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Redacţie:
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Public-Private Partnerships in Anti Money Laudering and Counter Financing Terrorism

László Attila, Barátki[1] PhD student

Abstract

The possibility of public-private cooperation has long been raised in the fight against money laundering and terrorist financing. It is a commonly used structure in many sectors around the world, so it was only a matter of time before this cost-effective and innovative solution, would be introduced in the fight against money laundering and terrorist financing. Several experts have already addressed this possibility, but no study has yet been carried out in Hungary. The aim of my research is twofold. One is to pioneer the linking of these two professional sectors, and the other is to present the European Union's efforts in this direction. I will briefly present the alternative of public-private cooperation in the fight against money laundering and terrorist financing, then I will explore the scientific positions with an international perspective, summarize the benefits and challenges, and finally I will give a professional opinion on the expected implementation.

Keywords: *Public Private Partnership (PPP), AML/CFT, AMLA, FATF, European Commission*

1. What is Public Private Partnership[2] (PPP)?

The Public Private Partnership (PPP) scheme is based on the recognition, typical of the social rule of law worldwide, that public authorities do not wish to finance the public tasks they are constitutionally entitled to perform from a single budget, nor are they able to finance the investment, service improvements and infrastructure development necessary to fulfil their tasks from their own revenue. In such cases, the public sector will involve private capital in the implementation of facilities and the service capacities of the private sector in those tasks that can be legally outsourced from the public sector.

From the definitions developed by some experts, the following common features can be identified for the different PPP schemes:

- an atypical partnership between the public and private sectors, based on a contract

[1] László Attila Barátki PhD student, University of Pécs, Doctoral School of Law and Political Sciences, Contact: baratky75@gmail.com.

[2] Public Private Partnership (PPP) – is a new form of public service delivery in which the state involves the private sector in the design, construction, maintenance, financing and operation of the facilities, institutions and equipment needed to deliver public services, in a complex partnership. In the classic private PPP system, this is done by a single company or group. The public actor or end-user recovers the value of the investment, the costs of operation and services in the form of an availability payment to the operator.

- typically involves long-term cooperation,
- the private partner contributes to the performance of public tasks by providing financial resources and know-how[3] in return for which
- receives an availability payment from the public partner or directly from the users of the service provided[4].

The PPP concept aims to create a higher level of added value through the perfection, expertise, higher innovative capacity and management power of the private sector, with the so-called winners being not only the contracting parties but all stakeholders, including members of society. The private sector can also invest in certain areas of public operations, investing in long-term predictable projects, and the public sector can deliver high quality services to its citizens in a cost-effective way. A not insignificant aspect is that these projects create a multiplier effect[5] at macroeconomic level. At the same time, it is essential for successful implementation and operation that the contract properly defines the allocation of responsibilities and risks. Each contracting party should only take on risks that it can bear and manage properly in its own operations.

There are several subtypes depending on the degree of responsibility and risk sharing. Among the PPP schemes, the so-called Buy-Build-Operate[6] (BBO), according to international terminology, can be used in the fight against money laundering and terrorist financing. The difference is that the state does not sell the asset used to perform its tasks, but the private company develops a new state-of-the-art asset and then continues to operate it in order to use it quickly, innovatively and efficiently.

The PPP scheme is a common method of application around the world. It was only a matter of time before it was used in international action against money laundering and terrorist financing. The European Commission also intends to strengthen the mutual cooperation between the public and private sectors through the establishment of the soon to be set up European Supervisory Super Authority, the AMLA[7]. A similar project between the private and public sectors is already in place in the UK, which is also home to PPPs, creating an unity of purpose within the sector. The Joint Money Laundering Steering Group[8] (JMLSG) is a private sector body made up of the leading trade associations in the UK financial services sector. It carries out oversight activities and

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[3] Know-how – In Hungary, Act LIV of 2018 introduced the concept of "know-how" as applied to proprietary knowledge. Accordingly, know-how is a form of trade secret recorded in an identifiable manner. The law highlights that it can be technical, economic, organisational knowledge, a solution with such content, or a combination of these. A trade secret is any secret knowledge of pecuniary value relating to an economic activity which is not readily accessible or not generally known and which the holder (owner) has an interest in keeping secret or in treating as such. In this approach, therefore, know-how is knowledge of identifiable value relating to an economic activity which is kept secret.

[4] Commission Green Paper on public-private partnerships and Community law on public procurement and concessions COM(2004) 327 final, points 1 and 2.

Source: https://eur-lex.europa.eu/legal-content/HU/TXT/HTML/?uri=CELEX:52004DC0374&from= ES.

[5] The multiplier effect is a kind of multiplying effect. The investment multiplier shows how many units of investment per unit of investment in the economy result in total income growth. The diffusion of experience accumulated through projects (some model-value implementation) is called the multiplier effect. The multiplier effect can further increase the net impact of a project.

[6] BBO – This is a common use of PPP schemes in the UK and the US in areas where the acquisition of information is sufficient for the public sector to perform its functions. More detailed information: https://ppp.worldbank.org/public-private-partnership/ppp-process

[7] AMLA – Anti Money Laundering Authority Source: https://www.consilium.europa.eu/hu/press/press-releases/2023/12/13/anti-money-laundering-council-and-parliament-agree-to-create-new-authority/

[8] Source: https://www.jmlsg.org.uk/

issues guidance approved by HM Treasury as part of its anti-money laundering and counter-terrorist financing functions[9]. It maintains a public database of the activities it carries out and publishes the results of its audits with the approval of the Treasury[10]. In Hungary, there is no standardisation of the supervisory activities, nor of the guides. The legislator has divided the supervisory bodies into activities according to Article 5 of Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing (Pmt.)[11].

Different supervisors have issued their own guidelines according to their own interpretation of the law. More on this I will write in another research paper.

2. The key role of public-private relations today

The policy ideas behind PPPs and their legal consequences can be seen in past examples. Few people are aware that in Hungary, between 2006 and 2012, more than 300 public-private PPP projects were implemented. The Palace of Arts was the first such project, but there have also been motorways, public cultural and public institutions such as schools, colleges, hospitals, court buildings and even two prisons currently operating in this way. These have been contracted on atypical contracts lasting 20-35 years. Although these investments do not have a so-called good reputation in our country, they are still used today in Europe and around the world as a well-established scheme, in many forms of PPP cooperation. This is because, with the right contract, a good relationship based on mutual trust can be established between the parties concerned along well-defined interests. It is also important to note that these investments are predictable in the long term from an investment point of view and that they achieve significant development objectives.

The idea of public-private partnerships in the fight against money laundering and terrorist financing reflects the idea that the implementation of AML/CFT[12] obligations

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[9] Source: https://www.jmlsg.org.uk/joint-money-laundering-steering-group-jmlsg/about-us/what-we-do/

[10] Source: https://www.jmlsg.org.uk/latest-news/jmlsg-publishes-revisions-5/

[11] Pmt. § 5 – For the purposes of this Act, a supervisory body is defined in § 1 (1)

a) a) to e) and, with regard to the service providers and persons specified in Article 1(1b), the MNB (hereinafter referred to as the "Supervisory Authority"), acting in its capacity as the supervisory authority of the financial intermediary system;

b) in relation to the service providers specified in point (i), the Authority for the Supervision of Regulated Activities;

c) in relation to the service providers defined in point (g), the Hungarian Chamber of Auditors;

d) in relation to the service providers specified in point (l), in accordance with the different provisions applicable to lawyers, chamber legal advisers and notaries under this Act:

(da) in the case of lawyers and chamber legal advisers, the chamber of which the lawyer or chamber legal adviser is a member (hereinafter referred to as the 'regional chamber of lawyers'),

(db) in the case of notaries, the chamber of which the notary is a member (hereinafter referred to as the 'regional chamber of notaries');

(e) in relation to the service providers referred to in points (j), (k), (p) and (q), the trade authority;

(f) in relation to the service providers defined in points (f), (h), (n), (o) and (r), the authority acting as a 'Financial Intelligence Unit' (hereinafter referred to as FIU);

(g) in relation to the service providers referred to in point (m), the Office under the Act on Fiduciaries and the Rules Governing their Activities (hereinafter referred to as the "Office")

[12] AML/CFT – Anti Money Laudering and Counter Financing Terrorism

by private entities and the enforcement of these obligations by supervisory authorities is in practice often characterised by compliance with formal rules rather than by the desire to prevent and deter crime effectively. However, this is a misguided approach, as the idea behind the public-private partnership is that the current framework could be improved if the flow of information in both directions were faster and more efficient. An example could be when a major customer due diligence needs to be done by the public authority having more information and sharing it, even in the form of partial information, with the private sector concerned, who can then achieve a more accurate result in terms of AML/CFT compliance. In other words, in a "partnership", both parties involved take a proper approach to a case, and do not just carry out formal obligations based on the minimum legal requirements. One of the tasks of AMLA,[13] the EU authority that the European Commission wants to set up, will be to monitor how closely and effectively the public and private sectors have been involved in a case. This can obviously be achieved by encouraging a shared sense of purpose based on the common interests of public and private sector representatives.

AML/CFT tasks consist of a number of key elements, such as customer due diligence, risk rating, whistleblowing where necessary, analysis by the Financial Intelligence Unit (FIU) and ultimately criminal investigations. It consists of a wide range of technical, organisational and human resources activities. This implies that closer cooperation between the public and private sectors can take place at different stages. In practice, public-private partnerships are often - and some would argue most often - characterised by a desire for formal compliance with AML/CFT requirements by private bodies and enforcement of requirements by supervisory authorities, rather than a desire for prevention or effective prevention and deterrence of crime. This is because the obliged organisations seek to act formally and to demonstrate that they have taken reasonable steps to comply with the law in order to be penalised for any non-compliance.

Developing a PPP framework is not just about creating mechanisms to complement other elements of the current architecture. Rather, it is about adapting current legislation to implement CDD[14] obligations more effectively, based on practical examples. Similar considerations apply to the other primary role of information sharing, namely to support ongoing investigations. The role of public-private information sharing in ongoing investigations in particular highlights a number of unanswered questions in the relationship between criminal procedural laws and the laws providing for AML/CFT. Where informal practices of information sharing in support of ongoing criminal investigations are developed, PPPs may be an example of such practices that work well in parallel and, in addition to prosecutorial measures[15].

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[13] A new EU authority to combat money laundering and terrorist financing, based on a proposal put forward by the European Commission in July 2021. This was part of a legislative package aimed at implementing the EU's 2020 Action Plan for a comprehensive policy to prevent money laundering and terrorist financing. The AMLA would be the centre of an integrated system, consisting of the Authority itself and national authorities with AML/CFT supervisory mandates. It would also support EU Financial Intelligence Units (FIUs) and establish a cooperation mechanism between them. It will be headquartered in Frankfurt and will become operational in 2025.

[14] CDD – Customer Due Diligence

Source: https://airontrust.hu/aml-penzmosas-terroizmus-jogi-fogalmak/.

[15] B. Vogel, *Opportunities and limitations of public-private partnerships against money laundering and terrorist financing*, Eucrim, 2022/04, pp. 52-60. Source: https://eucrim.eu/articles/potentials-and-limits-of-public-private-partnerships-against-money-laundering-and-terrorism-financing/#docx-to-html-fn16.

When the EU's anti-money laundering regime was introduced, it was criticised by many as an intrusion into fundamental rights to privacy. However, experience has led some scholars to point out that customer due diligence obligations imply the mass retention of financial data. The term data retention is generally defined as "*the collection and storage of personal data for unspecified purposes in case they are needed for an as yet unspecified future use*"[16]. I believe that data retention can be basically divided into two parts. Firstly, mainly private actors are legally obliged to keep most of the data for a certain period of time. The second section contains the legal provisions that allow public authorities to access this data. Article 13(40) of the European Union's Anti-Money Laundering Directive obliges organisations to retain personal financial data[17].

While there is an obvious need to retain data in the fight against money laundering and terrorist financing, public authorities may also have access to such data for other reasons, such as the investigation of a crime. In Hungary, access to AML/CFT data for the purpose of detecting a crime is not authorised for investigative authorities by the Pmt. but by Act XC of 2017 on Criminal Procedure. Access to AML/CFT data for supervisory authorities and FIU is provided for in the Pmt. Thus, according to Article 70 of the Pmt, the supervisory authorities shall closely cooperate with each other - the FIU, the investigating authority, the prosecution and the court - as well as with supervisory authorities in other Member States or third countries. However, in my experience, this is not sufficiently exploited. I believe that this provision should probably be extended to include cooperation with the private sector, which is obliged to collect and store data.

3. PPP in AML/CFT/CPF[18]

As the previous chapter points out, the use of PPPs is common in international examples and there is an alternative in the fight against money laundering and terrorist financing. The fight against money laundering and counter terrorist financing, including the fight against proliferation[19] (AML/CFT/CPF), requires strategic cooperation efforts between public authorities and the relevant service sector. Task-sharing between private sector institutions and public sector bodies such as law enforcement, supervisory or regulatory authorities can be key in the area of AML/CFT/CPF. Policy makers should also take into account the professional suggestions of stakeholders when drafting legislation, as it is on the basis of the gaps identified in practice that proper codification and prominent implementation results can be achieved. The sharing of information and proper interpretation of the rules with stakeholders has a major impact on the success of the fight against financial crime, including money laundering and terrorist

[16] M. Albers, *Data Retention in Germany*, in M. Zubik, J. Podkowik és R. Rybski (Edit.), *European Constitutional Courts to Data Retention Laws*, 2021, p. 117.

[17] Directive (EU) 2018/843 of the European Parliament and of the Council (fifth amendment: 30 May 2018) amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing and amending Directives 2009/138/EC and 2013/36/EU, OJ L 156, 19.06.2018, pp. 43. Source: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L0843.

[18] AML/CFT/CPF – Anti-Money Laundering/Combating The Financing of Terrorism/Countering Proliferation Financing of Weapons of Mass Destruction.

[19] Proliferation – Combating the financing of proliferation of weapons of mass destruction.

financing. At present, it is much less in the interest of duty-holders to make additional efforts to detect and screen a problematic customer relationship, especially if they do not ultimately lead to the detection of criminal activity and are therefore not properly assessed.

Information sharing is key to promoting financial transparency and protecting the integrity of the financial system. Financial institutions and the relevant competent authorities need to have timely and up-to-date information, analysis and data in order to prevent the commission of financial crimes, including money laundering, terrorist financing and proliferation financing (ML/TF/PF), in a timely manner. This is important not only on the basis of the recommendations of the international organisations set up to combat the proliferation of ML/TF/PF, but also because it is in the national economic interest of each State to have an effective system in place.

Dr. Marcus Pleyer, Chairman of the Financial Action Task Force[20] (FATF), the largest international body, in the fight against money laundering and terrorist financing, also mentioned the potential aspect of public-private cooperation in his speech at the Organization for Security and Co-operation in Europe (OSCE) Chairmanship 2020 Counter-Terrorism Conference, saying, "*I cannot stress enough the importance of public-private partnerships in the fight against money laundering and terrorist financing. Many of us in Europe, the Americas and the Asia-Pacific region have witnessed a number of large-scale terrorist attacks over the past few years. Building trust between the public and private sectors, building trust between the private sectors, is essential in the fight against money laundering and terrorist financing. Public-private partnerships need to be established before money laundering and terrorist financing can occur, and therefore need to be investigated*"[21].

In my opinion, this strengthens prevention, which means that Mr President could not have been thinking of an investigation in the classic sense, as an official criminal investigation to uncover a crime, but of effective action based on preventive measures, analysis and the discovery of data to prevent so-called dirty money from being laundered or a financial crime from being committed. At the same time, the dual purpose of AML/CFT should not be forgotten, namely to support law enforcement authorities in investigating relevant crimes and to support obligated persons in preventing ML/TF/PF.

The FATF has published an international standard entitled "*FATF Recommendations 2012*"[22], which in its February 2023 amendment already contains definitions and standards for the exchange of confidential information to the private sector, as follows:

– Information sharing between the public and private sectors through PPPs with the cooperation of stakeholders enhances the effectiveness of AML/CFT/CPF

[20] The Financial Action Task Force (FATF) is an international organisation established in 1989. The so-called "*Forty Recommendations*", which were drafted in 1992, are soft-law regulations, i.e. they have been used as a guideline for the drafting of other international anti-money laundering documents, such as the European Union's anti-money laundering guidelines. Several EU Member States (and, as an organisation, the European Commission) are members of the international panel. The FATF Forty Recommendations provide guidance for the development of both criminal and non-criminal preventive legislation.

[21] Conclusion of the speech by FATF President Dr Marcus Pleyer at the OSCE conference "*Strengthening public-private partnerships to limit logistical and financial support to terrorists and vulnerable targets*", 15.09.2020. Source: https://www.fatf-gafi.org/en/publications/Fatfgeneral/2020-osce-counter-terrorism-conference.html.

[22] Source: https://www.fatf-gafi.org/en/documents/publicandprivatesectorpartnershipinfighting financialcrime.html.

measures by facilitating a comprehensive overview of financial transactions and customer behaviour.
- Through such partnerships, sharing often takes place in a secure environment, allowing the private sector to conduct additional data mining, operational analysis and due diligence to fill any intelligence gaps.
- These PPPs allow information to be shared between oversight bodies and FIUs, law enforcement agencies, private sector monitoring participants and international partners.

The exchange of information must of course also comply with other rules, such as the obligations under the GDPR.[23] The European Commission (the Commission) has taken a position on this issue, taking into account the standards issued by the FATF, and has published Guidelines on EU rules for public-private partnerships in the prevention of money laundering and terrorist financing, which have been sent to all Member States for comments.

In the light of the comments received, the Commission has published its Action Plan 2020/C 164/06 on a comprehensive EU policy on the prevention of money laundering and terrorist financing[24]. This Action Plan outlines how the Commission intends to achieve these objectives based on the following six pillars:
- Ensuring the effective implementation of the existing EU framework to combat money laundering and terrorist financing;
- Establishing a single EU rulebook to combat money laundering and terrorist financing;
- Implement the EU-wide supervision of the fight against money laundering and terrorist financing;
- establishing a support and cooperation mechanism for financial intelligence units;
- enforcement of criminal law provisions and exchange of information at EU level;
- strengthening the international dimension of the EU framework for combating money laundering and terrorist financing[25].

Based on the initiatives taken by the FATF and the Commission, it is certain that public-private sector cooperation and closer links will be established in the near future.

4. Public and private sector participants in AML/CFT

Public-private partnerships should be encouraged as much as possible in the context of better use of financial intelligence. In many cases, the nature of the information and its untimely exchange can limit the results of analysis, detection and prevention. Of course, such sharing must also respect data protection legislation, as I have already mentioned. In the application of PPP, the participants in the exchange of information between law enforcement authorities, financial information units and the private sector may take different forms. However, the use of certain types of PPPs should be

[23] GDPR – General Data Protection Regulation

[24] Source: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13152-Preventing-money-laundering-and-terrorist-financing-EU-rules-on-public-private-partnerships-PPPs-_en.

[25] Source: https://net.jogtar.hu/jogszabaly?docid=a20k0058.com.

clarified and enhanced in order to improve information sharing. This should be done at Commission level, given the differences in legal frameworks and practical arrangements between Member States.

Standards and guidelines are available for PPPs on how to share best practices, in particular on antitrust rules, data protection safeguards and restrictions, and guarantees of fundamental rights. The EU rules on combating money laundering and terrorist financing are not intended to prevent access to legitimate financial services, but it is necessary to create the possibility for rules on combating money laundering and terrorist financing to be properly linked to the legislation regulating the financial sector and other designated non-financial businesses and professions. To this end, the following proposal can be made:

a. For Financial institutions (FIs)

- Provide fast and real-time information and data to FIU and Law Enforcement Agencies (LEA), as well as other authorities, to assist in the prompt detection of possible ML/TF/PF.
- Establish a harmonised system of professional bodies, given their knowledge of customer behaviour and their role as financial intermediaries.
- Identify suspicious activities and issue suspicious information, send transaction reports (STRs) to FIUs in real time and, in a digitised manner.

b. For Designated Non-financial Businesses and Professions (DNFBPs)

- Identification and recognition of businesses and/or activities that are used exclusively to conceal the original form of payments and/or to create other complex legal structures or transactions ML/TF/PF activities. These include lawyers, notaries, tax advisors, accountants and bookkeepers, and real estate transaction businesses.

