RESEARCH RESULTS – 2023
(Summaries of completed research)

CONTENT

RESEARCH PROJECTS INITIATED BY THE INSTITUTE

László Tibor Nagy:

The criminal law and criminological examination of extortion

The research was the fourth and final stage of the analysis of violent offences against property by the National Institute of Criminology, following the study of vigilantism, plundering and robbery. During the research we tried to explore the criminal law-related and criminological aspects of extortion, the issues and problems of law enforcement and the possibilities of prophylaxis, and to draw appropriate professional conclusions that may be applied in practice. Within the comprehensive understanding of the phenomenon of extortion, evidentiary issues and those related to the qualification of the offence, as well as problems of law enforcement arising during criminal proceedings, were also explored.

First, the legal history of extortion, its legal development, its legislative context and its criminal statistics were examined, followed by an empirical study based on criminal records.

Extortion is the other violent crime against property in addition to robbery, which was already punishable under the Csemegi Code, but the criminal conduct did not require a result and included coercion, which was not separately sanctioned by the law. The Criminal Code of 1961 and the subsequent codes formulated the elements of extortion essentially in the same way, defining the result as damage. Changes have only been made for aggravated cases. The Criminal Code of 2012, however, provides for the pecuniary loss as a result of extortion, since, in addition to the loss of value of property, the victim may also lose an expected pecuniary advantage as a result of the crime.

The highest number of recorded extortion offences was in 2012 (1021), but since then there has been a significant decrease, with only 186 such offences recorded in 2022. However, it is essential to bear in mind that the number of counts of an extortion offence is the same as the number of the victims in the offence. In addition to traditional methods, electronic means of offence, such as mass extortion emails, are increasingly common, where the number of complainants and therefore that of the victims is limited. A special feature of extortion is the high number of offences involving an aggravating circumstance, a serious threat to life or limb or other equally serious threats, which have occurred at a rate of 36-47% over the last three years. However, latency is not negligible either, as victims are often afraid of threats, physical abuse or family and moral scandals. Of the offences defined in the Criminal Code, coercion by threat to act is the most predominant, the aim of which is mainly to obtain financial gain, but sometimes also motivated by revenge for a break-up or other injury.

Primarily for the prophylaxis of young people, it is important to stress that sending intimate photos and videos, even to friends, has a very serious risk, which makes us easily open to blackmail later on, and who will receive such videos is unpredictable.

György Virág – Judit Szabó:

Evidentiary problems in sexual violence cases in the criminal procedure prior to indictment

According to international figures, a high proportion of prosecutions for sexual offences are dropped and only a small proportion of cases that go to prosecution end in convictions. Although statistical data show that the situation in Hungary is somewhat better in terms of the success rate of prosecutions, the evidentiary difficulties arising from the nature of sexual

offences and the potential distorting effects of certain socio-psychological factors arising from the social context of sexual offences are also existing problems in Hungary. The aim of this research was to explore the evidentiary difficulties that lead to some of the prosecutions for sexual violence not going to indictment, and more generally the problems that investigators and prosecutors regularly face in such criminal proceedings. Due to the complexity of the issues to be investigated, the research was based on a complex methodology. In order to become familiar with and understand better the problems that arise in the process prior to indictment, we have reviewed the following data, also using data from our research on sexual offences in previous years:

- domestic statistical data on registered offences of sexual violence;
- the prevalence and latency of sexual violence,
- attrition in the course of criminal proceedings that have been initiated,
- unsubstantiated denunciations and false accusations,
- evidentiary questions and difficulties,
- questioning of the victim witness,
- difficulties in interviewing child victims, and
- key data and findings from the literature on the difficulties of expert evidence; and
- we have summarised the quantitative and qualitative results of our previous and current case studies, and
- the results and main findings of the focus group interview taken place with investigators and prosecutors.

Based on the knowledge gained from the research and summarised in the detailed research report, we would like to highlight the following conclusions.

1) In more than *one third of the cases* examined (all cases of sexual violence that did not reach the prosecution stage in 2021 and 2022 due to dismissal, termination or suspension of the complaint), *a ground for total exemption from criminal responsibility* (mainly age of childhood), in almost *one third* of the cases, *the absence of a charge*, and *in one fifth of the* cases, *death or statute of limitations* led to the proceedings being concluded at the investigation stage. It was only in *a very small number* of cases (only four cases, 2.3%) that the reason for the proceedings not reaching an indictment was the *lack of evidence*. This insignificant rate would suggest that there are few evidentiary problems in these cases. Since almost all the literature and practical experience indicate the opposite, it needs to be explained what causes the discrepancy between statistics and practical experience, and '*where'* cases are lost, where the commission of the crime or the fact that the suspect committed the crime cannot be established.
2) In cases where the evidence is typically weak, *expert opinions*, especially those of forensic psychiatrists and psychologists, are particularly important. The shortage of experts is therefore a major problem, and their workload often means that opinions are issued slowly. In order to obtain evidence, it is important to involve the expert early and to provide an expert opinion in a timely manner. On the one hand, it is important that the authority formulates appropriate questions in its decision to appoint an expert, which are in line with the expert's competence and, on the other hand, that the expert's opinion does not go beyond the limits of their competence.
3) An enforcement problem with criminal complaints is that the investigating authorities often require a statement from the victim on whether they want to make a criminal complaint, even when the victim personally makes a complaint, which can easily lead to the case being dropped. It is our understanding that if the victim reports the crime that they have suffered in person to the investigating authority within the time limit, their statement shall be considered an irrevocable criminal complaint and they do not need to be requested to make such a complaint.
4) During the investigation of these cases, a number of circumstances and problems arise that require special knowledge, skills and abilities, the lack of which may complicate or mislead the investigation of the case. This knowledge, in addition to having a significant impact on

