SPECIAL ISSUE 6.

BELÜGYI SZEMLE

PROFESSIONAL AND SCIENTIFIC PERIODICAL OF THE MINISTRY OF INTERIOR

volume 69.

BELÜGYI SZEMLE

PROFESSIONAL AND SCIENTIFIC PERIODICAL OF THE MINISTRY OF INTERIOR

VOL 69. 2021 / SPECIAL ISSUE 6.

BELÜGYI SZEMLE

EDITORSHIP

EDITORSHIP H-2090 Remeteszőlős, Nagykovácsi út 3.
Phone: + 36 (26) 795-900 /24-600
szerkesztoseg@belugyiszemle.hu
www.belugyiszemle.hu
ISSN ISSN 2677-1632 (Online)
Volume LXIX
PUBLISHER Ministry of Interior of Hungary
www.kormany.hu/hu/belugyminiszterium
H-1051 Budapest, József Attila utca 2-4.
PICTURE EDITOR László Botlik
PRINTERY Duna-Mix Kft.
RESPONSIBLE MANAGER Lóránt Szakolczai, corr. colonel

CONTENTS

EDITORS 2021 / SPECIAL ISSUE 4.

PREFACE

'Being a family means you are a part of something very wonderful.'
Lisa Weed

Dear Reader,

The family is a very important part of our everyday life. It will teach us the values of love, adherence, concern, sincerity and confidence by offering means and proposals which are needed to be successful in life. It gives us a sense of security and works as a rampart against the world we are living in. It looks after our basic needs and protects us from attacks. It will sustain us to tide over hard time and offers hope to have rest during accepting exhausting challenges of life. The family is the source of power.

The scientific journal Belügyi Szemle has been for nearly seventy years determining performer in the Hungarian scientific life and proofs month by month to be a worthy member in the big family of the Hungarian scientific community. In the past three years we have made deciding and considerable steps to become an acknowledged member of the international scientific life and we have had faith in us and in the significance of our results in the whole period. The challenges made us even stronger. The members of our editorship made Belügyi Szemle successful after the good results in Hungarian language also in the international scientific space. Coming near to the end of the year 2021 we can bravely declare that belonging to the family of the international scientific life means – with the words of Lisa Wedd – that we can be part of something wonderful.

Please appreciate the scientific thoughts in the special issue 6/2021 of Belügyi Szemle in English language, which can contribute to answering the emerging questions as a scientific source.

Thinking of the upcoming holiday season we wish for all our readers happy and reflective Christmas holiday and a happy and healthy new year.

the Editorship

DOI: 10.38146/BSZ.SPEC.2021.6.1

Ernő Krauzer

Didactic methods used in police training in some foreign countries

Abstract
In the publication, I present the didactic methods used in the training of deputy police officers, the amount of time spent on training, the number of students in the training, and the proportion of theory-practice. I will explain whether the different generations are taken into account during the training, and whether smart tools are used, as well as the availability and quality of personal and material conditions.

Keywords: training, education, didactics, policeman, school, theory, practice, internship, methods

Introduction

At the Doctoral School of Law Enforcement of the University of Public Service, I am conducting research on the development of the teaching methodology of police deputy training, during which I conducted a questionnaire survey in foreign countries for the purpose of data collection (Krauzer, 2020). The goal of the data collection is to gain experience in the practice of police officer training abroad. It is important to emphasize that the data collection specifically covered the school-based, full-time police officer training. For the training of prospective police officers who, after successfully completing school, perform service duties in the public order service branch, in uniform, in public places.

I carried out the questionnaire survey at the following foreign police school[1]:

- 'Septimiu Muresan' Police School - Romania, Cluj-Napoca (RO1), 2004.
- Border Police Agents Training School - Romania, Oradea (RO2), 1992.
- Police School in Katowice - Poland, Katowice (PL), 1999.
- National Police school of SENS - France, Sens (FR), 1946.
- Police school 'Josip Jovic' - Croatia, Zagreb (HR), 2000.
- Police College - Slovenia, Ljubljana (SI), 1972.

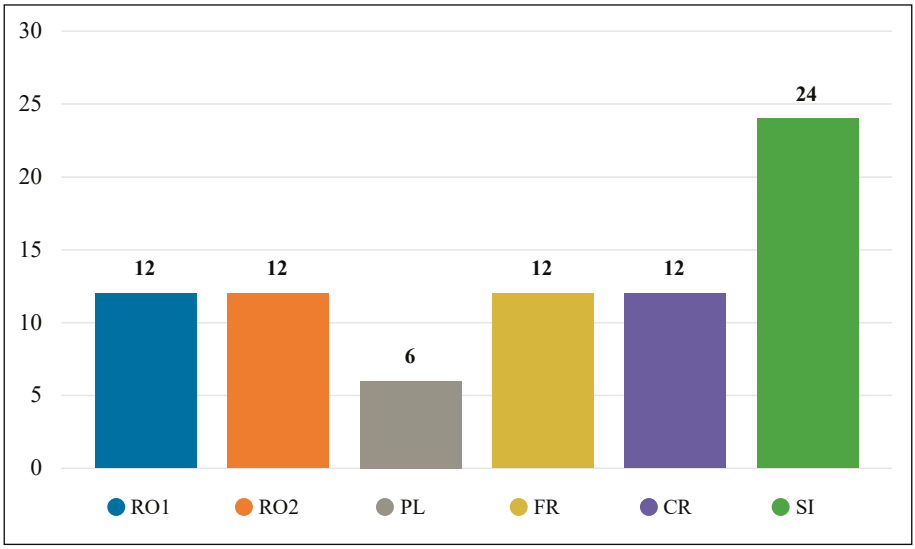
Data on police training

The permanence of police training is shown by since when the training takes place at the educational institution, by the history of the given training, from which we can conclude the maturity of the training. We can really talk about training experiences if the given training has been carried out for several years - possibly for several decades - in an essentially unchanged structure. If a given training changes from year to year, we do not get real knowledge of whether changes are actually needed. Nowadays, change is common, which does not necessarily have professional reasons. In the case if police training appears on the training palette of a given country as an independent, state-recognized profession, it must adapt to general changes in education and to those expectations. This may have formal and substantive requirements. Schools providing police training must also adapt to the needs of their customers and the police, which does not always have a positive effect on training. Adaptation for schools is basically not a problem if they have time to run the training they started earlier and are given enough time to introduce new ones.

The data I have examined show that in France and Slovenia the roots of police training have a significant history, while in other countries the establishment of schools is between 16 and 28 years old, suggesting that experiential police training could only have developed more or less. It is clear that founding police schools in the former socialist countries, - with the exception of Croatia - took place in the years following the change of regime.

1 The abbreviation in parentheses after the name of the schools is the notation used hereinafter in the article, and the year numbers represent the date of establishment of the schools.

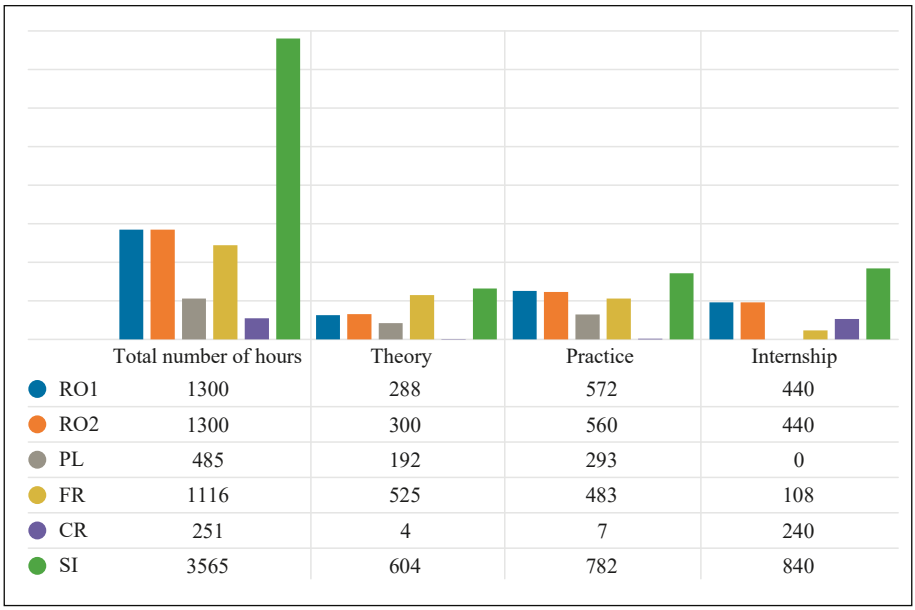
Figure 1: *Training length in months*



Note: The author's own editing.

The duration of police training is between 6 and 24 months in the countries surveyed. In general, the typical training period is 12 months, which suggests that one year of training is considered sufficient in the studied states. It is worth comparing this in the light of the fact that in Hungary the training of police officers was 10 months from the 1980s to 1992, and then it became two years, ie 24 months (Kenedli, 2008). Nowadays – from the autumn of 2020 – in addition to the two-year training, the 10-month training has been re-introduced in parallel. The two-year training can only be carried out at the Körmend Law Enforcement Technical School and the Miskolc Law Enforcement Technical School, while the 10-month training can be completed at the newly established Police Training Academy, at Adyliget and Szeged under of the Police Education and Training Center.

Figure 2: *Total number of training hours (theory-practice-professional practice) – (total number of hours, theory, practice, internship)*

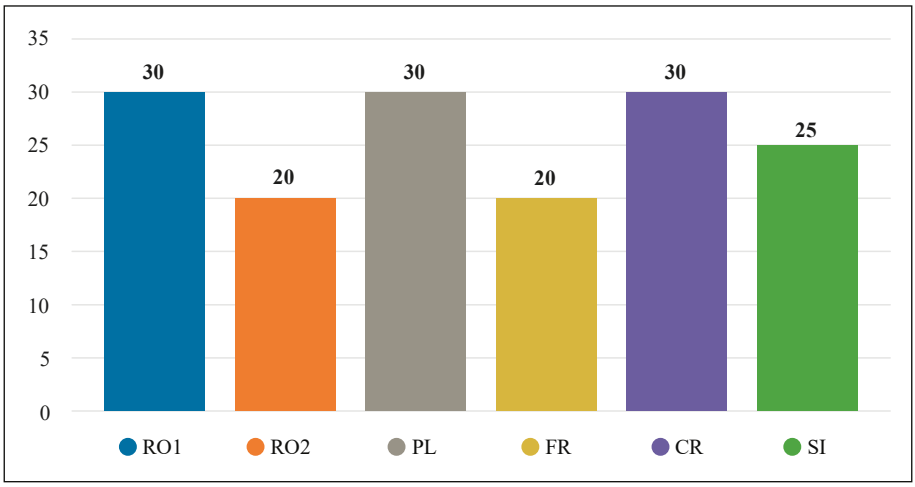


	Total number of hours	Theory	Practice	Internship
RO1	1300	288	572	440
RO2	1300	300	560	440
PL	485	192	293	0
FR	1116	525	483	108
CR	251	4	7	240
SI	3565	604	782	840

Note: The author's own editing.

In Cluj-Napoca and Oradea, there is a minimal difference in police training, which suggests that the training of police officers takes place according to a central training program, on the basis of predetermined number of hours, in which the permitted deviation is minimal. The Slovenian police training shows an interesting picture, which includes 1339 lessons in which prospective police officers study independently. In Poland, due to its short duration, the training does not include internships with police forces. The proportion of theoretical and practical lessons is basically 40–60%. It is important to point out that, - with the exception of Poland - internships with police forces appear everywhere, which is not the same as trainings in police schools. One cannot replace the other because both have different roles in training. We can also approach this that it is expedient to send the participants to the internship if they already have the appropriate theoretical and practical knowledge. So, theory-practice-professional practice is a process based on each other, and all practical occupations have a theoretical basis.

Figure 3: *Class size*



Note: The author's own editing.

Class sizes range from 21 to 30 for police training in Cluj-Napoca, Poland, and Croatia, from 11 to 20 for schools in Oradea and France, and between 21 and 25 for Slovenian schools. The significant difference between the two Romanian schools is striking. From the point of view of the effectiveness of the training, it is desirable for the class size to be as small as possible. In the case of large class sizes, it is a common practice to carry out the tasks divided into groups in some practical sessions. Of the six schools, class divisions are only in Ljubljana, Slovenia. It is related to the class size whether the instructors can take into account the abilities and age specifics of the future police officers, and whether they use smart tools. The answers to these questions are given in Table 1.

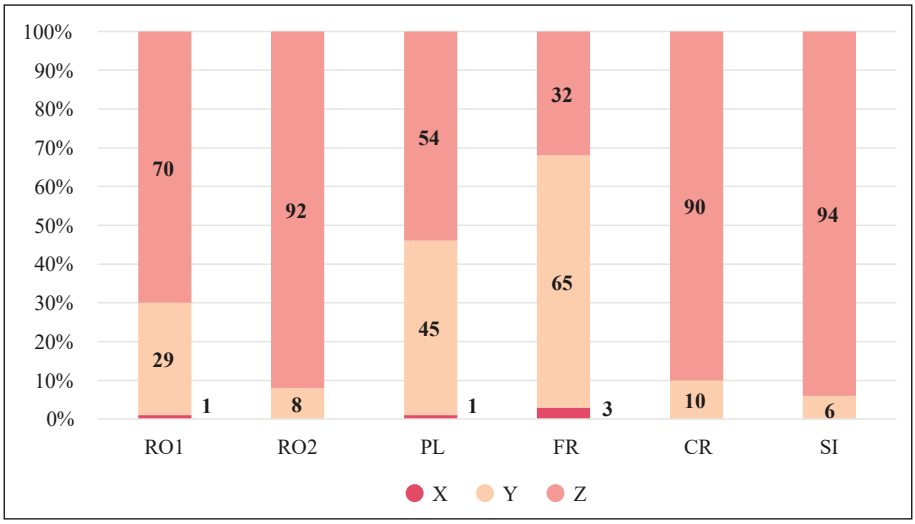
Table 1: *Considering abilities, age specifics, and using smart devices*

	Country	Consideration of individual abilities	Consideration of age specifics (generations)	Using smart devices in %
1.	Romania (Cluj-Napoca)	No answer	No	Yes, 26–50
2.	Romania (Oradea)	Yes	Yes	Yes, 26–50
3.	Poland	Yes	No	No
4.	France	Yes	Yes	Yes, 0–25
5.	Croatia	No	No	No
6.	Slovenia	Yes	No	No

Note: The author's own editing.

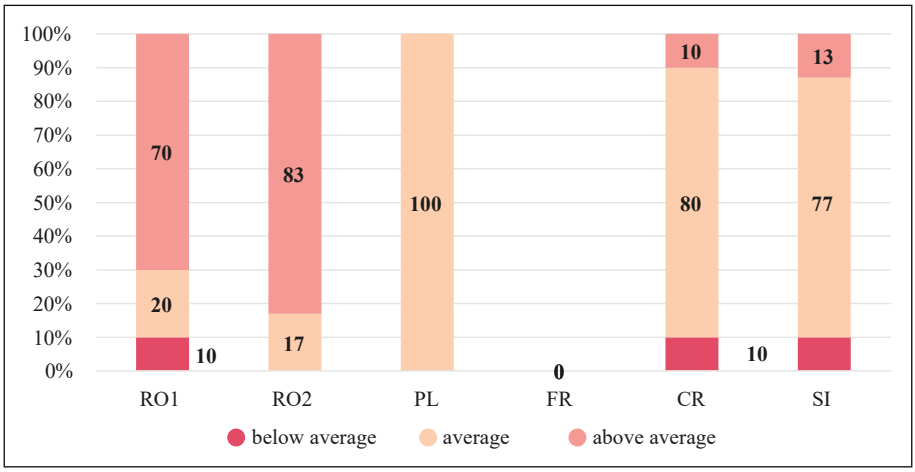
There is an interesting difference between the two Romanian schools, and it can be stated that individual abilities can be taken into account in the training, but they are not yet prepared for generational differences. The regular use of smart tools is not yet a methodological requirement for everyday training. In my opinion, it is essential for effective and efficient education and training to take into account the abilities of students, to introduce individual, tailored development and to adapt to the learning habits of generations, and this is no different in police training. Exploiting the possibilities offered by technical means is an essential condition for meeting the requirements of the age. In my point of view, the significant proliferation of smart devices in all areas of life points in the direction that they should not be banned, but consciously incorporated into training in the acquisition, application and incineration of new knowledge.

Figure 4: *Generation classification of participants in training by age in %*



Note: The author's own editing.

Figure 5: *Classification of participants according to their abilities in % (below average, average, above average)*



Note: The author's own editing.