5. The advantages of PPP in the fight against ML/TF/PF

Public and private sector institutions can be both sources and targets of information flows. The use of data highlights the benefits of an ongoing dialogue between the public and private sectors. The effectiveness of the work of FIUs depends to a large extent on the timing of the reporting, its data content and the multi-directional analytical work. As an experienced analyst, I know that notifications requiring immediate action and investigative work do not always happen at the same time, as official investigations involve the collection of more information, while notifications are unidirectional. Indeed, in many cases DNFBPs unintentionally - or intentionally - do not report to the FIU.

In Hungary, the FIU's Analytical Department is part of the Anti-Money Laundering and Counter-Terrorist Financing Bureau within the National Tax and Customs Administration[26]. It is not an investigative authority, nor does it perform intelligence gathering, crime prevention or crime detection functions. It only carries out operational and strategic analysis and evaluation activities in accordance with the provisions of

[26] Source: https://pei.nav.gov.hu/elemzo-ertekelo-tevekenyseg/elemzo-ertekelo-tevekenyseg.

the Money Laundering and Terrorist Financing Act and, where appropriate, forwards the information processed for the purposes of combating money laundering and terrorist financing to the investigating authority, the prosecution, the national security services, the National Tax and Customs Administration body responsible for crime prevention and detection, other FIUs abroad or Europol. However, it is important to stress that in the course of its official activities, the FIU has the right and the obligation to initiate proceedings on the basis of existing information, and may also provide information for other proceedings already in progress. If it receives reports of money laundering activities from service providers, it will investigate them under its own responsibility, carry out an analysis, collect additional data and, on the basis of the results of the analysis, forward the case to the appropriate bodies for law enforcement purposes. The analytical activity is detailed below:

- Improving the quality of reporting and entering additional information into the database;
- Increased sharing of information and knowledge on existing ML/TF/PF typologies;
- Increase the level of expertise and knowledge of all partners and DNFBPs;
- Increased and continuous communication with relevant disciplines.
- Identification of new and emerging risks;
- Improving the quality and use of suspicious activity reporting;
- Improving cooperation and more constructive relations between public authorities and regulated entities;
- Increased risk awareness in the private sector, including the development of guidance documents;
- Improving channels for the exchange of financial information between operational authorities and reporting organisations;
- Strengthen the existing anti-money laundering and counter-terrorist financing framework and make codification proposals.

In the application of the PPP, competent authorities may share information with the private sector to monitor the financial behaviour of suspects and other relevant persons and entities. This typically includes, in particular, sharing the names of targets and possibly other information that may help to make the tracing more effective. This could include, for example, information on contacts or the business activities of the targeted person.

According to expert Dr. Benjamin Vogel, "*a possible solution could be for competent authorities to provide the private entity with information on the profile of the targeted individuals or potential suspects to enable the private entity to conduct targeted and accurate searches of the data records*"[27]. From an operational point of view, I myself see the authorisation of such targeted searches as positive for two reasons. One is that it allows private bodies to respond to a targeted request for information from an investigating authority without flooding the authority with unstructured and often useless bulk data. The other reason is that it can allow investigating authorities to filter through private data for previously unidentified suspects using offender profiles, which can also make it easier to detect offenders.

[27] B. Vogel, *Potentials and Limits of Public-Private Partnerships against Money Laundering and Terrorism Financing*, Eucrim no. 1/2022, Max Planck Institute for the Study of Crime, Security and Law. Source: https://doi.org/10.30709/eucrim-2022-002.

6. The challenges of using PPP in AML/CFT:

One of the main obstacles to the implementation of PPP in AML/CFT is ensuring the confidentiality of shared information, especially from the public sector. In many cases, the information disclosed by the public authorities can have a negative impact on intelligence or on the work of those involved in active investigations, as the source of the information may be revealed.

Other challenges and conflicting priorities include:

- In a criminal prosecution, the resources available for investigation are limited on both the public and private sector sides;
- The legal or regulatory framework of the country - loopholes, so to speak - inhibits data sharing, especially cross-border data exchange;
- Disproportionate authority dynamics between the regulator and the regulated;
- In Hungary, the culture of secrecy in the financial system and in the legal profession goes beyond what is legally required and hinders dialogue and thus the sharing of crime prevention information or necessary intelligence;
- Capacity constraints of supervisory and investigative bodies, particularly in human resources and, in the investigation of financial crime;
- Disproportionate gaps and shortcomings between regulatory, authority priorities and the private sector.

Public-private sector information sharing in the context of AML/CFT, including in the context of AML/CFT, has two main objectives: to make the client due diligence process more dynamic - i.e. more efficient - which enhances prevention, and to facilitate ongoing investigations and detections. The two objectives often overlap, of course, as more efficient client due diligence ultimately adds more value to criminal investigations.

7. Opinion

As an EU citizen and anti-money laundering specialist, I believe that the current legal framework in the Member States does not provide an effective basis for Member States to fight transnational financial and economic crime. The current overall regulatory environment in the EU is fertile for illicit financial flows. However, I know from experience that the anti-money laundering authorities in our country are not sufficiently effective in supporting transnational police forces and fighting corruption. And the anti-crime efforts of private sector banks, payment service providers and other obligated entities only do their duty under pressure from the authorities. In my opinion, in order to effectively combat money laundering, terrorist financing and fraud, financial institutions and other obligated entities, as well as FIUs, should be allowed to share detailed information on customers and financial transactions with an independent supervisor, such as the established AMLA, under a clear framework and with a watchful eye. It is clear that the privacy and civil rights of EU and third-country nationals must be protected, but this protection must not extend to covering up illegal acts or criminal activities.

I believe that an effective solution can only be the establishment of high quality EU-level supervision of the fight against money laundering and terrorist financing in order to restore confidence among citizens and the wider international community. The establishment of an EU supervisory system has a higher priority than national

interests. Its functions, competences and relationship with national supervisors can be clearly defined in this EU directive, which is devoid of vested interests, as is the case with OLAF[28].

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[28] OLAF – European Anti-Fraud Office. Source: https://anti-fraud.ec.europa.eu/index_en.

The Context of the Confiscation and Recovery of Criminal Assets According to the System Requirements of a Constitutional State

Béla Blaskó[*]
Lívia Horgos[**]
Endre Nyitrai[***]

Abstract

The starting point of our research is twofold. First, the specific case of criminal asset forfeiture. In this case, the prohibition of double confiscation is violated when the civil claim of 'a public body' as the victim, which is not enforced in the criminal proceedings but is defined in criminal procedural law as – is only enforced after the final order of confiscation. On the other hand, we have examined to what extent the system of procedural actions for the recovery of criminal property, as defined in criminal procedural law, helps in practice to solve the problems arising from parallel proceedings.

Our conclusion is that in a constitutional state – regarding the prohibition of double confiscation – the harm to the accused cannot be increased by paying twice for the damage caused by the crime.

That is, partly in the form of confiscation of property and partly as a civil claim by the victim.

The fundamental elements of a constitutional state – especially the due process of law, the right for just procedure – have to be guaranteed by legislation and judicature.

We also examined the possibilities of tracing the proceeds of crime and other crime-related assets from a forensic perspective.

Keywords: *confiscation of assets, civil law claim, constitutional state, prohibition of double confiscation, e-investigation*

Introduction

In the private and blood feuds that developed in the early stages of human coexistence, the public law element of the crime was only secondary and only the victims were liable to pursue a criminal claim. This was based on the assumption that the crimes did not harm or endanger the interests and order of the state.

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[*] Albert Szent-Györgyi award-winning university professor, professor emeritus, University of Public Service, Faculty of Law Enforcement, Department of Criminal Law, Blasko.Bela@uni-nke.hu.

[**] Senior Lecturer, PhD, University of Public Service, Faculty of Law Enforcement, Department of Criminal Procedure Law, Horgos.Livia@uni-nke.hu.

[***] Senior Lecturer, PhD University of Public Service, Faculty of Law Enforcement, Department of Forensics, Nyitrai.Endre@uni-nke.hu.

The principle of compositio, or redemption, paved the way for the common law in the area of criminal law, which was based on the principle of the material satisfaction given by the offender to the victim or his community for the release of revenge, part of which, and later the whole, was paid to the chieftain, prince or king. The institution of redemption developed in the ancient slave-holding states and was completed in the early feudal conditions[1].

With the strengthening of public power, separate bodies of the state took over the functions of justice. As a result of a long historical process, the imposition and execution of punishment gradually became a state function[2].

From the High Middle Ages onwards, criminal law became increasingly public. And from the beginning of the modern era, the right to punish offenders was exercised by the state. The enforcement of the ius puniendi, the state's duty to punish acts that violate and endanger the legal order, had already become a state monopoly in Europe, including Hungary, by the 19th century.

The elements of the ius puniendi of the constitutional state – in particular the requirement of legal certainty and fair trial – are codified in the criminal justice system during the enforcement of the state's criminal power[3].

The development of the legal institution of confiscation

Property penalties were widely used in the criminal law of slave-owning and feudal societies. As it is known from legal history, throughout the ages, property punishment in the form of various ransoms and compositions was one of the foundations of penal systems.

When 'common law' gained ground in the realm of criminal law, confiscation of property was already widely used. It is worth mentioning, for example, that in Roman law, during the imperial period, this institution was mostly used by the ruler to enrich himself. Or, in early feudal German law, confiscation of property was usually accompanied by the death penalty, especially for crimes of a political nature.

The Hungarian criminal law of the Middle Ages was also characterised by the imposition of confiscation of property as a normal corollary of the death penalty. The property of those sentenced to be beheaded and deprived of their livestock was transferred to the crown. Thus, for example, Werbőczy's 1514 Code of Laws proposed the punishment of infidelity, well known from feudal law, by the forfeiture of head and cattle, while the punishment of usurpation of power was the forfeiture of head or cattle.

In the various periods of the development of Hungarian law, punishments of a pecuniary nature remained widespread.

However, the amendment of the former Hungarian Criminal Code in 2001 marked a paradigm shift in the way confiscation of property was dealt with. This amendment

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[1] Blaskó, B. *A büntetőjog előtörténete, eredete, kialakulása és fejlődéstörténeti vázlata az ókortól a XVIII. század végéig.* [*The prehistory, origin, development, and historical outline of criminal law from ancient times until the end of the 18th century*.] Rendőrtiszti Főiskola. Budapest, 2011. p 47.

[2] Blaskó B. *Magyar Büntetőjog Általános Rész.* [*General Section of Hungarian Criminal Law*.] Rejtjel Kiadó. Budapest, 2020. p. 24.

[3] Horgos L. *Gondolatok a ius puniendi jogállami tartalmáról.* [*Thoughts on the constitutional content of ius puniendi.*] In Bragyova A. (Szerk.) *Ünnepi tanulmányok Farkas Ákos professzor 65. születésnapjára. [Festive studies for the 65th birthday of Professor Ákos Farkas],* Miskolci Jogi Szemle, XIV. évfolyam 2. különszám, 1. kötet, 2019. p. 390.

removed confiscation of property from the category of ancillary penalties and included it among the measures. The legislator has thus clearly stated that confiscation can no longer be used as a repressive legal sanction and having lost its punitive character, cannot be used as a means of depriving lawfully acquired property. The rules of this measure, which provided for in integrum restitutio in accordance with the offender's financial situation before the offence was committed, no longer aimed at a pecuniary disqualification expressed in the form of a penalty.

The legal institution of confiscation of property in existing Hungarian criminal law

Act C of 2012 on the Criminal Code (hereinafter: Btk.)[4] continues to uphold the legal policy consideration that confiscation of property cannot be considered a punishment. A measure which is intended to the deprivation for the benefit of the State of property derived from the commission of a criminal offence and of property lawfully acquired but used or intended to be used for the commission of a criminal offence. Confiscation of property cannot be used as a repressive disqualification t[5], 2 and can be used independently and in addition to a penalty or measure.

As regards the category of property that may be confiscated, the application of criminal law may rely on a well-established category in civil law, as a source of law other than criminal law[6].

The scope of the property subject to confiscation – and the mandatory cases in which the measure must be applied – is defined in a separate subchapter of the law.

These cases include the following:

a) Property resulting from the commission of a criminal offence and acquired by the offender during or in connection with the commission of the offence. [Art. 74 (1) (a) of the Criminal Code, Subsection (1) of Art. 74.]

This property is nothing other than the offender's benefit from the offence. Property acquired by the commission of the offence cannot automatically be identified with property acquired during the commission of the offence. The realization of the property resulting from the commission of the offence – acquired in connection with the commission of the offence – may be postponed until after the date of the commission of the offence. This includes the confiscation of property received by the offender for the commission of the offence, not including the proceeds of the sale of property received for the commission of the offence or property purchased therefrom.

(b) The confiscation of property shall be ordered in respect of property which has replaced property derived from the commission of the offence and acquired during or

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[4] Date of entry into force: 1 July 2013.

[5] It is worth pointing out that, according to the criminal law measures applicable to legal persons, the fine applicable to legal persons as a measure is of a retributive nature, and therefore there is no obstacle to the combined use of this legal instrument and confiscation of property. However, confiscation cannot be imposed on property (assets) which must be handed over or returned to the victim or which has already been returned to the victim, nor can it be imposed where the victim has been compensated for his loss by seizure and restitution.

[6] Property, as universitas iuris, is the universality of rights in rem and obligations. It is thus nothing other than the totality of the property, that is to say, the rights and obligations of a legal person in respect of things and of other persons. Civil law excludes non-monetary property, i.e. property that cannot be expressed in money (for example, property linked to personality).

in connection with the commission of the offence. [Article 74 (1) (d) of the Criminal Code, Subsection (1) of Art. 74.]

The unlawfulness of the acquisition of property is not altered by the fact that it has been replaced by other property. The post-acquisition mobilization of property acquired in the course of or in connection with the commission of the offence, and the conversion of the property into other property, for example by means of various business transactions, cannot avoid the confiscation of the property that has replaced it.

(c) Property which has been provided or intended to be provided for the purpose of the commission of the offence in order to secure the conditions necessary or facilitating the commission of the offence shall also be confiscated. Such property shall be confiscated irrespective of who provided or intended it for the purpose of committing the offence. The use of such property in the commission of an offence shall not be a condition for the ordering of confiscation. [Article 74 (1) (e) of the Criminal Code, Subsection (1) of Art. 74.]

(d) Confiscation of property which was the object of the pecuniary advantage given or promised. [Btk. Article 74 (1) (f), Subsection (1) of Art. 74. Btk. and Point f)]

This measure shall also be imposed on property resulting from the commission of the offence, acquired during or in connection with the commission of the offence, and enriched by another. Where such property has been enriched by an economic entity, confiscation shall be ordered against the economic entity. [Art. 74 (2) of Btk. Subsection (2) of Art. 74. Btk.] It follows that the criminal origin of the property acquired in the course of or in connection with the commission of the offence is not altered by the fact that it changes hands. The unlawfulness of the acquisition of property by a third party in the case at hand means the unlawfulness of enrichment (acquisition) in the civil law sense, given that the property can be disposed of by its owner and the offender is not the owner. In this context, it is important to point out that confiscation cannot be ordered in respect of property acquired in good faith for valuable consideration. Ad argumentum a contrario, confiscation must also be ordered against a bona fide gratuitous author (who is unaware of the criminal origin of the property).

(e) Given that the criminal origin of property unlawfully acquired in the course of or in connection with the commission of an offence does not, of course, change even if there is a succession due to the death of the offender or the unlawfully enriched person or, in the case of an economic entity, due to its transformation, that property should also be confiscated. [Art. 74 (3) of the Criminal Code, Subsection (3) of Art. 74. Btk.] It should be stressed that the legislator provides an important guarantee of the rule of law by declaring the prohibition of double confiscation, including, inter alia, the prohibition of confiscation in the case of parallel proceedings. Thus, confiscation may not be ordered in respect of property used as collateral for a civil claim in criminal proceedings or property acquired in good faith for valuable consideration, nor to property in respect of which an obligation to pay has been imposed by a final decision of an administrative authority, a State tax or customs authority or a final decision of a court in an administrative action in respect of the same facts as the offence which is the subject of the criminal proceedings, up to the amount of the obligation to pay. [Criminal Code. Article 74 (5) a) b) c), Subsection (5) of Art. 74. Btk. and Point a), b), c)]

In the latter case, the prohibition is subject to two conditions. One condition is the identity of the facts, which does not imply the complete identity of the historical facts established in parallel proceedings. The other condition is that the prohibition of double

deprivation is only imposed by law in respect of the deprivation of property resulting from the commission of the same act by the same person.

The legislator specifies which property is to be considered subject to confiscation until proven otherwise. This includes property acquired by the offender during his participation in a criminal organization or during the commission of the offence of trafficking or trafficking in narcotic drugs or the commission of the offence of smuggling of human beings, whether on a commercial basis or in conspiracy. [Criminal Code. Article 74/A (1) (a) (b) (c) Subsection (1) of Art. 74/A. Btk. and Point a), b), c)] This legislation is considered to be one of the most effective instruments in the fight against organized crime, because it deprives criminal organizations of their assets.

A further provision of the Criminal Code, which is not detailed here [Art. 74/A. Btk. § 74/A. (2) Subsection (2) of Art. 74/A. Btk.] provides that, until proven otherwise, property shall be deemed to be subject to confiscation and that confiscation shall also be ordered in respect of property acquired by the offender in the five years preceding the commencement of the criminal proceedings, if the property or the offender's lifestyle is particularly disproportionate to his proven income or personal circumstances. The offences in question are not listed.

It should be stressed that under the Hungarian Criminal Code confiscation of property cannot be ordered in respect of property lawfully acquired if the offender proves that the property did not derive from a criminal offence. The possibility that during the period in question the perpetrator acquired the property lawfully (e.g. by inheritance) cannot be ruled out. The contradictory situation which may arise from the foregoing and the possibility of excusing the accused – in a special way, by reversing the burden of proof – is resolved by the legislation in question, in that the legal presumption can be rebutted. The risk of success in proving the rebuttal of the presumption of law is borne by the accused. The confiscation of property must be ordered in monetary terms where the property subject to confiscation can no longer be found or where the property subject to confiscation cannot be separated from other property or where it would be disproportionately difficult to separate the property cannot be separated from other assets or would be disproportionately difficult to separate. [Criminal Code. Article 75 (1) (a) (b) (c) Subsection (1) of Art. 75. Btk. and Point a), b), c)]

Thus, the State's criminal claim is guaranteed even if the property can no longer be found or if the property subject to confiscation cannot be separated from other property or if it would be disproportionately difficult to separate it. This provision protects the bona fide, recidivist acquirer by ensuring that the property is not confiscated from him.

The confiscation of property is compulsory in the so-called "proceedings in rem" if the offender is not punishable for reasons of childhood, pathological mental state or for reasons of non-criminalization as defined by law, or if the offender has been reprimanded or cannot be executed during the period of special protection as defined by the Special Protection of Cultural Property on Loan Act. [Criminal Code. Article 75 (2) (a) b) c), Subsection (2) of Art. 75. Btk. and Point a), b), c)] The facts of the case (and the acquisition of property in connection therewith), which are exhausted by the conduct of the above persons, may objectively have a danger to society that may justify the order of confiscation of property.

The fate of the confiscated property is that, unless otherwise provided by law, it will pass to the State. [Art. 75 (3) of the Criminal Code Subsection (3) of Art. 75. Btk.]

The legislator provides for the possibility of sharing confiscated property between States in the context of international legal assistance.