the cooperation of victims and the success of evidence in general, can have an important impact on the situation of victims, their difficulties and the secondary victimisation of victims during criminal proceedings. The difficulty of an effective response to sexual violence by the criminal justice system and the adequate treatment of victims is a systemic problem worldwide. Providing high quality, up-to-date, experience-based *training and knowledge transfer*, accessible to the professionals concerned, is an essential element in solving the problem and reducing the difficulties. Training alone is obviously not a panacea, but research shows that it can be an effective way of improving the system. The relevant data and findings of the international literature were also agreed with by the legal practitioners we interviewed during the research, expressing the increasing need for initial and ongoing training that supports practical work.

Ágnes Solt:

Child victims, detection difficulties, home environment and detection rates in domestic violence

After reviewing and analysing the entire criminal case file of child endangerment cases ended with final judgments between 2015 and 2020, we hypothesised that those living in segregated housing or isolated circumstances are more likely to have latency in domestic violence, lasting several years before child abuse comes to the attention of the authorities. Latency is, by definition, much higher in the criminal justice system than in the child protection system.

In this research, by studying 76 investigative, prosecutorial and judicial files on cases of child endangerment closed between 2019 and 2022, we hoped to find cases among those that ended in dismissal of charges, termination of the investigation or termination of proceedings that are in some characteristics more similar to cases that remain latent than cases that end in final conviction. Conclusions were drawn on child protection and criminal procedure.

For the purposes of this paper, by focusing on criminal procedure, we will summarise the operational dysfunctions or deficiencies that lead to a decrease in the willingness to report, thus increasing the degree of latency.

The willingness to report depends primarily on the assumptions of the potential reporter about the effectiveness of the investigating authority and the criminal justice system, provided that they are more or less informed about the proceedings.

1. Hearing

Even if the hearing is professional, it is depressing for the witness. During the proceedings, the hearing of the injured witness may be lenient, but this is merely an option, not an obligation. While the application of special treatment requires a detailed justification from the judge and may be grounds for the defence to contest, failure to do so does not necessarily entail a reprimand. For all these reasons, the use of special treatment is limited in practice, despite the fact that ensuring the psychological safety of the witness would greatly facilitate the applicability of the testimony and thus the evidence.

2. Failure to take child protection documents into account

The study of the documents revealed a striking practice whereby the extremely informative child protection and guardianship documents obtained and available in cases of child endangerment are little or not used at all in the evidential proceedings, and therefore in many cases conviction does not take place due to lack of the necessary support.

3. Opposition by the authorities
    a) The police are typically reluctant to prosecute cases of domestic violence and child endangerment if they involve violence within the family. This may be because it is often more difficult to obtain evidence in such cases.

b) The effectiveness of prosecution is an important indicator of the work of the prosecution service. If the charges are not well established and the proceedings do not end in a final conviction, this can be interpreted in practice as a criticism of the prosecutor's work. One of the lessons learned from the discussions and workshops with members of the investigating authority and prosecutors was that in cases that are difficult to prove because of their nature, such as domestic violence cases, the prosecutor, even if they are convinced that the crime has been proved, will only prosecute after several investigative acts and pieces of evidence, fearing that the court may rule otherwise.

Ildikó Ritter:

National characteristics of operational intelligence on illicit substances

The aim of the study was to explore the characteristics of operational intelligence on the import of illicit substances into the country and the impact of the legislative changes of 2017 on the pattern of official detections, and to compare it with the results of a study conducted on a similar sample from ten years earlier (2013). The study was conducted using documentary analysis and semi-structured sociological interviews with professionals.

In previous years, our research in this area on the phenomenon of drug detection indicated that the number of operational police detections related to supply-side drug offences, whether or not performed by covert means, had decreased very sharply, but we did not investigate the reasons for this. Although police experts in the field of drug detection mentioned the effects of the legislative changes as a reason years ago, the results of the present research refute this argument and the hypothesis of the research, which also interpreted the decrease in the number of operational detections of offences related to the importation of illicit drugs into the country as an effect of the legislative changes. Basically, the reorganisation of the intelligence structure and the pattern of detections that followed the 2012 reorganisation of the central investigation authorities of the Police resulted in a sharp decline in the number of operational detections, which is also reflected in the research results. The NTCA's (National Tax and Customs Administration of Hungary) activities have also clearly become the dominant force in the detection of import and supply-side illicit drug offences and drug-related crimes. A typical detection pattern is that cases are 'brought in' by the NTCA, meaning that, following its own detection, cases involving significant or particularly significant quantities of illicit substances are brought to the central investigation authorities, where data collection or even detection using covert means continues.

The research also found that the geomorphology of import detection activity has also changed: over the past 10 years, import drug offences detected by the authorities have shifted from the north-west to the south-west of the country. And in terms of market roles, between 2013 and 2023, the share of traditional couriers and micro and small entrepreneurs decreased, while that of consumers and mules increased.

Katalin Tilki:

The Hungarian practice of judging the offences of damage to nature (Section 242 of the Criminal Code) based on the evaluation of the implementation of the EU Directive on the protection of the environment through criminal law [SWD(2020) 260 final]

The aim of the research is to provide an overview of the penalisation practice of the offences of damage to nature. The analysis is based on the key points of Directive 2008/99/EC on the protection of the environment through criminal law and the evaluation of the implementation of the Directive [SWD(2020) 260 final].