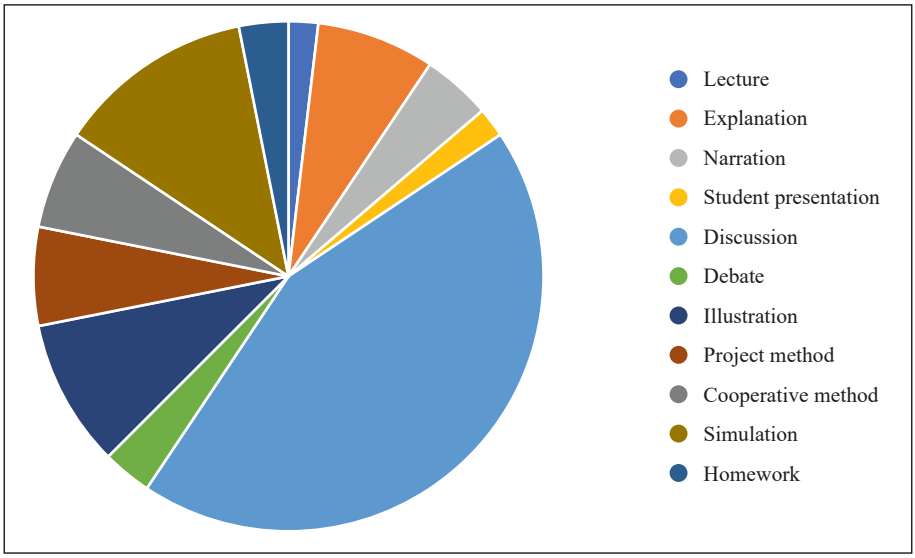
There was no response from the French police school to the classification according to ability. Persons with above-average skills apply to Romanian police training, which suggests that high-quality training can be achieved. For the other countries, people of average skills take part in the training. In my opinion, ensuring the replenishment of the police should not only consist of replenishing the quantity, but also issuing quality professionals from the police schools. Professionals who are well prepared for the work and profession of the police are able to perform their tasks to a high standard, as a result of which the professional judgment of the police improves, and their social acceptance increases. I think it is important that police students who are admitted with different abilities do not only receive general training, in which the talented cannot develop further, nor does the catching up of the weaker ones take place. Great emphasis should be placed on both categories so that the development of talented people is unbroken, and the weaker ones have a realistic chance of rising to at least the average level. This, in turn, requires the implementation of training that takes into account the abilities of the individuals and has a personalized development plan. Of course, this means a significant additional task for the instructors, because it is not enough to 'just' hold the lessons, but it is necessary to constantly monitor the development and abilities of the participants in the training. An attempt should be made to get the most out of everyone and to anticipate what police duties an individual is recommended to perform after

completing the training. It should be noted that a trained police officer is not suitable to perform all tasks either. The individual's ability, readiness and personality determine the ideal service task for him or her. For example, patrol or district commissioner work or team service activities require different people within the public order service branch.

Didactic methods applied in the training

The questionnaire survey asked which of the didactic methods listed in the literature (Tigyiné-Pusztafalvi, 2015) are used by the institutions and in what percentage.

Figure 6: *Didactic methods applied in the training in % (Cluj-Napoca) (lecture, explanation, narration, student presentation, discussion, debate, illustration, project method, cooperative method, simulation, homework)*



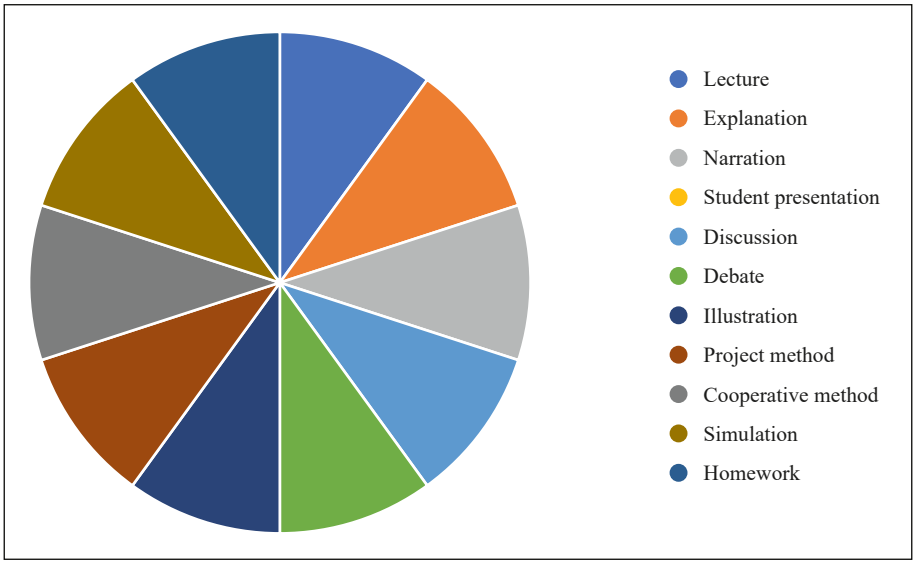
Note: The author's own editing.

In Cluj-Napoca, Romania, all didactic methods are used in police training, the first four places include:

1. Discussion
2. Simulation
3. Illustration
4. Explanation

This sequence suggests that the traditional Prussian, frontal education model has been replaced by a more modern one, moving toward practice-oriented training, highlighting the importance of trainees and hands-on activities embodied in simulation and illustration. I also looked for the answer to the question of how effectively the applied didactic methods appear in the training, but I did not receive an answer from the police school in Cluj-Napoca.

Figure 7: *Didactic methods applied in the training in % (Oradea)*



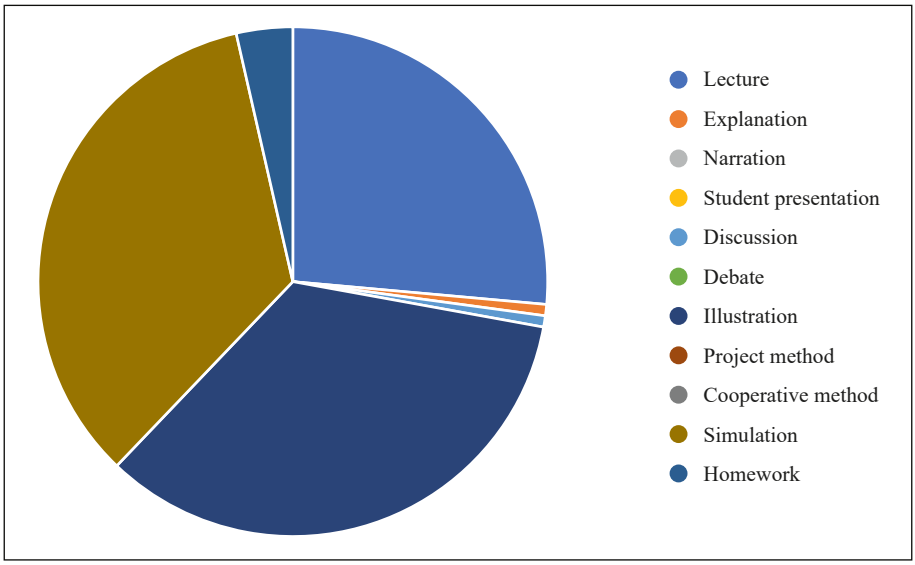
Note: The author's own editing.

The Oradea Police School does not use a student presentation, which, in my opinion, strengthens the sense of responsibility and independence in addition to the deeper acquisition of professional knowledge, as it must be manifested in front of the peers and the instructor. At the same time, I do not think that this would be a mistake, because other didactic methods may include the development and awareness of the competencies described above. Regarding the didactic methods used, the school did not indicate a percentage of application. The following response was received to the effectiveness of the didactic methods used:

1. Simulation: 100%
2. Illustration: 100%
3. Discussion: 90%
4. Explanation: 90%.

From the efficiency data, we can conclude that, similarly to the school in Cluj-Napoca, a practice-oriented educational model is used. In my opinion, this will make it much easier for police officers issued from the school to integrate into the various places of service, and it will also make it easier for police forces to work because they get trained police officers who do not have to be specially trained for basic professional tasks.

Figure 8: *Didactic methods used in training in % (Katowice, Poland)*



Note: The author's own editing.

Among the general didactic methods, narration, student presentation, discussion, project method and cooperative method are not used in the police school in Katowice, Poland. Between the didactic methods applied, the order of strength is as follows:

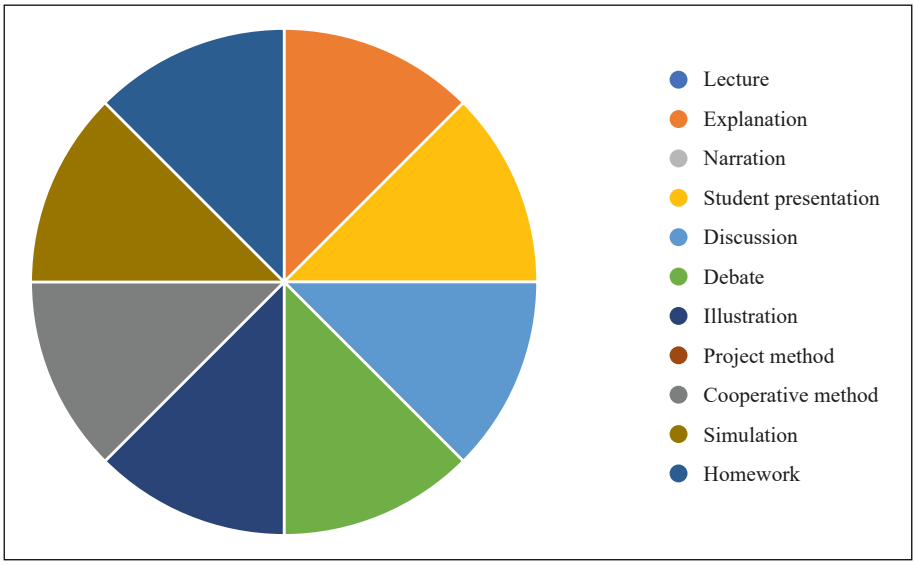
1. Simulation
2. Illustration
3. Lecture
4. Homework

Regarding the effectiveness of the didactic methods used, the following response was received:

1. Explanation: 80%
2. Lecture: 70%.

From the given data, it can be concluded that in addition to the traditional educational model, a practice-oriented reinforcement also appears.

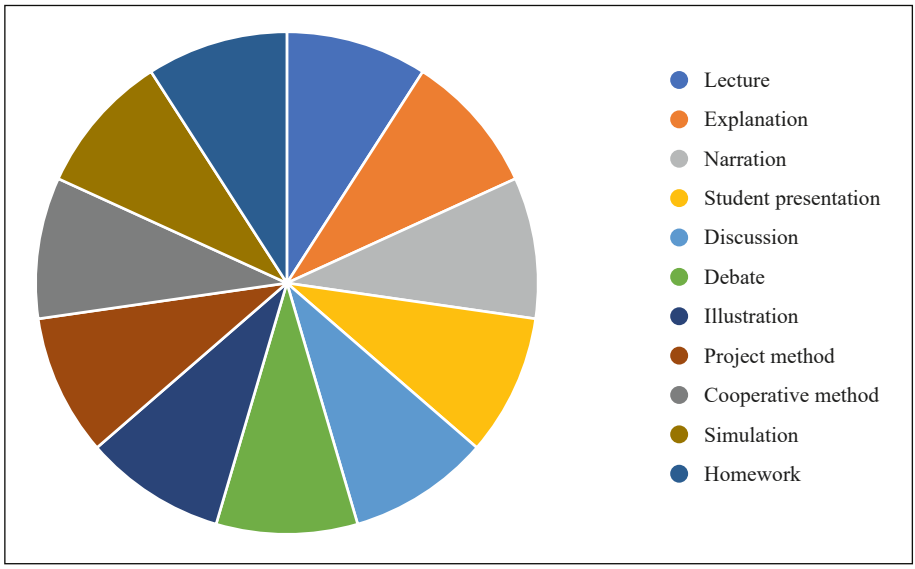
Figure 9: *Didactic methods used in training in % (Sens, France)*



Note: The author's own editing.

At the police school of Sense in France, they do not apply from the didactic methods the lecture, narration, and the project method. The didactic methods used were not classified, nor was a response received regarding their effectiveness.

Figure 10: *Didactic methods used in the training (Zagreb, Croatia)*



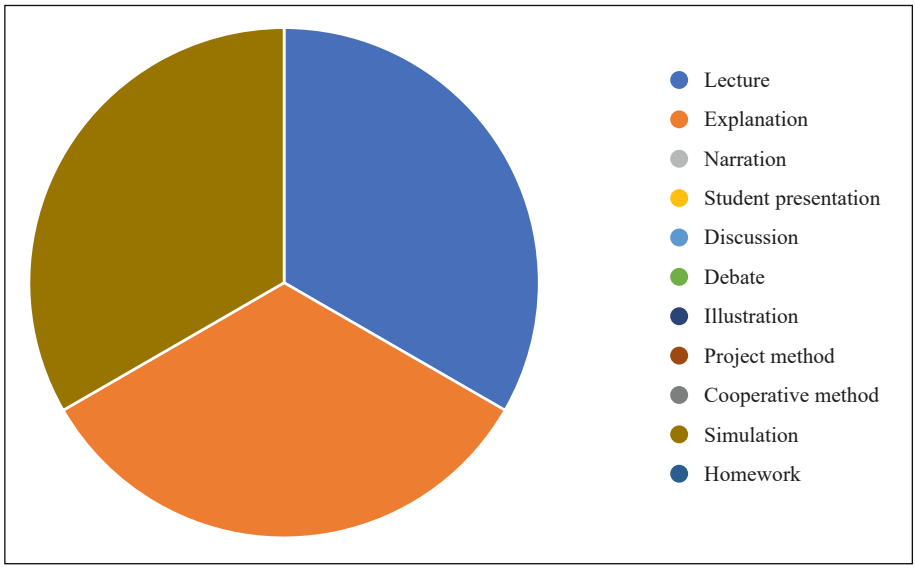
Note: The author's own editing.

All didactic methods are used in the police school in Zagreb, Croatia, but no answer was given regarding the percentage of their usage. The following order of strength was indicated for the effectiveness of the applied didactic methods:

1. Simulation: 95%
2. Illustration: 95%
3. Discussion: 75%
4. Debate: 75%.

Efficacy data suggest that a practice-oriented educational model is applied during the training.

Figure 11: *Didactic methods used in training (Ljubljana, Slovenia)*



Note: The author's own editing.

The Ljubljana Police School in Slovenia did not complete the didactic methods section of the questionnaire, but provided a textual answer stating that basically the following methods appear in the training:

1. Lecture
2. Explanation
3. Simulation

The type of didactic method is chosen by the instructor according to the content of the training curriculum. This means that the instructor has considerable freedom in the transfer of knowledge. This can have a positive effect on the training if the instructor chooses the enforced didactic method not only by taking into account the content of the curriculum to be acquired, but also the abilities of the participants in the training. Quality assurance includes the fact that the institution works well if the instructor's freedom, the didactic method used is recorded, for example in a lesson plan prepared in advance by the instructor. So it is not about improvisation, but about using carefully constructed, consciously chosen didactic methods.

The efficiency of the applied didactic methods is not measured, they do not have data, therefore no answer was received to this question.

Availability of personal and material conditions during the training

In the questionnaire, I addressed whether schools have an adequate number and quality of instructors. If not, where does the shortage appears, at the theoretical education or at the practical training? The answers are shown in Table 2.

Table 2: *Personal conditions during the training*

Police School	Is the number of instructors sufficient?		Where is a shortage?	
	Yes	No	Theoretical education	Practical training
RO1		X	X	X
RO2		X		X
PL		X	X	X
FR	X			
HR		X		X
SI		X		X

Note: The author's own editing.

It is striking that, with the exception of the police school in France, there is a shortage of instructors everywhere, especially in terms of practical training.

Table 3: *Preparedness of instructors*

Police School	Preparedness of instructors		
	Below average	Average	Over average
RO1	X		
RO2		X	X
PL		X	
FR			X
HR	X	X	X
SI			X

Note: The author's own editing.

In the French and Slovenian police schools, all instructors are above average, in Poland they are all average, in Cluj-Napoca all are below average, and the others give a mixed picture. The conclusion from these data, is that further training of instructors is absolutely necessary.

Table 4: *Availability of tools for education*

Police School	Availability of tools for education			
	0–25%	26–50%	51–75%	76–100%
RO1				X
RO2				X
PL				X
FR				X
HR		X		
SI				X

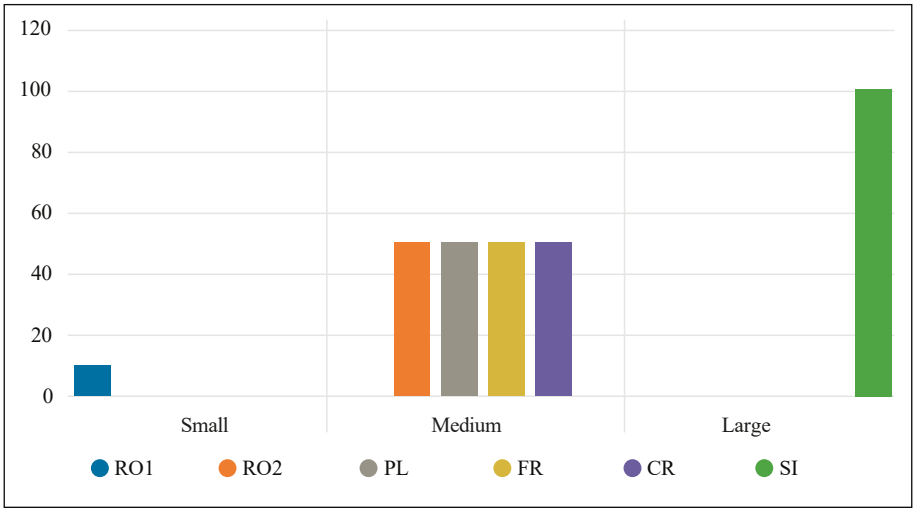
Note: The author's own editing.