International outlook

The prerequisite for the application of confiscation under the German Penal Code is the confiscation of property resulting from the commission of any offence against criminal law or the payment of its equivalent. [Strafgesetzbuch, StGB §§ 73-73e] It is applicable even if guilt is not established and not only in respect of the perpetrator but also in respect of another person. However, the deprivation of property belonging to the victim may not be ordered if the victim has a private claim arising from the offence, for the fulfilment of which he would have to deprive the offender of the amount from the proceeds of the offence. This also applies when the victim's satisfaction of his civil claim is jeopardized by the payment of the deprivation in value[7].

Similar solutions have developed in English and Spanish law. However, in English law, for example, the rule applies only to the offender[8].

The development of the legal institution of civil action

The claim for compensation for the damage caused to the victim by a criminal offence can be found at the very beginning of the development of Hungarian legal history. In addition to the prospect of the application of the death penalty, the institution of compensation was also included9. The root of the compensation for the victim's damage related to the crime, the assertion of a civil claim, was compositio[10].

The first Hungarian Code of Criminal Procedure, Article of Law XXXIII of 1896 of criminal code of procedure (henceforth: Bp.), already assumed that certain crimes (e.g. assault, manslaughter) caused such damage to the victim that the victim's private interests were so violated that the crime was not yet resolved by a finding of guilt and the imposition of a penalty. For this reason, partly criminal law and partly private substantive law have given the victim a right of action against the offender. This is what criminal law called the victim's private claim (obligatio ex delicto)[11]. To a limited extent, the B p. accepted the theory of the so-called adhesion system, that the injured private party could assert his claim for damages already in the criminal proceedings. However, this did not change the fact that the main purpose of criminal proceedings was to establish criminal liability.

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[7] M. Hollán, *Vagyonelkobzás. [Confiscation of property.]* HVG-ORAC Lap- és Könyvkiadó, Budapest, 2008. p.170, p. 182.

[8] M. Hollán , cited, p. 160.

[9] e.g. according to the law of St. Stephen, in the case of intentional homicide, the perpetrator was obliged to pay gold coins to the "state" (treasury) and to the victim's relatives for the crime committed. Second Book of the Decretals of King Stephen. Furthermore, the institution of redemption was accepted in the reign of Louis the Great and even during the reign of King Matthias.

[10] The study specifically examines the institution of civil claim in the context of the so-called adversary proceedings in criminal proceedings. Thus, it does not touch upon other forms of compensation for the victim.

[11] F. Finkey , *A magyar büntető eljárás tankönyve. [Course Book of Hungarian Criminal Procedure.]* Politzer Zsigmond és Fia., Budapest, 1903, pp. 156-166.

The legal institution of the civil claim in our domestic criminal procedural law underwent gradual changes and clarifications in the 20th century until its current stage in the 21st century.

In the realization of the state criminal claim, the civil claim arising from the crime committed by the accused on the side of the victim/private party as a direct consequence of the act charged in the specific case is adjudicated by the court in the course of the criminal proceedings.

The regulation of civil claims in current Hungarian criminal procedural law

The preamble of the Law of Criminal Procedure Act XC. of 2017 (henceforth: Be.)[12] 6 places special emphasis on the increased protection of victims of criminal offences and the importance of enforcing their rights. The amendments that have taken place have arguably strengthened the procedural status of victims and the guarantee of their corresponding rights, which has allowed the Be. to systematize these provisions[13]. The above-mentioned provisions also apply to the rules on civil claims by private parties.

The Be. lays down clear, well-defined rules on the possibility of adjudicating civil law claims in criminal proceedings, lists the framework for this and the scope of civil law claims that may be asserted in criminal proceedings. With this system, the Be. has confirmed the legitimacy of the adversarial procedure and made it easier and more effective to use in criminal proceedings.

However, the civil claim is ancillary to the criminal claim. Its function is secondary in the criminal procedure, since its object is to enforce the criminal claim of the state against the civil procedure[14].

The intention to assert a civil claim can be announced by the victim before the indictment. This gives the opportunity to establish the exact content of the civil claim during the investigation, but also to correct it before the indictment, or even to refrain from doing so. [Be. § 355 Art, 355. Be.][15].

The Be. stipulates how long after the indictment the victim can present his civil claim. At the latest at the court of first instance at the procedural act at which he/she could first be present according to the provisions of the Be. If the time limit is missed, no certificate may be issued. [Art. 556 (1) of Be. Subsection (1) of Art. 556. Be.] Therefore, if the victim did not appear at the preparatory hearing, he/she may no longer present his/her civil claim at the trial. The Be. precludes the institution of a certificate in this respect in the event of his failure to appear.

If the private party lodges a civil claim, the criminal and civil consequences of the offence committed against the victim may be determined – jointly – in the criminal

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[12] Date of entry into force: 1 July 2018.

[13] K. Farkas, *A sértett helyzete az eljárás hatékonysága tükrében.* [*The situation of the victim in the light of the effectiveness of the procedure.]* In M. Hollán, K. Mezei (eds.), *A büntetőjog hazai rendszere megújításának koncepcionális céljai és hatásai* [*Conceptual goals and effects of the renewal of the domestic system of criminal law]* Társadalomtudományi Kutatóközpont Jogtudományi Intézet. 2020, p. 64.

[14] A. Kiss, *A sértett szerepe a büntetőeljárásban.* [*The role of the victim in criminal proceedings.]* Országos Kriminológiai Intézet [National Institute of Criminology] 2018, p. 175.

[15] G. Megyeri, *Nyomozás.* [*Investigation*] In P. Polt (ed.) *Kommentár a büntetőeljárási törvényhez. 1. kötet. [Commentary on the Criminal Procedure Code. Volume 1.]* Wolters Kluver, 2018, p. 711.

proceedings. In the adversary proceedings, the private party also assumes the position of plaintiff under the rules of the Code of Civil Procedure against the defendant as a defendant, as if the private party had brought an action before the court.

A civil claim can only be brought before a court, as reflected in the definition of private party. According to it a private party is a victim who brings a civil claim in court proceedings, even if he or she has declared his or her intention to do so before the charge is brought. [Be. § 54 (3) Subsection (3) of Art. 54. Be.]

The Be. adopted the provision of the former Hungarian Be., according to which the civil claim must have a direct causal connection with the act which is the subject of the accusation. This implies, on the one hand, that a civil claim can be enforced before a court – after indictment. On the other hand, it follows that only private law claims closely related to the subject-matter of the case can be brought in criminal proceedings, which are essentially intended to determine criminal liability. Criminal proceedings may be used to seek compensation, restitution of unjust enrichment, cessation of the infringement or the removal of the injurious situation, restoration of the situation prior to the injurious situation or the original situation, or other claims for the delivery of something or the payment of money. Appropriate measures to satisfy these claims can also be found in the Be. (e.g., in the case of harassment, restraining the accused from further infringements by means of a restraining order). The private party has the possibility to lodge, prepare and secure a civil claim during the pre-trial investigation (e.g. by requesting the seizure of the accused's property). Nevertheless, one of the main differences between a civil claim and an asset recovery activity is that the investigating authority does not have an obligation to search for assets in the case of the former[16].

The Be. defines as a new element the scope of application of the Law Code of Civil Procedure Act CXXX of 2016 (hereinafter: Pp.) in the case of the adjudication of a civil claim. [Be. § 555 (1)-(6) Subsection (1)-(6) of Art. 555. Be.]

In order to facilitate the enforcement of a civil claim by the victim, the Be. lays down minimum elements without which the merits of the civil claim would not be adjudicated. [Be. 556 § 556 (2) Subsection (2) of Art. 556. Be.] The Be. also provides for the communication and amendment of a civil claim in this context. [Be. § 558 (1) – (3). Be. § 559 (1) – (2). Subsection (1) – (3) of Art. 558. Be., Subsection (1) – (2) of Art. 559. Be.] In order to ensure that private law claims are judged according to uniform criteria, the Ordinance also applies to civil law claims the provisions of the Civil Code on the types of claim and the cause of action. [Pp. Sections 172-173, Art. 56 (2) of the Be. Pp. 172-173, Subsection (2) of Art. 56. Be.]

In this way, the Be. has raised the professional standards expected of judges in adversarial proceedings, since detailed knowledge of the rules of the Pp. has become necessary in criminal proceedings as well.

The Act states that a claim that cannot be enforced in court cannot be brought in criminal proceedings either. [Subsection (3) of Art. 56. Be.]

The Be. explicitly excludes the assertion of a civil claim in the case of offences against the budget and other offences against the State. In such cases, procedures other than civil court proceedings, in particular administrative, tax and customs procedures, are available. [Be. § 56 (4) Subsection (4) of Art. 56. Be.]

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[16] R. Nagy, V. Vári, *Új irányok a vagyonvisszaszerzésben*. [New Ways in Asset Recovery] Belügyi Szemle. 69(4), 2021, pp. 579-593.

The principle of officiality is impaired in relation to civil claims. The Be. stipulates that the public prosecutor's office may only assert a civil claim on behalf of the victim or join in the assertion of such a claim on the side of the victim, in accordance with the rules of the Pp., in an auxiliary capacity and with limited powers, except in the cases specified in the Be[17].

The Be. maintained the previously known rule that the assertion of a civil claim by other legal means does not preclude the victim from acting as a private party. [Be. § 56 (6) Subsection (6) of Art. 56. Be.]

The court of first instance shall rule on the merits of the civil claim on the legal basis and the amount of the claim. [Be. § 571 (1) – (4) Subsection (1) – (4) of Art. 571. Be.] A further possibility is to order the civil claim to be dealt with by other legal means. [Be. § 560 (1) – (4) Subsection (1) – (4) of Art. 560. Be.] However, the Be. does not provide the court with the possibility to dismiss the civil claim on the merits.

International outlook

The German Code of Criminal Procedure [Strafprozessordnung, (StPO) §§ 403-406c] provides for the possibility of an adhesion procedure for the victim. It can only be used to pursue a civil claim relating to the offence for which no other legal proceedings are pending. The victim's right of petition may relate to any criminal offence. If, on the basis of the outcome of the hearing on the merits, the application for an application for an admissibility order is well founded, the court will grant it in the criminal judgment. The decision may be limited to the legal basis of the asserted claim or to a part of it[18].

The French Code of Criminal Procedure also grants the right to a natural person who is the victim of a criminal offence to claim for direct damage – material and non-material – before a criminal court as a private party (partie civile). [Code de procédure pénale (henceforth: CCP), CCP Article 2, Art. 2 CCP.]. [CPP 4 and 5, Art. 4-5 CCP][19].

The Italian Code of Criminal Procedure [Codice di procedura penale (henceforth: CPP)] regulates the participation of the civil party entitled to compensation in criminal proceedings as a general rule and not as an exception. The rules for joining and the judicial procedure are set out in separate articles. [CCP Articles 74-75, CCP Articles 74-75, CCP Articles 538-539, Art. 538-539 CCP., Herke, 2011, 99.] The victim is obliged to submit the amount of compensation in writing to the criminal court at the end of the trial[20].

In contrast, English law does not give the victim the right to join the criminal proceedings as a private party (partie civile) in the case of a public prosecution. Furthermore, the victim has no formal right to seek compensation. However, courts are bound by ex officio compensation rules[21].

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[17] A. Békés, Sértett. In P. Polt (ed.), *Kommentár a büntetőeljárási törvényhez. 1. kötet* [*Commentary on the Criminal Procedure Code. Volume 1.*] 2018, Wolters Kluver, p.182,

[18] Cs. Herke, *A francia és az olasz büntetőeljárás alapintézményei.* [*Basic institutions of French and Italian criminal procedure.]* PTE ÁJK, Pécs, 2013, pp. 110-111.

[19] Cs. Herke, *A német és az angol büntetőeljárás alapintézményei.* [*Basic institutions of German and English criminal procedure.*] PTE ÁJK, Pécs, 2011, p. 99.

[20] Cs. Herke , 2011, cited, p. 100.

[21] Cs. Herke , 2013, cited, p. 115.

The specific conflict between confiscation of property and the enforcement of a civil claim

It is not in line with the requirements of the rule of law to order confiscation of property (assets) which the offender has acquired through the offence, and which therefore belongs – unlawfully and temporarily – to his property, but which is proven to belong to the victim or to another person.

This follows from settled Hungarian judicial practice. According to this, confiscation of property under the Criminal Code is a measure intended to deprive the State of the property resulting from the commission of an offence and of property lawfully acquired but used or intended for use in the commission of an offence.

Asset forfeiture may not be ordered in respect of property used to cover a civil claim in criminal proceedings. Thus, the prohibition of confiscation of property applies only if the court hearing the criminal proceedings decides on the merits of the civil claim of the victim. However, Paragraph 54(3) of the Be. provides that it does not preclude the enforcement of a civil claim by other legal means if the victim has not been a private party to the criminal proceedings. This may lead to a violation of the prohibition of double deprivation if the victim is a "public body" and the confiscation order in favour of the State governed by criminal law is made after the final disposition of the criminal proceedings, the civil claim is made by the victim "public body" after the conclusion of the criminal proceedings. This is in fact a specific case of a breach of the prohibition of double deprivation. On this basis, if the victim – a "public body" – may be paid twice by the accused person for the property resulting from the commission of the offence. The reason is that the current provisions of the Criminal Code and the Criminal Procedure Code nowadays allow this. In our view, this could have an unintended effect on the rule of law in criminal proceedings, as it is completely contrary to the rule of law and the sentencing of the accused in favour of the State would in particular violate the principle of legal certainty.

If the victim and the victim as a 'public body' do not request that the administration proceedings be conducted and do not assert their civil claim in the criminal proceedings, the imposition and payment of confiscation of assets would risk the accused being liable to pay twice.

This is no longer a quasi conflict of laws, as it is not otherwise a conflict of laws. There is no doubt that the situation created by the legislation under consideration is contrary to the fundamental values of criminal procedure in the rule of law and is unacceptable.

International perspective

For the purposes of our topic, we have reviewed the German Btk. [Strafgesetzbuch, (StGB)]. Section 73(1)(II) of this Act excludes the applicability of confiscation of property if the victim of the offence has a private claim arising from the offence, the fulfilment of which would require the confiscation of the proceeds of the offence from the perpetrator or the participant. In this case, it is irrelevant whether the civil claim is pursued in the adversary proceedings of the criminal proceedings or in civil proceedings, only that there is a civil claim[22].

[22] M. Hollán, 2008, cited, p. 170.

If confiscation has not taken place due to the exclusionary rule of the German Criminal Code, but the criminal proceedings have been completed without the civil claim being asserted, then subsequent confiscation in the criminal proceedings should be allowed for three years. [StPO Art. 111 (4) (i), Subsection (4) of Art. 111. StPO. and Point i).] If the victim has not asserted the civil claim in civil proceedings within three years, the claim shall be vested in the State.

Criminal aspects of the recovery of criminal property

The prosecution and the investigating authority are obliged to take all necessary measures during the proceedings to trace and secure the property or assets that may be confiscated. [Art. 353 (1) of Be. Subsection (1) of Art. 353. Be.] Prior to the indictment, at the request of the prosecution or the investigating authority, the body of the investigating authority responsible for the recovery of property may participate in these tasks.

The body responsible for the recovery of property of the investigating authority shall conduct its proceedings in accordance with the provisions of the requesting prosecution or investigating authority and, in specific cases, a joint investigation team may be established. The member of the investigative body responsible for the recovery of property may carry out procedural acts in order to detect and secure confiscable property or assets, and it shall act in the interests of the investigation and may initiate the procedural act he considers appropriate with the requesting authority. [Subsections (1)-(2) of Art. 354 Be.] Furthermore, the body of the investigating authority responsible for the recovery of property may obtain any information necessary for the purpose of detecting and securing the confiscated property or property. [Be. § 354 (4) Subsection (4) of Art. 354. Be.]

A number of measures are to be carried out in connection with the tasks of securing and recovering property. Pursuant to ORFK Instruction No. 20/2018 (31 May 2018) on the tasks to be performed for the purpose of tracing, identification, and asset recovery of proceeds of crime and other property related to crime:

- during the investigation of a criminal offence generating property, the investigating body must, in order to ensure the enforceability of the confiscation or forfeiture of property, examine the possibility of seizing the property resulting from the offence;
- the victim must in all cases be informed of the civil liability of the victim in order to obtain compensation for the damage caused – in all cases, the victim must be informed of the possibility of pursuing a civil claim in criminal proceedings in order to recover damages,
- in the course of the preparatory proceedings and investigations initiated in connection with a criminal offence generating the proceeds of crime, measures must be taken to obtain information on the assets and income of the perpetrator or of other natural or legal persons or entities without legal personality who have benefited from the proceeds of crime. The mapping of assets must be carried out up to two dates: the date of the commission of the offence or the date of the entry into force of the Criminal Code. 74/A of the Criminal Code.
- if there is a suspicion that the offence was committed by a criminal organization, the search of property must be extended to the entire period of the existence of

the criminal organization or, in the case of a given offender, to the period during which he was a member of the criminal organization. The investigating authority should also identify the suspect's network of contacts and criminal history in order to identify any person who may have been involved in the concealment or management of the property, the way in which they cooperated and the property that was concealed, and to establish the origin of the offender and the fact of concealment.

- in the course of the property search, it is also necessary to obtain physical and personal evidence relating to the acquisition or transfer of each item of property discovered.
- if the legal conditions for confiscation or forfeiture are met, and in order to satisfy a civil claim, urgent measures must be taken to enforce the property measures.
- where an investigation plan is drawn up, it must specifically indicate the measures and procedural steps planned for the recovery of assets. At the end of the investigation, a summary report should state whether any measures have been taken to secure the assets or clearly indicate the reasons for the lack of a search. [ORFK instruction 20/2018 (31.V.) ORFK instruction 20/2018 (31.V.) ORFK instruction] Pursuant to the Instruction, in the investigation of all property-generating crimes, the possibility of deprivation of property resulting from the commission of a punishable act must be examined[23].

However, this also requires monitoring of scientific and technical developments. A major role in this is played by financial profiling and the mapping, understanding and processing of electronic investigation (e-investigation) resources. E-investigation means that the investigating authority requests information from directly or indirectly accessible databases in order to detect and prove criminal activity and to locate criminal assets[24], while applying tactical recommendations to ensure the success of the investigation. E-investigation facilitates the tracing of criminal assets (proof of acquisition of illicit assets) for financial profiling (asset recovery) and the establishment of versions or the verification of established versions for asset seizure and asset recovery[25]. Knowledge of domestic databases and rapid exchange of information and cooperation between Member States are essential for the tracing of the assets of the person concerned[26].

The enforcement of coercive measures is an important element in the recovery of criminal assets. Two categories of coercive measures are distinguished: coercive measures affecting personal liberty and coercive measures affecting property. Coercive measures affecting property include search; search; seizure; seizure under lock and key and temporary unavailability of electronic data. [Be. § 272 (3) Subsection (3) of Art. 272. Be.]

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[23] R. Nagy, V. Vári, *New Ways in Asset Recovery*, In: Jačimovski, S (eds.) *Archibald Reiss Days 2020: thematic conference proceedings of international significance,* Belgrade, 18-19 November 2020, Belgrade, Serbia: University of Criminal Investigation and Police Studies, 2020, p. 247.

[24] G. Gardonyi, *Still Image Face Recognition in Hungary* Belügyi Szemle *68/ 3,* Special Issue Budapest 2020, pp. 22-33, https://doi.org/10.38146/BSZ.SPEC.2020.3.2

[25] E. Nyitrai, *A bűncselekményből eredő vagyon visszaszerzése*, [*Recovering the property resulting from the crime*] Ügyészek Lapja, 2020/2-3.sz., Budapest, 2020, p 51.

[26] E. Nyitrai, *Vagyon-visszaszerzés a szervezett bűnözés felszámolásában*. *[Asset recovery in the eradication of organized crime]* In: L. Frigyer (ed..*): Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból. Tanulmánykötet II.* [*Research on the investigation of international organized crime from the point of view of information flow. Study volume II.]* Nemzeti Közszolgálati Egyetem, [National University of Public Service] Budapest,2018, p.127.

These forms of coercive measures enable confiscation to be effective and the criminal property to be secured. If the offender is deprived of the property acquired through the offence, it is not worthwhile for him to commit the offence and, if it becomes a practice, it is likely to deter economic crime and to protect the interests of the victim[27].