The study presents the results of empirical research conducted in 2022-2023. The investigation was based on the criminal cases in which final decisions were made, as provided by the county prosecutors' offices, between 2015 and 2021. A total of 123 cases were included in the sample.

Based on the cases, it can be concluded that the complaints were generally filed by the county tax and customs directorate of the NTCA, the director of the national park directorate and the police for the illegal importation and destruction of highly protected/protected animals and plants, as well as for the collection of protected animals and plants and for shooting protected or highly protected animals.

The most common offence was unlawfully obtaining and destroying a specimen of a highly protected living organism. Typically, this has been done by killing ground squirrels, shooting and taking brown bears, trapping butterflies, shooting little owls and white storks, illegally importing specimens of living organisms listed in Annexes A and B of Regulation (EC) No 338/97, illegally importing protected plants and birds, and keeping and killing protected animals.

The court generally considered the accused's clean criminal record and confession as mitigating circumstances. Aggravating circumstances usually included plurality of offences, co-perpetration and criminal record.

The prosecution mostly proposed suspended imprisonment and a fine, and in the minority of cases, it proposed a lighter sanction or measure.

In the final judgments, the court imposed suspended imprisonment, fines and community service work. The suspended imprisonments ranged from 1 to 2 years and from 7 months to 1 year. The judges rarely imposed enforceable imprisonment, mostly in cases of plurality of offences.

Damage to nature is usually established in conjunction with the misdemeanour of theft, the misdemeanour of breaching the obligation related to the keeping of dangerous animals and the offence of damaging the natural environment.

Circumstances that make it difficult to prove beyond reasonable doubt the offence of damaging the natural environment include the difficulty of reconstructing the state of an area before the damage occurred, the fact that expert opinions are often based on estimates, the lack of up-to-date data in the biotic database of national parks and, in some cases, the difficulty of identifying the object of the offence, i.e. the individual.

Proposals:

- The development of a methodological guide to assist in the investigation of offences against the natural environment, which would specify in detail the procedure for investigating these offences. This could be developed by a dedicated working group consisting of competent professionals (investigators, prosecutors, judges, researchers).
- First responders and professionals participating in the criminal proceedings need to be properly trained to acquire specific expertise.

– Adopting good practices, such as paying the conservation value of a highly protected/protected animal; taking into account factors other than the conservation value of the specimens when imposing penalties; increasing the conservation value of highly protected/protected organisms in monetary terms.

Tünde A. Barabás:

Criminology in Hungary: development and opportunities

The aim of the research is to examine the current state of criminology in Hungary and to identify the directions that are key issues for future development.

Crime is a constant, unchanging feature of the evolution of society, and its forms are constantly adapting to changing circumstances as society evolves. The task of criminology is to understand these changes, to identify the root causes and to develop the means of the state and society for prevention, thus helping the work of the police and strengthening public safety. Theoretical criminology includes all the basic concepts and knowledge that make up the overall knowledge on crime, whereas applied criminology is concerned with the research that underpins the theories, the concrete institutional proposals and the due diligence of the operation of crime control. According to *Dénes Szabó*, the function of criminology (and of the administration of justice) is universal, and is basically founded on two strands. The first is the collection, accumulation and development of knowledge, and the second is to guarantee the effective exercise of freedom and responsibility by those concerned, the potential victims and the perpetrators, i.e. members of society. The latter is in fact prevention based on scientific knowledge, which in practice is a routine activity of law enforcement, but which, on the whole, based on a coherent concept of crime prevention, serves to protect of the members of society and the interests of the community. Each of the main strands of applied criminology – such as crime prevention, strengthening victim-centred approaches, examining fear of crime, and developing a re-socialisation and reintegration-oriented sanctions system – can have the potential to reduce crime in the long term, while in they can, in the shorter term, directly support the work of law enforcement. However, the results of research not only support the work of legislators and law enforcement, but the measures based on them can also have an impact on public satisfaction and reassurance.

The objects of study in applied criminology are not set in stone because, just like the world and science, some forms of crime are constantly changing, 'evolving', adapting to new challenges and breaking through the security shields of even the most secure systems. Today, this is the case with cybercrime, for the investigation and prevention of which cybercriminology has emerged as a separate sub-discipline. Closely linked to the darknet and thus to the financing of organised crime and terrorism is the examination of the use of cryptocurrencies and their links to crime. New forms of crime, including the prevention of and liability for accidents caused by self-driving cars, which are emerging with the development of artificial intelligence, must be addressed now. A similarly new field is the young but rapidly developing 'green criminology', which studies criminal phenomena that affect the living world of our planet, nature.

This illustrates the multidisciplinary character of criminology and the extent to which researchers draw on new knowledge from other disciplines in the study of certain criminal phenomena, which requires continuous development and learning on their part.

Petronella Deres:

The domestic and international perception of armed crime, with particular reference to the phenomenon of *knife crime*

The research provides a picture of the characteristics of the so-called *knife-crime* phenomenon, beyond the Hungarian characterisation of the 'armed' classification, with a special focus on the international, mainly British, experience.

Armed offences are very widely used as an aggravating circumstance in the special part of the Criminal Code, but the legislator also regulates them in the general part (in the case of justifiable defence).

Judicial practice and the provisions of individual laws are the guiding principles as to which weapons are considered to be capable of taking life and in what way these weapons must be used (e.g. weapons that are particularly dangerous to public safety, or that are typically used for the purpose of killing, weapons that increase the force or impact of a blow, chained weights and other substances). The Curia held that armed robbery cannot be established in the case of tools that are not typically deadly weapons, but may only result in killing in the case of unfortunate coincidences.