With the exception of the Croatian police school, all schools have the material conditions for effective education.

The administrative burden of training

Nowadays, thanks to the spread and rapid development of information technology, there are many opportunities to replace the seemingly bureaucratic, repetitive administrative burdens with electronic means. This may apply both to training documentation - framework curricula (URL1), training programs, subject programs, syllabi, class diaries, certificates, module closures, etc. - and to those led by instructors - lesson plans, descriptions, individual development plans, etc. Part of the administration is carried out by the staff of the study departments, as well as by the class teachers and instructors. Administrative activity in many cases takes a significant amount of time, which could also be spent on education. In the questionnaire, I also covered these, which I classified into three categories - small, medium, large - and how much IT support was provided.

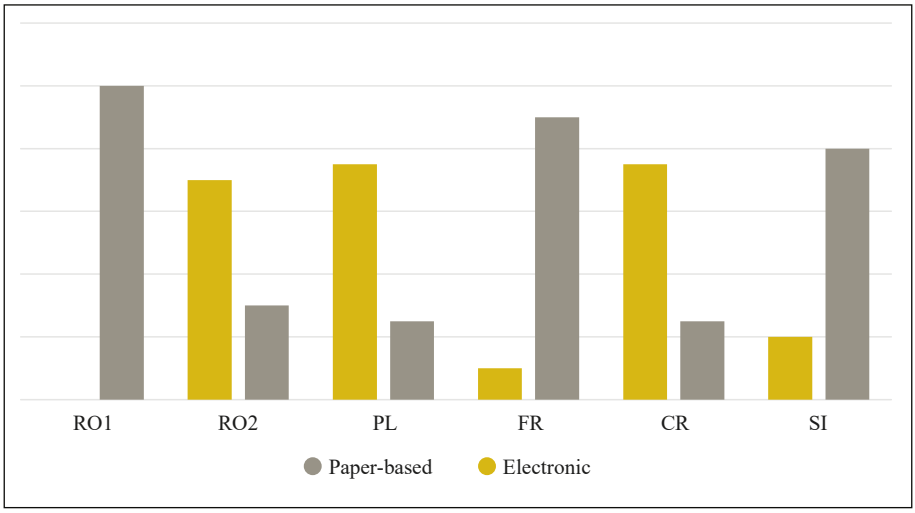
Figure 12: *Administrative burden (small, medium, large)*



Note: The author's own editing.

The administrative burden is felt to be small in Oradea, high in Ljubljana and medium in the other police schools.

Figure 13: *IT support for administrative burdens (paper-based, electronic)*



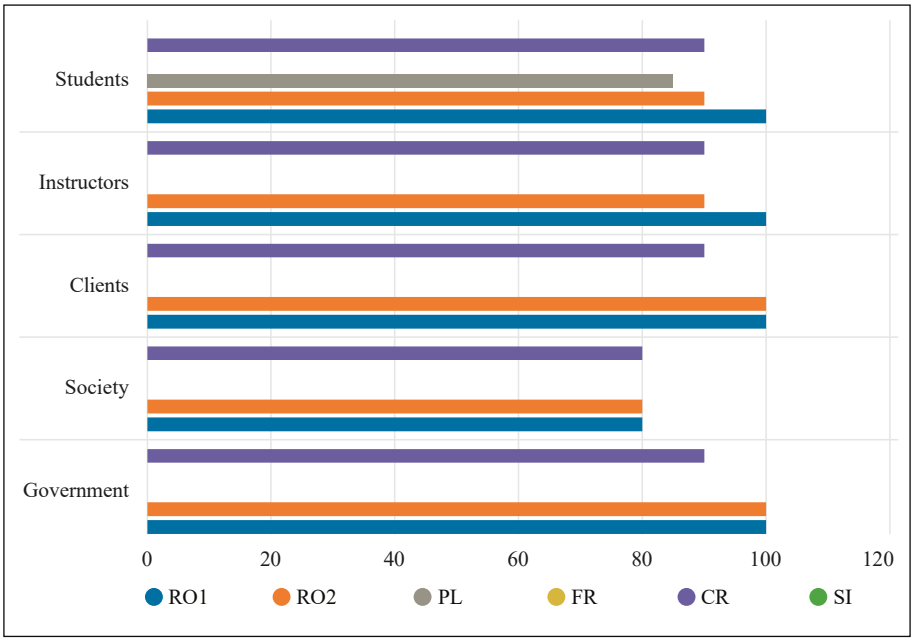
Note: The author's own editing.

The performance of administrative tasks is generally supported by the IT system, but this is not enough. We can be completely satisfied if all the processes can be carried out by means of IT or even at the place of education.

Acceptance of the training

In my opinion, its acceptance plays an important role in all training, especially in the training of police officers, because they are considered public figures and exercise their rights over citizens. It is not enough to think that everything is fine, and we are doing our job well, but - also in the spirit of quality assurance - we need to ask for feedback. In the questionnaire I identified five areas – 1. government, 2. society, 3. clients, police, 4, instructors, 5. students in training - and asked for a percentage answer. The following responses were received from the six police schools, illustrated in Figure 14.

Figure 14: *Acceptance of police training in % (students, instructors, clients, society, government)*



Note: The author's own editing.

No data were received from France and Slovenia on the acceptance of police training, and in Poland only from the students. In Romania and Croatia, based on the data sent, not only is police training acceptance, but the percentages indicate satisfaction.

Conclusions

Based on the answers of the six foreign schools dealing with the training of police officers, many similarities and differences can be established in resemblance with each other, as well as in comparison with the training in Hungary. Examining the results of the survey, we can see the strengths and weaknesses, from which, in my point of view, it is possible to build on and develop the Hungarian police training. A very important additional task is to look at the international scene, as those experiences can point out directions for development. Fortunately, there are many examples in Hungary that the former four law schools in Adyliget, Körmend, Miskolc and Szeged regularly held international conferences with the participation of police schools in the partner countries to exchange experiences on the priority areas of police training. This tradition must be continued in the future.

References

Kenedli, T. (2008). The history of the Budapest Police Vocational High School and the police officer training (Part 1). *National Security and Law Enforcement, 1*(3), 60–71.

Krauzer, E. (2020). Questionnaire - Research on the development of the teaching methodology of police officer training. Nemzeti Közszolgálati Egyetem, Rendészettudományi Doktori Iskola.

Tigyiné-Pusztafalvi, H. (2015). Teaching methods and ways of organizing education chapter. In Bethlehem J. (Ed.), *Healthcare methodology* (pp. 33–48). Budapesti Műszaki és Gazdaságtudományi Egyetem, Tanárképző Központ.

Online links to this article

URL1: *Vocational training framework curricula (From the 1st of Sept. 2013).* https://www.nive.hu/index.php?option=com_content&view=article&id=440

Reference of the article according to APA regulation

Krauzer, E. (2021). Didactic methods used in police training in some foreign countries. *Belügyi Szemle, 69*(SI6), 8-25. https://doi.org/10.38146/BSZ.SPEC.2021.6.1

DOI: 10.38146/BSZ.SPEC.2021.6.2

Boglárka Meggyesfalvi

Policing harmful content on social media platforms

Abstract

Social media content moderation is an important area to explore, as the number of users and the amount of content are rapidly increasing every year. As an effect of the COVID-19 pandemic, people of all ages around the world spend proportionately more time online. While the internet undeniably brings many benefits, the need for effective online policing is even greater now, as the risk of exposure to harmful content grows. In this paper, the aim is to understand the context of how harmful content - such as posts containing child sexual abuse material, terrorist propaganda or explicit violence - is policed online on social media platforms, and how it could be improved. It is intended in this assessment to outline the difficulties in defining and regulating the growing amount of harmful content online, which includes looking at relevant current legal frameworks at development. It is noted that the subjectivity and complexity in moderating content online will remain by the very nature of the subject. It is discussed and critically analysed whose responsibility managing toxic online content should be. It is argued that an environment in which all stakeholders (including supranational organisations, states, law enforcement agencies, companies and users) maximise their participation, and cooperation should be created in order to effectively ensure online safety. Acknowledging the critical role human content moderators play in keeping social media platforms safe online spaces, consideration about their working conditions are raised. They are essential stakeholders in policing (legal and illegal) harmful content; therefore, they have to be treated better for humanistic and practical reasons. Recommendations are outlined such as trying to prevent harmful content from entering social media platforms in the first place, providing moderators better access to mental health support, and using more available technological tools.

Keywords: online policing, harmful content, social media, content moderation, online safety

Introduction

Social media content moderation is an important area to explore as the number of users and the amount of content are rapidly increasing every year. As an effect of the COVID-19 pandemic, people of all ages around the world spend proportionately more time online. While the internet undeniably brings many benefits, the need for effective online policing is even greater now, as the risk of exposure to harmful content grows. This essay aims to understand the context of how harmful content is policed online on social media platforms and how it could be improved. It is intended in this assessment to outline the difficulties in defining and regulating the growing amount of harmful content online, which includes looking at relevant current legal frameworks in development. It is noted that subjectivity and complexity in moderating content online will remain by the very nature of the subject.

It is discussed and critically analysed whose responsibility managing toxic online content should be. It is argued that an environment in which all stakeholders maximise their participation and cooperation should be created in order to effectively ensure online safety.

Acknowledging the critical role human content moderators play in keeping social media platforms safe online spaces, consideration about their working conditions are raised. They are essential stakeholders in policing harmful content; therefore, they have to be treated better for humanistic and practical reasons. Recommendations are outlined such as trying to prevent harmful content from entering social media platforms in the first place, providing moderators better access to mental health support, and using more available technological tools.

Problem areas in policing harmful content on social media platforms

The growing amount of harmful content on social media platforms

In recent years, there has been an increasing concern about harmful content on social media platforms, widely available to an ever-rising number of users. At the beginning of 2021, there were around 4.2 billion active social media users, an almost 14% growth compared to a year before (URL5). Social media is a collective term used for community-focused websites and applications that facilitate the creation and distribution of information through interactive digitally-mediated technologies (Munk, 2021). It includes social networks (e.g., Facebook),

media sharing networks (e.g., Youtube, Instagram, Vimeo) and forums, all of which provide technology for people and organisations to share various types of content like text, images, videos, polls, announcements, links and live streams. According to Caplan (2018), the new challenge of managing content that can be publicly disseminated by anybody, from anywhere and at any time, derives from the fact that platforms of such size and information-density as Facebook and YouTube were unprecedented before.

As highlighted by the Online Harms White Paper (2020), the United Kingdom's new regulatory framework that aims to improve citizens' safety online, it is crucial that all actors take responsibility and cooperate to make the internet a safer place, and online spaces are not surrendered *'to those who spread hate, abuse, fear and vitriolic content'* (URL4). International institutions, such as the European Commission, also expressed the need to effectively manage the growing spread of harmful content online, including harassment on social media, and fake news like false information on the COVID-19 pandemic (European Parliament, 2021).

However, defining what harmful content means can be difficult. In its Digital Services Act proposal (2020), the European Commission stated that it was commonly agreed by stakeholders that defining 'harmful' content should be a subject of ensuing regulations as *'this is a delicate area with severe implications for the protection of freedom of expression'* (European Commission, 2020). The British government also avoided giving an interpretation of the term in the Online Harms White Paper, instead published a non-exhaustive list of harms in scope. The list indicates what types of harmful content or activity had a 'clear' or 'less clear' definition, for example, harassment and cyberstalking falling in the previous, advocacy of self-harm in the latter category (URL4).

While there is no widely accepted, clear definition of what harmful content is, in simple terms it is any content that causes a person distress or harm. This approach, however, is rather subjective and associates a vast amount of content both illegal and legal, making it difficult for people to classify. Perceiving or experiencing distress depends on numerous aspects, including the cultural and religious beliefs, age, and the individual level of sensitivity of a person. For categories such as harassment and fake news, there will always be edge-cases, depending on interpretation, dealing with *'examples where someone's background, personal ethos, or simply their mood on any given day might make the difference between one definition and another'* (URL9).

Policing social media platforms is challenging

Even if it is challenging to define what harmful content is, it is important that it is removed immediately. Regulations and processes need to be in place to ensure that victims are protected, the negative impact is minimised and further harm (e.g. secondary victimisation) is prevented. However, lately, there are more and more questions arising about whose responsibility it is to keep the online space safe and police harmful content on social media platforms.

Policing these platforms is problematic for a number of reasons, including the *'volume of the number of posts that need to be policed; the inter-jurisdictional nature of users; the lack of international cooperation and information-sharing protocols; the ease and anonymity by which the content can be disseminated; and varying legal definitions'* (Williams, Butler, Jurek-Loughrey & Sezer, 2021).

Although there is currently a number of legislations in the pipeline, such as the above mentioned Digital Service Act and the Online Harm Bill, due to the technical complexity and dynamism, and high political sensitivity (Llansó, Hoboken & Leersen, 2020) there are no easy solutions to how effective policing of social media should look like in the future.

Governments in the past preferred self-regulatory approaches, trying to introduce non-binding, voluntary forms of co-regulation, being cautious to introduce determinative regulations regarding harmful content (Llansó et al., 2020). However, since 2018, policymakers in the European Union and the United States of America have started to ask *'increasingly tough questions about how tech giants handle online content'* and push them *'to take greater responsibility for illegal, hateful and false information'* (URL8). Over the past years, the public debate climaxed on the responsibilities and liability of social media companies facilitating the *'mass diffusion of any type of content'* (Bertolini & Cherciu, 2021), leading towards an end of an era of self-regulation and the placement of *'significant legal and practical responsibility on online companies'* (URL4).

It is problematic how social media companies moderate harmful content.

There are several existing strategies for managing content on social media platforms. The way they choose to handle this task and responsibility can depend on their size and the amount of content generated on their platforms. As noted by Gillespie (2018) *'moderation requires a great deal of labor and resources: complaints must be fielded, questionable content or behavior must be judged, consequences must be imposed, and appeals must be considered'*. Giving an example of the extent, in its online transparency report Google revealed that

YouTube removed nearly 35 million videos during 2020, of which almost 2 million were not automatically flagged (URL3).

Caplan (2018) identifies three main types of strategy used by social media companies: artisanal, community-reliant and industrial. Artisanal strategy is followed by platforms such as Vimeo and Patreon, which choose to have smaller teams of moderators operating in-house, doing the job manually with relatively little use of automated technologies. Community-reliant strategy operators, for example, Wikipedia and Reddit, are reliant on their populous volunteer base to respond to moderation needs in their free time, following the previously established content moderation policies of the platforms. The largest global social media companies, such as Google and Facebook, apply the industrial strategy, trying to maximise the use of machine-learning tools and artificial intelligence (AI), operationalising their rules, and often having a significant amount of their policy enforcement work outsourced.

Inevitably, one component shared by all companies in the process of policing harmful content is the necessity for human moderators. Even the most popular social media platforms like Youtube now admit that human review is absolutely critical for them (URL8). Companies invest in technological tools that are becoming sufficiently robust and capable of flagging different types of harmful content (URL6), nevertheless, it will not be able to *'replicate the computing power of an army of human content moderators'*, especially when the content is controversial and *'require local knowledge or cultural cues'* (URL8).

Moderators' working conditions are often not adequate.

While companies following the artisanal strategy might work with in-house teams of not more than 10 members, others have publicly committed to employing more moderators to make their platforms safer. YouTube alone had 10,000 individuals working in such positions in 2018, and Facebook pledged to have 20,000 people in their content moderation and policy teams by the end of the same year (Caplan, 2018). Their job is demanding due to the amount and the nature of the workload they have to review and analyse on one hand, and on the other, because adequate mental and available technological support measures put in place are often lacking (URL6; URL9; URL8). Problems, such as the *'risk of serious shortcomings in the training, working conditions and support provided for content moderators'* are also becoming recognised at the governmental level (URL4).

As Vincent (URL9) summarised *'humans tasked with cleaning up the internet's mess are miserable'*, and it is about time to better explore this area and provide meaningful solutions.

Critical analysis and discussion

Harmful content will stay

In order to better understand how policing harmful content on social media platforms could be more effective, we need to take a closer look at the problems outlined above.

Trends are that social media platforms are gaining ground in the online space, with more people connected, and more content generated every year. There seems to be no reason to expect that with time, harmful content would miraculously disappear or decrease from these online platforms without serious, targeted interventions. If so, it would have probably happened in the past decades. Instead, a change of view is needed to acknowledge that harmful content, at least until now, has been an integral, inalienable part of the content online. Similarly to offline everyday life, there are actors in the online space too, that intentionally or accidentally cause harm or distress to others. Social media companies, users, law enforcement and civil organisations develop in recognising and handling damaging content, but so do criminals and mal-intentioned players in tricking and outsmarting their weaknesses.

