in crimes by women

To date, criminology has failed to establish a uniform, generally accepted theoretical framework to explain the low proportion of women among offenders. The Hungarian-language literature we consulted primarily attributes this phenomenon to the social role of women, while more recent English-language research projects have highlighted the different characteristics of crimes committed by men and by women. According to the evolutionary psychological approach in focus, while men's violent crime is the result of competition for reproduction, women are the ones most likely to refrain from these crimes in order to preserve their own reproductive capacity and protect their physical integrity. In addition to reviewing the literature, we studied official criminal statistics from Europe and Hungary and carried out a secondary analysis of a database of previous research on homicide. Our results confirm that

- the proportion of women is declining as criminal proceedings progress,
- women typically commit less serious fraud-related crimes, and
- they are barely involved in violent crime.

Among all crimes and violent crimes against persons, male perpetrators are more likely to have a criminal record and an affected state of consciousness. It should also be noted that the proportion of juvenile delinquents is higher among female offenders than among male offenders, and has increased significantly in recent years, particularly in violent criminal offences. The secondary analysis of the research database on homicides has somewhat reinforced the theory of evolutionary psychology's explanation for the differences between male and female crime based on the age-crime curve.

György Vókó:

Factors of effectiveness and legality in the European sanction enforcement, in particular in the fight against repeated offences

The research aimed to draw attention to the theoretical and practical importance of recognising the role of prison law that has changed in Hungary and across Europe. All of this is constantly being fulfilled on the basis of social will, practical needs and science being ready to process them, as well as increased human rights expectations. The study examines from a particular perspective whether this renewed activity has already produced a measurable impact in the overall fight against repeated offences and, if so, what the main directions are. In this, efficiency and legitimacy are complementary elements.

The research was based on the assumption that prison law which, under the rule of law, includes the regulation of all sanctions, including restrictions on criminal law, is an acknowledged and substantial part of the overall prosecution process.
In Europe and Hungary, crime is on a downward trend. However, in terms of the number of registered multiple and repeat or violent offenders, the decline is smaller than that of other repeat offenders. According to the data, offenders committing more serious crimes are more involved in the "criminal pipeline" than other offenders. That is, we need to find more effective methods to deal with them than before, which can continue to strengthen law enforcement.
Punishment has a dissuasive effect and legal and humane enforcement can contribute to reducing crime. The comprehensive analysis of the causes of criminality, and the search for effective tools and methods is a continuous task. Cooperation between science and practice is indispensable for progress.
The main mission of all criminal sciences (criminal law, procedural and enforcement law, criminology, etc.) is to respect people, also when it comes to protecting the victim, but even when imposing sanctions on offenders. In this context, there is a particular responsibility of prison jurisprudence, the theoretical fundamentals of which are intertwined with, but not identical to, the theories of substantive and procedural dogmatics.
The goal of reintegration includes, from motivational factors through graduality and progressivism, all programmes and activities that promote and support the effectiveness of reintegration into society, and which minimise or even eliminate the chances of reoffending.
Safeguarding the rights of persons subject to criminal and administrative prosecution while restoring legal equilibrium contributes to the reintegration into a law-abiding society.
The rule of law requires that other people are protected from perpetrators – since no one's conduct may interfere with the same freedom and rights of his or her fellow human beings – however, while penalising the criminal offences, it must comply with the guaranteed expectations for the protection of human rights and the requirement of legality.
Individual states take advantage of the opportunity to reward positive changes in the attitude of prisoners with relief from sanctions. Alternatives to imprisonment, such as traceability, electronic surveillance, parole and reduction of the confinement period, are increasingly gaining ground. However, there may be questions as to whether the enforcement rules are appropriate, how far away the sentence can be from the judgment handed down, and what impact this could have on imposing sentences. When examining these issues, it must be taken into account that the reduction of the penalty cannot result in a reduction in the deterrent effect of threatening with a sanction.

Anna Kiss:

Criminal procedure in theory and practice III.