Overall, it can be concluded that the Criminal Code has created a framework which can be 'filled in' on the basis of the case law and which can be interpreted clearly on the basis of the results of criminal statistics.

The research presents the current solutions and perspectives of British legislation and practice on *knife-crime*-related offences, with a special focus on the possibilities and good practices for prosecution. *Knife-crime* refers to offences involving knives and other bladed or sharp objects. Injuries and deaths caused by such easily concealable 'sharp objects' are particularly common in the 15-24 age group in northern and western European countries. Such objects are also the favourite weapons of so-called *lone-wolf* attackers, which are also a special focus of the authorities (Counter Terrorism Centre) in Hungary.

The increase in offences related to *knife crime* is influenced by a number of social and economic factors (e.g. religious/political extremism, deviances, migration, economic crisis, gang crime), which the available new technologies alone cannot address, but to which they can contribute significantly (e.g. infrared technology, facial recognition systems and software platforms combining them).

The potential of *knife-crime*-related 'predictive police activities' (using computer algorithms and statistical data to help allocate resources) is still untapped. The use of artificial intelligence by the police – for example to identify patterns in statistics – can help them to target resources where they are most needed and make better-informed decisions about specific training and crime prevention in this area.

József Kó:

Methodological problems of file processing

In the framework of the research, methodological problems encountered in the processing of files were examined. The first and most important question is what kind of research we want to conduct. Two broad categories of methods are used: quantitative and qualitative approaches. The paper begins by briefly outlining the main features of the two methods and the main elements of the controversy among practitioners about them. In this 'paradigm war', representatives of different epistemological and ontological positions argued for one or the other approach to research, mainly revolving around the issue of validity and reliability. In conclusion, the fundamental differences of opinion are irreversible and still persist, but a

consensual ‘peace’ has finally been reached. The task of researchers is not to argue about the philosophical nature of the paradigms behind the methods, but to use means that lead to understanding.

One of the key findings of the research is that the most appropriate means must be assigned to the objectives. Therefore, the research objectives must determine the method used, not the methods to which the objectives are assigned. It is not a question of whether qualitative evidence is better than quantitative evidence or vice versa, but of which method can achieve the desired objectives.

In the second part of the paper, the methodological problems encountered in research and possible solutions are discussed. A key issue in research is sample selection. Sample selection errors can call into question the validity of research results, so we look in detail at the problems that arise. The problems most commonly encountered in selecting the sampling frame, determining the sample size, interpreting the selection method and how the results are analysed, illustrated by practical examples of how these problems occur and how they can be solved and managed. Tables with specific values illustrate the determination of the appropriate sample size.

The aim of this research is to provide a guide that can be followed in the design and implementation of file research to produce truly reliable and usable results.

Ágnes Solt:

Longitudinal study of criminals sentenced to life imprisonment without parole 2011–2023

In March 2011, initial discussions took place between OKRI (National Institute of Criminology) and BVOP (Hungarian Prison Service Headquarters) staff on the researchers’ plans for a long-term, 12-year study focusing on those who had been sentenced to life imprisonment without parole. As a result, the researchers conducted in-depth interviews with prisoners serving actual life terms (hereafter: LWOP) for 1-3 hours, 3-4 times a year for ten years.

The aim of the research was to raise questions about the institution of LWOP and to show how it changes and what effects it has on the guilty, outcast person who is imprisoned for decades.

A longitudinal study, like a motion picture, reveals a much more nuanced reality: a chain and complex network of causes and effects. Both the situation and the person are constantly evolving. The way they think about themselves, the way they feel about the crime they committed, the way they view their punishment, the way they see the world and their role in it can all change radically over the years. Meanwhile, the artificially inflexible, security-oriented system that surrounds them does not respond to these changes.

The sentencing practice show that the most severe type of life imprisonment, which excludes the possibility of parole, is often imposed because the offender does not admit during the proceedings that they committed a serious crime. However, it often happens that, after years or decades of penance, the convicted person realises the gravity of what they had done, confesses and actually regrets it. But by then it is too late: there is no way of changing the verdict.

Self-assessment among LWOP-prisoners was initiated in a few cases where the personality of the inmates and the conditions of their placement could provide a basis for it. However, if the conditions are not present, namely the prisoner’s personality structure and/or the prison environment is not conducive to the prisoners facing themselves and their actions, self-reconstruction cannot start. If toxic stress, which may result from the imprisonment and the treatment, is chronic or prolonged, the function that activates survival mechanisms becomes developed, but self-regulation remains undeveloped. This leads to maladaptive coping and the development of personality pathologies. In this way, prison contributes to the process by which the prisoner is irreversibly deprived of their humanity and then it maintains this state.

However, if the conditions – i.e. the prison system – allow the prisoner to look inside themselves, to introspect, then they can step on a path of personal development and responsibility, of self-improvement, which can lead to them becoming more or less peaceful, which can reduce or even eliminate the threat they present to society.

Ildikó Ritter:

Domestic characteristics of online drug trafficking

In the first year (2022), we used content analysis to investigate the evolution of drug trafficking on darknet marketplaces, and this year we looked at known online offences involving drugs and other illicit substances and the characteristics of the perpetrators. The domestic online drug trade is characterised by a buoyant demand market. It is mainly online purchases by consumers that are detected by the authorities, and most of these are occasional purchases, with only a few transactions at micro or retail trade level being detected. While drug micro- and retail trade has moved from a 'hidden transactional environment' to a partially visible platform for the authorities, the complex transactional pattern – with both legal and illegal elements – has not only not made detection, especially effective detection, easier, but has significantly reduced it due to the evidentiary difficulties. The central drug detection unit(s) of the police are increasingly seldom 'case managers', i.e. they rarely initiate own detection using covert means; while their secondary detection activities based on NTCA (National Tax and Customs Administration of Hungary) detection are increasing.