Taking into account the vast amount of content produced, defining and regulating what constitutes harmful can have far-reaching effects. For example, in the case of drawing the line between sexually explicit and sexy in a certain way can result in the difference of removing or leaving billions of images accessible online. There will always be harmful content shared online with 'clear' or 'less clear' definitions and 'edge-cases'. The intention behind sharing a particular piece of content might determine whether it is legitimate documentation of a potential war crime or potentially harmful material (URL8). Therefore, the conclusion can be drawn, that by its nature defining what constitutes harmful will remain challenging, and in some cases objectively impossible.

There are no easy solutions to how effective policing of social media should look like in the future

Besides the enormous amount of content, the lack of clear, widely accepted or legal definitions, there are other factors, such as the lack of international cooperation and information sharing, that add to the complexity of policing social media. Powerful actors as companies, governments and supranational organisations, like the European Union, often seem to focus on how to shift the responsibility to another player in the field, rather than developing common strategies.

Social media platforms try to avoid regulating their sites beyond necessity, and frame the users predominantly responsible *'for what they say, read, or watch'* (Gillespie, 2018). Governments and supranational organisations increasingly criticise the companies for acting vaguely and not doing enough, and try to impose stricter rules. The British government, for example, plans to *'establish a new statutory duty of care to make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services'* (GOV. UK, 2020). In a recent briefing to the European Parliament on the Digital services act in progress, they stated that concerning illegal and harmful content on platforms *'in the absence of effective EU regulation and enforcement, those platforms set the rules of the game'* (European Parliament, 2021).

In the nodal-like structure of stakeholders in online policing, political and economic interests and power relations determine the margins in which all of them can operate. Trying to shift the responsibility of policing harmful content away can delay taking effective actions, and keep the costs of allocating new resources on hold. However, it is only a relatively small and temporary reward compared to the possibility of an extensive, global cooperation of actors, which could serve the overall online safety of all. Therefore, in order to move towards a more effective way of policing, the real question might not be whose responsibility it is to do what part of the job, but rather how to create an environment in which all stakeholders are motivated and benefit from the enhanced safety in online space.

Human moderators' role will remain essential

Moderation is an important part of policing social media platforms. Human moderators and artificial intelligence are key to keep these online spaces safe from disturbing material and bad-intentioned, potentially dangerous actors. Their work includes ensuring that harmful material is removed instantly, such as terrorist propaganda, child abuse material, live streaming of extreme violence, fake news, advertisements of illegal goods and more. Their capabilities and performance have to be maximized because lives can literally depend on it.

In the midst of the growing public concern for more effective solutions and advancing legal regulations globally, companies race to show more results by using automated technologies like machine learning algorithms. However, all companies have a different level of access to these technologies. Some, that prefer the industrial strategy like Facebook, tried to communicate for a while that artificial intelligence would ultimately solve content moderation on their platforms (URL9) and invested heavily in machine learning. However, it can

be argued that the global COVID-19 pandemic has shown that the enhanced use of technology did not ultimately prove to eliminate or visibly decrease the amount of harmful content online overall. AI *'can both miss content (false negatives) and incorrectly flag unrelated content (false positives)'* (URL6). These mistakes, coupled with slowed down response time, were noted by many since the beginning of the pandemic (URL2; URL8). It also led Facebook to acknowledge that relying more on automated tools has limitations (URL2).

The circumstances of moderators will have to improve

Those limitations then are supposed to be overcome by trained human moderators. The challenge is, that unlike machines and algorithms, humans need proper, tailor-made conditions to succeed in a demanding job like content moderation. By human nature, their performance and efficiency depend on their circumstances. AI follows the same rules each time it receives information, but moderators pick, choose and decide all the time, in all kinds of ways (Gillespie, 2018), based on their understanding of company policy, local and cultural knowledge and individual judgement. Therefore, it is essential to provide adequate working conditions for the tens of thousands of people working in these roles, both because they are entitled to it, but also because it is a prerequisite of effective work. Content moderators are key actors in policing social media online, thus it is unsettling that good conditions have reportedly not been provided by social media companies, neither in-house nor outsourced (URL7).

There are several difficulties that can be identified when analysing why adequate working conditions for content moderators are not sufficiently provided. On a micro level of the individuals, content moderators might not be prepared for the work, or have false expectations of what it will constitute. Many of them come from a 'customer support' background with no previous expectations and burn out quickly without proper mental support (URL1).

On a meso, community and organisational level, companies often lack the resources or the will to provide technological tools that could make moderators work easier (URL6; URL1). Lack of diversity is also another problem, because the *'largely white, largely young, tech-savvy* Californians' (Gillespie, 2018) who form the core group of moderators might find it more difficult to deal with some specific content, compared to a background-wise more diverse group. Another factor that can negatively affect their performance, morale and health is the lack of professional management, including leaders who deny break time, fired employees on flimsy pretexts, and changed shifts without warning, unavailable mental support and no sufficient wellness time provided (URL7).

On the macro level of leadership, legal and cultural context regulations are unarguably missing. It obviously has not been of interest for social media companies to advocate for more restrictions and responsibilities for themselves. Legal regulation, as noted by the government of the United Kingdom, it is a duty that should be initiated on a governmental level, that is why they committed to set out codes of practice, *'outline the systems, procedures, technologies and investment, including in staffing, training and support of human moderators, that companies need to adopt'* (URL4). For positive changes on all levels, there is one other element clearly needed, one that has started to gain recognition: namely that there is little understanding of the long-term effects of viewing disturbing images in quantity, on a regular basis. As more and more users create content that needs to be assessed, there is still a lack of basic knowledge of how the most difficult aspects of this work – removing graphic and disturbing content – affect the people doing it (URL7).

Recommendations

Having discussed the challenges in policing harmful content, whose responsibility it should be, and the maltreatment of moderators, there are recommendations on how online safety could possibly be improved.

Policing less content

An obvious solution to the challenge of policing an enormous amount of harmful content on social media platforms would be to have less of that kind of disturbing content. Easy as it sounds, it would involve a complex coordinated effort from a group of diverse actors on different levels. Social media companies would need to finally take a firm stand and admit their responsibility in policing their platforms, instead of avoiding to face their role in it. More effective prevention of harmful content appearing online in the first place would require companies looking at and modifying their policies (and having hard discussions regarding the freedom of speech), recoding algorithms, allocating more resources to this mission, and not at least, financial loss caused by less traffic on their platforms (URL6). However, efforts by social media companies would not be sufficient alone. Governments and supranational governmental organisations as the European Union, need to provide clear policies and regulations that companies can follow. It is their responsibility to use their democratically legitimised power to make decisions on distinctions of categories of 'less-clear' and not harmful

content. Defining these categories broader or narrower also has implications on what can enter and stay online, and involving experts would bring the necessary knowledge to the discussions.

Governmental organisations also have to facilitate the creation of an environment, in which companies have incentives and become motivated to maximise the safety of their platforms. The British government has already supported the incorporation of *'existing good practices into their products from the earliest stages of product development to ensure that their products are safe by design'* (URL4). The safety by design approach is gaining recognition in the United Kingdom and the United States and would prove to be beneficial globally.

Besides the above mentioned, governmental organisations also need to ensure on a policy level that users, namely their citizens are adequately supported in recognising harmful content, so they can prevent its creation and spread by their means, or adequately deal with it when encountered. It seems a positive development that the British government has already promised to raise awareness, and develop a new online media literacy strategy (URL4). Civil and educational organisations alongside law enforcement have an important role to play in awareness-raising and prevention too, as they can act as intermediaries between policy goals and people.

Finally, users themselves have to be more active in preventing harmful content through learning about its nature, not posting or sharing damaging material, protecting each other online, and helping fast removal when needed. As 'citizens of the digital space' they also have to act responsibly, with caution and respect toward each other, avoiding to create or amplify distressing content online.

Policing better

In addition to the multi-stakeholder collaboration in the field of prevention, legitimate regulations and 'clearer' definitions, there is room for improvement in dealing with the already existing harmful social media content. As discussed previously, despite the technological developments regarding AI, human moderators will be needed for this challenging job in the foreseeable future. As it is becoming recognised, progress is much awaited in this field and could be done in a number of different areas.

First, besides the humanistic considerations, it is important to enhance moderators mental safety in order to improve the quality of the work they deliver. Preventing burnout, desensitisation and the normalization effect regarding harmful content can have a positive effect on retaining people who are good at this job, therefore increasing the quality of online safeguarding. As more users produce

more content on social media platforms, recruiting and retaining people who can do this hard job of high importance is strategically crucial.

Secondly, it would be recommended to use existing technology and tools better. Leetaru (URL6) argues that there are already sophisticated technological solutions available to moderate content online that should be applied together with human power. Content moderation is a largely manual work, and if automatised technology filtered more content adequately, human moderators would have more time and energy to focus on controversial material that cannot be judged by AI. Likewise filtering, technological tools such as 'turner effects' (e.g., blurring and manipulating disturbing images), the black-and-white view option, playing videos backwards, the muted or sliced view can help to protect moderators' mental health (URL1).

There are many other possibilities to improve work experience, and therefore the productivity of human moderators, but the one support feature that was noticed through all materials reviewed was the need for counselling and human support. Providing quality counselling and mental health advice, together with more real wellness time would most likely provide an improvement for people working in these roles.

Conclusion

In this paper, the context of policing online harmful material in social media platforms was analysed from different perspectives. First, the very notion of harmful material and challenges around defining it was explored. As harmful content was found to constitute an integral part of the content on social media platforms by its very nature, it was necessary to discuss whose responsibility it is to police it. The position of a number of relevant actors was looked at, including social media companies, governments and supranational organisations, and users. The conclusion was that in order to effectively deal with, prevent the creation, and minimise harmful content online, all stakeholders must work together in collaboration, taking responsibilities matching their positions, be it making adequate regulations, allocating more funds to moderation, or raising awareness and learning about the problem itself. Finally, the essential need for human moderators was outlined together with their working conditions. It was concluded that AI technology can help a better policing of social media platforms, but not replace humans. Therefore, taking better care of these important players, the human moderators, is essential not only for humanitarian reasons but also in order to enhance online safety.

References

Bertolini, A. & Cherciu, N. (2021). *Liability of online platforms*. Panel for the Future of Science and Technology. https://www.europarl.europa.eu/RegData/etudes/STUD/2021/656318/EPRS_STU(2021)656318_EN.pdf

Caplan, R. (2018). *Content or Context Moderation? Artisanal, Community-Reliant, and Industrial Approaches*. Data & Society.
https://datasociety.net/wp-content/uploads/2018/11/DS_Content_or_Context_Moderation.pdf

European Commission (2020). *Proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC.* European Commission. https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en

European Parliament (2021). *Digital services act.* EU Legislation in Progress, EPRS. https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689357/EPRS_BRI(2021)689357_EN.pdf

Gillespie, T. (2018). *Custodians of the Internet*. Yale University Press.

Hanna, M. (2021). *UK government publishes details of digital regulation to combat 'Online Harms'.* Allen & Overy LLP.

Llansó, E, Hoboken, J. & Leersen, P. (2020). *Artificial intelligence, content moderation, and freedom of expression*. Trans-Atlantic Working Group Working Papers Series. https://www.ivir.nl/publicaties/download/AI-Llanso-Van-Hoboken-Feb-2020.pdf

Munk, T. (2021). *Online hate speech and harmful material*. Regulatory Practices and Policing Cybercrime. https://mdx.mrooms.net/course/view.php?id=27892

Williams, M., Butler, M., Jurek-Loughrey, A. & Sezer, S. (2021). Offensive communications: exploring the challenges involved in policing social media. *Contemporary Social Science, 16*(2), 227-240. https://doi.org/10.1080/21582041.2018.1563305

Online links to this article

URL1: *SafetyTech 2021 - Resilience and wellness*. 26 Mar 2021. https://www.youtube.com/watch?v=42pNOeTx86c

URL2: *Dave, P. (2020). 'Social Media Giants Warn of AI Content Moderation Errors, as Employees Sent Home'*. WEForum. https://www.weforum.org/agenda/2020/03/social-media-giants-ai-moderation-errors-coronavirus/

URL3: *Google Transparency Report*. https://transparencyreport.google.com/

URL4: *Online Harms White Paper*. Consultation Outcome.
https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper

URL5: *Hootsuite & We Are Social (2021). Digital 2021 Global Digital Overview*. https://datareportal.com/reports/digital-2021-global-overview-report

URL6: *Leetaru, K. (2019). 'The Problem With AI-Powered Content Moderation Is Incentives Not Technology'*. Forbes. https://www.forbes.com/sites/kalevleetaru/2019/03/19/the-problem-with-ai-powered-content-moderation-is-incentives-not-technology/?sh=3e1e849555b7

URL7: *Newton, C. (2019). 'The terror queue'*. The Verge. https://www.theverge.com/2019/12/16/21021005/google-youtube-moderators-ptsd-accenture-violent-disturbing-content-interviews-video

URL8: *Scott, M. & Kayali, L. (2020). 'What Happened When Humans Stopped Managing Social Media Content'*. Politico. https://www.politico.eu/article/facebook-content-moderation-automation/

URL9: *Vincent, J. (2019). 'AI Won't Relieve the Misery of Facebook's Human Moderators'*. The Verge. https://www.theverge.com/2019/2/27/18242724/facebook-moderation-ai-artificial-intelligence-platforms

Reference of the article according to APA regulation

Meggyesfalvi, B. (2021). Policing harmful content on social media platforms. *Belügyi Szemle, 69*(SI6), 26-38. https://doi.org/10.38146/BSZ.SPEC.2021.6.2

DOI: 10.38146/BSZ.SPEC.2021.6.3

Mónika Nogel

Contracting Forensic DNA Experts by the Defense in Hungarian Criminal Procedure[1]

Abstract
Most of the studies published in Hungary on the judicial expert system and expert evidence in criminal proceedings do not deal with the question whether the availability of forensic DNA experts is adequate for the defense. This paper examines the current legal environment and focuses on this question. The study also gives a brief overview of the circumstances when DNA analysis plays an essential role in criminal cases. Finally, the article will show whether the defense can employ its own forensic DNA expert in criminal cases.

Keywords: forensic DNA analysis, contracted expert, expert employed by the defense, evidence, criminal procedure

Introduction

Benjamin Franklin stated *'it is better 100 guilty persons should escape than that one innocent person should suffer'.* We must agree with him, even after three centuries. The failure of a criminal justice system is also obvious if a guilty person is acquitted. However, the conviction of a person for a crime he or she did not commit is an absolute tragedy. Criminal justice systems seek to introduce guarantees that help to prevent or, if the injustice has already occurred, at least explore miscarriages of justice worldwide. The most famous initiative is the Innocent Project started in the United States of America (USA) in 1992. This project exonerates the wrongly convicted through forensic DNA[2] testing and reforms the criminal justice system to prevent future injustices. The original

1 Supported by the ÚNKP-20-4-II. New National Excellence Program of the Ministry for Innovation and Technology from the Source of the National Research, Development and Innovation Fund.
2 Deoxyribonucleic acid.

project has been running at Cardozo Law School in New York city, but the successful program has found followers all over the world (Korinek, 2017). To be able to effectively defend in a criminal court, or operate a program such as the Innocent Project, an appropriate legal environment is essential that allows the defense to provide DNA testing. Naturally this does not mean that a defense should have their own DNA laboratory or that the law should allow the admissibility of forensic DNA expert reports from any source. Neither, the free access to criminal evidence, that holds the possibility of manipulation, can be permitted. Nevertheless, if the law poses obstacles for the defense to verify faulty or misleading evidence, the situation provides the possibility of an unfair trial.

Expert evidence in criminal cases

In any occasion when answering a legally relevant question requires special scientific knowledge or special expertise, an expert should be involved in the criminal case.

In common law countries, where an adversarial system is used, the accusation and the defense represent their position before an impartial person or group of people (a judge or jury), who attempt to determine the truth and pass judgment accordingly. Since they are equally strong combatants on court, both the accusation, and the defense party can call its own expert witness to help in proving the party's truth. Here, being an 'expert' is not a job title, but rather the designation of a type of witness and the form that his testimony may take (Turner, 2013). Traditionally there is no limitation how many experts are involved by the parties unless it is not obstructing the procedure and is not intended to unnecessary prolong the proceeding.

In civil law countries, the judge presides over the trial and the judge decides on criminal liability. The case is built up by the prosecutor, while the contribution of the defense to the building of the case is limited. The system is governed by the principle of freedom of evidence, therefore with a few exceptions, all forms of evidence is admissible. Experts are mostly official, registered experts, sometimes included on lists. During the trial, experts are usually examined by the judge, who thus has an active role and takes a more directive approach than in the common law systems. The defense is not completely cut off from the expert reporting process, since it is usually possible for them to make a request for appointing an expert, to make comments on the expert's report, to raise supplementary questions and possibly request the appointment of an expert to give a second opinion, to request the expert at the hearing to clarify

material which is still unclear (Champod & Vuille, 2011). Even if the defense's influence is limited to the course of the case, most countries recognize the right of the defendants to employ their own experts and to submit an expert opinion prepared based on contract between the defense and the expert. This right seems to be significant, since incorrect expert opinions may lead to wrongful conviction, and the expert employed by the defense - who is professionally trained in the same field as the expert assigned by the state authorities – might be able to highlight these errors. With that in mind it is undoubtedly an opportunity that is one of the manifestations of the principle of equality of arms.