Summary

Constitutional state is the rule of law and is derived from the constitution. The concept of the rule of law cannot be understood without taking into account the existence of the Constitution[28].

The fundamental element of the rule of law is the requirement of legal certainty and the legal, institutional and organizational system which is the guarantee of the rule of law[29].

Legal certainty, which is closely linked to the rule of law, expects the legislator to ensure that the law as a whole, its unified subdivisions and individual rules are clear, unambiguous and foreseeable. It is not only the guarantees of substantive criminal law that derive from the rule of law, but also procedural guarantees[30].

The fundamental elements of the rule of law are, in particular legality, justice, legal certainty, the principle of legality of prosecutorial activity and, last but not least, the requirement of due process[31]. In its preamble, it is stated that the fundamental right to a fair trial must be guaranteed in criminal proceedings for the perpetrators of crimes punishable under the Criminal Code and international law. The principle of equality of arms is an essential element of due process, which has been elevated to an important principle in continental legal systems by the case law of the European Court of Human Rights. A negative requirement in this context is that the prosecuting authorities are prohibited from increasing the disadvantage of the accused. It is also a violation of the principle of due process to require the accused to pay twice the amount of the damage caused by the crime.

In our view, both the German and the Hungarian legislation should clearly and unambiguously state that the prohibition of double deduction cannot be infringed within the constitutional framework of the rule of law. The possibility of the occurrence of quasi-collision permitted by the Hungarian legislation in force – the double deprivation of

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[27] P. Cieleszky , T. Henyecz, C. Horváth, *A vagyonfelderítés lehetőségei.* [Possibilities *of asset detection. Law Enforcement Review,*] Rendészeti Szemle, 2007/1, Budapest, 2007, pp. 32–37.

[28] B. Blaskó, *Jogállamiság – Büntetőjog – Bűnösség.* [*Rule of law – Criminal law – Guilt.*] Kandidátusi disszertáció [Candidate's dissertation], Magyar Tudományos Akadémia, 1994, p.27.

[29] T. Király, *Szemelvények ötven év büntetőjogi és más tárgyú tanulmányaiból. [Extracts from fifty years of criminal law and other subjects.]* ELTE ÁJK Büntető Eljárási jogi és Büntetés-végrehajtási jogi Tanszék. 2005, p. 250.

[30] A. Szabó, *A jogállami forradalom és a büntetőjog alkotmányos legitimitása,* [Constitutional revolution and the constitutional legitimacy of criminal law.] In Németh Zs. (ed.), *Tiszteletkötet Sárkány István 65. születésnapjára [Tribute volume for István Sárkány's 65th Birthday.]*, Rendőrtiszti Főiskola, 2010, p.116

[31] L. Horgos, *A ius puniendi jogállami tartalmának kiteljesedése.* [*The accomplishment of the constitutional content of ius puniendi*]. *Válogatás a DOSz Alumni Osztály tagjainak doktori munkáiból. II. kötet.* [*Selection from the doctoral theses of the members of the DOS Alumni Department. II. volum*e] Doktoranduszok Országos Szövetsége. [National Association of Doctoral Students] 2021, p. 212.

property which has otherwise been unlawfully acquired – must be eliminated, in particular where the victim is a State or budgetary body.

It should also be noted that forensic science and new investigative methods play a significant role in the deprivation and recovery of criminal assets. E-investigation can be considered as a new field of research in criminology, which can contribute to the enforceability of confiscation or forfeiture in the case of a property-generating crime, and to the seizure of the property derived from the crime.

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Hearing of the Witnesses – Psychological and Evidence Value of the Statement Given in the Pretrial Procedure

Vesna Trajanovska*
Natasha Peovska**

Abstract

Witnesses are still important and very common evidence in criminal procedure. In the case of subjective evidence, it is very important to assess the credibility of the testimony correctly. The authorized official (criminalist, judge or public prosecutor) in the pretrial procedure has an extremely difficult task in evaluating the objectivity of what the witness presents during his hearing. Therefore, in addition to legal, the authorized official must also have extra-legal knowledge. To be able to conduct the hearing successfully, the authors indicate the importance of knowing the psychological processes and tactics of the authorized persons when taking the testimony from the witnesses.

At the end of this paper, the authors analyze the problems related to the probative value of the statements given in the pretrial procedure, the use and the evidence value of the statements of the witnesses given to the public prosecutor in the pretrial procedure that are used in cases of inconsistency between this statement and the statement of the witness given during the main hearing. Although the purpose of the existing Law on Criminal Procedure is primarily to present all the evidence immediately at the adversarial and public hearing, it must also provide exceptions from the direct presentation of the evidence.

Keywords: *criminal procedure, examination, psychology, witness, reliability of testimony, the probative value of the statement*

Introduction

The subject of the testimony is a criminal event that happened in the past, and it refers to the crime and the perpetrator. The criminal event is fully or partially understood by the witness, which is why the criminalist has the task of separating the information obtained from the testimony into important and unimportant for the criminal procedure.

Any person can be a witness regardless of his characteristics (psychological, physical, and age). A witness is any person who was able to observe the occurrence of the crime in a certain way, to reproduce the observations by way of memory during the procedure itself. When it comes to the age of the witness, it is irrelevant because both minors and adults can appear as witnesses. Also, children can be questioned,

* PhD in criminal procedure law and associate professor, e-mail: vesna.trajanovska@yahoo.com.

** Associate professor at Faculty of Security-Skopje, University "St. Kliment Ohridski"- Bitola, e-mail: natasa.peovska@uklo.edu.mk.

taking into account their psychological development as well as the nature of the subject for which they have to testify[1].

One of the criteria for dividing the witnesses is the way they perceived (learned about) the specific criminal event. In connection with the above, we divide the witnesses into those who testify about the criminal event based on their own observations causu criminalis or so-called, real witnesses and witnesses who came to the knowledge of a certain criminal event through an indirect way by hearing from other people which is why we call such witnesses indirect witnesses or hearsay witnesses.

Personal evidence arises as a result of observation (perception) and psychological survival of the persons who were in contact with the commission of the crime (witnesses, the injured as a special category of witnesses, and the suspect in the pretrial or the accused in the criminal procedure). The evidentiary information from these persons is taken by way of hearing. This type of evidentiary information is primarily conditioned by the possibility of noticing (perceiving), remembering and forgetting, and reproducing what was observed, which on the other hand is directly conditioned by the tactics of questioning to obtain a true statement. Apart from criminalistic tactics, forensic psychology also deals with this issue.

Signals, as carriers of criminal information, arise when a crime is committed, exist in the outside world, and contain information about both the crime and the perpetrator. Crime, as a real phenomenon that surrounds us, is not in a static state, but in rapid and constant disintegration and disorientation. From the moment when the signals of the committed crime have arisen, they begin to change, transform, and disappear, regardless of whether they are personal or material carriers of information. Psychic carriers of information, that is, memories fade and change over time. Because of this, it is necessary to take criminal measures following the principle of speed and surprise, to successfully and promptly discover and fix criminal information, because only with such action can their loss and destruction be prevented[2].

The information obtained by questioning the victim of the crime, the witness, the perpetrator, or the defendant in a situation given by law, represents a solid basis for discovering and proving the crime. Even though we are talking about the hearing of witnesses, the victim or the perpetrator, the general criminal rules that are implemented in the investigative procedure must be respected. We must mention that no precisely defined template should be used by operatives in the investigative procedure. This finding is supported by the arguments that criminal acts are grouped into several subgroups, the perpetrators of them have different character traits intellectual power, and different interests.

During the hearing of the mentioned group of persons, we meet two parties, an examiner (an authorized official) and a respondent who can appear as a suspect, witness, and victim in the pretrial procedure.

In this process of examination, an interaction is established between the participants (the respondent and the subject), which is verbal, i.e. primary, on which the secondary part is added, which is the psychosomatic behavior of the respondent (nervous behavior, dry throat while giving answers, trembling of the body and voice, wandering gaze, redness of the face etc.), which allows the examiner to build the most fruitful examination tactics[3].

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[1] N. Rot, *Opšta psihologija* [General Psychology]. Beograd, 1974, p. 115.
[2] V. Pivovarov, *Istrazhna Kriminalistika* [Criminal Investigation] kniga, Skopje, 2017, p. 4.
[3] Ž. Aleksić, *Kriminalistika* [Criminalistics] Beograd, 1982, p. 307.

1. Legal basis for examination of witnesses in pretrial procedure

Although the purpose of the existing Law on Criminal Procedure is primarily to present all the evidence immediately at the adversarial and public hearing, it must also provide exceptions to the direct presentation of the evidence. Depending on the legal situation in which the person suspected of committing the crime is, or if an accusation has been brought against him, the examination of the suspect is carried out by the criminal investigator in the pretrial procedure.

According to the LCP, a witness (testis) is any natural person, a person who is obliged in the criminal procedure to present his sensory observations about all the facts that are the subject of the proof and are of importance for the criminal event. The obligation to testify arises with the decision of the court and not with the proposal of one of the parties in the procedure.

The statement given by the witness is called testimony, by which the witness conveys his immediate observations about the facts of the past that he knew (perceived), with the help of the senses of touch (for blind people), smell, hearing, and sight, which relate to on a certain criminal event. A witness statement is a statement made by a person other than the accused, given to the authority that conducts the criminal proceedings, the same to note a fact from the past, a fact that is important for the specific case and to prove that fact[4].

All those persons who are supposed to know (personal or transmitted by another person) and who relate to the crime (perpetrator, circumstances for preparation, execution, and concealment of the same) can be called witnesses. The injured party, the injured party as plaintiff, and the private plaintiff, also according to Art. 217 paragraph 2, may be heard as a witness. Even in certain situations, the other persons participating in the procedure, such as the prosecutor, the judge, and the lay judge, may be questioned as witnesses, provided that after giving their testimony as witnesses, they are exempted from further proceedings. Age, gender, social status, and business ability of persons cannot be an obstacle for them to be called to testify about a certain criminal event[5].

The duty to testify is a legally constituted obligation of all citizens, both domestic and foreign, residing in the territory of the Republic of Macedonia unless they are exempted from the obligation to testify by special legal provisions. The obligation to testify covers the following elements: the duty of the witness to appear on the summons of the court and to give his testimony.

During the pretrial procedure (pre-investigation and investigation), the judicial police and the public prosecutor are authorized to summon persons. According to Article 43 of the Law on Police and Article 12 of the rulebook on the way of performing police work, within the framework of police investigations, the judicial police, assuming that a certain person can give notice of facts that are important for a certain criminal event, summons the same with a summons.

The police are authorized in writing with an invitation to summon citizens to give the necessary statements necessary for the performance of police work. The written summons contains the name and surname of the person being summoned, title, place,

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[4] T. Markovikj., *Savremena tehnika istrazhivanja krivichnih dela* [Modern techniques of criminal investigation], Zagreb, 1977.

[5] Z. Milovanović, *Starosna doba svedoka kao elemenat za ocenu dokazne vrednosti prepoznavanja u krivičnom postupku* [The age of the witness as an element for evaluating the probative value of recognition in criminal proceedings], Anali Pravnog fakulteta u Beogradu, 1986, p. 34 (1-3).

and address of the headquarters of the organizational unit of the Police where the person is summoned, reasons for the summons, place and time of the summons, as well as instruction on the right to a defense attorney in the police procedure, as well as the consequences if he does not respond to the invitation. The subpoenaed person can be forcibly brought only by a court order and only when he refuses to respond to a duly delivered summons in which he was warned of the possibility of forced delivery and when he does not justify his non-appearance.

The person who responds to the summons or was forcibly brought, and refused to give a statement, cannot be summoned again for the same reasons. The person who is summoned or forcibly brought is instructed about the rights from Article 34 of this law, as well as about the fact that he is not deprived of his liberty and that he can leave after giving or refusing to give a statement. For the invitation and conversation, the police officer allows the invited person to make the statement by hand in a form previously prescribed by the Minister of the Interior or, if the official enters the statement in the form, reads it out loud and finally the respondent signs it. Minors are invited by submitting a written invitation to their parents or guardians.

The Law on criminal procedure obliges the justice police, as soon as it assesses that the citizen called to give a statement can come forward as a suspect, to immediately notify the public prosecutor[6].

The witness is obliged to give a statement and speak only the truth without concealing the facts known to him, and if he gives a false statement, he commits a crime – perjury. A witness is not required to testify to certain questions only if the answers given would cause embarrassment or material damage to him or a member of his family.

The accused as a witness has the legal opportunity to defend himself by remaining silent. Only in exceptional situations, the first accused may appear as a witness when his capacity as an accused ceases or when the accused has been convicted by a final court judgment in a case in which several co-perpetrators still have the capacity of an accused. The accused may, of course, voluntarily waive any of the rights, but his examination cannot begin unless the statement that he waives any of the rights is recorded and signed by him. The accused cannot waive the right to counsel if the defense is mandatory.

At the same time, the Criminal Procedure Code provides the possibility of recording the conversations of the suspect. Namely, paragraph 1 of Art. 207 stipulates that the examination of the accused by the public prosecutor or in his presence can be recorded with a video-audio recording device. With this, they will be able to be used as evidence in the proceedings for the first time[7].

The European Court of Human Rights particularly takes into account whether the defense has been granted the right to question the witness during the investigation or at a later stage of the proceedings[8]. When the accused did not have the opportunity to ask questions of the witness, in the investigation or at the main trial, and the verdict is based exclusively or on the decisive degree of the testimony of the witness, then violated the rights of the defense to a fair trial, guaranteed by the provisions of Article 6

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[6] Criminal Procedure Law of the Republic of North Macedonia, Official gazette No. 150 from 18 November 2010, Article 279.

[7] G, Kalajdiev *Kon predlog zakon za izmeni i dopolnuvanje na zakonot za policija* [On the proposal of the law for amendments and additions to the law on the police], Makedonska revizja za kazneno pravo i kriminoloogija no.1-2 2011/2012.

[8] Case *Ludi v. Switzerland*, 12433/86 of June 15, 1992.

paragraph 1 and 3 (d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms[9].

The testimony of a witness given before the main trial cannot, as a rule, be used as evidence at the main trial, it is necessary for the party or the defense to prove to the court in advance that they have made efforts to ensure attendance. to the witness. and that despite that he remained unavailable

A certain group of persons, according to the Criminal Procedure Code, shall not be witnesses, namely:

- a person who would violate the duty of keeping a state or a military secret if he or she gives a statement, unless the competent entity relieves him or her of that duty;
- the defense counsel of the defendant on anything confided by the defendant in him or her as counsel, unless the defendant himself or herself demands it;
- a person who would violate the duty of keeping a business secret if he or she gives a statement, regarding anything learned during the practicing of his or her profession (religious confessor, attorney and physician), unless the person has been relieved of such a duty by a separate regulation or by a written statement, i.e. or by a verbal statement given on record by the person for whose benefit the keeping of the secret was instituted, i.e. by such a statement by his or her legal successor;
- a juvenile person who, bearing mind his or her age and mental development is not capable of understanding the significance of his or her right not to testify, unless the defendant himself or herself demands it; and
- any person who is not capable of testifying at all, due to his or her mental or physical illness or age[10].

Also, the Criminal Procedure Law provides for a group of persons who are excused from the duty to testify, that is, the testimony depends on their will. This group of persons consists of:

- the marital and illegitimate partner of the defendant;
- any blood relatives of the defendant in a direct line, any relatives in an indirect line up to the third degree, as well as in-law relatives up to the second degree; and
- an adopted child or a foster parent of the defendant[11].

2. Psychology, strategies and tactics of the witness hearing

Witnesses have always been an important and often-used evidence tool in criminal proceedings. They have not lost their importance even today, despite the knowledge that they can represent a rather unreliable source of information. Namely, witnesses are in the group of so-called subjective means of evidence, which rest on the testimony of the person about the facts perceived by the senses. With such evidentiary means, it is difficult to avoid a certain amount of subjectivism, which permeates both the stage of

[9] Case *A.G. v. Sweden*, no. 1315/09 10 January 2012.

[10] Criminal Procedure Law of the Republic of North Macedonia, Official gazette No. 15 from 18 November 2010, Article 213.

[11] Criminal Procedure Law of the Republic of North Macedonia, Official gazette No. 15 from 18 November 2010, Article 214.

the interviewee's statement and the stage of assessing his credibility. If witnesses continue to be one of the most frequently used means of evidence as sources of evidence in criminal proceedings, there is nothing left but to use the development of science to improve this evidence and neutralize its negative aspects. In this regard, we can rely on the previous achievements of forensic psychology, other psychological disciplines, logic, and criminology[12].

To be able to successfully conduct the examination, the authorized person in the pretrial procedure should first know the psychology of testimony, the methods of criminal psychology, and the general rules for conducting a conversation, and for all of the above, comprehensive preparation is required. Episodic memory is the basis for quality reproduction of what was perceived (observed) during the occurrence of a criminal event. Episodic memory is a psychological process that consists of declarative long-term memory that refers to the temporal determination of when the event occurred (episodes) and their temporal and spatial connection determining where and when some information is perceived. The problem of testimony is closely related to the properties of episodic memory[13].

a) Collecting data about the person to be interviewed is one of the most important elements in building a further strategy for conducting the interview. The data about the person with whom he is having a conversation is part of the preparatory stage for conducting a conversation, and the same is collected in an operational way (data about his personal life, his family, communication with other people, his habits and inclinations etc.) as well as by checking in the records of the internal affairs authority if the person with whom it is necessary to have an interview is already recorded in such records. A big drawback is the lack of records for persons with whom the internal affairs authority has already had a conversation on another basis, that is, data on their character traits. From such records of already registered persons, we can only obtain data about their former criminal activity, criminal communication with co-perpetrators, the way of committing crimes, the specificity for committing certain types of crimes etc. Such extensive preparation represents a solid foundation. for obtaining a successful representation for the future interlocutor and thus a basis for creating questions for which there is an interest in being fully or partially clarified.

б) In the preparatory stage, the second moment is the study of the specific criminal case, and with that, the interests of the operational worker are defined for clarifying a certain segment of the criminal event or the entire criminal event. The study of the subject refers to all the verbal and material evidence collected up to that point, and after their study, the unclear points are specified which should be clarified or specified through the conversation.

The tactic of interviewing persons is divided into three successive stages, namely:

a) Stage of getting to know the person or introductory stage,

b) Stage of free presentation of the examined person, and

c) Stage of asking questions or stage of reply[14].

a) The purpose of the first stage of getting to know each other is for the examiner to establish a seemingly informal dialogue with the respondent authoritatively so that the respondent would relax in the upcoming stages. Thanks to the quality preparation for

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[12] T. Markovikj., cited.

[13] M. Aćimović, *Uvod u psihologiju krivičnog postupka* [Introduction to the psychology of criminal procedure]. Beograd, 1979, p. 32.

[14] V. Pivovarov, *Istrazhna Kriminalistika* [Criminal Investigation], Skopje 2017, p. 4.

the hearing and previously provided knowledge about the person of the respondent, the examiner at this stage should act in a friendly tone, not raising his voice, starting the dialogue with general facts about the respondent himself, his family and the environment, indicating that he is experienced with the condition in which the respondent is, that is, that every person can be found in his condition. At this stage, it is necessary to gain trust on the part of the person being examined, because each person in contact with the examiner, represents a newly created situation in which the subject experiences stress that creates mistrust, nervousness, or restraint, which in the further examination procedure would certainly represent a problem for obtaining a quality and truthful statement, which is essentially the purpose of the hearing. The examinee must feel that he is being given sufficient and due attention by the examiner. The examiner shouldn't act arrogantly, address the respondent in a high-pitched tone, behave rigidly – bureaucratically, not to issue orders, and not to show excessive severity to the respondent. Such behavior in the respondent causes the opposite effects aimed at creating mistrust towards the examiner and on the other hand disinterest in cooperation during the examination.