The results of the research indicate that the criminal law legislation, in an attempt to control the market for illicit drugs of various types, in order to implement the international conventions, has created a legal environment where it is a professional question to define what is a drug, what is a medicine, what is a new psychoactive substance, and what is a precursor.

The inclusion of the interpretative frameworks of other scientific fields and different branches of law in the classification not only poses a new challenge to domestic law enforcement and jurisprudence, but also requires specialised expertise from legal practitioners.

Beyond the legislative 'imperative' of international obligations, it would be necessary to harmonise not only the conceptual and interpretative framework for illicit substances, but also the relevant provisions, including the possible criminal conducts.

The growing use of the internet and other digital means of communication is making demand-side drug trafficking much easier and simpler. Although this gives consumers less exposure to the 'traditional' criminal subculture, which also eliminates the criminogenicity of the phenomenon that causes many of its collateral problems, their involvement in the operations of darknet marketplaces in effect merely diverts them to another criminal platform. The indirect effects of this are already predictable, but will only become clearly visible years later.

József Kó:

Age characteristics of offenders for each type of crime

The finding that participation in crime declines with age is one of the oldest and most widely accepted principles in criminology. There is no significant difference between researchers' views on the initial stage: crime tends to peak in late adolescence or early adulthood and then declines with age. However, while the reduction in crime can be seen as a general trend, the distribution parameters of the crime-age distribution over time or location can be quite different.

Hirschi and Gottfredson challenged the traditional sociological view of age-crime. They pointed out that the age distribution of crime cannot be explained by any single variable or

combination of variables currently available to criminology. The propensity to commit crimes peaks in the mid to late teens and then gradually declines with age. Furthermore, this distribution is typical of the age-crime relationship, regardless of gender, race, country, time or offence. From this they established the invariance theorem of age and crime.

The most recent (2022) national data refute the invariance of age and crime data, whether we look at absolute frequencies or their distribution relative to population proportions. We can see that the graphs of age distributions have changed significantly. The decrease in crime at older ages is a common feature of all crimes, but not to the same extent for each crime.

The results of the analyses are quite convincing. They confirm that significant social changes have taken place in recent decades. The impact of these changes can be seen in the downward trend in crime and changes in the age of offenders. The analysis of the data clearly demonstrates that the invariance between crime and the age of offenders is not a tenable position and that there is a strong case for sociological and psychological theories in criminological research. However, it is unlikely that any one theory can explain crime as a whole convincingly. The age of offenders varies so significantly across offences that global explanations are not possible.

RESEARCH PROJECTS INITIATED BY THE PROSECUTOR'S OFFICES

Gabriella Kármán:

Cases of the burden of proof on the accused: practical experience of the application of the reversed burden of proof in the context of confiscation of property [Section 74/A (1) and (2) of the Criminal Code]

The possibility to apply the reversed burden of proof in criminal proceedings is exceptional; limitation of the guarantee principles of burden of proof and presumption of innocence may only be applied in duly justified cases provided by law. In line with international and European legislation, the possibilities of so-called 'extended confiscation of property' were introduced in the Hungarian Criminal Code in October 2016 in order to combat serious and organised crime effectively.

The evolution of the rules on confiscation of property is closely linked to the fact that the recovery of the proceeds of crime has become a strategic aspect of criminal proceedings in recent decades. The deprivation of criminal assets is not only a means of compensating victims; depriving offenders, in particular criminal organisations, of the proceeds of crime, is also a fundamental measure in crime prevention.

Act C of 2012 on the Criminal Code defines two cases of facilitation of proof in relation to confiscation of property: paragraph (1) of Section 74/A regulates the classic case of extended confiscation of property, the applicability of which is based on the presumption linked to the date of acquisition, and paragraph (2) contains the possibility of confiscation of property based on the presumption of disproportionate increase of assets. In these cases, the authorities must also prove the date of acquisition, or, in the case of paragraph (2), the particular disproportionality between the property and the income of the offender and, if this is successful, the property of the offender shell be subject to confiscation. The legal origin of the property shall be proved by the offender against the presumption.

The research focused on the cases where the burden of proof was on the accused. In addition to the analysis of the conditions provided for in the legislation, an empirical study was carried out to explore practical experiences. The number and nature of the cases examined demonstrate

that, although there is a strong interest in the use of extended confiscation of property – which can be ordered on offenders committing organised crime, or offences of high importance, generating property – the instrument, while facilitating of gathering evidence to the authorities, has been relatively little used. The effective proof of reality on the part of the accused is even rarer, as opposed to a presumption of disproportionate accumulation of property.

The conditions for the applicability of extended confiscation of property are also under constant review by the European Union with a view to ensuring its effectiveness and the necessary guarantees, and which are proposed to be included in the new Proposal for a Directive on asset recovery and confiscation [COM(2022) 245 final].