The judicial expert and the concept of equality of arms

Equality of arms is an inherent feature of a fair trial. It requires a fair balance between the parties – the defense and the prosecution. To the fulfillment of this principle, the opportunity must be given to the parties to have knowledge of and comment on all evidence adduced or observations filed with a view to influencing the court's decision (Brandstetter v. Austria, § 67). Naturally, the principle of equality of arms is also relevant in the matters related to the appointment of experts in the proceedings. However, the European Court of Human Rights has found that the requirement of a fair trial does not impose on a trial court an obligation to order an expert opinion merely because a party has requested it (Huseyn and Others v. Azerbaijan, § 196). But, if there are experts employed from both sides, there must be an equal treatment between the expert for the prosecution and the expert called by the defendant (Bönisch vs Austria). The Court also stated that the rules on admissibility of evidence must not deprive the defense of the opportunity to challenge the findings of an expert effectively, in particular by introducing or obtaining alternative opinions and reports. In certain circumstances, the refusal to allow an alternative expert examination of material evidence may be regarded as a breach of Article 6 § 1 of the European Convention on Human Rights (Stoimenov v. the former Yugoslav Republic of Macedonia, § 38; Matytsina v. Russia, § 169) since it may be hard to challenge a report by an expert without the assistance of another expert in the relevant field (Khodorkovskiy & Lebedev v. Russia, § 187).

The forensic DNA expert report in criminal cases

Wrongful convictions have been associated with various causes (Fenyvesi, 2014). It is beyond the scope of this study to examine them all. The central question

of this article is how forensic DNA analysis can prevent injustice or how it can point out that the conviction was wrongful. Particular emphasis is put on the question whether the defendant could obtain another DNA expert opinion, if the originally submitted one - ordered by the authorities - is not in their favor.

For a variety of reasons, DNA profiling has significantly advanced the analysis of biological stain evidence. DNA analysis is a powerful and often the only tool for establishing the presence or absence of someone at a crime scene. It is also one of the most precious tools in transnational fight against criminals (Prainsack & Toom, 2010). Shortly after its introduction, forensic DNA expert reports have occurred increasingly in criminal cases. Nowadays, thousands of DNA expert testimonies are presented to the criminal courts in Hungary every year (Pádár et al., 2019). However, while in domestic criminal procedure we encounter this kind of expert evidence usually only in criminal cases in progress, internationally, an unforeseen consequence of the introduction of DNA profiling has seen the reopening of old cases. The reason for this is that traditional forms of forensic evidence – handwriting analysis, fiber analysis, ballistics, blood-spatter analysis, bite-mark analysis – which rely upon expert judgement and have limited connection to established science, have been called into question in comparison with the new 'gold standard' of DNA profiling (Lynch, 2003).

The US National Academy of Forensic Science (NAS) released its report *'Strengthening Forensic Science in the United States: A Path Forward'* in 2009 (URL1). The report primarily concluded that, except for nuclear DNA analysis, many commonly used forensic techniques had not undergone the necessary testing to establish sufficient validity and reliability to support claims made in court. Therefore, in many jurisdictions they started to re-examine evidence from the crime scene that in the time of their discovery could not have undergone DNA analysis.

However, there are cases when even a forensic DNA expert opinion raises questions about its usability or admissibility. Therefore, it can also assist in wrongly convicting somebody. This situation can occur for many reasons. One of them is the obvious fact, that at crime scenes, on objects and human body parts that may be linked to crimes the secured DNA sample is often a mix-DNA. This means that the evidence frequently contains DNA from several people. In June 2021, the National Institute of Standards and Technology (NIST) has published its draft report '*DNA Mixture Interpretation: A Scientific Foundation Review'* (URL2). The report reviews the methods that forensic laboratories use to interpret evidence containing a mixture of DNA from two or more people. The NIST review shockingly states that currently *'there is not enough publicly available data to enable an external and independent assessment of the degree*

of reliability of DNA mixture interpretation practices, including the use of probabilistic genotyping software (PGS) systems.' (URL1). The DNA expert can also be influenced by cognitive bias (Dror & Hampikian, 2011). Recently, experts have been also analyzing trace amounts of DNA, including 'touch DNA'[3] left behind when someone touches an object. These types of evidence can be far more difficult to interpret reliably than the 'relatively simple' DNA evidence typical of earlier decades. With 'traditional' DNA analysis, the results tend to be clear, either a suspect's DNA profile is found in the evidence or it is not. It is not too difficult even for laypeople to understand readily what that means. With DNA mixtures and trace DNA however, the results can be ambiguous and difficult to understand, sometimes even for genetics experts. In cases where the interpretation is difficult, inaccurate expert testimonies are more common. Therefore, in these cases, for the defense it is quite important to ensure access to an independent control inspection or check-interpretation.

Another problem is that DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. Because a DNA technology called Polymerase Chain Reaction (PCR) replicates or copies DNA in the evidence sample, the introduction of contaminants or other unintended DNA to an evidence sample can be problematic. If a sample of DNA is submitted for testing, the PCR process will copy whatever DNA is present in the sample; it cannot distinguish between a suspect's DNA and DNA from another source. DNA experts should be suspicious of results that do not fit with case circumstances, including a mixture that is not expected from the material processed and that is difficult to explain, based on their organization's valid interpretation guidelines. Re-testing the item may confirm that the profile is unrelated to the case. However, in many cases the contamination of samples may cause that an innocent person is associated with the crime.

Similarly, the problematics of DNA transfer can lead to a wrongful conviction. There have been several investigations of the primary transfer of DNA from a person to an object or another person and under what conditions primary DNA transfer can and will occur. It may also be possible that a perpetrator of a crime brings traces of another individual into a crime scene and deposits these traces via secondary DNA transfer. Secondary and multiple transfer occurs when DNA is transferred from one object or person to another via an intermediate object/person (Cale, Earll, Latham, & Bush, 2016). The notion that DNA could also be picked-up and transferred to somewhere else, and the potential

3 *'Touch DNA'* is DNA obtained from biological material transferred from a donor to an object or a person during physical contact (Sessa at al., 2019).

implications thereof, was presented in the same Nature paper reporting the discovery of 'touch DNA' (Taylor, Kokshoorn & Biedermann, 2018). DNA transfer and contamination refer to the same physical phenomenon of DNA movement from one surface or location to another. It is basically the timing of this movement that defines whether DNA transfer is associated with a crime-related activity prior to securing a crime scene (be it pre-, during, or post-criminal activity), or a non-crime related contamination event during, or post-securing of a crime scene (Oorschot, Szkuta, Meakin, Kokshoorn & Goray, 2019).

In a forensic setting, non-crime related contamination can come in many forms and via different vectors. For example, a police officer at the scene, a scientist examining the evidence, a dirty examination tool, dirty crime scene bag or a non-DNA-free reagent used during sample analysis. Conversely, crime-associated DNA transfer refers to the movement of DNA from a source that may, or may not, be involved in the criminal activity, such as a perpetrator acting as a vector for the transfer of someone else's DNA to the crime scene while performing a specific activity relevant to the crime. This someone else's DNA could be that of an innocent individual (otherwise not associated with the offender, crime or crime scene) picked-up by the perpetrator during an interaction directly with that person, or an object that person had previously touched, just prior to the criminal activity taking place. While crime-associated DNA transfer occurs only before the crime scene is established by the authorities, contamination can only occur afterwards (Oorschot et al., 2019).

Mixed DNA, DNA contamination, DNA transfer and expert's cognitive bias can mislead the expert. Oftentimes, only another expert can reveal such a mistake who is trained in the same field.

Expert contracted by the defense ('private expert') in Hungarian criminal proceedings

It is necessary to clarify two different ways of using experts in the Hungarian criminal procedure. First, the expert can be assigned by the investigative authorities, by the prosecution and by the court - hereafter called assigned expert, or expert employed by the investigative authorities/prosecution/court. Second, an expert can also be contracted by the defense, hereafter called contracted expert or expert employed by the defense. The reason for avoiding the term 'private expert' for the latter, otherwise officially used in Hungarian legislation, will be explained later in the article.

According to Hungarian law, in all circumstances, if the establishment or evaluation of a fact to be proven requires special knowledge, an expert shall be employed. Experts may be assigned by the court, the prosecutor and by the investigating authority. The defendant and the counsel for the defendant may advise the state authorities to obtain an expert opinion. The defense also has the right to specify, who to assign as an expert. If the proposal to appoint an expert is rejected, the defense can mandate an expert itself. This also applies for situations, when the investigating authority or the prosecutor assigns a different expert than the defense has specifically asked for (Act No. XC of 2017 on Criminal Proceedings, § 188., § 190).

However, if the defense requests for the assignment of an expert to clarify a professional issue that was previously examined by another expert employed by the investigating authority or the prosecutor, the defense can contract an expert only if the following criteria are met:

- an objection was submitted by the defense which argues that the first expert's opinion is incomplete, unclear, contradicts itself or it is assumed to be incorrect for other reasons, and
- for this reason, the defense has asked for the clarification or completion of the expert opinion or has asked for the assignment of a new expert, but this request was rejected.

However, this rule does not apply, therefore no expert can be contracted, if the first expert was the one who was selected based on the defense's suggestion. Another limitation is, that the defense can employ an expert only once during the whole procedure (Act No. XC of 2017 on Criminal Proceedings, § 190). Thus, the law ignores the fact that even an expert who was assigned based on the defense's suggestion and the same one who was contracted by the defense, can submit an expert opinion that is considered as non-credible according to the defense. It is also clear from the legislation, that there is no possibility for the defense to submit a new expert opinion prepared by contracted expert as new evidence after the case is closed, so a re-trial is basically excluded on such a basis. That of course limits the defense's ability to provide new evidence concerning the convicted client's innocence. An additional limiting factor for the defense is the fact, that if the conditions described above have not been met, the opinion formed and written by the expert employed by the defense will count only as a comment. Accordingly, it will not be considered as evidence, at all.

Not surprisingly, arguments exist that the regulation concerning the defense's limited rights to use expert evidence violates the principle of equality of arms.

If the criteria described above are met, and the defense is allowed to submit an expert opinion prepared by the contracted expert, this expert is considered and called as 'private expert' according to the law. The 'private expert' shall be obliged and entitled to get acquainted with data only from the defense and his/her expertise cannot cause any setback in the work the expert assigned by state authorities. But, even if the expert is selected and paid by the defense based on a contract between them, we cannot call this expert an 'expert of the defense'. This is because regarding the professional content of the expert opinion no instruction can be given to the expert by the defense. Every single profession rule and obligation that applies for the expert assigned by the authorities, applies also for those ones who are contracted by the defense. According to the legislation, the expert is always obliged to form an expert opinion with an objective assessment of the revealed facts (Act No XXIX of 2016 on Judicial Experts, § 52). If they are called to testify, they are also obliged to answer the question asked by the investigator, the prosecutor and the judge. Also, their ethical, disciplinary, and legal responsibilities are no less severe. For these reasons the present paper claims that the designation of 'private expert' is ambiguous since it erroneously suggests that the expert employed by the defense is biased in favor of the defendant by all odds. In fact, the expert should remain unbiased and objective, faithful to science and his/her profession in every circumstance, and these values should not be questioned without good reason.

The defendant's right to obtain forensic DNA expert opinion

Theoretically, a DNA expert can help a criminal defendant in four ways. First, an expert employed by the defense can search for possible error during the sample collection or by the forensic DNA testing laboratory appointed by the investigator, the prosecution, or the court. Second, they can testify at trial about the problems with DNA statistics and potentially offer the judge a lower probability estimate. Third, an expert employed by the defense can conduct independent tests on DNA samples (Deylin, 1998). Fourth, they can offer different explanation on how the DNA got into the crime scene.

Before we examine these four ways and whether there is a possibility in Hungarian law to make use of these opportunities, we have to look through the regulation on forensic DNA testing in Hungary.

Hungarian legislation permits examining of DNA in criminal cases exclusively for the National Expert and Research Center (NERC) and the institutes of legal medicine at medical schools. Even though there are four medical schools

with institute of legal medicine, in fact all the forensic DNA analyses are provided, and the great mass of forensic DNA expert opinions are prepared by the NERC, since they are the only institution, that meet the other criteria that are required to analyze forensic DNA (Pádár, Kovács & Kozma, 2020). Namely, Decree 12/2016 (V.4.) of the Ministry of Interior demands accreditation of the DNA laboratory according to the ISO 17025 standard, and the institution's regular participation on proficiency test developed by the European Network of Forensic Science Institutes (ENFSI). Even if the accreditation can be achieved, and proficiency tests developed by the ENFSI Expert Working Groups are also open to non-ENFSI members, the last few years have proved that for medical schools it is not worthwhile to provide these conditions and strict additional specifications, both for personal and material reasons. Institutes of legal medicine of medical schools chose not to apply for accreditation or not to extend their accredited status, since they have not received enough assignments from the authorities. It is obvious for them that the huge costs would not be reimbursed, since the investigating authorities, prosecutors and courts will insist on appointing the NERC if they will need forensic DNA expert opinion. Therefore, the law names the institutes of legal medicine as eligible to provide forensic DNA examinations in vain. In fact, assignors' tendency to avoid them caused a situation where the law turns it into empty words. Consequently, the role of institutes of legal medicine is limited to those parts of the forensic DNA expertise, that do not include laboratory work (for instance interpretation of peak heigh in profiles, pointing out alternative interpretation of mix-DNA (Pádár & Kovács, 2015).

Now, let us examine the four possible ways how the DNA expert can effectively help the defense.

Detection of human errors during the collection of samples and laboratory work

Owing to the fact that DNA evidence is more sensitive than other types of evidence, law enforcement personnel should be especially aware of their actions at the crime scene to prevent inadvertent contamination of evidence (Gárdonyi, 2019). Maintaining the chain of custody is vital for any type of evidence. Another critical point is documentation, that is essential to sustain the integrity of the chain of custody (Herke, Kovács & Gárdonyi, 2020). The institute where the laboratory tests are made, should follow different obligatory guidelines, avoid contamination and shall prepare its test documentation in such a way that all elements of the laboratory activity and the results of the laboratory activity

can be retrieved and verified. The laboratory must keep a record of each test, recording all notes, records, worksheets, photographs, spectra, forms, tables and other (special) data or comments on which the laboratory communicates its findings and supports its conclusions. The laboratory must keep the whole documentation and store it in a retrievable form (ENFSI, 2010). All the documents, including records about collecting, storing and testing can be given to another expert, who can review them and to point out the errors and malpractice. This paper argues that all aspects of DNA testing be fully documented is most valuable when this documentation is discoverable in advance of trial, and it is also available for the defense.

Although generally quite reliable, DNA tests are not now and have never been infallible. Claims that the tests themselves are error-free have contributed to the rhetoric of infallibility that has surrounded DNA testing (Aronson, 2007). These claims are misleading, because humans are necessarily involved in conducting DNA tests. Another expert involved into the case can explain the lack of precision or a potential error of the new or improved methods. The question is, whether this 'another' expert could be a contracted expert?

Overall, two facts must be considered when examining the possibility of the defense to employ a DNA expert in Hungary. First, the NERC and institutes of legal medicine at medical schools are exclusively authorized to submit forensic DNA expert reports, but currently only the NERC has the right to perform the laboratory work, as mentioned earlier. Second, every expert has an obligation to refuse the inquiry from the defense to prepare a contracted expert opinion if it interferes with the performance of their obligations received from the authority, and all experts are prohibited from getting into a conflict of interest. Obviously, if there is only one institution in the country that is actually empowered for entire forensic DNA examination including laboratory work, this institution does not bring itself in a position which would later make it impossible for them to work as an assigned expert for the state authorities. And accepting a request from the defense to prepare contracted expert opinion evidently is such a position. For institutes of legal medicine, who can hypothetically also act as a contracted expert, the biggest obstacle to reanalyze data provided by NERC laboratory is the fact, that the full, detailed documentation of the forensic DNA analysis is not attached to the expert opinion and is not available for the parties. Therefore, factually there is no room for contracted expert opinion in the field of forensic genetics. The only chance for the defense in case of faulty expert opinion is that doubt arises in the authority, and it appoints another expert, who can study the full documentation and point out the mistakes (clearly, without laboratory test).

Challenging the interpretation of DNA-analysis

If legal and judicial personnel are not fully trained how to interpret forensic DNA evidence, it can result in false leads and miscarriages of justice. Limited quantities of DNA, degradation of the sample, or the presence of inhibitors (contaminants) can make it impossible to determine the genotype at every locus. Because partial profiles contain fewer genetic markers (alleles) than complete profiles, they are more likely to match someone by chance (Thomson, 2008). Interpretation of DNA mixtures can be challenging under the best of circumstances but is particularly difficult when the quantity of DNA is limited (Thomson, 2008). Peter Gill, one of the world's leaders in forensic science, once sad *'If you show 10 colleagues a mixture, you will probably end up with 10 different answers'* (Murphy, 2015). In addition, forensic genetic laboratories perform a large amount of STR analyses of the Y chromosome, in particular to analyze the male part of complex DNA mixtures. However, the statistical interpretation of evidence retrieved from Y-STR haplotypes is challenging. Overall, we must not forget, subjectivity is involved in DNA testing. These factors can lead to false incrimination. Nevertheless, one expert can challenge the match or/and the statistical assumptions of another expert. An expert can also perform an independent statistical analysis and present the authorities lower probability estimates (Bennett, 1995). Also, an expert can explain statistical evidence to the authorities in a different way, demonstrating the uncertainty involved likelihood ratios as well the limits of DNA technology (Devlin, 1998). Second expert can offer different – maybe correct – interpretation of the data. But, for the same reason as in the previous case, the current legal environment does not allow the defense to use a forensic expert on DNA contracted.