Apart from gaining trust, the examiner with the initially established dialogue should also understand the intellectual capabilities of the respondent, his character traits, and his attitude towards the criminal event and the participants in it, but the most important thing is to direct the respondent in the direction of speaking only the truth. Even when establishing the first verbal contact, the examiner should monitor the psychological behavior of the examined person (trembling, rapid blinking of the eyes, wandering gaze, reddening of the face, cracking of fingers, trembling of the voice, sweating etc., as symptoms of internal psychological reaction expressed by the examined person), as an external manifestation of the respondent that may appear due to fear of false answers that he is preparing to give in the next stage of examination or fear of the newly created situation. For such symptoms that appear in the examinee, the examiner should analyze them and then come to an assessment of what they are due to.

Only after the respondent gains the trust of the examiner, the second stage of free exposure of the examined person can begin. We could not put this introductory stage into a template that would give the expected results, but the examiner himself should have a sense of finishing the first stage and starting with the stage of free presentation, which is a basic prerequisite for achieving the expected results of the hearing.

It is recommended, if the conditions allow, to have two examiners present from the beginning during the examination of persons, for the reasons that the second examiner can fully monitor the manifestation of the behavior of the person being examined.

In this stage, the examiner first determines the identity of the summoned person and the capacity in which he is summoned (witness, victim, suspect in pretrial proceedings, or defendant in criminal proceedings)

b) The stage of free presentation begins at the moment when the examiner judges that the first stage of getting to know the person has been completed, and that he is ready for the further course of the examination.

In the introductory part of the stage of free presentation, the respondent is asked general and neutral questions after which he is instructed to continue with free presentation, that is, to interpret with his vision what he perceived about a specific criminal event. The examiner is obliged to carefully follow the presentation of the person being examined, and if the same is logical and does not contradict the previously collected material and verbal evidence relating to the specific criminal event, it is not advisable to interfere with the presentation of the person being examined. Otherwise, if the examined person interprets illogical data that is in contradiction with the previously

collected material and verbal evidence relating to a specific criminal event, the examiner, by interrupting the presentation of the respondent, will try to indicate to the respondent in an indirect way that he does not speak the truth. If there are gaps in the presentation of the examined person regarding certain facts, then the examiner will refresh the respondent's memory with guiding questions. In situations where the examined person talks in general about the criminal event, which avoids the important moments that happened during the commission of the crime, and the examiner assumes that the subject knows those facts, then the examiner should react with questions that will reduce the space for an extensive (irrelevant) presentation, that is, they will return it to the desired direction of explaining specific facts. In the pretrial procedure, in a given tactical situation, the examined person is allowed to fully present his statement even though he is not telling the truth to gain the impression that the interrogator is confident in his statement.

In this stage of the examination, the examiner acts seemingly passively, expressing attention to the statement of the examined, and in essence, he makes an additional assessment of the personality of the examined, and on the other hand, he considers whether the previously repared questions for the third stage of the examination, the "replica stage", will insert new ones. questions that he did not plan and that arose from the examinee's free presentation. The examiner in a stage must write notes in his notebook, which will be of invaluable use in the next stage.

The hearing at this stage can pass in a non-conflict situation, when the examiner completely without remarks and guiding questions allows the examinee to present his presentation, and a conflict situation in which the examiner, due to the assessment made, interrupts the examinee's presentation with remarks and guiding questions. Which tactic the examiner will impose depends primarily on two factors. First, the assessment made by the examiner, and second, the course of the examinee's presentation, which can be true or false.

The examiner in this stage, the stage of free presentation of the subject, can apply the tactic of requesting a re-examination by the subject (if he doubts what was expressed by the subject), to point out the contradictions through re-exposing the subject. in his presentation.

The stage of asking questions or the so-called replica stage is the last in the examination of a person. After the examiner's assessment, the stage of free presentation ends, after which the examinee continues the course of the hearing by asking additional, reminders, control, or clarifying questions. The purpose of these questions is to supplement or check the statement given during the free presentation of the respondent, as well as a more detailed explanation of circumstances and facts that were unclear during the presentation of the examined person in the previous stage of free presentation or were not mentioned at all, to remind the subject of a fact that the examiner assumes that the subject knows that fact keeps silent, as well as to establish or remove possible misconceptions that exist among the examiner[15].

The questions that the examiner asks the respondent must meet the following criteria:

- to be clear,
- to be precise,

[15] R. Grasberger, *Psihologija krivičnog postupka* [Psychology of criminal procedure], Sarajevo, 1958, p. 67.

- not to be suggestive,
- to be understandable for the respondent,
- to have a chronological order, that is, to be in one whole.

When conducting the conversation, it is recommended that the examiner, as far as possible, conduct the conversation in the dialect used by the subject and after the previously made assessment for the subject and ask the questions depending on the intellectual development of the same.

The examiner shouldn't address the respondent in a loud and insulting tone, to ask one question that requires multiple answers. Also, the examiner should take into account the time factor, that is, by following the respondent (while conducting the conversation) to assess whether he is tired and if it is evident time to stop the hearing. After the break, the examiner continues the examination by presenting his summary of the dialogue conducted until then with the subject and even then continues with questions that follow and were previously prepared. If the examiner judges that there is no opportunity to take a break, then he continues the examination by regaining the concentration of the examinee by asking easy questions.

After a preliminary assessment, the hearing can be conducted by two examiners. Such a tactical solution has its advantages in that one examiner can be active (asks questions and leads the dialogue) and the second passive, in charge of observing the examinee, that is, his visible external manifestations, which are an expression of his inner psychological development. Also, both examiners can be active in such a way that one is the "strict" and the second is the "good" examiner, leading the subject to tell the truth to the good examiner, but always the passive examiner assumes the role of observing the external manifestations of the examinee[16].

The subject's internal mental restlessness manifests itself through increased body motility, striking gesticulation, playing of the facial muscles, vague gaze, increased sweating, drying of the lips, constant swallowing of saliva, uneven breathing, and changes in the intonation of the voice. If, during the conversation, the person under investigation manifests some of the visible signs that we listed earlier due to inner turmoil, the tactics of further conversation should be adjusted to the newly created situation.

In certain situations when the examiner decides it is possible for the stage of free presentation and the stage of asking questions to take place simultaneously, i.e. combined. This method of combined examination is applied in situations where the examiner expects the respondent for various objective or subjective reasons to give a false statement to protect himself or another person[17].

After each hearing of a person, it is necessary to analyze the recorded material from the hearing, using the comparative method to compare it with the material and verbal evidence that was collected up to the time of the hearing to determine whether the hearing has clarified all the previously foreseen circumstances and facts under which the criminal event took place, i.e. whether the purpose of the hearing was achieved. The examined person is asked to wait for a certain period after the initial hearing, and if certain facts remain unclear during the initial hearing, the conversation is continued with the respondent to clarify all the ambiguities related to his role as well as the actions of the other participants. in the criminal event. The fixed content should be brought to the attention of the respondent and he should be asked to state his objections, and

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[16] V. Vodinelić, *Kriminalistika* [Criminalistics], Beograd: Savremena administracija 1982.

[17] A. Hellwig, *Moderne Kriminalistik* [Modern Criminalistics], Leipzig, 1914.

then, if there are any, to document them. When interrogating persons, the respondent should always take into account the legal position of the person being examined, i.e. whether it is a witness, victim, suspect in the pretrial procedure, or the accused in the criminal procedure[18].

3. Probative value of statements given in the pretrial procedure as the exception from direct taking of evidence

Otherwise, our theory (and practice), statements obtained by examining persons by the police, and in connection with the provision that the police may not question persons in the capacity of accused witnesses or experts, treated these statements as an informal information gathering from the citizens, which is applied before the start of the formal procedure, and thus did not consider them as evidence in the legal sense of the word, but only as evidence in the cognitive sense[19].

The LCP also leaves the possibility of using statements collected during the pretrial procedure, as an exception to the principle of immediacy, which remains one of the most important principles of the criminal procedure. The problem of the use and probative value of the statements given in the pretrial procedure, before the public prosecutor, arises in the interpretation and application of the provision of Art. 388 which governs the exception from the direct presentation of evidence. Namely, paragraph 2 of this article stipulates that the statements of the witnesses given in the investigative procedure and the statements collected within the framework of actions of the defense during the investigative procedure can be used during cross-examination or when refuting allegations presented or in response to a refutation, to assess the reliability of the statements made at the main hearing.

At the same time, the situations from paragraphs 3, 4, and 5 of this article are indisputable, which leaves the possibility, with the decision of the court, if after the start of the main hearing, indications appear based on which it can be concluded that the witness was exposed to violence, threats, a promise of money or another benefit so that he does not testify or falsely testify at the main hearing, the statements of the witness given before the public prosecutor in the pretrial procedure can be presented as evidence, as well as the minutes of statements given before the public prosecutor that can be presented as proof by reading or reproduction, if the person who gave the statement died, became mentally ill or, despite all the means provided by law for finding him, remained unavailable. At the same time, the situation from paragraph 3 is clear, which refers to the evidentiary hearing held when there is a danger that the evidence will not be able to be presented at the main hearing or that their presentation would be associated with difficulties and which, although it is part of the pretrial procedure, statements during this hearing are conducted according to the rules of the main hearing, so the question of their probative value does not arise further in the procedure.

The problem perceived in practice is, in fact, in the interpretation of paragraph 2 of Art. 388 and in paragraph 2 of Art. 400. So, in paragraph 2 of art. 388 provides that

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[18] D. Putnik. *Sudska psihologija* [Forensic psychology], Beograd, 1962, p. 39.

[19] V. Bayer, *Jugoslavensko krivično procesno pravo, Knjiga druga: Pravo o činjenicama i njihovom utvrđivanju u krivičnom postupku, Četvrto izdanje* [Yugoslav Criminal Procedure Law, Book Two: Law on facts and their determination in criminal proceedings, Fourth Edition], Pravni fakultet u Zagrebu, 1986, pp. 109 -123.

the statements from the investigation procedure, when they are used in cross-examination, it is to assess the reliability of the statements given at the main hearing, which is why in the application of the Criminal Procedure Code, practitioners interpret this as a ban on the statements reproduced in this way at the main hearing to base the judgment on.

Because of this, it is considered that the judges must not even allow their reading during the main hearing. But what, it seems, is not considered or is misunderstood, is paragraph 2 of Art. 400 of the Criminal Procedure Code. Namely, this article stipulates that the judgment cannot be based only on a statement made in this way. In other words, this means that the very fact that the Law says that a conviction cannot be based solely on a statement given in a pretrial proceeding before a public prosecutor, which was used during cross-examination at the main hearing, means that it allows the conviction to be is based on this statement, but with a limitation – only in case it is not the only evidence in the procedure. This is a completely justified exception, especially since it raises the question of what that procedure and that accusation would be, which would be based on only one piece of evidence, and even less if it was a statement.

From here, it is obvious that, if in addition to the statement from the pretrial procedure, which was reproduced at the main hearing, there are other pieces of evidence in the case, then there is no legal obstacle or prohibition for the court to allow the reproduction, and further take it taken into account when passing the verdict and its reasoning, according to the principle of free evaluation of the evidence and the right of the court to evaluate the existence or non-existence of the facts, which is not connected or limited by special formal evidentiary rules[20].

The 2018 Commentary of the Criminal Procedure Code, commenting on paragraph 2 of Article 388 of the Criminal Procedure Code, states: "The statements of witnesses given in a pretrial procedure before a public prosecutor and their statements made within the framework of the actions of the defense are used only to assess the reliability of their statements given during the main hearing, and that by themselves do not constitute evidence in the proceedings"[21].

On the other hand, commenting on paragraph 2 of article 400, it says: "Paragraph 2 limits the judge to base the judgment only on the statements that were derived from the principle of immediacy in the production of evidence, that is, by reading or reproducing minutes or recordings of statements that they gave the faces to one of the parties. In this sense, the judgment cannot be based only on statements of witnesses that were read at the hearing, and given before the public prosecutor, and on statements or parts of statements given in a pretrial procedure, presented during cross-examination..."

Such a comment, in other words, means that the judgment can be based on these statements in cases where they are not the only evidence on which the judgment will be based. The commentary in paragraph 2 of article 388 and paragraph 2 of article 400 are inconsistent, because in the commentary in paragraph 2 of article 388, it is said that these statements are not evidence in the proceedings, and in the commentary in paragraph 2 of article 400 it is said that the verdict can be based on them (if they are not the only evidence).

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[20] Criminal Procedure Law of the Republic of North Macedonia, Official gazette No. 15 from 18 November 2010, Article 16.

[21] G, Kalajdzhiev. G, Lazhetikj. L Nedelkova., M Denkovsa., M, Trombeva. T, Vitlarov. P Jankulovska., D, Kadiev. 2018, *Komentar na ZKP* [Commentary on the CPC], OBSE Skopje, 2018, p. 797.

Conclusion

The concept of testimony can be defined as a type of statement of persons given before the police authorities in the pretrial procedure or during the judicial procedure given before the court about the perceived facts of a certain crime that happened in the past. Examining a witness is a complex action that requires the expertise and precision of the criminalist or judge and their knowledge of the psychology of testimony.

A witness is any person who, in the criminal proceedings, states his observations about facts that happened in the past, during the occurrence of a certain criminal event. The witness focuses on reporting his sensory observations, while not giving his opinion on the observed facts. The witness in pretrial proceedings is an irreplaceable source of information.

Although the purpose of the existing Criminal Procedure Law is primarily to present all evidence immediately at the adversarial and public hearing, it must also provide exceptions from direct presentation of evidence. Witnesses can be called by all those persons who should know (personally or transmitted by another person) and who relate to the crime (perpetrator, circumstances of preparation, execution, and concealment of the same). The injured party, the injured party as plaintiff and the private plaintiff, also according to Art. 217 paragraph 2, can be heard as a witness. In certain situations, other persons participating in the procedure, such as the prosecutor, the judge, and the lay judge, can be heard as witnesses, provided that after giving their testimony as witnesses, they are exempted from further proceedings.

At the same time, the Law on Criminal Procedure provides for the possibility of recording the conversations of the suspect. Namely, paragraph 1 of Art. 207 provides that the examination of the accused by the public prosecutor or in his presence can be recorded by video-audio recording. With this, for the first time, they can be used as evidence in the procedure.

To be able to successfully conduct the hearing, the authorized person in the procedure should first of all know the psychology of testimony and the tactics of application during the hearing. Collecting data about the person to be interviewed is one of the main elements in building a further strategy for conducting a conversation and gaining the interviewee's trust. The tactic of interviewing people is divided into three successive phases, namely: The phase of getting to know the person or introductory phase, the Phase of free presentation of the person being questioned, the Phase of asking questions, or the phase of the replica.

The European Court of Human Rights especially takes into account whether the defense was granted the right to examine the witness during the investigation or at a later stage of the proceedings. When the accused did not have the opportunity to ask questions to the witness, in the investigation or the main trial, and the judgment is based exclusively or in a decisive measure on the testimony of the witness, the rights of the defense to a fair trial hearing, guaranteed by the provisions of Article 6, paragraph 1 and 3 (d) of the European Convention for Human Rights are violated.

The testimony of a witness taken before the main trial cannot by default be used as evidence at the main trial. It is necessary for the party or the defense attorney to prove to the court beforehand that they made efforts to secure the presence of the witness, and that despite this he remained unavailable. The court cannot use the witness's statement in the pretrial procedure if the witness is present at the main trial.

The new concept stipulates that the court decision will be based only on the evidence presented at the main trial so that the statements of the examined witnesses and the accused provided during the pretrial procedure can only be used for presentation during the main trial if these persons do not give a statement or change their statements. An exception is provided only for the evidence provided at an evidentiary hearing, where those persons who cannot be heard during the main trial will be heard as witnesses. It is obvious from the above that the probative value of the statements obtained by the witnesses heard in the pretrial procedure is not the same as the probative value of the statements of the witnesses given at the main hearing or the evidentiary hearing.

Finally, the problems surrounding the probative value of the statements made in the procedure and the use and evidentiary value of the statements made before the public prosecutor in the procedure that is used in cases of inconsistency between this statement and the witness's statement are analyzed at the main hearing.

It is evident from practice the need for further harmonization of the provisions of the Law on Criminal Procedure that refer to the use and probative value of the statements made in the pretrial procedure and refer to the exceptions to the principle of immediacy when presenting the evidence during the main hearing. At the same time, it is necessary to clarify the evidentiary value of the statements of the witnesses given before the public prosecutor in the pretriale procedure, which is used in cases of inconsistency between this statement and the statement of the witness given at the main hearing as well as the possibility of an independent judicial assessment of the reliability of this evidence and finally basing the verdict on these statements. In practice, it creates confusion, and on the other hand, the fact is that testimony used in rebuttal to assess credibility is derivative evidence, which is further used by the court according to its free judicial conviction and ultimately is testimony used. towards the (non-)existence of legally relevant facts for making the verdict has been established.

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Investigation Challenges of Airmail Parcels Containing Drugs and Their Possible Solutions

Szabolcs Mátyás*
Máté Sivadó**
Zágon Csaba****

Abstract

The study examines the role of postal items (letters and packages) in the drug trade in the Hungarian drug market. Every day, more than a hundred thousand of consignments arrive in Hungary from countries outside the European Union. Many of those contain drugs or raw materials necessary to produce drugs. Identifying non-compliant parcels and filtering them out from the stream is challenging work. It is because of the large quantities on the one hand and on the other, the multiple rules and regulations parcel delivery services and law enforcement agencies are dealing with. This study focuses on increasing the identification of shipments containing illicit drugs. The study aims to provide an additional explanation as to whether a change in the risk analysis method can increase the number of successful detections. After studying the route of Hungarian postal items and based on questionnaires filled out by people who have recently lived or still live in drug rehabilitation institutions, the authors want to formulate practical proposals for law enforcement agencies. The suggestions made in the study can be used in everyday practice not only by Hungarian but also by all European law enforcement agencies.

Keywords: *parcel forwarders, postal services, illicit drugs, customs, police*

1. Introduction

It sounds like a cliché, but it is a fact that drug use is becoming a growing problem in most countries of the world. Various drugs and the raw materials needed for their products come in large numbers from other countries[1], some of which are overrepresented in the sample, such as China and India[2]. The ordered packages are

* Ph.D. police major, associate professor University of Public Service, Faculty of Law Enforcement.
** Ph.D. police major, assistant professor University of Public Service, Faculty of Law Enforcement.
*** Ph.D. assistant professor University of Public Service, Faculty of Law Enforcement.

[1] B. Szabó, *A technikai-, és az információtechnológia fejlődés globális integrációban betöltött szerepe, és az állami szerepvállalással való közvetett kapcsolata [The role of technical and information technology development in global integration and its indirect relationship with state involvement]*, 2020, in: Csaba, Zágon; Szabó, Andrea (eds.): *Közös kihívások – egykor és most [Common challenges - then and now]* Budapest, Magyarország: Magyar Rendészettudományi Társaság Vám- és Pénzügyőri Tagozat , 2020, pp. 241.

[2] *See:* M. Tihanyi, Sz. Mátyás, V. Vince, *Drug policy in Hungary: Genesis of legal regulation*, 2020, Актуальные Вопросы Развития Государственности и Пубичного Права. Материалы VI

delivered mainly by air traffic as air parcels[3]. It may seem simple to think that packages from the above countries should be inspected so that the drugs and their raw materials entering the country cannot reach the distributors. The Airport Directorate of the National Tax and Customs Authority (NTCA) (2023) reported that more than a hundred thousand parcels arrived in Hungary as a daily average volume in 2022. However, consignments destined for Hungary can be cleared through customs at domestic airports and airports in other EU Member States and delivered as intra-Community consignments. The primary objective of our study is to describe the operation of parcel-forwarder companies and thus to formulate suggestions on how to improve further the cooperation between parcel-forwarders and law enforcement agencies to increase the accuracy of illicit substances.

The topic may consider unique, as it has yet to be dealt with in such detail or within an academic framework in Hungary. Due to the nature of the topic, the authors mixed original and secondary methods and needed to pay attention to the analysis of primary data too. Seventy-seven current or former drug users were given a questionnaire and were allowed to give their opinion about it. Several of the interviewed persons were consumers and committed drug-related cases themselves.