The research, planned for several years, will analyse coercive measures in the context of the new Act on Criminal Procedure of 2019. There appears to be no real change in this part of the law: although some coercive measures have been given a different name, a

large part of the underlying rules remain the same. However, behind the apparent lack of change, there are new solutions, giving rise to content analysis, that do not always meet the criteria for a fair trial. On the one hand, the research points to these, and, on the other hand, in the part on *Coercive measures with judicial authorisation concerning personal freedom,* which is the first half of the final research study, by presenting the practice in Strasbourg through examples, it emphasises that old mistakes may be committed even on the basis of the new Act on Criminal Procedure.
The current year's final study in the research also looks at the connecting points that link criminal procedure to enforcement. Namely, the legislation on the enforcement of prison sentences is partly contained in the code of criminal procedure and, to a large extent, in the act on the enforcement of penalties.
Hence, it is an important research finding that one area of law cannot be investigated by itself, but we must always look at the regulatory system of other branches of law as well. Different laws interact. This is true of the Code on the Enforcement of Penalties and the Act on Criminal Procedure. However, according to the research, the most important connection point is the case law of Strasbourg. The decisions analysed show that the requirements for the conditions of detention and the granting of detainee rights in each country are not uniform, while the ECtHR seeks to create a so-called minimum level, taking into account all the circumstances of the case, the duration of the treatment subject to the complaint, its physical and mental effects and the sex and health of the victim.
The second part of the final study analyses the coercive measures affecting property, with particular emphasis on new legal institutions and new rules on old ones. For the latter, for example, new rules on asset recovery are being explored and, for the former, there are legal institutions for securing new types of assets, with well-known virtual assets behind them (bitcoin or digital/electronic payment instruments). The seizure of electronic money and the blocking of access to electronic money have also been made possible in the new Act on Criminal Procedure, so the research also covers these legal institutions.

Tünde Barabás – Anna Kiss:

The change in the role of the victim in the new legal institutions of the Act on Criminal Procedure

The research, planned for two years, studies the new legal institutions both from the point of view of criminology and from the legal aspect of criminal procedure. The criminological approach focused primarily on the changes in victim participation, especially the applicability of restorative tools in light of the provisions of the new Act on Criminal Procedure. In doing so, it took into account the findings of an earlier investigation by the Council of Europe European Commission for the Efficiency of Justice (CEPEJ); Directive 2012/29/EU laying down minimum standards for the rights, support and protection of victims of crime; and the replacement of Council Decision 2001/220/JEEC, and the decision of the Committee of Ministers of the Council of Europe, article 19(99) on mediation in criminal matters. This year, the criminal procedure review reviewed the new legal institutions for victims and analysed the new legislation for victims who are minors in detail. The research, by comparing the law,

concludes that the additional rights for minor victims are not specific to the new Act on Criminal Procedure; some of them are due to the creation of a children-friendly justice system and some to the 2012 EU directive, which we had to incorporate into the Act on Criminal Procedure by 2015.

B) RESEARCH COMMISSIONED BY THE PROSECUTOR'S OFFICES

B/1. Research initiated by the Prosecutor General's Office

Krisztina Farkas – Klára Kerezsi:

The international regulation of integrity tests, practical measures following integrity tests in light of investigative and judicial practice, and a comparative study of such experience with that in Hungary

In the field of combating corruption, new ways and solutions have emerged worldwide over recent decades. The integrity test is one of these solutions. In Hungary, the law enforcement procedure that complies with integrity testing is the so-called reliability test that now has a history of eight years. The process contributes directly and indirectly to the fight against corruption – primarily official corruption -, and legal guarantees established in the investigation "*has become Hungarian good practice", and its* effectiveness can be increased further by reviewing the legal framework.
The integrity test is a process typical of Central and Eastern Europe, which originates in the United States of America and has taken root in Anglo-Saxon territory. Few states use this type of corruption prevention tool. From a dogmatic point of view, this is an immature legal institution awaiting development by the legal science. It concerns two areas of law, law enforcement and criminal procedural law.
Following a conceptual framework based on corruption, the concept and purpose of integrity and the integrity test was studied. The research reviewed the reasons for the introduction of the Hungarian reliability test, the bases of the current regulation, the results of the investigations conducted by the Prosecutor General's Office in 2017 and 2018 and the problems and solutions related to the reliability investigation.
When examining foreign solutions, similarities and differences can be observed. There is broader experience in the Anglo-Saxon countries, where they have been applied since the early 1990s. The solutions of Central and Eastern Europe appeared in the early 2000s, so it is possible to evaluate their operation after almost one or two decades. Among the regulations, it is necessary to highlight the Romanian solution, which is famous for its success. It can be observed that enforcement falls within the competence of a specific law enforcement agency. Another common feature is that the testing body creates a simulated situation, in which the target person is exposed to a situation that may occur during his or her work, in which he or she can assess whether he or she is in breach of the law governing his or her work. However, there are significant differences in the detailed regulations.