Szandra Windt:

The practice of the grounds for exclusion of criminal liability under Section 19 of the (Hungarian) Criminal Code in connection with unlawful acts committed by victims of trafficking in human beings and forced labour under coercion and threat

The complex phenomenon of trafficking in human beings is usually presented in terms of exploitation for the purposes of sexual abuse, forced labour and other purposes. Little is known about the other purposes, regarding which the international literature mentions exploitation of criminal activities, forced begging and organ trafficking, among others. Exploitation for other purposes was also included in EU Directive 2011/36, which included, in the official translation, *exploitation of criminal activities*. Based on Act V of 2020, the definition of trafficking in human beings and forced labour has changed significantly since 1 July 2020; *exploitation for the purpose of obtaining a regular benefit* has been included as an offence. In the course of the research, in addition to studying the international literature and practices, we requested documents and, in order to be practice-oriented, we also conductedfocus group discussions with practitioners on this topic. For our research, we selected and requested 62 cases, 59 of which were submitted on paper or electronically. Of the processed documents, it was only possible in *14* cases to establish that the offender was a victim of human trafficking; in the five given cases, this was only ‘suspected’, and no detailed information was available. In 39 cases, the relevant crime was not related to any victim of human trafficking at all. Of the 17 perpetrators in the 14 files, *nine* were victims of labour exploitation and *eight* were victims of sexual exploitation. In terms of gender, nine men and eight women were found to have been forced/coerced to commit an offence. In line with international trends, these cases included offences against property (typically theft), drug abuse and coercion to commit crimes related to human trafficking.

While a direct threat is required as a ground for total exemption from criminal liability, trafficking in human beings and forced labour can also be committed through a simple threat. The practices in the counties are not uniform: some prosecutors accept the qualified threat, while in other places it is found to be sufficient to terminate the case on the basis of Article 19 of the Criminal Code (i.e. they do not differenciate cases of human trafficking by solicitation), if they can draw conclusions from several different circumstances and facts of the case.

In some procedures the victim of trafficking is on the prosecution side and does not disclose being forced/coerced into committing the offence during their exploitation, due to a lack of awareness. In these cases, *it is up to the law enforcement officer to recognise* and rule out this fact by posing further questions.

Judit Szabó – József Kó:

The profile of a typical money-laundering offender in Hungary: the personal circumstances of the accused and their possible role in becoming an offender

The aim of the research, which was initiated by the Office of the Prosecutor General, was to identify the personal circumstances and socio-demographic characteristics of money laundering offenders and to find out what role the latter play in their becoming offenders.

The research was primarily based on the criminal case file research method, which was used to process the prosecution's documents and the investigation documents on criminal proceedings for money laundering offences closed by a final court judgment in 2021 on a complete national sample, excluding those offences that would have been considered as possession of stolen property under the previous legislation. In total, we analysed data from 271 offenders in 111 criminal cases. To provide as complete an empirical background as possible, we also analysed data on the 458 offenders known to the criminal statistics (ENYÜBS) in 2021.

Based on our results, at least for the criminal cases registered and adjudicated with a final decision in 2021, the socio-demographic characteristics of money laundering offenders are special; on the one hand, they differ from the average offender in some aspects and, on the other hand, they do not reflect stereotypical expectations related to the offence. The vast majority of offenders commit the offence by opening a bank account and withdrawing and transferring the proceeds of the offence in cash or by bank remittance, acting as an intermediary (money carrier) in the hope of making easy money. Only two-thirds of the offender sample are men; the proportion of women (one-third of the offenders) is higher than for other crimes. The over-representation of middle-aged people in the sample is also typical. Two-thirds of the total offender sample has no criminal record, with a proportion of 85% for women. It is worth highlighting that both men and women are characterised by relatively low levels of education and difficult, constrained financial circumstances. This calls into question the white-collar nature of money laundering in Hungarian practice, as the perpetrators are typically not graduates or people with specific financial expertise, and most of their activities are not carried out in the context of their profession.

The majority of domestic perpetrators of money laundering offences are therefore poor, cash-strapped, poorly-educated and under-informed people, who are easily persuaded to commit what may seem like an easy way to make money and what may seem harmless. Our results underline the importance of education and information transfer as a possible preventive tool, not only in the field of preventing victimisation but also in the prevention of becoming offenders.

Anna Kiss:

The role of the agreement with the person subject to the proceedings in the court decision – possibilities in the domestic legal order, different solutions in international practice

On the one hand, the research reviews the international consensual elements which help to either avoid a court trial or hold it with simplified rules and, on the other hand, it presents, analyses and compares in detail the agreements concluded with the defendant in the Code of Criminal Procedure and their impact on the court decision.

Research hypotheses: 1) Consensual legal institutions, which are also present in domestic criminal proceedings, are also characteristic of European judicial systems; 2) these legal institutions are different from *plea bargaining*; 3) domestic agreements with defendants are in line with Strasbourg requirements in terms of guarantees.

Findings of the research:

1) As a result of the common legislative process within the European Union, similar legal instruments relating to procedural efficiency have been introduced in the various legal systems, which, although bringing the different jurisdictions closer together, have not resulted/do not result in the elimination of the differences between the legal systems. As the last bastions of sovereignty, the Member States' procedural laws resist full harmonisation. This can be explained mainly by the fact that criminal procedures have a strong historical-cultural dimension, reflecting cultural values on the one hand, and manifesting them in their functioning on the other. As a result, specific national values that make differences evident are re-created.
2) The apparent plea bargaining nature of the agreement is supported by the rule that the law allows the prosecution to contact only the defence separately on reconcilable issues, provided that the accused has given their consent. However, unlike the Anglo-Saxon legal institution, in the case of domestic settlements, conciliation is only directed at certain legal issues, not at the facts, as is the case in most EU Member States. The plea bargain nature of the settlement is further supported by the rule that the agreement cannot be challenged by the court: either the court approves the settlement or not. (In the latter case, the procedure continues according to the general rules.) However, it is against the plea bargaining nature of the settlement that although the judge does not actively intervene in the settlement of the case during the investigation, he cannot be considered a passive judge like his Anglo-Saxon counterpart, as the Code of Criminal Procedure still assigns him a number of active activities during the 'Procedure in the case of settlement', which is regulated among the separate procedures.
3) The guarantees of consensual procedures for the accused have been developed by the domestic legislator in the Code of Criminal Procedure, so the accused who confesses does not suffer any legal disadvantage because of this, provided that the law enforcement acts in accordance with the guarantees provided in the Code of Criminal Procedure.