The authors set the objective that the ever-increasing quantities of packages containing drugs arriving in Hungary by post could be identified with greater accuracy when they arrive in the country than is currently the case.

Based on the current rules of competence and the system of procedures, the control of air parcels and airmail is carried out by the staff of the National Tax and Customs Administration (NTCA) acting as customs authorities in cooperation with the Hungarian Post and other parcel-forwarding services[4]. The customs authorities of the EU Member States also carry out risk management activities for security and safety purposes, in addition to protecting the financial and economic interests of the Community and the Member States, as required by the EU Customs Code[5]. The latter includes enforcing prohibitive or restrictive provisions, including rules prohibiting the illegal importation of drugs, in customs procedures. In risk management, customs officers usually use risk analysis methods to select high-risk packages and carry out internal inspections to filter out those that are indeed drugs and those that are likely to contain drugs or substances that are considered to be drugs or substances necessary for their manufacture. Following

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[3] S. Mátyás, E. Nyitrai, *Spatial Nature and Geographical Characteristics of Drug Crime in Hungary*, in Laws, 2022, 11(6), p. 90, https://doi.org/10.3390/ laws11060090.

[4] Companies providing postal and parcel services at Liszt Ferenc International Airport are AEO certified. The AEO programme (Authorised Economic Operator) is an EU programme which aims to increase the security of the international supply chain. It is a voluntary scheme whereby applicants for AEO status agree to meet the AEO criteria set out in EU customs legislation. The AEO authorisation is recognised in all Member States and based on mutual recognition even beyond it. It attests to the holder's customs credentials and indicates their willingness to cooperate with customs.

[5] Cf. Points 7. and 25. of Art. 5. and Art. 46. in the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (UCC).

the discovery and seizure of illicit drugs, the Criminal Investigation Service of the National Police will continue the investigation.

The authors also wanted to investigate drug users' experiences ordering drugs by postal and parcel services to understand these acts better.

The authors formulated the following hypotheses:

Hypothesis 1:

The authors claim that most drug users who consume drugs delivered by courier services use online parcel tracing solutions, and most of the time, they receive the packages as they place their order. The authors assume that packages containing illicit substances occur in a small fraction of the total volume. The competent authorities are taking a risk-based approach to increase accuracy and to carry out adequate controls.

Hypothesis 2:

From the perpetrators' point of view, the less risky period is the few weeks before Christmas: the known peak time when parcel traffic reaches the highest volume. Hence, criminals assume that there is less risk that authorities can identify parcels' illicit contents.

2. Literature review

The literature on drugs is extremely extensive. Many disciplines deal with the field (e.g. medicine, biology, chemistry, sociology, psychology), but the authors refrain from describing them. Law enforcement, sociology and criminology also deal with the field extensively both internationally and in Hungary.

Sociology and criminology examine, among other things, the social effects of drug use, both from the point of view of distributors and consumers[6]. They also examine the possibility of prevention and assistance[7].

Law enforcement also examines the area from many aspects, but we can state that due to the nature of the area, it is more characterized by a more practical approach. It appears as a problem that the police officer can take appropriate action against the person

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[6] *See:* T. Rhodes, *Risk environments and drug harms: A social science for harm reduction approach*, in International Journal of Drug Policy, 20(3), 2009, pp. 193–201. https://doi.org/10.1016/j.drugpo.2008.10.003; E. Goode, *Drugs in American society,* Ninth Edition, 2014, McGraw-Hill Education; A. Stevens, C.E. Hughes, S. Hulme, R. Cassidy, *Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession*, in European Journal of Criminology, 2022, 19(1), pp. 29–54, https://doi.org/10.1177/1477370819887514; M. Pawson, B.C. Kelly, *Drug Normalization and Conventional Social Institutions: The Unusual Case of Prescription Drug Misuse*, in Sociological Forum, 2022, 37(1), pp. 48–69. https://doi.org/10.1111/socf.12778.

[7] *See:* H.R., Sumnall, *Encouraging a 'generational shift' in the UKs relationship with drugs. A commentary on the new UK drug strategy. What can be achieved with drug prevention?* In International Journal of Drug Policy, 2022, p. 109, 103841. https://doi.org/ 10.1016/j.drugpo.2022.103841; National Crime Agency, *County lines drug supply, vulnerability and harm 2018*, (NCA Intelligence Report NAC(19)095), 2019, https://national crimeagency.gov.uk/who-we-are/publications/257-county-lines-drug-supply-vulnerability-and-harm-2018/file; A. Winstock, N. Eastwood, A. Stevens, *Another drug strategy for the UK*, BMJ, 2021, n3097, https://doi.org/10.1136/bmj.n3097; M. Sivadó, E. Lészkó, *Beszámoló egy kerekasztal beszélgetésről* In: Czene-Polgár, V.; Zsámbokiné, Ficskovszky Á. (eds.) *Innováció, elektronizáció*, tudásmenedzsment Budapest, 2018, pp. 305-314; M. Sivadó, *Új kihívások a droghelyzet kezelésében itthon, Európában és a világban – kis alkohológiai kitekintéssel*, Tanulmányok a "Biztonsági kockázatok – rendészeti válaszok" című tudományos konferenciáról, 2014, pp. 235-242.

using drugs[8] and that the police officer does not get injured or infected during the action (e.g. HIV, Hepatitis)[9]. Zoltán Csízner wrote about the role of organized crime, according to which "The spread of goods and services that can be ordered on the Internet, the impersonalization of trade, and the restrictive measures ordered due to the COVID-19 virus have created new conditions that also affect the sale of illegal goods. Risk-free ordering and delivery options, new payment methods have opened up, which demand the development and application of new methods from the intelligence agencies as well"[10] .

Only one author has written about the relationship between package forwarding services and drug shipments in the Hungarian literature. Ákos Erdős stated that "In Hungary, prohibited psychoactive substances – narcotics and new psychoactive substances – predominantly reach consumers through illegal international trade. Air passenger, mail and goods traffic is decisive from the point of view of the smuggling of prohibited psychoactive substances. (…) It has been clearly confirmed that air traffic smuggling of prohibited psychoactive substances takes place much more in mail and goods traffic than in passenger traffic."[11]. The author analyzed the reconnaissance data of the Hungarian customs authority.

In the foreign law enforcement literature, many studies deal with the problem of an increasing number of consumers ordering illegal drugs from the darknet by mail[12]. The solution is mostly seen in consumer education and stronger control of the dark web. However, the latter seems to be a difficult task for the time being, since the users of the dark web are anonymous, and the large number of people involved in this illegal trade exceeds the capacity of law enforcement agencies[13].

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[8] *See:* M. Tihanyi, *Rendőri intézkedések kábítószer-fogyasztás esetén [Police measures in case of drug consumption]*, In Rácz, J. (Ed.), *Rendészeti ismeretek a kábítószer-problémával kapcsolatban [Law enforcement knowledge of the drug problem]*, IRM Büntetőpolitikai Főosztály, 2019, pp. 324- 363, http://bunmegelozes.easyhosting.hu/dok/rendeszeti_ismeretek_a_kabitoszer_problemaval_kapcsolatban.pdf ; A. Greer, M. Selfridge, T.M. Watson, S. Macdonald, B. Pauly, *Young People Who Use Drugs Views Toward the Power and Authority of Police Officers*, Contemporary *Drug Problems*, 2022, 49(2), 170–191. https://doi.org/10.1177/009145 09211058989 .

[9] S. Mátyás, *A kábítószer-bűnözés elleni küzdelem mint stratégiai kihívás a magyar bűnüldözésben [The fight against drug crime as a strategic challenge in Hungarian law enforcement]*, NKE, 2020.

[10] Z. Csizner Z., *Ellenőrzött szállítás – az illegális kereskedelem elleni módszer szabályozá- sának története és új lehetőségei*[Controlled delivery – the history and new possibilities of the regulation of the method against illegal trade], *Belügyi Szemle*, 69 (7), 2021, 1209-1226. https://doi.org/10.38146/BSZ.2021.7.7

[11] A.Erdős, *Pénzügyőri szolgálati ismeretek 2.0 [Fiscal service skills 2.0],* Magyar Rendészettudományi Társaság Vám- és Pénzügyőri Tagozat, Budapest, 2021, p. 4.

[12]*See:* A.Morales-Gómez, S. McVie, F. Pantoja, C*ontrolled Delivery of Illegal Drug Parcels in Scotland: Does Policing Practice Align With a Public Health Approach Focused on Drug-Related Harm?*, in Journal of Drug Issues, 52(4), 2022, pp. 616–637. https://doi.org/ 10.1177/00220426221098986; J. Aldridge, R. Askew, *Delivery dilemmas: How drug cryptomarket users identify and seek to reduce their risk of detection by law enforcement*, *International Journal of Drug Policy*, 41, 2017, pp. 101–109. https://doi.org/10.1016/j.drugpo. 2016.10.010; S.A. Bakken, J.J. Demant, *Sellers' risk perceptions in public and private social media drug markets*, in International Journal of Drug Policy, 2019, 73, pp. 255–262. https://doi.org/10.1016/j.drugpo.2019.03.009; S.A. Bakken, K. Moeller, S. Sandberg, *Coordination problems in cryptomarkets: Changes in cooperation, competition and valuation*, in European Journal of Criminology, 15(4), 2018, pp. 442–460. https://doi.org/10.1177/147737 0817749177

[13] A.ElBahrawy, L. Alessandretti, L. Rusnac, D. Goldsmith, A. Teytelboym, A. Baronchelli, *Collective dynamics of dark web marketplaces*, Scientific Reports, 2020, 10(1), 18827. https://doi.org/10.1038/s41598-020-74416-y

Concealment and packaging are two key components of delivery and often influence the distributor's actions. The term "concealment" refers to how a product is disguised to look like a legitimate package, especially in front of the Postal Service's X-ray machines. Packaging refers to the way a drug is packaged to avoid detection by drug-sniffing dogs or other means of detecting odors and traces[14] .

3. Methodology

1. We used a keyword search in several international scientific databases (Google Scholar, BASE /Bielefeld Academic Search Engine/, DART-Europe – E-theses Portal, Hungarian OAI search engine, MTMT /Hungarian Scientific Bibliography/); however, we did not find any study that would have conducted a questionnaire survey related to the postal trade of drugs and consumers.

2. In the course of the research, we carried out questionnaire data collection. The respondents were selected from current or former residents of a drug rehabilitation institution. The current residents of the rehabilitation center suffer from drug addiction, and the former residents suffered from addiction in the past. Completing the questionnaire was voluntary and anonymous.

Our goal in filling out the questionnaire was to learn about criminal practices with sending and receiving parcels. The questionnaires were analyzed with the SPSS program.

Due to its nature, the subject can only do with a thorough examination of the dispatch and arrival of postal items. We visited the locations of DHL and Hungarian Post, where we studied the process of mail and package handling in and out of the country and interviewed the managers of the locations.

We reviewed the packages containing drugs arriving in Hungary by post, as well as the package delivery process, based on the reports of the employees of the package forwarding services. Next, we collected the experiences of the "other side", drug users, regarding parcel delivery and receiving services. We wanted to find out what kind of drugs are ordered by those who fill out the questionnaire, how they are hidden and packaged, and for what purpose they use mail-order services.

With the help of the literature databases, we also examined whether a literature publication had been published on the topic.

4. Results

4.1. Amendment to the law regarding packages from third countries

Shopping on the Internet plays an increasingly important role in our lives, which has also significantly transformed our shopping habits. Ordering a product from distant countries was rare a decade ago, but it has recently become common. Trade in goods bought online has reached such proportions in the last few years (with COVID-19 setting new records for trade volumes) that the EU had to take drastic action.

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[14] A. Ailipoaie, P. Shortis, *From Dealer to Doorstep – How Drugs Are Sold On the Dark Net. Global Drug Policy Observatory*, Swansea University, 2015, https://www.swansea.ac.uk/media/From-Dealer-to-Doorstep-â%C2%80%C2%93-How-Drugs-Are-Sold-On-the-Dark-Net.pdf

In relation to the Internet, it should be noted, however, that the present research looked at trading on the open Internet. The vast majority of drugs are sold via the dark web. This was not possible to investigate in the present research.

In exchange for products at a fraction of the average European price, buyers have accepted the possibility of more extended and uncertain delivery times and the impossibility of effectively enforcing a warranty against the trader in case of problems with these goods.

The import of cheap Chinese goods has already virtually eliminated specific domestic industries (electronics and light industry, such as shoes and textiles production) even before the boom in e-commerce. Looking at the payment of public charges on e-commerce, it also appears that EU countries have lost significant tax revenue, as products below EUR 22 were previously exempt from customs duties and import VAT, giving an unjustified market advantage to low-value goods from third countries. Member States have faced an increasing loss of VAT revenue due to the exemption of low-value packages. It has been estimated that at least EUR 1 billion of revenue is lost yearly due to VAT exemption and around EUR 4 billion due to fraud, typically due to undervaluation and misrepresentation as gifts (Bakai et al., 2022).

As customs duties and VAT were not imposed on imports of low-value parcels, customs authorities did not need to focus on securing fiscal revenues in this segment. Of the dual risk management objectives mentioned earlier, i.e., to safeguard the financial and economic interests of the EU and the Member States and to manage security and safety risks posing threats to our societies, only the latter remained a priority. From a customs perspective, fewer resources remained for this traffic segment. This was, of course, very much circumvented, with less than EUR 22 being declared as the product's value, which was then used not only to illegally reduce the public charges payable on the import of goods but also to import goods subject to prohibitive or restrictive measures. As a result, from 1 July 2021, all goods imported into the EU from third countries (including those below EUR 22) will be subject to import VAT.

According to the NTCA's experience, in the year following 1 July 2021, 65.5% of the volume of air parcels and airmail arriving from third countries and crossing customs borders in Hungary came from the People's Republic of China, 7.6% from the United Arab Emirates and 5% from the United Kingdom. When grouped by value, 15.8% of the items were between EUR 22 and EUR 150, and 84.2% were below EUR 22. It was the category of consignments for which customs authorities needed to have electronically analysable data before the new legislation. 99% of the declarations submitted came from only two traders (the remaining 1% was spread over 10 other traders). In almost all cases, the Airport Directorate of NTCA was the competent authority for the clearances. Of the incoming parcels, 8.8% were destined for Hungary, while 91.2% were forwarded to other EU Member States. Budapest airport is, therefore, one of the regional entry points for e-commerce into the region, where some 4 million air cargoes were cleared annually before the change. This increased to 31.5 million customs clearances for low-value parcels in the subsequent year, according to eVAM database of NCTA[15] , which translates to 37.8 million customs clearances for the entire calendar year 2022[16] .

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[15] K.P. Bakai, L. Suba, A. Szabó, A., *First Year Experience of the Abolition of the €22 Rule and the Introduction of the New e-Commerce Vat Laws*, Public Finance Quarterly, 67(4), 2022, pp. 585–600, https://doi.org/10.35551/PFQ_2022_4_7

[16] Airport Directorate of NTCA, *Yearly assessment report 2022,* published in 2023.

These facts have led to a sharp increase in the administrative burden, not only for customs but also for the exporter side and have also changed other aspects of the trade. Under the previous practice, each EU Member State primarily received parcels and letters from third countries themselves. The advantage of this for each country was that all incoming mail was destined for that country, allowing them to carry out a risk analysis and to pick out or track shipments deemed suspicious. Thanks to the new rules, Chinese trading companies have set up large logistics centres in some EU countries (e.g., Frankfurt a.M. in Germany or Bruges in Belgium), where parcels sent from China to the EU are cleared through customs and then distributed to the EU countries of destination. However, once the goods have been cleared in another Member State and sent to the country of destination, as intra-EU traffic, there is no longer any opportunity to check the goods. It means, on the one hand, that the law enforcement authorities in the home country have no option but to rely on the clearance procedure of the customs clearance country and, on the other hand, that they lose the possibility of tracing the delivery to the consignee in the absence of notification.

4.2. The result of interview data collection and questionnaire survey related to package forwarding services

4.2.1. Experiences gained during the study of the locations of DHL and Hungarian Post, the practice of parcel handling

Among the interviewees, XY stated that as of January 1, 2013, the monopoly of Hungarian Post in postal services ended in Hungary, and privately owned companies providing parcel forwarding and other postal services appeared. The initial interest soon seemed to wane, and a few larger, mostly foreign-owned companies were left competing for postal services in Hungary.

In parcels and letters Hungarian Post continues to handle enormous traffic (27.5 million pieces/year). Private service providers mainly deal with parcel forwarding within the country and the EU. (This is because these companies have yet to build centres that would receive packages from abroad.) Most packages from abroad enter the country's territory at Hungarian Post locations.

The main pr'blem is the conflict of different interests. It is in the interest of law enforcement agencies to uncover and seize the drugs and raw materials entering the country as much as possible, as well as to identify the customer. On the other hand, the interests of service providers are regulated by market-based economic laws. In other words, to deliver the packages to the customer as quickly and undamaged as possible. Suppose the customer finds that the ordered product arrives slowly or damaged. In that case, he will next time entrust another package forwarding service to deliver the product to its destination.

In our view, the parcel-forwarding services operating in Hungary cooperate to the maximum extent with the customs and, in broader terms, the law enforcement agencies; they try to take all possible measures to filter out illegal products; however, due to the conflict of interests, the individual parties are guided by different goals.

The product is often transported by air to the destination country for goods ordered from thousands of kilometres away. The carrier's primary concern is aviation security, particularly detecting explosive devices and harmful chemicals. Each package is checked individually by X-ray. In this sense, narcotics do not threaten flight safety and are difficult to distinguish from other substances, often in powder form (e.g., bodybuilding

powders, talcum powder and powders for weight loss), by X-ray screening or sensory examination. Mainly no such control is applied to land transport, where the chances of anuthorit to smuggle a prohibited substance into a country are even higher.

Technical development has enabled the customer to trace their package via the Internet. After arriving in the country, a package reaches the recipient within a few days. If a package becomes suspicious to law enforcement agencies, it can be detained for a short time. However, a delay of two or three days can already make the customer suspicious, so it often happens that they do not even pick up the ordered package because they are afraid of being caught. In other words, the authorities must act extremely quickly. The parcel delivery service can explain technical and logistical problems in a day or two, but the customer may become suspicious in the case of a longer time interval.

Drug dealers are incredibly cautious, they often choose the '*poste restante*' delivery method, and if anything raises their suspicions, they never pick up the shipment. The data shows parcels containing narcotics have rarely been found in parcel machines.

At non-state parcel forwarding services, the parcel is checked for new customers. It must be opened before sending, and the sender must identify himself with a document. In this case, a large percentage of prohibited products can be avoided. However, there needs to be customer identification or content control in the case of the contracted partners. Here the package collection is based on previous acquaintance and trust. In this case, risks may arise, but if it turns out that a customer needs to act following the rules, he will lose the discount he previously obtained, and his packages will no longer be delivered. Parcel forwarding companies regularly train the staff who pick up packages, so they look at customers' behaviour, what kind of goods they deliver and where they want to deliver them.

The parcel forwarders and postal operators cannot open packages and inspect their contents. If there is a suspicion that a consignment contains drugs, the Customs authorities are informed before customs clearance, and the Police are informed afterwards.