Katalin Tilki:

Questions of detection and investigation of the crime of damaging the environment

The purpose of the project initiated by the Prosecutor General's Office was to provide an overview of the issues of detecting and investigating the crime of damaging the environment. It also asks why, in practice, complaints are rejected and investigations are terminated, and the difficulties and "pitfalls" in the course of investigations.
The research was based on criminal cases from 2011 to 2017, which were sent to us by the county prosecutors' offices based on specific criteria and case numbers. A total of 85 cases were reviewed.
The study presents statistical data on the subject, the current criminal law regulation of damaging the environment, prescriptive rules for circumstances hindering the procedure, and the results of empirical research conducted in 2019.
The jurisprudence shows that 79 percent of cases were closed by the prosecutor and 18 by the police. The complaint was rejected in 3 percent of the cases. In most cases, the investigation was terminated because the prosecutor's office considered that the suspect's conduct was no longer dangerous, or was barely dangerous to society, that it was unnecessary to impose the slightest punishment or another measure under the law, and admonition was applied; and there was a ground for exclusion of a criminal offence, i.e. a mistake.
The most frequent prosecutions concerned the unauthorised importation of medicinal products, the destruction of protected/ highly protected birds, the destruction of nesting sites and the performance of unauthorised activities (earthwork, soil transformation) on Natura 2000 sites. There have also been cases where specially protected fish were caught or unauthorised logging took place. In some cases, the investigation is hampered by the passage of time, which makes proof difficult, and the lack of adequate monitoring tests.
In these cases, it is crucial to clarify concepts, to have adequate knowledge of the background legislation and to appoint forensic experts and to obtain a professionally sound opinion.
Information on conservation and prevention is particularly important. Regular monitoring of national parks and periodic surveys of the number of specimens would help professionals immensely.

Katalin Tilki:

Analysis of animal cruelty cases concluded with final acquittal

The research, initiated by the Prosecutor General's Office, is intended to provide an overview of animal cruelty cases that have ended in acquittal, through the presentation and analysis of the jurisprudence. The research was based on criminal cases between 2015 and 2018 sent to us by the county prosecutor's offices based on specific criteria. A total of 14 cases were reviewed. The study presents statistical data on the subject, the existing criminal law regulation of animal cruelty, the essence of acquittal control, and the results of empirical research conducted in 2019.

Of the 14 cases on which the research was based, in seven cases the defendants were acquitted on the grounds of lack of criminal activity and in five cases on lack of evidence. In the remaining single cases, there was a ground for disqualification (ultimate necessity), or the criminal offence of animal cruelty was not committed by the defendants. The court of second instance overturned the sentence of the district court in four cases and ordered the court of first instance to conduct new proceedings; in one case the court of appeal overturned the sentence of the court of second instance and ordered new proceedings. The credibility of witnesses has been questioned more than once in these cases; there have been cases in which the error at the initial stage of the investigation could not be rectified; there were also cases in which it was found that the court's assessment and reasoning were incorrect, that it did not comply with the rules of logic and that it failed to fulfil its obligation to state the reasons completely.
In addition, questions were raised as to what conduct could be regarded as unjustified treatment, when the defendant's conduct falls within the scope of the system of administrative or criminal penalties, what exactly constitutes animal cruelty causing particular suffering, what constitutes causing particular suffering and when negligent treatment constitutes a misdemeanour of animal cruelty.
In summary, early detection and prevention are particularly important in these cases. The later the cases come to light, the more serious the consequences. The greatest difficulty is that objective evidence is difficult to obtain. In these types of cases, on-site inspection and the presence of an official veterinarian are of utmost importance. It is essential to take high-quality photographs of the scene and the condition of the animals, and to ensure that a member of the investigating authority accurately describes the facts found on the spot.