Gabriella Kármán – Petronella Deres:

The possibilities of recovery of financial loss in criminal cases of budget fraud: the proportion of the compensation by the offender [Section 396(8) of the Criminal Code], the confiscation of property and the assets recovered through an order for payment from the tax authorities and the avoidance of double deprivation in criminal proceedings

As part of the issue of asset recovery, the more effective compensation of the financial loss caused by criminal offenses is one of the current priorities of Hungarian, EU and international criminal policy, especially in the fight against serious and organised cross-border crime. This study aimed to overview the specific opportunities and to examine the practical experience of their effectiveness in criminal procedures initiated for budgetary fraud.

The criminal-law protection of the budget is of paramount importance; apart from the number, nature and organisation of the crimes, the most important feature of these offences is the extent and evolution of the financial loss; however, even more important is the fact that – as the confiscation of property has become a strategic objective –, the recovered financial loss can be an objective indicator of the effectiveness of criminal proceedings and even of law enforcement.

The relationship between tax administration and criminal procedure in the criminal offences against public finances has been discussed in Hungary and internationally. The perpetrators of so-called 'tax-related offences' commit both a tax infingement and a tax-related offence. This

raises the question of the mutually exclusive or sequential nature of the two procedures, the parallel applicability of tax and criminal consequences, and the possibility of using evidence obtained in the different procedures.

The question which raises most of the dilemmas concerning the relationship between sanctions in tax administration and criminal proceedings, which have been solved in several ways in the case law, is the possibility of double sanctions. A solution to the '*ne bis in idem* problem', which has been much discussed in the practice of the ECtHR and the CJEU, was found in Hungary in March 2022, with the joint amendment of the relevant provisions of the Criminal Code and the Act on the Rules of Taxation. The legislator intended to avoid double confiscation primarily by amending the regulation of confiscation of property, by addition the provisions of Section 74 (5) c) of the Criminal Code. The examination of the case-law shows that, in order to avoid double confiscation, the law already provides that the tax authority's order for payment of the tax deficit is an obstacle to a confiscation order in criminal proceedings, although this does not in itself guarantee that payment will actually be made. The real objective would be to ensure that the lost tax revenue is actually recovered To this end, consideration should be given to the proposal that, only the actual deprivation of assets in the tax proceedings should be taken into account when deciding whether to apply confiscation in criminal proceedings. These two coordinated methods of confiscation of criminal property, together with the possibilities for voluntary compensation for financial loss, can be a more effective way of recovering an increasing share of lost tax revenues.

Renáta Garai – Anna Kiss:

The handling of seized electronic data and the protection of personal data, the procedural status of a copy of seized data and its fate in criminal proceedings

The spread of digitalisation and the continuous development of information technology tools have also brought difficulties in the field of law enforcement in relation to the handling of criminal signals to the surface, which in many cases are reflected in conflicting questions of law or interpretation of the law (how far the competence of the law enforcement officer extends with respect to electronic data and data carriers, whether prosecutorial expertise is required and, if it is, to what extent). In the area of CCTV surveillance, another problem may be how and on what legal basis the information extracted from the recordings seized by the authorities and later assessed as evidence can be used, as well as whether unlawfully recorded and stored footage can be used at all. Our first hypothesis was that law enforcement is less aware of the data protection provisions applicable in criminal proceedings, and therefore different practices are in place with regard to processing seized electronic data. Our assumption was confirmed. In the context of processing seized electronic data and protecting personal data, law enforcement officers are not fully familiar with the operational mechanisms and IT background of computer tools and the relevant provisions of the GDPR and the so-called criminal GDPR, and therefore (further) training courses that provide an overview of the basic concepts and the detailed rules should be provided. The divergent positions and contradictory decisions in practice, while respecting the guarantees and principles, call for legislative amendments, as the protection of privacy and data protection and the enforcement of the criminal claims of the state are both important interests.

The research also raises the issue of the conflict between the rights of the accused and the rights of the victim, which arises from the fact that, in some cases, electronic data (documents) not only play a role as a means of evidence but also as a result of the crime. Which right prevails: the accused's right to know the evidence (defence, preparation) or the victim's right to human dignity?

Our second hypothesis was also confirmed, namely that in the case of a conflict between the rights of the accused and the rights of the victim, the Code of Criminal Procedure in force does not always guide the law enforcement. The solution could either be to interpret the rules of special treatment more broadly in the event of a conflict between the rights of the accused and the rights of the victim, and – in line with the case law of the ECtHR – to accept that, in certain cases, the (non-absolute) rights of the accused may be partially limited (provided, of course, that this is done in a proportionate manner and does not violate the principle of fair trial as a whole), or to resolve the conflict of rights by amending the Code of Criminal Procedure.

TASKS COMPLETED WITHIN THE FRAMEWORK OF COOPERATION

Research projects initiated by the National Police Headquarters:

Eszter Sárik – Petronella Deres:

Fraud offences against customers of financial institutions in the online space

The scale of crime in the online space is reflected in the fact that up to five percent of corporate revenues are lost to fraud each year, according to a global report published by the *Association of Certified Fraud Examiners (*ACFE) in 2022. In the research, we primarily analysed the types of crime and the ways in which fraud is committed, and also looked in more detail at online fraud trends in the UK, the US and Japan, based on the available international literature.