The NTCA staff continuously checks parcels arriving by air from third countries to Hungary during customs procedures. Based on risk analysis, they select those consignments that represent a high risk and are therefore checked in detail. Customs controls have three main objectives. Firstly, to safeguard the financial and economic interests of the Member States, to regulate trade and to ensure the safety and security of the citizens of the Member States. At the same time, Customs authorities must ensure the continuity of trade and promote economic development and must therefore organise their control activities in such a way as to minimise the impact on legitimate trade and to detect illegal consignments as accurately as possible. Trade facilitation and the principles of security and safety together seem at first sight to be contradictory dual objectives, which Customs authorities use risk management to achieve (Article 46 of the UCC). This implies that they can only effectively control a few per cent of trade, where the level of detail and resource requirements of controls can be illustrated by following the 'funnel principle' of gradualness. According to the latest report of the European Court of Auditors, the average proportion of customs controls in EU countries considering customs declaration items was 9.5% documentary and only 4.5% physical in 2019[17]. The former figures are not only for air transport but all modes of transport and all customs clearance. Behind the averages, there is also a spread of the figures

[17] European Court of Auditors, *Customs controls: insufficient harmonisation hampers EU financial interests*. Special Report, 2021, https://www.eca.europa.eu/Lists/ECADocuments/SR21_04/SR_Customs_controls_EN.pdf

across the Member States, which fluctuate from period to period according to the volume of trade and several other factors. It means that the Customs authorities in an average EU Member State can check slightly less than one in 10 packages without opening the consignment and examining its contents based on the documents submitted for clearance and other available data. If it finds evidence of non-compliance with customs legislation, it conducts an in-depth internal examination of part or all the consignments. Based on the above data, these are carried out on less than one occasion in 20 parcels. Customs authorities perform physical checks better than average for short periods, such as international operations and action days.

In physical checks, Customs will seek to target their investigations in areas where, based on the experience of previous seizures, information available to Customs, information received from domestic or foreign partner authorities and other considerations, above-average or exceptionally high risk levels can be identified. It needs to be made clear of success in detecting infringements before the investigation. Still, based on these risk considerations, it only expects to detect infringements in these areas more likely than elsewhere. Experience has shown that in approximately one out of three batch inspections, infringements are detected, and in two cases, the risk management system is wrong, leading to a false positive. These cases indicate an 'oversensitivity' of the risk management system, with customs spending unnecessary time checking non-infringing goods, passengers or means of transport. While this does not result in infringing goods entering the market, it wastes resources and time rather than valuable work. If there are a series of such cases, lessons should be learned, as this will require a review of the risk profiles involved. The opposite of failed customs inspections also occurs, where the risk management system does not indicate risk, but the package still contains illegal contraband, such as drugs. In this case, the selection for control is not carried out, mainly due to poor risk identification, assessment or lack of capacity. In such cases, the risk management system should be trained to identify risks by setting up new profiles. The development of the risk management system should, therefore, not simply aim at increasing the number of so-called real positive hits (detections) accurately flagged by the system or the number of cases of correct flagging of non-infringing goods since the number of such cases is mainly a consequence of the volume of traffic, given the precise knowledge of the risks. The challenge is to reduce the rate of false hits when risk management is wrong about the presence of infringing goods[18] .

Given this, the Airport Directorate of NTCA has successfully controlled parcels and mail arriving by air. In 2022, despite the significant change in clearing low-value parcels, customs carried out internal goods inspections for 6.29% of import-directed customs procedures. In that year, only 9% of the 37.8 million items cleared were consigned to or destined for Hungary, the majority being consignments destined for other EU Member States, for whom the effectiveness of the controls depended on the ability and expertise of the Hungarian customs authorities. Customs inspections were carried out on 3.5% of the transits carried out by traders operating at the airport and

[18] See: Z. Csaba, M. Gecsei, *Kockázatelemzés a gyakorlatban: cigaretta a repülőtéren [Risk analysis in practice: cigarettes at the airport]*, 2021 in Czene-Polgár, V. et al. (Eds.) *Tradíció, tudomány, minőség: 30 éves a Vám-és Pénzügyőri Tanszék [Tradition, science, quality: the Department of Customs and Excise is 30 years old]*, Budapest: Magyar Rendészettudományi Társaság Vám- és Pénzügyőri Tagozat, pp. 129-142. http://doi.org/10.37372/mrttvpt.2021.2.7 ; Rukanova et. All, *cited*; Samoilenco, *cited*; European Commission, C*ommunication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk*, 2013.

not holding an AEO authorization based on individual and central risk management results. Risk management used risk information received from foreign customs authorities, in addition to its information and information received from the NTCA's central risk management unit, and on several occasions contributed to the risk management of foreign partners by sending information. Customs revealed 564 cases of suspected possession of drugs, 160 cases of suspected facilitation of drug manufacture and 123 cases of suspected abuse of new psychoactive substances. These predominantly concerned air parcels rather than passenger traffic, with a significant proportion of the latter being mail traffic[19]. According to the annual customs clearance statistics, only a tiny proportion of drug-related offences were detected compared to the full-scale volume. However, an objective assessment of this is challenging due to the need for approximate latency estimates.

4.2.2. The results of the questionnaire data collection

The first question of the questionnaire was about gender. The questionnaire was filled out exclusively by men, 77 people. One of the Hungarian drug rehabilitation institutions providing the data treats only male clients.

The second question of the questionnaire sought the answer to age. Based on the given years of age, more than two-thirds of the interviewed persons were under forty. Most of them were in the age group of 20-29 (33.8%), 30-39 (28.6%) and 13-19 (11.7%). This also clearly shows the values of the primary lifetime prevalence of drug users within society since drug users mostly come from the young adult age group.

The next question (question 3) was about marital status. The answers to the question confirm the answers given based on the age question. Almost sixty per cent (59.5%) of the respondents were unmarried. This can partly be explained by drug-addicted people trying less to meet traditional social expectations (see: wedding). Due to their living situation, the conditions for social coexistence could be more favourable in their case. 26% of the respondents were married, and 6.5% were divorced. The latter value is relatively low, presumably resulting from the high proportion of unmarried people.

The fourth question was about education. The proportion of those with primary education or less (37.7%). – the proportion of high school graduates (29.9%) and the proportion of university/college graduates (7.8%).

Among the socio-demographic questions, the last question (question 5) was aimed at how long the interviewed person has been using drugs. 41.6% of them have been using drugs for 10-19 years, while nearly thirty per cent (28.6%) have used drugs for 5-9.9 years.

Question 6 sought to find out where the respondent obtained the substance consumed. More than half of the respondents (54%) stated that they get the drug from friends and acquaintances. One-third (34.9%) of the respondents bought the prohibited substance from a dealer. The proportion of people who ordered from the Internet and bought from family members was 3.2%, and nearly 5% (4.8%) of the respondents obtained drugs from other sources. This is surprising since the authors assumed that the percentage of Internet buyers would be much higher.

Examining the question by age group, we can establish that the representatives of the 20-29 and 30-39 age groups stated that they also buy online (Table 1).

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[19] Airport Directorate NTCA, 2023, *cited.*

Where did you get drug from?	Percentage
friends, acquaintances	55,3
family members	2,6
dealer	35,5
internet	2,6
other sources	3,9
Total	**100**

Table 1: Question 6 – Where did you get drug from?

Based on the years of consumption, we can conclude that the values of the "from friends and acquaintances" category are the highest. Based on the years of consumption, the following outliers were found in the "from friends, acquaintances" category: 2-4.9 years (66.7%), 5-9.9 years (59.1%) and 10-19 years (62, 5 years).

In question number 7, we wanted to answer whether it had ever happened that some prohibited substance was delivered to the interviewed person via a courier service. The results showed that 81% of the respondents had never ordered drugs by mail. Less than 10% of the respondents stated that they rarely (7.9%) or often (9.5%) order drugs online. It could have been assumed that, due to computer use, the youngest age group is the one that orders the most significant proportion of drugs from the Internet. However, in the case of the 13-19 age group, this was zero per cent (just as in the case of the over fifty age group). In the case of the 13-19-year-old age group, this was zero per cent (just as in the case of the over-50 age group).

In the following question (question number 8), the interviewees commented on their experiences with parcel delivery services. Of course, only those who previously stated that they had ordered drugs online answered this question.

The vast majority of respondents (85.7%) stated that "everything was fine" or "generally everything was fine". 14.3% only said that it was "mostly not OK". From this, we can conclude that ordering by mail is far from safe, as more than a tenth of the respondents already had a negative experience.

Question 9 asked about adverse experiences more precisely than positive and negative experiences. The question was, "Has it ever happened that the material did not arrive?" 45% of the respondents stated that it has happened that the ordered narcotic drug did not arrive. This can be considered a high value and confirms the above.

In question No. 10, we wanted to determine the proportion of respondents against whom criminal proceedings were initiated concerning goods received via the courier service. Police proceedings have yet to be initiated against 90% of those interviewed, so we can count on exceptionally high latency since only one person out of ten made a negative statement. This is consistent with the answer to question number 8.

The most significant proportion (20%) of the 20-29 age group members stated that they had been prosecuted for this reason. This can be related to the fact that they can also be considered the most active age group in this crime (they most often order drugs). The next question, number 11, approaches the problem from a practical point of view. Based on this question, the authors wish to formulate recommendations for law enforcement agencies. The question concerned how the senders packaged the individual drugs (e.g., marijuana, cocaine, heroin). It can be assumed that the senders

packed it in a material they assumed would 1. Not attract attention, 2. Not be detected by drug-detecting dogs.

Nearly 40% (38.5%) of respondents indicated the combination of paper and plastic, while 30.8% indicated plastic. 7.7% indicated paper, plastic, and aluminium foil, while another 7.7% indicated the combination of plastic and aluminium foil. Plastic is mentioned in 84.7% of the answers. Plastic insulates well and protects against moisture, tearing and other damages. Based on this, during the risk analysis, it is recommended to pay more attention to the inspection of shipments with multiple packaging materials.

For marijuana, paper/plastic (29.4%) and plastic (23.5%) packaging methods were indicated. Due to the characteristic smell of marijuana, plastic is, of course, an essential packaging material. For cocaine, paper/plastic (42.9%) and plastic (28.6%), while for heroin, foil (50%) is the most popular, while paper and paper/plastic share 25% each.

Most types of packaging were observed for designer drugs (10 types). Consumers order these drugs by mail in the most significant proportion.

22.2% of respondents indicated plastic and paper/plastic, i.e. more than forty per cent of the respondents. Aluminium foil received over ten per cent, while X-ray foil received 5.6%.

Question 12 tried to determine the average quantity ordered for the four types of drugs mentioned above. In the case of marijuana, almost two-thirds of the respondents (62.5%) ordered quantities above 5 grams. In contrast, in the case of cocaine, half of the respondents indicated a value between 3.1 and 5 grams. For heroin orders, the weight value between 1 gram, 1.1-3 grams and 3.1-5 grams received a third value. The smaller orders show that heroin users are, in financial terms, mainly among the poorer drug users who cannot afford to buy larger quantities. (It may also be ordered for personal use only)

Designer drugs arrive in the country in relatively large quantities among the ordered materials. 75% of the respondents order more than 5 grams of substances. This is probably ordered with the intention of wholesale distribution.

It can be observed for each drug that the share of orders over 5 grams increases in direct proportion with the increase in the duration of consumption.

Question number 13 was about the most certain packet size. The authors wanted to find out which package sizes are the least noticeable to the authorities, according to the respondents. The categories shoebox (52.6%) and more extensive than a shoebox (13.2%) were selected by most people.

The next question (14.) concerned the safest package weight. A low package weight can arouse the authorities' interest in a specific package, so packages arrive with a greater weight than the actual weight of the substance inside. More than a third of those surveyed (34%) believe that luggage weighing up to half a kg is the least noticeable. A quarter of the respondents (24.5%) they indicated a weight between 1.1-2 kg, while 22.6% indicated a weight greater than 2.1 kg as a "safe" weight. For marijuana, paper/plastic (29.4%) and plastic (23.5%) packaging methods were indicated. Due to the characteristic smell of marijuana, plastic is, of course, an essential packaging material. For cocaine, paper/plastic (42.9%) and plastic (28.6%), while for heroin, foil (50%) is the most popular, while paper and paper/plastic share 25% each (Table 2).

Package weight	Percentage
0 – 0,5 kg	34,0
0,6 – 1,0 kg	18,9
1,1 kg – 2 kg	24,5
more than 2,1 kg	22,6
Total	**100**

Table 2: Question 14. – Which is the safest package weight?

Most types of packaging were observed for designer drugs (10 types). Consumers order these drugs by mail in the most significant proportion.

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The package's colour is also an essential question from the point of view of risk analysis. Question No. 15 wanted to know which colour is the least conspicuous to the police and NTCO. According to more than a third (35%) of current and former drug users, brown packaging is the least noticeable, while 17.5% think white packaging is the least noticeable. The third highest value was given to the colour grey (7.5%).

The packaging material can be important not only in terms of colour and material but also in terms of the transmission of various smells. One of the most important things about drugs is that drug-detecting dogs cannot smell the substance in the package, so criminals use packaging material (materials) that do not allow odours to pass through. Question 16 wanted to find an answer to this. Paper and plastic packaging (33.3%)

received the highest percentage, and the drug is mainly sent in aluminum foil, plastic foil and airtight bags.

The age group and the persons belonging to the period of drug consumption mostly overlap; in their case, it is possible to speak of the most excellent "precaution"; they seem to be the most cautious.

Question number 17 sought to find out the safest sending countries. After cleaning the answers (the respondents also mentioned several irrelevant countries, e.g. Uganda, East Timor, and Yemen), the highest value was given to Hungary and Switzerland.

With question 18, we wanted to determine the safest month to send the package. We assumed that due to many packages, most people mark the months at the end of the year. Nearly two-thirds of the respondents indicated December (64.7%), while August and October reached values above five per cent. The respondents did not give reasons for the answers, so in the case of the above two months – as a result of the anonymous filling – it is impossible to find out why August and October were selected. The package numbers do not justify this in any way.

With the expansion of the World Wide Web and postal services, more and more people follow the path of the ordered package. Question 19, in the framework of a to-be-decided answer, sought an answer to whether the person filling out the questionnaire used to follow the path of the package ordered on the Internet. Surprisingly few people answered yes, only 29.8% of the respondents. People over 50 are the most cautious, all answered yes, and most of those in the 20-39 age group answered no. Just over 20% of them only follow the path of the package.

5. Summary

The study examined drug-containing packages forwarded by package forwarding services. It made suggestions for law enforcement agencies that can be used during everyday law enforcement work during risk analysis. During the questionnaire analysis, it was established that the packages containing drugs are primarily wrapped in several packaging materials. During the risk analysis, shoebox-sized packages covered with brown or white packaging material are considered high risk. The most excellent chance of a drug-containing package arriving is during the period with the most significant number of packages, i.e. in December, when package traffic increases significantly due to Christmas, and there is less chance of being lost. Based on the above, the authors formulated proposals for law enforcement agencies (see below).

A factor complicating the research was the fact that it was not possible to obtain from the law enforcement agencies the data related to the territory of the drug order (where and in what quantity drug-containing packages were ordered), and there was also no data available regarding the drug-containing packages opened by the NTCA and the police. Of course, these barriers may occur future research challenges.

The following can be established about the set hypotheses:

H1: The hypothesis needed to be verified, as less than one-third of the respondents stated that they only follow the path of packages via the Internet. An even smaller percentage of the younger age group (20-39 years old) who regularly use the Internet follow the package's path.

H2: The hypothesis was confirmed, as the Christmas period is when, in the respondent's opinion, the chance of seizure is the smallest since this is the peak time of air parcel traffic.

Based on the results of the research, the authors make the following recommendations for law enforcement agencies:

Cooperation

- The research proves that the minority of parcels are consigned to the same destination country where the clearance has been conducted, and most consignments are destined for other EU Member States. Therefore, better cooperation is required among law enforcement agencies, primarily between airport customs authorities of the EU Member States because they protect societies all over the EU.

Measuring the packages

- A more frequent rummage is recommended if multiple packaging materials, especially paper combined with plastic, occur.
- Packages containing aluminum foil may be considered elevated risk.
- Shoebox-sized packages are considered elevated risk based on their size.
- Packages up to 2 kg pose higher risk than those of heavier weight.
- Brown and white packaging packages are more likely to contain illegal substances based on colour.

Timing

- Regarding time intervals, the end-of-year peak period should be addressed in risk management.

The authors see a further opportunity to continue the research in a broader frame of data collection. Primarily, they want to fill out a similar questionnaire in other European Union countries than Hungary, compare the results obtained in each country, and establish national characteristics. Also, a possible area for the continuation of the research is the questioning of the Hungarian and international law enforcement bodies, as well as examining this area from the point of view of tourism security[20] .

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Heartbeat Attached to Personal Identification

Dr. Nyitrai Endre*
Dr. Vigh András**

Abstract

Monitoring the achievements of other scientific fields and to implement their results – such as, for example, 3D imaging systems or the possibilities of DNA based personal identification methods – into its own toolkit is one of the priority tasks of law enforcement and its personal responsibility forces, in order to support successful completion of its everyday duties. Measurement of the electric functioning of the human heart is one of these new scientific achievements that may give a lead on credible and reliable identification of a certain person. The application possibilities of this procedure in the fields of safety engineering, personal and primarily law enforcement should definitely be subject of criminalistics analysis. This study aims to introduce the application possibilities of electronic signals generated from the heart rate and the results of measured heartbeat from the aspects of law enforcement.

Keywords: *personal identification, heartbeat, EKG, law enforcement, monitoring*

1. Introduction

The need to identify our fellow-men is as old as the establishment of human communities, however, many centuries have passed until the need for recognition that was already part of everyday relations has turned into reliable and credible for of personal identification in the areas of law enforcement and security technology. Using methods and technical instruments for the identification of relevant persons that may 'infallibly' verify the identity of the given person has gradually become an issue of priority. For long, possibilities of fingertip image or fingerprint analysis have prevailed in this field, however, DNA analysis has slowly displaced these procedures from the priority spot. Of course, development has not stopped, moreover, upon the scientific results achieved by exploiting the benefits of the digital world several new possibilities have been discovered, such as the analysis of the venous images, facial thermography and iris or retina scan. We may admit that application of such measures can primarily be attached to security engineering and technology, first of all, in relation to data security issues. Application possibilities of other research accomplishments and instruments may gain rationale for law enforcement and public security as well. This study shall introduce two procedures that may support credible and reliable identification of certain persons in the not too distant future.

Recognition that the human heart, the heartbeat and electronic working of the heart show characteristics that can be uniquely attributed to each individual, therefore,

* National University of Public Service Faculty of Law Enforcement, Nyitrai.Endre@uni-nke.hu.
** National University of Public Service Faculty of Law Enforcement, Vigh.Andras@uni-nke.hu.

they may be suitable for biometric identification dates back to several decades of scientific research.

Medical science has been examining the heart for quite a long time, but it has only been a little more than a decade ago when researchers have become certain that the electric signals of this vital organ prove to have characteristics uniquely specific for every single person, furthermore, such characteristics are relatively constant, they can also be subject of quality examination and recordings, therefore, they are suitable for the purpose biometric identification. EKG is present in every individual, it is difficult to fake, it can not be 'forgotten' neither can it be 'left'. Due to these characteristics using EKG recordings for the purpose of biometric identification procedures has gained grounds in the past few years. Let's just imagine, that we are able to identify ourselves with our own inseparable, constantly present heart without having to be involved in any special interactions during our usual everyday activities, replacing several and individual technical instruments used at the present. Heart based biometric research activities concentrate on the heartbeat, the electronic signal generated by the rhythm of the heart, in other words the electrocardiogram (EKG or ECG)[1]. Heartbeat based personal identification as a new biometric identification technology is expected to simplify the use of our technical surroundings, therefore it shall probably ease our everyday lives both in the fields of law enforcement and security engineering. The technical possibility of personal identification based on the analysis of the rhythm of the heart may effect most aspects of our lives, such as shopping, finances, work proceedings or even health care supplies. Nevertheless, this new biometric identification possibility shall not only serve consumer society but it shall also offer further perspectives for law enforcement authorities and facilitate the completion of law enforcement tasks. This study shall further examine the possibilities and limits of the new biometric technology based on the uniqueness of the human heartbeat, it explores its benefits, while, at the same time it attempts to establish recommendations for its utilization by the law enforcement and penitentiary services.