Szandra Windt – Petronella Deres:

Characteristics of human trafficking cases; a criminal, criminological and sociological evaluation of exploitation

In our research, we used several methods: in addition to the processing of international and domestic literature, we analysed the available international and domestic statistics and international instruments and organised a roundtable discussion; we also examined national documents from the prosecutor's office.
Researchers have a very difficult task in uncovering the characteristics and connections of human trafficking. Due to the high latency and the limited data available, it is difficult to paint the 'real' picture. Following the entry into force of Act C of 2012 on 1 July 2013, the new facts are more or less in line with international expectations, but have barely become "popular" in law enforcement practice, resulting in a *total* of 24 registered human trafficking cases between 2013 and 2017. However, if we expand the range of facts to be examined, including forced labour, pandering and the exploitation of child prostitution, we see a much higher value, so in this way the prevalence of this social phenomenon is already reflected in the numbers. Micro- and macro-sociological analysis of the causes behind the phenomenon of human trafficking was therefore necessary. The relevance of our research is provided in the October 2018 issue of Guideline no. KSB 3771/2018/5-I-NF.3889/2014/11 of the Prosecutor General's Office,

which covers, *inter alia*, the interpretation of exploitation and vulnerability with regard of human trafficking, and the separation of the criminal offence of pandering.
When requesting documents, Sections 192 and 193 of the Criminal Code on human trafficking and forced labour were identified, and the Prosecutor General's offices made available a total of 127 documents, of which 122 could be analysed, and five involved other crimes.
Among the human trafficking records we processed (85), six concerned the same case, which we received from both county and appellate prosecutors' offices. As such, we present 79 cases: most of them ended with rejection of the complaint or termination of investigations (25); only 16 sentences were issued. In 38 cases, the procedure is still *ongoing*: there were preparatory procedures, on which no indictment has been made, some foreign legal assistance requests, and in some other cases only interviews have taken place in Hungary in the framework of international investigative teams.
Only *two* of those resulting from trafficking had work as the purpose, while the other were for sexual exploitation. We also examined 37 documents containing forced labour. Of these, 12 were cases completed by a final and binding sentence, and 21 cases were closed by termination of the investigation (13) or dismissal of a complaint (8). In two cases, it was only an indictment, and in two cases the ruling was not final. Borsod-Abaúj-Zemplén county had the highest number of such cases: 12, including 10 from the Ózd District Prosecutor's Office, which is a very significant proportion and pinpoints a serious problem that requires further analysis.

Gabriella Kármán – Krisztina Farkas:

International cooperation in obtaining evidence

The research, launched in 2019 at the initiative of the Prosecutor General's Office, aims specifically to study in the framework of international criminal cooperation with regard to the procurement of evidence from other countries (countries of the European Union and those outside it) and the related results, using the literature and practical experience. The investigation paid particular attention to Directive 2014/41/EU of the European Parliament and Of The Council of 3 April 2014 regarding the European Investigation Order (EIO Directive) in criminal matters issued in criminal matters, which was adopted by the amended Hungarian Act CLXXX of 2012 on Criminal Cooperation with the Member States of the European Union. In view of the novelty of the legal institution, the Prosecutor General's Office has raised the need for the use and experience of its application and its operation and the need to know the characteristics of its procedures, in particular with regard to the expected benefits.
The sources and methods of the research were multilevel. The theoretical basis (I) was compiled by reviewing the legislative background and the relevant domestic and foreign literature. This is the basis of the empirical research (II): the subject matter of the investigation was the cases in which the Hungarian authority approached a foreign authority after 1 June 2017 for assistance. In order to investigate the usefulness of the responses received in the context of assistance, those cases where an indictment took place before 31 December 2018 were included in the investigation.
The Prosecutor General's Office also conducted an investigation in 2019 on the issuance and execution of European investigation orders with the primary objective of

reviewing the practice of the prosecution. The research at OKRI also examined other experiences with the use of the legal institution, such as the usability and actual use of evidence obtained from abroad.
Research on the subject so far has proved useful; various practical guides and studies reveal the basic problems, collect experiences and on the basis of them seek to provide practical solutions. Both the Summary Report of the Prosecutor General's Office and the joint note and guidance of Eurojust and the EJN are on this path. The initial practical experience of the legal institution is favourable. A study of EIOs issued by the Hungarian authorities shows that the EIO operates in accordance with the purpose of the Directive, and through the respect for deadlines and formalities laid down therein and mutual trust between the authorities and direct administration, the legal institution proves to be an effective means of obtaining evidence.