Conducting an independent DNA test

The ability to preserve biological stains is important in preserving the integrity of forensic evidence. Stabilization of intact biological evidence in cells and the DNA extracts from them is particularly important since testing is generally not performed immediately following collection. Furthermore, retesting of stored DNA samples may be needed in casework for testing, confirmation of results, and to accommodate future testing with new technologies. To be able to safely store the samples, testing laboratories are obliged to be equipped at least with a sample storage capacity of at least 100 liters, refrigerated to at least +4 ° C minimum three times, at least 50 liters to be refrigerated to -20 ° C minimum three times and at least 400 liters to be refrigerated to -70 ° C, all these refrigerators

with uninterrupted operation. Testing laboratories should have regulations for the handling and preservation of samples. In its 1996 report, the US National Research Council (NRC) recommended that any additional tests should be performed independently of the first by personnel not involved in the first test and preferably in a different laboratory (URL3). The 1992 NRC report stated that *'all data and laboratory records generated by analysis of DNA samples should be made freely available to all parties*,*'* and it explained that *'all relevant information can include original materials, data sheets, software protocols, and information about unpublished databanks'* (URL4). From a professional point of view, the validity of this recommendation is also undisputable in Europe. However, as there is only one laboratory that meets the criteria for forensic DNA testing in Hungary, the personnel providing the control test can be different from those who have run the original test, but the laboratory cannot. This is the biggest barrier for the defense in proving someone's innocence if wrongful conviction occurs. Defense has neither the right nor the possibility to access the collected samples. After all, the defense is in a vulnerable position. After the case is closed, there is no possibility for them to obtain a forensic DNA expert opinion, the defense does not have the right to order additional analysis. Basically, in such a situation it is only the prosecutor, who can order or request a court to obtain a new DNA test if there is a suspicion that the convicted person was innocent.

Offering a different explanation of hits and matches

One cause of false DNA matches is cross-contamination of samples. Accidental transfer of cellular material or DNA from one sample to another is a common problem in laboratories and it can lead to false reports of a DNA match between samples that originated from different people (Champod, 2008). Several legislation and protocols exist to prevent contamination, but it is impossible to completely avoid this phenomenon. In many cases, a control expert may notice an erroneous assessment.

Another occurrence is DNA transfer mentioned above. DNA transfer should be a concern for forensic DNA analysts because

- it could falsely link someone to a crime;
- it could introduce extraneous DNA, or foreign DNA into a forensic sample; and
- it could lead analysts and other medicolegal professionals to falsely conclude that DNA left on an object is a result of direct contact (Cale et al., 2016).

Because many lawyers may lack awareness of the problem of transfer, experts should flag the issue in their reports whenever the testing process indicates that transfer may explain the findings. Expert should alert the authorities in every such situations (Murphy, 2015).

If there is an expert involved in a criminal case who explains how the defendant's DNA could get into the crime scene on other physical evidence, another expert can point out that DNA from individuals who have nothing to do with the crime might be present at a crime scene. New experts can also clarify that DNA that is present in a place changes rapidly as people and objects interact within it. Therefore, experts can help the court to correctly understand the relevancy of DNA found at particular places and help to make the right conclusions derived from the obtained information. However, due to the current Hungarian legislation, for the defense it is not possible to employ an expert who is able to offer a different explanation of hits and matches.

Conclusion

As can be inferred from the review, in general it is quite limited, as to how the defense can challenge the expert opinion by employing an expert themself. The study has also discussed, how forensic DNA can prevent or reveal wrongful conviction. This paper argues, that to harness the true strength of a DNA expert opinion to prevent wrongful convictions or to bring attention to injustice, there is a need for regulation that

- allows the involvement of a DNA expert in criminal procedure at every stage, including after the case is closed (so to make possible a re-trial based on the expert report), and
- gives the opportunity to the defendant to dispute the expert opinion, and when needed, to present an expert opinion that questions the appropriateness of the state-appointed expert report.

Also, the paper suggests that since the process of preparing and testing DNA samples is prone to laboratory error, and the interpretation of the results of analysis is a subjective activity, we cannot deny the possibility of contamination or human error in the analysis or interpretation. It is essential to clarify all the sources of legal and scientific controversy, that criminal justice should understand and consider when deciding about conviction. The study has shown, that employing another expert – e.g., an expert contracted by the defense – has the potential to assist the court to make a correct decision about the guilty.

An additional finding is that the limitation to submit a contracted expert opinion – especially forensic DNA expert opinion, that is best known for its potential to explore wrongful identification of the convicted – after the verdict makes it impossible to introduce initiatives in Hungary such as the Innocent Project.

References

Aronson, J. D. (2007). *Genetic Witness: Science, Law and Controversy in the Making of DNA Profiling.* Rutgers University Press.

Bennett, F. W. (1995). Toward Eliminating Bargain Basement Justice: Providing Indigent Defendants. *Law and Contemporary Problems*, *58*, 95–138. https://doi.org/10.2307/1192170

Cale, C. M, Earll, M. E, Latham, K. E. & Bush, G. L. (2016). Could Secondary DNA Transfer Falsely Place Someone at the Scene of a Crime? *Journal of Forensic Science*, *61*(1), 196–203. https://doi.org/10.1111/1556-4029.12894

Champod, C. & Vuille, J. (2011). Scientific Evidence in Europe — Admissibility, Evaluation and Equality of Arms. *International Commentary on Evidence*, *9*(1), Article 1. https://doi.org/10.2202/1554-4567.1123

Champod, C. (2008). The Myth of Infallibility. In Krimsky, S. & Gruber, J. (Eds.) (2013), *Genetic Explanations: Sense and Nonsense* (pp. 227–346). Harvard University Press.

Devlin, J. (1998). Genetics and Justice: An Indigent Defendant's Right to DNA Expert Assistance. *University of Chicago Legal Forum*, (1), 395–423.

Dror, I. E. & Hampikian, G. (2011). Subjectivity and Bias in Forensic DNA Mixture Interpretation. *Science & Justice, 51*(4), 204–208. https://doi.org/10.1016/j.scijus.2011.08.004

ENFSI DNA Working Group (2010). *Recommended Minimum Criteria for the Validation of Various Aspects of the DNA Profiling Process.* ENFSI DNA Working Group Issue No. 001.

Fenyvesi, Cs. (2014). *Tendencies in forensics*. Dialóg Campus Kiadó.

Gárdonyi, G. (2019). A szemle szabályozásának változásai az új büntetőeljárási törvényben [Changes in the Regulation of Crime Scene Investigation in the New Criminal Procedure Act]. *Belügyi Szemle* 67(12), 35–48. https://doi.org/10.38146/BSZ.2019.12.2

Herke, Cs., Kovács, G. & Gárdonyi, G. (2020). Die Behandlung von Verwahrstücken in Ungarn. *Kriminalistik, 74*(11), 687–691.

Korinek, L. (2017). Az ártatlanság félelme [Fear of Innoncence]. *Jogtudományi Közlöny*, *72*(7-8), 309–325.

Lynch, M. (2003). God's signature: DNA profiling, the new gold standard in forensic science. *Endeavour*, *27*(2), 93–97.

Murphy, E. E. (2015). *Inside the Cell: The Dark Side of Forensic DNA.* Nation Books.

Pádár, Z., Kovács, G. & Kozma, Z. (2020). Molekuláris bűnjelek – Genetika a törvényszéken [Molecular Evidence – Genetics on Court]. *Magyar Tudomány, 181*(5), 604–613. https://doi.org/10.1556/2065.181.2020.5.4

Pádár, Z., Kovács, G., Nogel, M., Czebe, A., Zenke, P. & Kozma, Z. (2019). Genetika és bűnüldözés – Az igazságügyi célú DNS-vizsgálatok első negyedszázada Magyarországon I. [Genetics and Law Enforcement - The First Quarter of a Century of Forensic DNA-testing in Hungary I.]. *Belügyi Szemle*, *67*(12), 7–34. https://doi.org/10.38146/BSZ.2019.12.1

Pádár, Z. & Kovács, G. (2015). Misinterpretation of sample contamination in a Hungarian casework. *Forensic Science International: Genetics Supplement Series, 5*, e425–e427. https://doi.org/10.1016/j.fsigss.2015.09.169

Prainsack, B. & Toom, V. (2010). The Prum Regime: Situated Dis/Empowerment in Transnational DNA Profile Exchange. *British Journal of Criminology, 50*(6), 1117–1135. https://doi.org/10.1093/bjc/azq055

Sessa, F., Salerno, M., Bertozzi, G., Messina, G., Ricci, P., Ledda, C., Rapisarda, V., Cantatore, S., Turillazzi, E. & Pomara, C. (2019). Touch DNA: impact of handling time on touch deposit and evaluation of different recovery techniques: An experimental study. *Scientific Report, 9*, 9542. https://doi.org/10.1038/s41598-019-46051-9

Taylor, D., Kokshoorn, B. & Biedermann, A. (2018). Evaluation of forensic genetics findings given activity level propositions: A review. *Forensic Science International Genetics*, *36*, 34–49. https://doi.org/10.1016/j.fsigen.2018.06.001

Thomson, W. C. (2008). *Complicates the Use of DNA Databases for Criminal Identification*. Council for Responsible Genetics Conference. Forensic DNA Databases and Race: Issues, Abuses and Actions. June 19-20. New York University.

Turner, B. (2013). *Expert Opinion in Court: A Comparison of Approaches.* Wiley Encyclopedia of Forensic Science. http://dx.doi.org/10.1002/9780470061589.fsa001

van Oorschot, R. A. H., Szkuta, B, Meakin, G. E., Kokshoorn, B. & Goray M. (2019). DNA Transfer in Forensic Science: a review. *Forensic Science International: Genetics, 38*, 140–166. https://doi.org/10.1016/j.fsigen.2018.10.014

Online links in the article

URL1: *NAS: Strengthening Forensic Science in the United States: A Path Forward*. https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf

URL2: *NIST: Scientific Foundation Review: DNA Mixture Interpretation*. https://www.nist.gov/dna-mixture-interpretation-nist-scientific-foundation-review

URL3: *NRC: The Evaluation of Forensic DNA Evidence*. https://www.nap.edu/catalog/5141/the-evaluation-of-forensic-dna-evidence

URL4: *NRC: DNA Technology in Forensic Science*. https://www.nap.edu/read/5141/chapter/1

Reference of the article according to APA regulation

Nogel, M. (2021). Contracting Forensic DNA Experts by the Defense in Hungarian Criminal Procedure. *Belügyi Szemle, 69*(SI6), 39-54. https://doi.org/10.38146/BSZ.SPEC.2021.6.3

DOI: 10.38146/BSZ.SPEC.2021.6.4

Vince Vári

Relationship between trust in the police and the effectiveness of the police[1]

Abstract
In recent decades, a number of studies have appeared, mainly in the Western European police literature, which have examined the role of the police in society, the social utility of their operations and the social trust factors achieved throug the effectiveness of their procedures. These studies have revealed a number of factors which, although indirect, can be measured and understood. Nevertheless, they have hitherto been treated as abstract concepts in scientific approaches. These include the legality, legitimacy and fairness of police actions and procedures. In this study, I will show that the police can have a significant impact on social capital if they focus on these factors. In particular, it can improve that by focusing on aspects of procedural justice in measuring organizational effectiveness. However, the malleability of trust is questionable in a society where the overall level of trust is already low.

Keywords*:* efficiency, police, procedural justice, social capital, trust

Introduction

The police's social role and participation decipher the essence of public trust in the state's public institutions and thus in the law. Social faith as a kind of capital is a collective sense of the 'social effects.' At the same time, it is also an attitude towards the violent organization of power. This attitude is also the acceptance or rejection of the system of regulating power, given that the police are the 'ultima ratio' of the exercise of state control, that is, the executive power. However, unlike other public authorities, the law has a complete set of tools for enforcing violence. Thus, the social attitude towards it is emblematically an

1 The project TKP2020-NKA-09 was completed with the support of the National Research Development and Innovation Fund and financed by the Thematic Excellence Program 2020.

expression of the citizen's attitude towards power. The results of modern scientific research have now gone beyond quantitative indicators, which are mainly 'produced' by law enforcement. They have mostly taken scientific steps towards the objective measurability of quality indicators such as 'public satisfaction' or trust in the police. In the 1990s, in addition to the valuable efficiency narratives of policing, the need to consider the elements of 'legitimate policing' and social equality became more and more pronounced.

The key to legitimate policing is to develop appropriate efficiency indicators and to be able to measure positive effects critically in terms of social impacts. So, as far as the legitimacy of policing and public opinion is concerned, it is needed to reduce the number of crimes by improving quantitative efficiency and showing the processes how they have been achieved. Harmful in terms of its social 'side effects,' i.e., a police strategy rejected by the majority cannot be justified even if the statistical results improve. In terms of side effects, the medical concept's analogy shows that a complex society functions similarly to a complex living organism. The use of treatments and side effects without experimental studies can be a source of serious risks. Often, only the presence of side effects, as measured by decisions, decides to reject a procedure that seems promising. Without measurement, however, we cannot even talk about the chances of experiencing a side effect. Of course, measure itself doee not seem to be significant 'news'. Its lack carries even more dangers, as, without a 'good measurement' method, the relationship between the population and the police can become extremely unstable. The results of a favorable objective security situation are merely misleading and lead to incorrect policy strategy formulation. All of this only preserves social distrust and tension with the police. 'Good measurement methods' are those that focus on social trust and the legitimacy and fairness of procedures. These factors are discussed in the following chapters.

The relationship between legitimat operation of the police and public trust

Although the trust can mostly be seen as a kind of 'aftermath' that accompanies the organization's activities, it also impacts significantly the quality of law enforcement activities related to maintaining public security. Legitimate policing in this context means not only the observance of the relevant laws and norms in police activities (measures, procedures) and the correct, fair, equitable treatment and form of citizens (Stanko & Bradford, 2009). The latter includes bias and equal treatment of all those who contact the police in any capacity and

condition. Therefore, in legitimate police work, it becomes imperative that this actually leads to a positive attitude and that the majority also actively supports the police's job. In this way, the law can play a policing role effectively and with broad social authority for the community (Murphy, Hinds & Fleming, 2008).

Of course, police officers are not just 'one' in a particular role in modern, pluralistic society, so it would be a mistake to look at them from only one point of view. It also follows that it is impossible to generalize their judgment or set a uniformly favorable expectation towards the public. The opinion of someone who has been the subject of a quick and effective police action just after a call for help will be different from someone who recently received a fine after exceeding the maximum speed by a few miles. The emphasis is not on current opinion or formal judgment. Even harmful acts of the police are acceptable (arrests, punishments, etc.) as long as they make the decision-making processes leading to the outcome transparent and tangible. The whole process becomes familiar and most understandable to anyone. If the procedure is transparent to the community with their fairness, legitimacy, and impartiality, negative results are more likely to be acceptable by the people. The existence of procedural justice is based on the following main criteria:

- on the one hand, individuals should be allowed to interpret police decisions concerning them by receiving complete and thorough information, if necessary, with an explanation of their questions,
- respect their human dignity and an impartial attitude in the proceedings,
- individuals trust that decision-makers and executors are driven by neutral goals (Mazerolle, Antrobus, Bennett & Tyler, 2013).

Procedural justice is essentially an inherent part of every police action. It is a dynamic coefficient, a shaper of legitimacy and trust, and an elementary determinant of community satisfaction with the police. Legitimacy and trust can be built if this spirituality drives the daily interactions of the police officer and the citizen; if these traits are not characterized, they can be degraded easily and quickly. Michael Lipsy has identified this dynamic interaction among many public service professions, including the police and the prosecutor, judge, and social worker (Lipsky, 1980). The issue of trust appreciates today's globalizing world and is integral to the third stage of policing strategies. Kelling and Moore distinguished three eras in the history of policing: eras of political, reform, and community problem-solving (Kelling & Moore, 1988). Since 2001, we can speak of its fourth station to prevent the threat of terrorism.

There is no doubt that the expectations against police have shifted significantly in recent decades, as police strategies have taken other ways. The community

policing model of the 1990s, which sought to maintain close contact with community members, indirectly focused on strengthening public confidence but could not respond to crime in response to the threat of terrorism and social tensions of the 2000s and meet a legitimate social expectation although its effect on reducing crime, strengthening public confidence has been demonstrated in several studies (Gill, Weisburd, Telep, Vitter & Bennett, 2014). The initial community policing model shifted to problem-oriented crime control (Weisburd, Telep, Hinkle & Eck, 2010) and then 'intelligence-led policing' (Ratcliffe, 2003) to meet the needs of the information society in 'hot spots' (Sherman, 1995).