The study shows that fraud is becoming easier to commit in the online environment: as innovation in technology increases, so does the number of sophisticated fraud attacks. For those without technical, computer skills, within the framework of '*fraud as a service'* (see more: *Cybercrime as a Service (CaaS*) – available not only on the dark web, but also on Telegram and other messaging platforms – software packages can now be rented or licensed in exactly the same way as one pays for Microsoft, for example. At the same time, it can also be concluded that the human factor, in other words, the good faith and trusting attitude of the victims, still plays a role in the frequency of such offences. Phishing scams – where attempts are made to obtain personal data such as birth dates or passwords to commit fraud – will remain a threat, and in addition, love, investment and transport scams will continue to be present in 2023. In addition, there is a growing trend for perpetrators to try to impersonate colleagues via email, not only in companies but also in public bodies and institutions.

Attempts to deploy malware and efforts to combat more advanced security measures, such as two-factor authentication and sensory or facial recognition, are also expected to increase. Mobile SIM card swapping (so-called SIM swap fraud) is still present and, with the rise of mobile banking, fraud will increase. Our growing (and diversified) 'digital footprint' also makes an increase in identity theft more likely, not to mention the misuse of QR codes.

Katalin Tilki:

Sentencing for animal cruelty in practice

The aim of the research, initiated by the National Police Headquarters, is to investigate the problems of investigating the crime of animal cruelty. For this purpose, we reviewed the most

important international and EU documents on animal cruelty, foreign legislation on animal cruelty, statistical data on this subject and the criminal law in force on animal cruelty in Hungary.

The research examined cases in which a criminal procedure has been initiated and is ongoing due to an aggravated animal cruelty which entered into force on 1 January 2022. The research was based in prosecution documents provided by the Country Prosecutor's Offices, based on the case numbers provided by the National Police Headquarters.

The majority of the cases are believed to be subject to animal poisoning. In the course of criminal proceedings, the competent police station usually suspended the investigation due to the lack of identity of the perpetrator or decided to terminate the investigation because no criminal offence could be established. One case has been prosecuted.

The problems outlined in the investigation of the cases, namely the obstacles to the investigation, are few leads; the lack of witnesses; the passage of time; impossibility of identifying the perpetrator; the high cost and time-consuming nature of laboratory tests; and the lack of data in veterinary documents.

In these cases, it is crucial that the investigating authority carries out an on-site inspection and cooperates with the partner authorities, animal welfare organisations and veterinary experts.

Methodological guidelines need to be developed for the assessment of suspected animal cruelty situations and for the on-site investigation of animal cruelty crimes. The booklet '*Tips for investigating animal cruelty*' can be a great help in the investigation. In addition, it is essential to inform the general public (in an understandable way) about what constitutes a crime of animal cruelty and what sanctions the law imposes, and to emphasise the criminal liability related to poisoning cases in the media.

Orsolya Bolyky – Eszter Sárik:

Offences against property that result in violence (in particular such offences against the elderly)

A significant proportion of offences against property that result in violence start as 'non-violent acts' without the intention of assault against the victim. However, in the course of the offence, violence is used, mainly for situational reasons. The offender's current and general mental state (e.g. frustration, aggressive urges) and certain personality traits – e.g. weak mental restraint system, low frustration tolerance – are linked to this, which, together with situational factors, result in violence behaviour. The offences thus committed are typically classified as robbery, or in the case of the victim's death: homicide for financial gain. Based on the outcomes of our previous research, the victims are often elderly, sick and vulnerable people, therefore the current investigation focused on vulnerable people, who have special protection under criminal law. The sample included victims over 60 years old (the average age was 75.7 years). We have used file-analysis as research method – 104 prosecution files in total – mainly to find out the situational and psychological reasons for the change in the perpetrators' behaviour. We have also studied the literature and relevant statistical data. In order to develop a valid comparison, we have examined cases that did not contain violence, only offences against property (petty theft or burglary).

The sample comprised 129 defendants and 124 victims all together. The typical perpetrators were single, young men (average age 28.7), living in rural areas, with low education levels and a precarious labour market position, mostly having a criminal record. The sex ratio of victims was the opposite: there were twice as many female victims as males (66.9% female). One of the most vulnerable groups were the elderly people, alone in public spaces and were visibly slow, clumsy and unsteady to the outside world. The other group of victims included elderly people living alone in their homes. Offences that started as theft typically turned violent when the

victims physically resisted – usually by refusing to let go of a bag or purse that they were carrying. Street offences were mostly committed on weekdays in the morning/afternoon hours, when the elderly people were walking home alone from shopping. The property targeted was usually jewellery flashing on the victim's neck or ears, a bag hanging over the shoulder or a handbag in their hand. Victims attacked in their homes, were abused late in the evening or at night. The most common form of abuse (45.6%) was pushing or bringing them down to the ground. In most of the cases (64.5%) the accused person and the victim did not know each other before the certain criminal act.

With regards to the legal regulation, it would be worth examining whether it is necessary to name the old age or the disability as grounds for the aggravating circumstance, since they do not operate as grounds *per se*, but the physical and/or mental deficits that usually accompany them establish the basis for the aggravating circumstance. We believe *de lege ferenda* it would be important to consider the possibility of the amendment of the relevant aggravating circumstance, as follows: '*to the detriment of a person who, by reason of their condition, is incapable of preventing the offence*'.