B/2. Research commissioned by the County Prosecutors' Offices

Ildikó Ritter:

Time series investigation of traffic offences committed in under the influence of alcohol in light of the regulations in Act IV of 1978 and the new Criminal Code

"A small change in behaviour of a lot of low-risk people is much more beneficial at a social level than having a small group of high-risk people showing a significant change in behaviour." This public health approach originates from Laurence Ross, who wrote it down in 1992 and called it the *"paradigm of change"*. The interpretation of the relationship between driving and alcohol consumption is also based on public health principles in many respects: it is the basis for evaluating the success and effectiveness of certain public safety strategies. The success of road safety measures and interventions is measured by the number of personal injuries and fatal accidents, which serve as indicators.
Ross' paradigm of change fits well with the domestic situation. The results of the current study indicate that in the past few years, the number of road traffic accidents caused under the influence of alcohol and resulting in personal injury or death in Hungary (as in Europe as a whole) has decreased, while there was no meaningful change in the number of registered alcoholics in the country calculated on the basis of the Jellinek formula. The number of personal injuries and fatal road accidents caused by alcoholic intoxication is relatively small compared to the misdemeanour of drunk driving on public road, and a significant decrease can be detected over the last 10 years. The number of cases of the misdemeanour of driving under the influence of alcohol has been slightly but steadily increasing since 2013, which can be linked to the statistical data movement resulting from how the phenomenon is controlled (crimininalisation). This is confirmed by the results of the international ETSC study, which shows that the number of roadside alcohol tests per 1000 people in Hungary is slightly increasing, while the number of drunk drivers identified during the inspections is decreasing. This again supports the conclusion drawn from the results of the ESRA1 study and the statistics of the Hungarian Central Statistical Office (KSH), namely that drivers on public roads are increasingly careful in Hungary, and in order to prevent accidents,

fewer and fewer of them risk driving under the influence of alcohol. So the Ross paradigm of "the impact of a small change in behaviour of a lot of low-risk people on effectiveness" is working. Current campaigns, road safety interventions and stricter controls, rules and penalties have had an impact on "many low-risk drivers", demonstrating statistically measurable effectiveness in terms of the efficiency of interventions. However, it should not be overlooked that there is a group of drivers who have not been influenced by these interventions: the group of regular alcohol consumers or alcoholic motorists. Based on the Ross paradigm, significant behavioural changes in a small group of high-risk people are far less beneficial, so we also see in our country that they are not targeted by campaigns and road safety interventions, and even the regulations affecting them have not changed substantially in the last two decades. However, they are the ones who are least affected by the strictness of the law and the penalties. Their dependency is stronger than the fear of the law and fear of punishment; in most cases they ignore whatever punishment they receive, such as temporary or permanent disqualification from driving. This in turn results in the authorities being unable to remove them from the ranks of motorists, which increases their road safety risk.
Criminal law and the criminal justice system alone cannot cope with the risks posed by addictive drivers. Hungarian road safety authorities still owe society a temporary exclusion of alcohol-dependent drivers from road traffic until they recover. This would require cooperation in a number of areas of expertise in addition to the available technical means.

Szilveszter Póczik – Orsolya Bolyky – Eszter Sárik:

Criminal practice in the courts on people-smuggling cases following the outbreak of the migration crisis

In our research, we analysed the case-law on the criminal offence of smuggling human beings following the migration crisis in 2015. All 76 sentences examined were anonymised, and in many cases they did not provide clear information about the offenders, so we could only infer that from what was stated in the statement of reasons in the court rulings. The overwhelming majority of perpetrators are young adult males, many of whom were single, and many provided for minor children or other family members. Regarding their nationality, we most often encountered Serbian, Romanian, Ukrainian and Slovakian offenders, who typically spoke Hungarian (as well), but ethnic Hungarians were also included in the sample. Members of the perpetrators' groups also include persons affected by migration, mainly Afghans, Turks and Arabs, who also have a satisfactory command of the language of the transit or host country and the language of the smuggled people.
The majority of the offenders had secondary qualifications, and some of them had tertiary education.
In the case-law, given the international nature of the crime, it was common to find in the sentence that the crime was committed by a member of a criminal organisation. First-time criminal offenders acting alone and their abettors were consistently subjected to mild penalties, typically suspended imprisonment. Despite the strict statutory provisions, defendants in a criminal organisation guilty of the crime of people-smuggling were also given relatively mild sentences (imprisonment of 3-4 years), which

was, in all cases, challenged by the prosecutor's office in the appeal. Foreign offenders have been expelled from Hungary for a period of at least four years. Hungarian offenders have generally been subject to significant amounts of fines and confiscations.
Overall, the migration crisis of 2015 and the increase in the penalty for people-smuggling basically failed to result in stricter punishment practices. Presumably, the captured and convicted offenders were typically not leaders at the top of criminal organisations or even smaller groups, but participants at a lower level of the hierarchy. The offending behaviours found in the judgments and the personal circumstances of the perpetrators themselves often testified to troubled fates and extremely difficult life situations, which were also taken into account by the court when imposing sentences. However, the judgments studied exhibit to a unified approach, while, at the same time, differentiated law enforcement practices were observed in the specific cases.