The purpose of police communication should also be reassessed as each police strategy evolves. Its primary task is to demonstrate the achievement of neutral, fair, and politically motivated police results by creating transparency in decision-making processes. It must make unambiguous what is going on in society and the police's collective interaction. Just as the population's perceptions of police measures are not homogeneous, we cannot talk about the overall effects in individual communities. Citizens' negative experiences of the police will undoubtedly destroy trust, but positive experiences will not necessarily improve it (Boda & Medve-Bálint, 2017). Some factors influence the police's public perception, including negative experiences of crimes committed among one's friends and relatives, including media reports of police abuse (Vári, 2016). These factors were different in terms of adverse effects for each ethnic and racial group (Weitzer &Tuch, 2005). Above all, the most important thing is to decide what needs to be displayed to the public so that the police can be persuaded and explained about their neutrality, impartiality, goals, and work results. Convincing the public is typically based on the basic concept of procedural justice, as my opinion, it is worth apostrophizing policing along with the following issues:

- What are the police doing, and why?
- What is the result of the police operation?
- How can be the errors of individual and organizational police operation be revealed nd articulated? In other words, is there a normative framework with citizes accessibility for feedback on common operational effects?

Police efficiency measurement practice

Reforming police efficiency and performance measurement has been a challenge for years, and the scientific field has achieved significant results (Maguier, 2015). However, most efforts have focused on reducing crime, such as the detection rate, increasing the number of arrests, reducing reaction time, etc.

Law eforcement strategy's failures focusing on these, have led to a shift in direction towards experimental public trust and satisfaction measurements. The measurement has shifted to a multidimensional unit for community policing, which is now only partially correlated with the police's aforementioned actual output performance data, and increasingly with the community's concept of locally generated order. Several studies have aimed to capture the essence of social impacts and legitimate functioning through multilevel measurement, but these have not found widespread acceptance (Milligan, Fridell & Taylor, 2006; Moore & Braga, 2003; Willis, 2011; Davis, 2012).

To learn about the multidimensional significance of policing, researchers have drawn attention to the lack of more relevant data, such as creating a database covering atrocities involving police members at the national level. In a 2004 research summary, the U.S. National Academy articulated the need set up a database. Injuries or deaths resulting from resistance in police action, possibly offensive strokes to the police, which do not give rise to proceedings for violence against an official. In the absence of a database, an attempt was made to create a research database (URL1). In the professional discourse on the adverse side effects of police strategies, several proposals have been made in the United States at the federal level to display additional significant information:

- the territorial distribution of the use of police force about the entire population, the locations of escalations,
- follow-up of complaints,
- police opinion on police action culture and community opinion (McDevitt et al., 2011),
- number of police activities according to the size and nature of the community, police measures following emergency calls.

Collier (2001) hypothesizes that it can be detrimental to human rights and legal procedures in general if police officers strive to meet performance measurement goals. He concluded that greater autonomy should be granted to police forces at the local level and that a model based on qualitative indicators would be preferable. The study examines the implications of a performance-oriented culture for human beings and guarantee rights and suggests a shift towards a performance culture that values and enforces democratic fundamental rights rather than preferring money-centered indicators. Neyroud and Beckley (2000) indicated that increasing professional autonomy and more effective law enforcement feedback practice are also important. This method should be essential in the development of policy to ensure compliance with legal and guaranteed rights. In their opinion is the 'professional clinical model' should also be introduced in

law enforcement performance measurement. This method is similar to a general practitioner. However, the police clinician also solves problems at his or her discretion, makes a diagnosis, acts independently, and makes decisions based on available facts and circumstances. Feilzer (2009) warns of the dangers of using the British Crime Survey (BCS), which is used in England and is essentially a quantitative source and it is made for police performance measurement. It focuses primarily on methodological issues, particularly on the lack of validity of measurement questions. The paper summarizes the usefulness of using BCS data to assess the performance of local police forces.

Moore and Braga (2004) point out that police services' evaluation is not merely done by those who personally use that; this is a more complex question. Furthermore, the assessment does not only last as long as it is used or linked to it. But it is more extensive in space, person, and time. Significantly, the service carries several different dimensions of performance. Moreover, since diversity is mostly a matter of perspective, it is about what is desirable for law enforcement. It appears in the specific points of view of different groups. In this, it is primarily politics that needs to find common ground to select from many perspectives common and unified values in the diversity of other interests. These should be the principal basis for police performance appraisal. When choosing a value system, the evaluable aspects can be objective and measurable, such as crime reduction. Such different values are:

- to prevent the commission of criminal offenses by other means, such as arrest and any restriction of personal liberty;
- the judiciary does not neglect former perpetrators;
- reduce feelings of fear and promote security;
- encourage the community to participate in society to reduce the burden of crime (Bradford & Jackson, 2010);
- make road traffic and the use of public spaces the interest in creating order by using resources equally;
- to support the use of different types of medical and social services.

Besides, the ultimate value is determined by the positive outcome of the police-produced products of these effects, and society itself makes a substantial contribution to the costs incurred. By price, we mean the specific amount of money we spend on police services and the value of giving up certain freedom and privacy elements designed to protect society from crime. The authority of law enforcement and the broadening of its field of power is directly proportional to the increase in budget spending. On the other hand, compliance can be more reliably and cost-effectively ensured if citizens believe that a system

that enforces compliance is legitimate and widely accepted. It can be a source of tension if measures taken to increase security conflict with citizens' freedom and human rights (Moore & Braga, 2003).

Charbonneau and Riccucci (2008) emphasized the importance of factors of social equality in research. In doing so, they propose social equality indicators, including an assessment of fair treatment, which is similar to what is otherwise defined as 'procedural justice.' In their view, these should be included in measuring police performance and efficiency, as they are closely linked to community policing. They provide an analysis of the effects and results of empirical and theoretical research in the field of police performance measurement (Fielding & Innes, 2006). Their primary goal is to determine how social inequality is related to indicators of police performance. The authors' literature conclusion is that indicators of social differences exist, but they continue to play a marginal role in assessing individual police forces' arrangement. Even though the social differences are of paramount importance for the effectiveness of 'performance measures.' They conclude that if efficiency does not rely on sociodemographic factors, it can have serious consequences, especially for the police. The result is a police force that is alienated from society and loses confidence. Such police tend to have high social rejection and low trust capital.

Quantitative elements of measuring effectiveness include, for example, crime rates, number of arrests, and point of investigations. The indicator of the effectiveness of performance measures is the ratio of arrests to police officers and the specific cost of using police vehicles. However, there is no doubt that the point of the police means more than just improving the numbers. Along with the service's quality, it should also mean that the service achieves its purpose and meets that particular community (Shilston, 2008).

The relationship between police efficiency and social trust

Efficiency also means more and more to the police than merely being effective, whether in criminal or economic terms. Just as quantitative indicators cannot measure the police's efficiency in the absence of exact numbers, if this is attempted, it will have consequences that mask low efficiency and undermine the credibility of statistics (Finszter, 2018). The 'social utility' in the environment, i.e., in the community, can hardly be influenced by the 'quantitative' output set by the police organization, nor does it have any meaningful interaction with it (Mátyás, 2015). It is enough to refer only to the contradictions of legality and effectiveness. According to Skolnick (2015), the main problem of democratic

social policing can be grasped in that the police's pursuit of efficiency contradicts legality requirements. On the other hand, quasi-citizens, as an expectation in the outcome scene, do not match the police organization's performance criteria. It is a proven fact that police officers' behavioral culture, attitude, and communication better improve the police's social perception and reduce the dissatisfaction of citizens and the number of complaints against police measures (Haas, Crean, Skogan, Fletias & Diego, 2015).

The specific causes of public governance debates (such as law enforcement, militarization, or visibly declining effectiveness) are based on the fact that there are more significant and more fundamental changes in contemporary society. Previously, it was observed that in parallel with the development of modern nation-states, outstanding organizations in state governance became increasingly separated from each other but sought to control sub-areas centrally. Today, this is an untenable view. In society, the police's symbolic role has become as important as its direct effect on crime (Newburn & Reiner, 2012). Consequently, the police's social embeddedness and trustworthiness are strongly correlated with its effectiveness (Tihanyi, 2019). As an abstract element, strengthening the guarantee emphases of the rule of law (openness, civil control, fair procedure, equal treatment, etc.) is manifested in the decrease of elusive criminal fear and the increase of public trust (Gaál & Molnár, 2009). A Belgian empirical study also confirmed that procedural justice plays a considerably more significant role in judging the police's performance, thereby building citizens' trust in the police than the so-called crime statistics (Creane & Skogan, 2015). Of course, it is undeniable that, especially in Central and Eastern European countries, the fear of crime and the police's effectiveness still play a significant role in trust in the police and in willingness to cooperate (Moravoca, 2015). Research in Western Europe complements the link between efficiency and trust with equal treatment in police behavior (Jackson & Bradford, 2009; Sunshine & Tyler, 2003). Based on these, higher levels of trust have been identified in northern European countries, which have significantly lower crime and a reliable, predictable administrative and judicial system (Kääriäinen, 2007). In Finland and the other Nordic countries, trust in the police linking to high social equality and citizens' general government experience. The police are also a part (Kääriäinen, 2008).

The nature of confidence in police

The confidence certainly promotes cooperation between the police and citizens. However, the question rightly arises as to whether police officers trust their

community at all. The literature on police culture has generally concluded that the police take a somewhat cynical approach to citizens (Paoline, 2004). However, there is little empirical evidence on this, mainly from the United States and the United Kingdom. On the other hand, the literature focusing on social capital suggests that general trust varies significantly between societies. (Hickman et al., 2004; Langworthy, 1987; Regoli, Crannk & Rivera, 1990). It stems from social equality, good governance, and high civic activism. The European Social Survey 2002-2008, based on aggregated data collected from 22 countries, supports the presumption of police cynicism among police officers and other respondents. Although the general confidence of police officers equally reflects the level of public trust in society. This theory leads us to conclude that in countries where citizens generally trust each other, the police also have better confidence in citizens, as in countries where social trust is typically low. In these societies, members of the police also behave cynically with citizens (Kääriäinen & Sirén, 2012). So there are two alternative explanations for the nature of trust in the police and the public. The first starting point is police cynicism, which has emerged in previous research among Broderick police types, among others (Broderick, 1977).

Cynicism, or police officers' dismissive or indifferent behavior towards citizens, is essentially part of police culture, manifested in a most suspicious or even hostile attitude. There are research positions that view cynicism as an inherent element of a police culture that stems from the content of police work and its hierarchical structure. There is an inverse relationship between police solidarity and the lawlessness they commit and the orientation and openness to the outside world, i.e., society (Schernock, 1988). Organizational sociological research also defines law enforcement as a specific subculture with well-defined internal group criteria. Each police organization, when taking on the marks of this body, simultaneously carries out two types of operation: on the one hand, it isolates itself from the surrounding society (isolation), expressed in uniform, non-general rules of conduct, special privileges, and restrictions on police service, on the other hand, a robust internal group formation process develops, forged by learning the profession and daily assistance. These cohesion elements create police collectives' specific values, such as the extraordinary level of risk-taking, a high degree of collegiality, and excessive solidarity. This subcultural milieu, which is closed, and in solidarity with its environment, develops a special relationship with the social environment. Many theories see the notion of an ethnocentric police image rejecting, alienating from its environment. All this leads to the conclusion that he can be considered as a good policeman, who rules over people and protects his colleagues from being held accountable (Krémer, 1998). In other words, in the

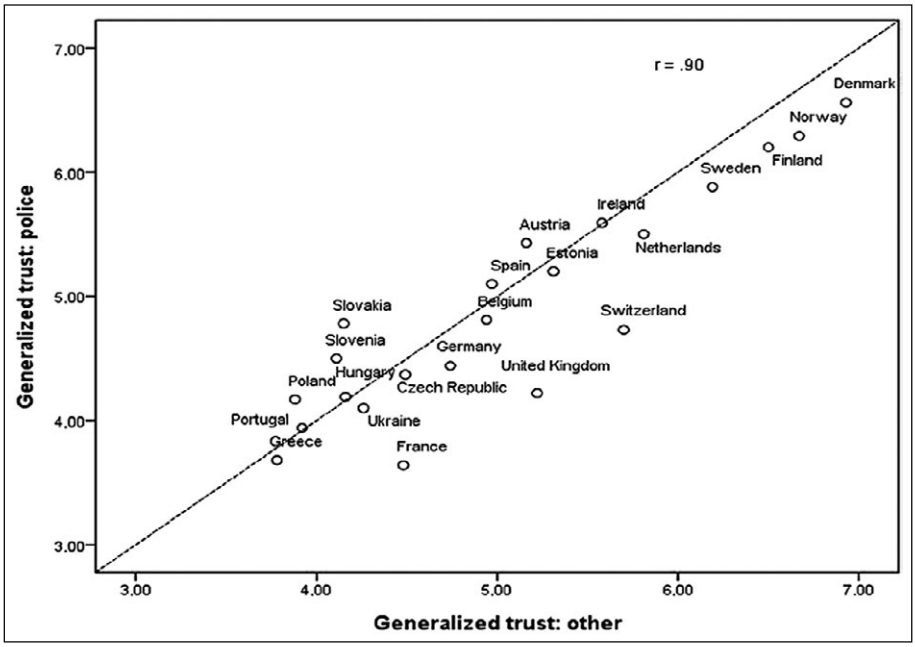
cynical police approach: in extreme cases, police officers defend each other even in cases of obvious illegality, while citizens are seen as hostile, as denouncers, as people with problems. Thus, in a police organization operating under such an approach, a police officer - without fearing his colleagues - can afford to drive drunk or hit a suspect. According to this assumption, the police must adopt a cynical mindset towards citizens in all organizations, regardless of society. There is a scientific view that police officers' behavior with citizens can be positively influenced by internal organizational development and trust (Crean, 2016).

On the other hand, the different approach is based on general trust, including the meaning of trust, the development of trust, and its effects on society. An excellent question is whether police officers have a similar general level of trust as other citizens living in the same community. Likely, the same forces that generally build trust between people will also increase mutual trust between the police and citizens.

Actually, who is the problem now: the police or society?

The study's observations of European societies yielded surprising results. European police seem to have a slightly lower general level of trust than the average citizen, but the difference is relatively small. In the same way as the citizens of their country, the conviction of police officers is closely linked to the general state of trust in society. Societies that generate and maintain social capital and trust also appear to build public trust among police officers. In other words, their findings suggest that police trust in citizens can be explained by the same factors that determine the overall trust of citizens as a whole. Those who become police officers grow up and raise their children in the same society as everyone else's lives and works. This research in line with the findings of a study of 1,500 young children aged 10–15 in England and Wales between 2010 and 2012. It is concluded that the children's views on the police were the same as those of their parents. There is a consistent and robust relationship between children and their parents (Sindall, 2016). The results of European comparative research strongly show that men and women working in policing are above all community members. It seems that the police profession does not create a specific 'culture' that would significantly undermine trust in itself. There are exceptions to this rule. In France, the United Kingdom, and Switzerland, police officers' confidence in citizens is much lower than the population's trust in them. On the other hand, in some countries, the situation is just the opposite: in Slovakia, police officers are much more confident than other citizens.

Table No. 1.: *Police officers 'overall confidence score compared to other respondents*



Note: Kääriäinen & Sirén (2012)

As the figure above shows, the overall level of trust for the population and the police coincides perfectly. In Hungary, there is only a 0.03% difference between the two (4.19: the marginal average of the general trust values of the police and 4:16 of the other respondents). However, it is not good news that Hungary was just three countries ahead of the confidence index at the end of the list. Until then, the value of the police and others' trust is almost the same in the Czech Republic, representing a slightly better value than in Hungary or Poland. It is no coincidence that northern European countries with low levels of corruption have the highest levels of trust. An interesting correlation is that the rate of corruption has a more significant impact on confidence than the number of police officers (Nägel & Vera, 2021).

The European research results coincide with the research I conducted in 2016 (Vári, 2016). In connection with which I partially modified the questions of Krémer-Molnár's research (Krémer & Molnár, 2003). Unlike them, I also wanted to know what the civilian's and the police officer's good relationship means. But also how dominant the attitude of social co-operation is in the police and how frustrated they are with the system of expectations that citizens

expect from them to solve more problems. The data obtained tend to confirm the concept of passive civilians' theory, more precisely within the police. It seems to be the most common approach inside the police. Still, the proportion of 'police help citizens' responses is welcome, which shows many police officers who show support attitude to the community. On the other hand, the majority of police officers (80%) say that most citizens have an indifferent attitude towards them. In comparison, only 18% rated the attitude of civilians towards police officers as acceptable, which does not paint a rosy picture of civilians—police relationship.

Table No. 2. *The citizen's trust in the police is more ...*

Excellent	0	0%
Acceptable	63	17,8%
Neutral	127	36%
Rejective	119	33,7%
Hostile	44	12,5%

Note: Vári (2016)

It should be noted, the above-mentioned 2002 questionnaire in the survey (Krémer & Molnár, 2003) asked the public for their opinion on the work and role of the police. Surprisingly, the lack of moral, material esteem and technical backwardness were identified as the main shortcomings. On the other hand, professionalism and lack of corruption were mentioned as quality. The two spheres of opinion are somewhat contradictory. Although they seem to be aware of the problematic situation of police officers, the link between corruption and financial crisis has not been sufficiently perceived (Nagy, 2004).
Patricia Warren emphasizes a similar principle when examining citizens 'trust in the police (Warren, 2010). She notes that confidence can come from citizens' personal experiences of police work and the narration of affairs by the whole community, primarily determined by the social position of the individuals involved. In communities that engage in discrimination and social injustice, social gatherings build a mistrust culture that targets the police and other institutions with state decision-making powers (Vári, 2018). The debate on police culture revolves around the same idea: police behaviors and procedures negatively affect citizens. The results of the research (Kääriäinen & Sirén, 2012), on the other hand, showed that the social interpretations developed concerning the police depend to a large extent on the collective mental state of the surrounding society. Societies in which social conflicts have not yet been adequately managed

and prevented are likely to provide fertile ground for police officers' negative behavior and, with it, for social rejection.