2. Heartbeat based identification in security technology

It is reasonable to consider how the unique electronic signals of our own hearts may be attached to our credible self-identification or to any technical instruments used in our daily routine? Is this method acceptable for the purpose of credible self-identification, can it be an assistance in the use of our tools or can it effectively increase secure protection of our data? Expansion and popularity of wearable gadgets like smart bracelets monitoring daily activities or smart watches seems to be unstoppable in guiding a healthy living, communication or attached to a separate digital unit or mobile phone. From day to day, more and more tools are available for keeping track of biometric data, such as pulse, blood pressure, in order to follow one's health during either sport activities or during rest. Moreover, our heart may beat slower or faster it does not really matter from the aspects of the electronic characteristics of the heartbeat. In fact, it is more about the shape of the waves and of the image of the electronic signal when

[1] N. Akhter, S. Tharewal, V. Kale, A. Bhalerao, K.V. Kale, *Heart-Based Biometrics and Possible Use of Heart Rate Variability in Biometric Recognition Systems*, Advanced Computing and Systems for Security Volume 1, 2016., pp. 15-26.

exposed by the heart. From here, it is only one step away to transfer the measured biometric data to a code and to create a device that is able to code the data and able to communicate with other digital gadgets. What are the advantages of the procedure? If we use EKG, our unforgeable, unforgettable and unleavable special characteristic to identify ourselves through technical devices we may also gain access to several other electronic devices. Contrary to a security card (pass) or a PIN code, the method's reliability is secured by the fact that this data can not be left, stolen, transferred, forgotten or forced. The device (wristband) called 'Nymi' uses exactly this specification of the product, not just keeping track of the user's own heartbeat, but uses EKG to authenticate and confirm its owner's identity then transfers the EKG to a specific key or password that can be used to unlock and access other electronic devices2. Rapid development of such technical instruments clearly overshadows the notable, but easily forgettable identification methods, even those that actually meet security standards, however, at many occasions they are based on rather complicated passwords (PIN codes) that are often difficult to be memorised but easy to forget.

If we simplify the technology, the individual's own heartbeat can be transferred into a unique security code that shall function as it were a special key allowing access to different digital devices. Authentication to this wristband is only required once a day, placing a finger on the screen, whereas the device confirms that it is being worn by its authorised owner upon the monitoring of the person's heartbeat signature (analysing EKG signals). Upon this, the wristband shall be able to communicate with and log onto any electronic system or service used by its owner. The designers of Nymi believe that this procedure shall put an end to such well known methods as computer passwords and phone PINs. Moreover, it may replace other items of everyday life as car keys, home keys, credit cards, pass cards or, in certain cases even valets[3].

Contrary to other solutions mentioned earlier, the great advantage of this procedure still in its infancy is that it uses our unforgettable, unforgeable and unstealable biometric data, therefore it is a much safer form of user identification. Identification upon the heartbeat remains accurate, regardless of any anxiety, raise of the pulse, faster or slower heart beat rates due to the fact that the beat of the heart looks exactly the same, regardless of the speed, yet, notably, there is a certain failure rate of the tracks. However, we may conclude that the biometric data monitored by the wearable Nymi device allows reliable identification[4]. Each time we want to use the fingerprint authentication app of a phone, we have to make sure that we touch the screen with a clean, dry, non-greasy finger held at certain angle and surface in order to secure successful log in. In comparison, if the authorised person once wears the Nymi he is continuously authenticated and does not have to worry about his personal identification until the gadget is worn[5].

However, heart disease or a former heart attack may limit the accuracy of the application, and according to our present knowledge this technology can not provide sufficient safety. Nevertheless, as for the chances of future utilization of continuous personal identification based on electronic signals of the heart may effect several aspects of everyday life, such as travelling, catering sectors or car industry.

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[2] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.08.
[3] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.08.
[4] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.08.
[5] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.08.

Nowadays, the issue of data security places an excessive burden on business enterprises. In parallel, technological disadvantages of using passwords appear to be an ever so pronounced issue. If that is the case, it is arguable, how can companies simultaneously keep the safety of their data and secure that their authorised personnel can access systems and information of key importance at the same time. Continuous (permanent) identification might be the solution, even by monitoring the authentication and right of access to data. But it is feasible that the employee sits down to his laptop and all his files just open up by themselves, since his computer confirms the device coding the electronic signals of his heart and authenticates the user. As he leaves the computer (leaves the office) the applications close up again so no one can sneak in and access confidential information. The authorised person may log in from any other place and does not have to use keys or pass cards, as he does not have to worry about PIN codes or changing any complex passwords often difficult to memorise or keep in mind[6].

From a consumer point of view, permanent identity may allow the user to access his vehicle and remember his preferences, for example, where he headed or what he listened (what are his habits and preferences)[7].

To sum it up, permanent and reliable identity is the priority recommendation (offer) of Nymi. Certainly, different electronic and digital systems and services do not have to recognise the heartbeat or EKG as biometric data. Analysis of such information is the task of this device. The Nymi shall identify its user if the user's heartbeat complies with the recorded pattern by the gadget. Then it shall send a 'yes' signal or in other words a code of confirmation data to other supplies (systems), emphasising the fact personal data has been transmitted. In comparison, it represents a significant alteration from the examination process of fingerprints or retina scan of identification purposes. The Nymi shall only function upon the heart pace of the registered individual. By all means, the presence of the living authorised individual is required for the usage of the device, so, for example, if the wristband gets stolen and can not be hacked, since it is not possible to copy or to steal the heart. Further benefit of the application that it does function in the dark, contrary to other facial recognition systems[8].

3. Law enforcement aspect of personal identification upon the heartbeat

Everyone has a unique heart and similarly, our beat of the heart is unique as well. Acknowledging this fact, researchers have developed a technical device called 'Jetson' for the Pentagon that recognises the unique 'cardiac signature' by infrared light. Analysing the technology we must emphasise that it can identify people from a distance and not only upon direct contact. At present, this distance is 200 meters, yet, it can be increased depending on the quality of the laser used. Further benefit of the device that it is able to complete measurements of 95% accuracy on individuals wearing heavy or thick

[6] I should like to take note that the empolyer is also able to monitor the employee unwittingly through the system based on heart pace identification, he may indirectly observe the employee's state of health, and on the other hand, he may check the employee's course of work upon his heart pace, thus in case of low pace he may even delegate more tasks to the employee. Source: https://www.adatvedelmiszakerto.hu/2015/03/a-biometrikus-azonositasadatvedelmi-kockazatai/.

[7] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.09.

[8] https://www.wired.com/insights/2014/06/heartbeat-may-soon-password/ 2021.02.09.

clothing or garment covering their bodies, for which they use a technique called laser vibrometry. It works by detecting the changes in reflection of infrared light caused by blood flow[9]. Of course, in case of greater coverage like if a valet placed in the inside pocket of the clothing the technique's efficiency rate is lower. The device works at an infrared amplitude invisible for the human eye[10]. Measurements take a few seconds, so the efficiency rate of the device on a moving target is still significantly limited[11]. One of the most important advantages of the heartbeat analysis based identification is that it can not be changed, and the factors of visual circumstances, facial hair, hats, (sun)glasses, scarfs or other elements of clothing do not confuse the results[12]. Presumably, heartbeat based identification will overrule the identification processes based on voice, fingerprints, facial scan in the future, our heartbeat shall be sufficient enough[13].

Today's threat of terrorism and the issues of migration raise new questions regarding surveillance and reliable identification of individuals. Many times, traditional methods, for example fingerprints or DNA comparison can not be used with sufficient accuracy, due to the fact that they require direct contact when taking samples or because they are expensive or time consuming. In the not too distant future it is possible to set up and establish a registry based on the unique electronic characteristics of the heart, providing credible identification process passively, from a distance, not requiring the cooperation the target person. The need for the establishment of such database is supported by the idea, that this technology allows relatively fast, passive or even covert monitoring even on broad masses of people, furthermore, the method may be used on a random scale, a spot check or a screening technique and not only as a targeted procedure. The tracked information can be compared to the registered data parallel, almost without a waste of time and in case of a match, immediate notification can be forwarded. In case of mass events, parades, sport events, demonstrations, political assemblies it is a possible way to monitor the participants and facilitate the recognition of the searched individuals as well their extraction from the crowd. Using this method may increase the safety of the protected person and support the prevention of possible terrorist attacks. In this case, changing facial features does not help hiding in the crowd. We often experience that individuals formerly expelled from the country or those foreigners previously rejected to enter the country attempt to come back or enter into the country with fake or forged documents.

Pursuing the introduced techniques may also aid the screening of multiple crossing of the border with changed data, the illicit movements of individuals related to migration or immigration. The heart beat based identification device developed by New York State University of Buffalo also proves the significance of the heart beat based personal identification method that is substantially more efficient than facial detection with its accuracy rate of 98%, however, this radar generated instrument can only be used from a maximum distance of 20 meters[14].

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[9] https://newtechnology.hu/a-szivveres-lehet-az-uj-ujjlenyomat/ 2021.02.09.

[10] https://hvg.hu/360/202026__fejlodo_szemelyfelismero_technologiak__aldas_es_atok__szitakotoprojekt__arul kodo_jelek 2021.02.10.

[11] https://jelenbolajovobe.blog.hu/2019/07/08/szivveres_alapjan_azonosit_a_pentagon_lezere 2021.02.09.

[12] https://bitport.hu/a-pentagon-tudja-hogy-a-sziv-nem-hazudik.html 2021.02.10.

[13] https://pcworld.hu/pcwlite/apple-okosotthon-szivveres-biometrikus-azonositas-274451.html 2021.02.10.

[14] https://www.technologyreview.com/2019/06/27/238884/the-pentagon-has-a-laser-that-can-identify-peoplefrom-a-distanceby-their-heartbeat/ 2021.02.10.

4. Significance of heart pace based analysis at the penitentiary institutions

Penitentiary (Bv.) institutions have a special place amongst law enforcement institutions. For such institutions reliable and 24/7 continuous personal identification is elemental. In order to secure viable heart beat based personal identification in these institutions the implementation of a centralised and also local databases of "cardiac signatures' that can be updated on a daily basis is a crucial issue. The existing central registry held by the Bv. should be amended with the specific characteristics related to the cardiac functions of the detainees.

With regards to the present legal regulations of Hungary we may find that the provisions on data protection do apply to the characteristics of the hearts electronic functions, prevailing rules allow the management and registration of such data, whereas the cardiac biometrical characteristics of the detained person shall be handled as personal data. At the present, in accordance with the provisions of Section 28 (1) of Act CVII of 1995 on the law enforcement system detaining Bv. institution shall keep a local, while the National Headquarters shall keep a central registry on the following data of the detainee

- the detainee's personal identification data, Hungarian social security number and photograph;
- permanent address;
- personal identification number;
- data and documents necessary to complete the tasks of law enforcement expressly stipulated in this Act and those necessary for the detainee's practice of rights;
- documents of the criminal procedure and of other procedures – court, prosecutor's office, notary public and administrative procedures – related to the detainee, that must be forwarded to the Bv. organisation in accordance with the provisions of law.

To sum it up, the records held by the hold the following data of the prisoner:

- personal data of the detainee,
- data on the legal title and term of the detainment,
- data related to procedures and actions of the international assistance in criminal matters effecting the detainee,
- law enforcement data (deprivation of personal freedom, involuntary treatment in a mental institution, forced measures, detention),
- data related to the proceedings of the judge responsible for penitentiary affairs,
- data related to the detainee's health treatment and emergency treatment,
- personal and witness protection data, data related to the protection program and data related to the placement and content of special signs,
- data of official correspondents of the prisoner[15].

Personal identification upon the heartbeat at the Bv. may be classified in accordance with its goals:

- personal identification of the prisoner prior to the detainment,
- identification of the convict for the purpose of monitoring and observation after the admission.

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[15] A. Müller, *Kommentár a büntetés-végrehajtási szervezetről szóló 1995. évi CVII.* törvényhez Bvszt. 28ához. [Commentary on CVII of 1995 on the penitentiary organization].

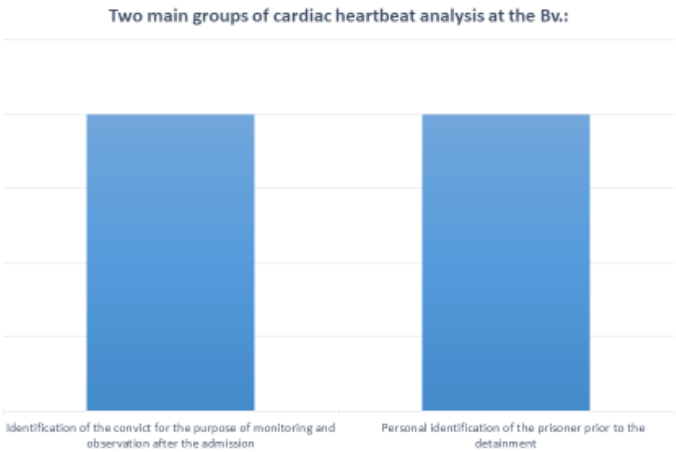

Illustration 1. own model
Two recommended groups of heartbeat analysis at the Bv. institute

In the course of the detainee's admission to the Bv. institution, the convict's identity must be checked, further, during the checking procedure the Bv. institution shall take over the data a held on the convict in the criminal registry of personal identification data and photograph images in accordance with the data stipulated in the admission documents and shall compare them with the data included in the documents forwarded as the grounds of the admission[16]. However, the monitoring procedure might reveal difficulties due to the lack of documents or otherwise if the detainee has identified himself with forged documents. Therefore, the analysis of a unique characteristic of the certain person suitable for reliable confirmation of his identification would be reasonable, alongside with the facts included in the simply checkable documentary and photograph registry. The method of examining of the heart's electric system introduced in this study earlier seems to be just suitable for this purpose. It would be sufficient to record the heart pace of the suspect during the criminal procedure, than again during the admission process if it was not completed under the criminal procedure. At the admission the convict's pace data could be compared to the formerly recorded 'cardiac signature' database, allowing comparative monitoring of the personal identity upon multiple grounds, avoiding that a different person would enter the penitentiary institution or a person other than the convict would return to the Bv. institution after a temporary leave and finish the legally binding term of detention instead of the true convict.

Also, it would seem reasonable to implement the heart beat monitoring device at different sites and spots of the institution for surveillance purposes of the convicts, or the biometric identification device could be implemented in the existing wristbands of the convicts. By these means, movements, activities and even the medical status of the convicts could be followed, or certain convicts could be continuously monitored by a wearable bracelet. Presently, detainees do wear a Near Field Communication (hereinafter referred to as NFC) chip supporting their identification in the zones and cells[17]. The

[16] 1995. évi CVII. törvény a büntetés-végrehajtási szervezetről 89. § (1) (2).

[17] J. Schmehl, *A Büntetés-végrehajtási Szervezet megújulásának áttekintése a hatályos Bv. törvény szellemében, Egységesítés, eredményesség, e-rendszerek alkalmazása a büntetés-végrehajtásban, Beszámoló egy kiemelt feladat végrehajtásának állapotáról* [n overview of the renewal of the Penitentiary Enforcement Organization in the effective Bv. in the spirit of the law, Unification, effectiveness,

new biometric identification method could supplement or replace the NFC chip, since it would actually identify the detainee instead of the chip of the wristband. In accordance with the provisions of Section 145 (1) of Act CCXL of 2013 on the Execution of Punishments, Measures, Forced Measures and Detention for Misdemeanours (Bv. tv.) the following security actions may be pursued against the detainee:

- security separation,
- placement to security cell or zone,
- using instruments constraining movement,
- using electronic remote monitoring instruments,
- using electronic surveillance instruments or surveillance devices,
- search,
- security check, security examination and security survey,
- ordering locking up the doors,
- suspension of certain rights.

Upon regulatory authorization the members of the law enforcement shall be entitled and obliged to pursue all actions necessary to maintain and restore the order, in order to seize any and all actions harming or endangering the safety of the Bv. institution[18]. (Illustration No. 2.)

Illustration 2. Security actions

The Act expressly and explicitly stipulates the security measures that can be pursued by the members of the law enforcement organisation, which should be amended the new instrument of 'cardiac signature' monitoring, as in using the identification analysis of the heart's functions could support the maintenance of the order of law enforcement and the safety of penitentiary institutions. For these purposes, legislative recognition of this new technical achievement could probably be beneficial.

Bv. officers serving at the different zones of the penitentiary institution could continuously monitor the location, movements of the detainees by using the heartbeat

application of e-systems in the execution of sentences, Report on the status of the implementation of a priority task], Börtönügyi Szemle, 2019/1, pp. 98.

[18] Section 145 (1) of Act CCXL of 2013.

identification system, moreover they might be able to draw conclusions on the emotional and mental state of the prisoners as well. Heartbeat analysis does not only assist the continuous identification of individuals, but it might give a reflection on the detainee's behaviour, or to any differences from their usual behaviour such as excitement, stress, threat in cases of fights, usage any toxic material, that is other negative factor can also be detected. Sudden increase of the pulse may suggest that the perpetrator is experiencing a certain psychological or physical impulse (for example, the perpetrator is participating in a fight), but also, on the other hand it may imply to a health issue, or even to a coronary disease. Heartbeat analysis can support the maintenance of the order of law enforcement and the safety of penitentiary tasks at Bv. institutions. It may also be considered as the measure monitoring, whereas its benefit are shown on the following chart.

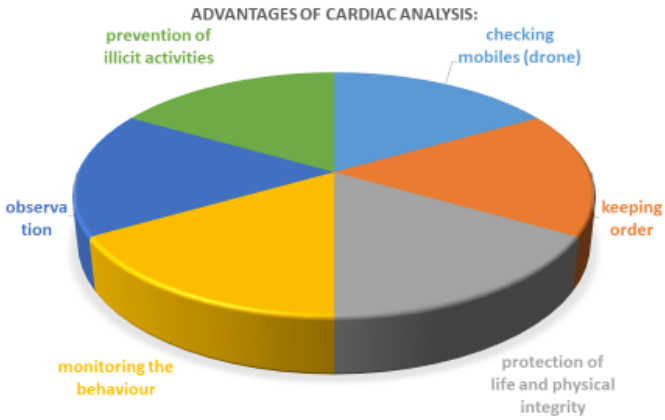

Illustration 3. own model
Advantages of cardiac analysis at penitentiary institutions

Provided to secure the order of penitentiary institutions we may detect several advantages of cardiac analysis. It allows the identification of the convicts 24/7 inside the institution. Their exact place and location can detected, their movements can be followed, for example

- at the facilities commonly used by the convicts,
- at the courtyard or in the corridors of the Bv. institution,
- in the security zones, in order to prevent criminal offenses, misdemeanours, misconducts or other illegitimate actions,
- in solitary confinement or correction facilities,
- in transfer vehicles,
- in order to prevent suicide, self-destructive behaviour, for the protection of life and physical integrity.

It may be used in the cell or during the term of separation of the detainee who previously attempted to commit suicide or any self-destructive action against his own well-being, furthermore on those who carry a high risk of suicide or self-destructive behaviour. Even more so, expansive application may also be possible for the purpose of identification of individuals staying by the outside walls and gates of the Bv. institution or on visitors, comparing the result to the data of the registry. Drones can be also equipped with the new technology, monitoring the facilities of the institution from the air, and may identify and monitor the individuals staying in the area. Although no visual information is

captured on the monitored person upon the heartbeat analysis, therefore, neither personal rights, nor any aspects of intimacy are harmed, judicial regulation of this sort of surveillance should be taken into consideration.

5. Summary

Due to its numerous advantages, the usage of the newest technical devices based on the method of heartbeat analysis and coding the heart's electronic functions is predicted to become more and more common in the future. Most probably such biometric technical innovations as Nymi, for example, shall reform the use of the everyday devices and gadgets of our lives by several means, since our hearts, likely to our iris signatures or fingerprints are also unique, but, contrary to other measures our 'heart prints' or 'cardiac signatures' can be identified passively, from a distance[19], by, for example the 'Jatson' device developed for the Pentagon that does not even need further facial recognition. Since personal identification does not require the actual cooperation of the person or persons targeted with the identification the application of the technology can not only be visualised in an open manner. Upon the heartbeat analysis border control, identification and capturing of criminal offenders, terrorist and monitoring of the convicts should be much simpler. The new technical method is expected to support law enforcement tasks as well in the future, facilitating to secure the order of law enforcement and the prevention of criminal offenses, misdemeanours, misconducts or other illicit actions

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