Judit Szabó – Bernadett Csapucha:

Law enforcement practice in relation to child pornography offences, with special regard to juvenile offenders

The fight against child pornography is becoming increasingly challenging, as technological advances have brought new ways of producing and disseminating such content, making it really hard for legal regulation and law enforcement measures to keep up. Hungarian criminal law has sanctioned a variety of offences involving pornographic images of minors since 1997, and the range has expanded since then to meet international legal requirements.
This kind of empirical research was carried out in Hungary more than 10 years ago, so it was justified to re-examine the facts of child pornography. The research was launched in 2019 at the initiative of the Heves County Prosecutor's Office with the aim of exposing the key characteristics of criminal proceedings and the underlying offences related to child pornography as well as to abuse involving forbidden pornographic recordings under the former Criminal Code, in particular regarding juvenile offenders. It was also an important objective to summarise the main trends and problems of law enforcement practice in relation to the crime of child pornography. The case study of the empirical research focused on criminal cases closed in 2016 or 2017 (n=178).
Among the results of the research, it should be highlighted that crimes committed by juvenile offenders differ significantly in general, both in terms of the motivational background and the manner in which they were committed compared to “classic crimes”. With regards to the sentencing practice, only a quarter of offenders were sentenced to non-suspended imprisonment; the rest were given suspended sentence, while juveniles were released on probation. Defendants who had also committed other, typically serious, sex crimes in addition to child pornography were usually sentenced to non-suspended prison terms.
Problems related to the application of the facts are generally linked to the rapid development of social networks and Internet communication, as well as the Internet habits of minors. The assessment of the offender’s consciousness, the age of the victim and the pornographic nature of the recordings may be difficult to assess in the course of the evidence phase, and there were also problems with the practice of ordering forensic science experts.

Renáta Garai:

Views on the felonies of sexual coercion and rape in the national practice, with special emphasis on the concepts of "sexual act" and "coercion"

The subject of the research was the perception of sexual coercion and rape as per Sections 196-197 of the Criminal Code, and the clarification of the relevant concepts, linking this to the practical application at national level, qualification, accumulation and delimitation issues, and other characteristics of criminal offences. The investigation covered cases that became final through a court decision between 1 January – 31 December 2017, and a total of 263 files were processed from all counties of Hungary.

According to the aggregate data, offenders in 84% of cases during the period under investigation were accused of rape, while sexual coercion accounted for 11% of the court rulings. In 2 percent of cases (6 cases), the accused committed a crime of both rape and sexual coercion, while 3 per cent (7 cases) resulted in the termination of criminal proceedings in court for other criminal offences.

Of the 263 defendants, 16 did not commit the offence alone, but rather as an joint offencer (in 5 cases sexual coercion, in others violence). However, this figure is not equal to the number of victims of sexual acts, because the defendants committed their crimes against a total of 326 people, 35 percent on a continuous basis.

The research highlights the problems with legal classification and the conditions causing difficulties of proof, while taking stock of typical accumulation crimes in Hungary, but also addressing the locations and modalities of the offences, sentencing practice and finally the characteristics of and the relationships between victims and perpetrators.

98 percent of *defendants* were male, mostly in the 26-50 age group, and two-thirds were actually sentenced to in on-suspended imprisonment by the court's final ruling.

16 percent of the *victims* were men or boys; 84 per cent were women or girls. The age of the victims showed that the accused mainly targeted the youngest and most vulnerable age group with their sexual acts: 35% of the victims were children under 12, 10% were between 12 and 14 years, and 20% between 14 and 18; that is, 65 percent of victims of sexual offences were minors at the time that the criminal offence was committed.

The relationship between the victim and the person accused of sexual offences is a deplorable fact: only 10 percent of them say that the attacker was completely unknown, meaning that in 90 percent of the cases the victim and the accused knew each other in some way. Nearly 40 percent of victims were sexually assaulted by their family members, while the same proportion was reported among acquaintances. In addition, and this may be a surprising figure, just as much danger to the victims came from a good friend of the family as from neighbours (6-6%).

Anna Kiss:

Expected impact of automotive developments (e.g. self-driving vehicles, safety systems, etc.) on traffic offences II.

The research was undertaken to process some international and domestic literature and, by analysing it and using the presentations of the two conferences organised by the researcher, to reflect further on what is said in them to highlight issues related to the development of artificial intelligence (AI), and the liability for accidents caused by autonomous vehicles.
The first question we need to ask is whether or not the law should regulate this at all, since the hypothesis here is that the number of traffic accidents will be greatly reduced with the spread of robotic cars.
If criminal law does not renounce the regulation of this liability issue, it must decide who to punish in the event of an accident. It cannot punish the robot itself, as criminal law only considers a conduct to be a criminal offence if it is culpable, that is, attributable to the perpetrator (meaning that it can only be a human behaviour), and therefore, it may mostly be considered vicarious liability in this case.
Another task will be to change the rules of the Highway Code when autonomous vehicles become the main actors in transport. Because robots only understand code, the legislation needs to be amended accordingly. One of the major areas of development for autonomous vehicles, according to the research, is precisely the ability of self-driving cars to recognise and understand traffic signs and road signs, that is, to translate the Highway Code into their own code. It is therefore necessary to replace traffic signs with electronic signs and messages.

Anna Kiss:

Incorporate of the ‘communication rule’ of the Act on Criminal Procedure into the criminal language of the prosecutor

The research concludes that the communication rule also appearing in its title is not specific to the new Act on Criminal Procedure but has already been incorporated into the legislation and was part of the old Act on Criminal Procedure due to the amendment to Act CLI of 2015 (Section 62/A of the old Act on Criminal Procedure). In essence, the new Act on Criminal Procedure adopted it (in Sections 74 (2) and (3).
The communications rule is incorporated in the Act on Criminal Procedure as of 1 November 2015, and requires law enforcement (including the court, the prosecutor’s office and the investigating authority) to make all reasonable effort when communicating with the person involved in the criminal proceedings in order to ensure that the person involved in the criminal proceedings understands what has been communicated to them and can communicate their position. To this end, the court, the prosecution service and the investigating authority must communicate in a simple and straightforward manner , take the status and personal characteristics of the person involved in the criminal proceedings into account and ensure that the person involved in the criminal proceedings understood what was said. If they did not, the communication must be explained.

Research hypothesis: despite the intentions of the Act on Criminal Procedure, participants in the proceedings continue to feel excluded from them. The research supported what was stated in the hypothesis. To prove this, it used methods from the science of narratology.

The enforcer appears to fulfil his obligation to provide information, as he is obliged by law, but in the world of everyday life, this is mostly a result of a lack of rights and obligations, and therefore individuals are often left uninformed; they do not understand much of the complicated official language. The reference to legal passages is still unclear and the information thus appears to be a system of intricate rules. Any stage of the criminal proceedings is characterized by the primacy of the technical terminology.

The first part of the research-based final study reviews the prosecution's decisions in criminal proceedings, analyses them in accordance with legal requirements, and then selects the indictment to see if the language of the prosecution is clear.

The study highlights, among other things, the following problems:

- the use of multiple possessive structures;
- the use of complex subordinate clauses, which makes the style expansive and affected and hinders understanding;
- use of foreign words,
- the use of the word 'illetve' (since it also means "or" and "and" and should, therefore, not be used in legal texts);
- omitting the article;
- incorrect use of the definite and indefinite pronouns;
- word repetitions (understanding is not disturbed);
- incorrect and inconsistent use of abbreviations;
- poor punctuation that interferes with understanding;
- incorrect use of the comma before the word "as";
- incorrect use of word pairs (understanding is not hindered): e.g. not only – but also, not only, but etc.;
- Misuse of 'who, what, which'.

The study published on the research specifically analyses the flaws that also interfere with understanding. It also states that, in accordance with the legal demand, the prosecutor's office must take into account the condition and personal characteristics of the person involved in the criminal proceedings. Because of the latter, the research also covers the examination of special treatment.

According to the closing findings of the research, it is not enough to state the requirements for public comprehensibility and individualisation in the Act on Criminal Procedure, because without the practical (psychological, narratological, linguistic, etc.) training of the law enforcer, the communication requirements will not be implemented.