Conclusions

There can be little doubt that all outsiders and disliked groups are trying to defend themselves in a hostile social environment by clinging to their own values and cohesion (Perez, 1998). This results in further intensification or reproduction of harmful environmental factors (Ericson, 1989). This case is already entirely unnecessary to investigate faults or causes, especially if they are coupled with long-embedded collective social or subcultural stereotypes. Therefore, it is more plausible to rely on research results against the fundamentally negative police image, which is not incidentally confirmed by the Japanese police model's effectiveness. Sincere respect, acceptance, appreciation of inner groups, and intensive identification based on positive acceptance of the values and traditions that strengthen group cohesion are directly proportional to the need to increase outward orientation (Kenneth, 1979). The same approach can be applied to any law enforcement organization, including the prison officers (Czenczer, 2019). The police's closedness and belonging are not created or aroused by the rejection of society towards to police. The shared love of the profession and its exercise by the police justifies the need for greater social solidarity, my research has highlighted. Finszter (2010) agrees with this when he says that the system's excessive secrecy causes society to be prejudiced against the police. In most countries globally, the police's effectiveness is measured mainly by professional number activity figures. This process alone does not satisfy the public and scientific need to take into account cost-effectiveness and legitimate operation. However, the world has changed a lot in recent decades; in an information society, it is no longer a question of good publicity propaganda for statistical effectiveness 'selling' police work. But about finding out as authentically as possible what real social impacts our activities have had (how much satisfaction, trust, the recognition they have gained in society). The results of community apperception and police effectiveness measurement should be aligned so that all factors influencing subjective sensation should be mapped and understood. Researches should primarily determine what factors influence individuals' trust and supportive attitude towards the police. Today, any information content is available on the World Wide Web in a matter of seconds, from which we can get information and news in width and depth as we like. The stakes of change are no longer insignificant from a political point of view: the possibility of news

sharing, provided by anyone on the Internet, can trigger tectonic social effects in a matter of moments. Police and political leadership, erroneously positioning themselves in terms of their social role, misleading in terms of their results, and applied with measurement-methodologically incorrectly constructed data, are sitting on a barrel of gunpowder. May also stem from the growing need for governments in modern democracies to understand and map the actual social impacts of policing.

References

Boda, Zs. & Medve-Bálint, G. (2017). How perceptions and personal contact matter: The individual-level determinants of trust in police in Hungary. *Policing and Society, 27*(7), 732–749. https://doi.org/10.1080/10439463.2015.1053479

Broderick, J. J. (1977). *Policing a time of change.* General Learning Press.

Charbonneau, E. & Riccucci, N. M. (2008). Beyond the usual suspects: an analysis of the performance measurement literature on social equity indicators. *Policing. Public Performance and Management Review, 31*(4), 604–620. https://doi.org/10.2753/PMR153-9576310405

Collier, P. M. (2001). Police performance measurement and human rights. *Public Money & Management, 21*(3). 35–40. https://doi.org/10.1111/1467-9302.00272

Crean, M. (2016). Understanding Police Officers' Trust and trustworthy behavior: A work relations framework. *European Journal of Criminology*, *13*(2), 274–294. https://doi.org/10.1177/1477370815617187

Creane, M. & Skogan, W. G. (2015). Trust in the belgian police: the Importance of responsiveness. *European Journal of Criminology*, *12*(2), 129–150. https://doi.org/10.1177/1477370814543156

Czenczer, O. (2019). Az alapvető jogok biztosának a nemzeti megelőző mechanizmus keretében végzett vizsgálatai egy bv-s szemével [The examinations of the commissioner of fundamental rights in the frame of the national prevention mechanism through the eyes of a correction officer]. *Miskolci Jogi Szemle, 14(2)*, 135–146.

Davis, R. C. (2012). Selected international best practices in police performance measurement. *Rand Corporation,* Tr-1153-Moi, 1–21. https://www.rand.org/pubs/technical_reports/TR1153.html#download

Dion, K. L. (1979). Intergroup onflict and intragroup cohesiveness. In Austin, W. G. & Worshel, S. (Eds.), *The social psychology of intergroup conflict* (pp. 221–224). Brooks/Cole.

Ericson, R. V. (1989). Patrolling the facts: secrecy and publicity in police work. *The British Journal of Sociology*, *40*(2), 205–225. https://doi.org/10.2307/590269

Feilzer, M. Y. (2009). Not fit for purpose! The (ab-) use of the british crime survey as a performance measure for individual police forces. *Policing: A Journal of Policy and Practice, 3*(2), 200–211. https://doi.org/10.1093/police/pap009

Fielding, N. & Innes, M. (2006). Reassurance policing, community policing and measuring police performance. *Policing and Society: An International Journal of Research and Policy, 16*(2), 127–145. https://doi.org/10.1080/10439460600662122

Finszter, G. (2008). Víziók a rendőrségről [Visions about the police]. *Belügyi Szemle*, *56*(1), 10–41.

Finszter, G. (2010). A rendőrképzés és a rendészettudomány [Police education and law enforcement science]. In Németh, Zs. (Ed.), *Tiszteletkötet Sárkány István Sárkány István 65. Születésnapjára* [A book of honour to the 65th birthday of István Sárkány] (pp. 73–96). Rendőrtiszti Főiskola.

Fogarasi, M. (2003). A rendőrség és a társadalom [Police and society]. In Fogarasi, M. (Ed.), *Pszichológia Rendőri Vezetőknek* [Psychology for police leaders]. Rendőrtiszti Főiskola.

Gaál, Gy. & Molnár, K. (2009). *Ami elromolhat, az el is romlik? A média szerepe a biztonságos, élhető közösségek formálásában* [What can go wrong, will go wrong? The role of media in formation of secure and livable communities] (pp. 131-140). *Pécsi Határőr Tudományos Közlemények, 14,* 131–140.

Gill, C., Weisburd, D., Telep, C. W., Vitter, Z. & Bennett, T. (2014). Community-oriented policing to reduce crime, disorder and fear and increase satisfaction and legitimacy among citizens: a systematic review. *Journal of Experimental Criminology, 10*(4), 399–428. https://doi.org/10.1007/s11292-014-9210-y

Haas, N. E., Crean, M., Skogan, G. W., Fletias, M. & Diego, M. (2015). Explaining officer compliance: The Importance of procedural justice and trust onside a police organization. *Criminology & Criminal Justice, 15*(4), 1–22. https://doi.org/10.1177/1748895814566288

Hickman, M. J., Piquero, N. L. & Piquero, A. R. (2004). The validity of Niederhoffer's cynicism scale. *Journal of Criminal Justice*, *32*, 1–13.

Jackson, J. & Bradford, B. (2009). Crime, policing and social order: on the expressive nature of public confidence in policing. *British Journal of Sociology*, *60*(3), 493–521. https://doi.org/10.1016/j.jcrimjus.2003.10.001

Jackson, J. & Bradford, B. (2010). What is Trust and Confidence in the Police? *Policing: A Journal of Policy and Practice*, *4*(3), 241–248. https://doi.org/10.1093/police/paq020

Langworthy, R. W. (1987). Police cynicism: What we know from the Niederhoffer scale. *Journal of Criminal Justice, 15*, 17–35. https://doi.org/10.1016/0047-2352(87)90075-4

Kääriäinen, J. & Sirén, R. (2012). Do the police trust in citizens? *European Comparisons. European Journal of Criminology, 9*(3), 276–289. https://doi.org/10.1177/1477370811435737

Kääriäinen, J. (2007). Trust in the police in 16 european countries: a multilevel analysis. *European Journal of Criminology, 4*(4), 409–435. https://doi.org/10.1177/1477370807080720

Kääriäinen, J. (2008). Why do the finns trust the police? *Journal Of Scandinavian Studies in Criminology and Crime Prevention, 9*(2), 141–159. https://doi.org/10.1080/14043850802450294

Kelling, G. L. & Moore, M. H. (1988). The evolving strategy of policing. *Perspectives on policing, 4,* 1–15.

Krémer F. & Molnár E. (2000). Modernizálható-e a magyar rendőrség? – A rendőrök véleménye [Can be Hungarian Police modernized? The opinions of policemen]. *Magyar Rendészet*, *1*(3–4), 82–102.

Krémer, F. (1998). A rendőri szubkultúra valamint a korrupció néhány sajátossága – egy kérdőív tapasztalatai [A few specialities of police subculture and corruption – experiences of a questionnaire]. *Belügyi Szemle*, *46*(10), 34–53.

Lipsky, M. (2010). *Street-Level Bureaucracy: Dilemmas of the individual in public Services, 30th Anniversary Expanded Edition.* Russell Sage Foundation.

Mátyás, Sz. (2015). Szubjektív biztonságérzet – lakossági vélemény a közbiztonságról és a rendőrségről [Subjective sense of security - opinion of the population on public safety and police]. *Magyar Rendészet. 14*(5) 159–170.

Mazerolle, L., Antrobus, E., Bennett, S. & Tyler, T. R. (2013). Shaping citizen perceptions of police legitimacy: a randomized field trial of procedural justice. *Criminology, 51*(1), 33–63. https://doi.org/10.1111/j.1745-9125.2012.00289.x

Mcdevitt, J., Posick, C., Zschoche, R., Rosenbaum, D. P., Buslik, M. & Fridel, L. (2011). *Police integrity, responsibility, and discipline.* National police research platform. http://Uicclj.Squarespace.Com/Storage/Updated-Papers/Police%20Integrity%20responsibility%20and%20discipline.Pdf

Milligan, S. O., Fridell, L. & Taylor, B. (2006). Implementing an agencylevel performance measurement system: a guide for law enforcement executives. *Police Executive Research Forum.*

Moore, M. H. & Braga, A. A. (2003). Measuring and improving police performance: the lessons of compstat and its progeny. *Policing: An International Journal of Police Strategies & Management, 26*(3), 439–453. https://doi.org/10.1108/13639510310489485

Moore, M. H. & Braga, A. A. (2004). Police performance measurement: A normative framework. *Criminal Justice Ethics, 23*(1), 3–19. https://doi.org/10.1080/0731129X.2004.9992156

Murphy, K., Hinds, L. & Fleming, J. (2008). Encouraging public cooperation and support for police. *Policing & Society, 18*(2), 136–155. https://doi.org/10.1080/10439460802008660

Nagy, Sz. I. (2004). *Lakossági vélemények a rendőrségről és a bűnözésről. A rendvédelmi munka társadalmi beágyazottsága* [Opinions of the population on police and criminality. The social embeddedness of law enforcement work]. Rendőrtiszti Főiskola.

Newburn, T. & Reiner, R. (2012). Policing and the police. In Maguier, M., Morgan, R. & Reiner, R. (Eds.), *The Oxford Handbook Of Criminology*. 5th Ed. (pp. 806–838). University Press.

Neyroud, P. & Beckley, A. (2000). *Policing, Ethics And Human Rights. Willan Publishing.* Cullompten. https://doi.org/10.4324/9781843924678

Paoline III., E. A. (2004). Shedding light on police culture: An examination of officers' occupational attitudes. *Police Quarterly, 7*(2), 205–236. https://doi.org/10.1177/1098611103257074

Perez, D. W. (1994). *Common Sence About Police Review*. Temple University Press.

Ratcliffe, Jerry H. (2003). Intelligence-Led Policing. *Crime and Criminal Justice*, *248*, 1–6.

Regoli, B., Crannk, J. P. & Rivera, Jr G. F. (1990). The construction and implementation of an alternattive measure of police cynicism. *Criminal Justice and Behavior, 17*(4), 395–409. https://doi.org/10.1177/0093854890017004001

Schernock, S. K. (1988). An empirical examination of the relationship between police solidarity and community orientation. *Journal Of Police Science and Administration, 16,* 182–194.

Sherman, L. W. & Weisburd, A. (1995). General deterrent effects of police patrol in crime 'hot spots'. A randomized, controlled trial. *Justice Quarterly, 12*(4), 625–648. https://doi.org/10.1080/07418829500096221

Shilston, T. G. (2008). One, two, three, what are we still counting for? Police performance regimes, public perceptions of service delivery and the failure of quantitative measurement. *Policing: A Journal of Policy and Practice, 2*(3), 359–366. https://doi.org/10.1093/police/pan043

Sindall, K., Mccarthy D. J. & Brunton-Smith, I. (2016). Young people and the formation of attitudes towards the police. *European Journal of Criminology, 9*(2), 1–21.

Skolnick, J. H. (1975). *Justice Without Trial: Law Enforcement in Democratic Society*. 2nd Ed. Wiley and Sons.

Stanko, E. A., & Bradford, B. (2009). Beyond measuring 'how good a job' police are doing: The MPS model of confidence in policing. *Policing: A Journal of Policy and Practice, 3*(4), 322–330. https://doi.org/10.1093/police/pap047

Sunshine, J. & Tyler, T. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law & Society Review*. *37*(3), 513–548. https://doi.org/10.1111/1540-5893.3703002

Tihanyi, M. (2019). Hajléktalanság az alkotmányos rendészet tükrében [Homelessness in the light of constitutional law enforcement]. *Belügyi Szemle, 67(*6), 100–112. https://doi.org/10.38146/BSZ.2019.6.7

Vári, V. (2016). Empirikus kutatás a rendőrök körében a civil–rendőr viszonyról, a statisztikai szemléletről és a bűnüldözés hatékonyságáról [Empirical research among policemen on civil-policeman relation, on statistic approach and on effectivity of criminal prosecution]. In Christián, L. (Ed.), *Rendészettudományi kutatások: az NKE Rendészetelméleti Kutatóműhely Tanulmánykötete* [Law enforcement scienctific researches: Collection of Essays of the Law Enforcement Theoretic Research Workshop of the National Univesity of Public Service] (pp. 151–161). Dialóg Campus Kiadó.

Vári, V. (2018). Conceptual framework: measuring police performance and efficiency. The types of 'quality' indicators in foreign researches. *Magyar Rendészet, 18*(1). 193–207.

Vári, V. (2016). A média és a rendőrség iránti bizalom [Trust in media and in police]. *Magyar Rendészet, 16*(4), 73–89.

Warren, P. (2010). The Continuing Significance of Race: An Analysis Across Two Levels of Policing. *Social Science Quarterly, 91*(4), 1025–1042. https://doi.org/10.1111/j.1540-6237.2010.00747.x

Weisburd, D., Telep, C. W., Hinkle, J. & Eck, J. E. (2010). Is problemoriented Policing Effective in Reducing Crime and Disorder? Findings from a Campbell Systematic Review. *Criminology & Public Policy, 9*(1), 139–172. https://doi.org/10.1111/j.1745-9133.2010.00617.x

Weitzer, R. & Tuch, S. (2005). Determinants of public satisfaction with the police. *Police Quarterly, 8*(3), 279–297. https://doi.org/10.1177/1098611104271106

Willis, J. J. (2011). Enhancing Police Legitimacy by Integrating Compstat and Community Policing. *Policing: An International Journal of Police Strategies & Management, 34(*4), 654–673. https://doi.org/10.1108/13639511111180261

Online references in the article

URL1: *We're compiling every police-involved shooting in America. Help us.* http://Regressing.Deadspin.Com/Were-Compiling-Everypolice-Involved-Shooting-In-Americ-1624180387

Reference of the article according to APA regulation

Vári, V. (2021). Relationship between trust in the police and the effectiveness of the police. *Belügyi Szemle, 69*(SI6), 55-72. https://doi.org/10.38146/BSZ.SPEC.2021.6.4

DOI: 10.38146/BSZ.SPEC.2021.6.5

Viktor Németh – Csaba Szabó

The effect of community mediations in the practice through an analysis of two municipal case studies

'We were born to work together, just like legs, arms and eyes,
like two jaws, the upper and the lower ones.
The restraint of each other is unnatural.'
Marcus Aurelius

Abstract
This study presents the continuously spreading municipal mediation in Hungary through two community mediations as good practice. It analyses theoretical and practical course of proceedings in community decision-making processes. It presents each practical phase of community mediations, analysing the practical effects of them. It compares them with other forms of decision-making, highlighting clear advantages of community mediation both for the leadership and the given community. Through presenting the process of two case studies, two model projects are analysed in details from the perspective of the municipal decision-making organs, civil organisations and the local population. In both presented cases different problems of the community are solved through the same process protocol.

Keywords: municipal problem solving, community mediation, organisation development, development of community communication, settlement mediation

The background of progress in effective social decision-making forms

Through the past decades the terms leadership and – together with that – decision-making are considerably changing all over the world. Instead of the earlier personal decision-making process as good practice, now emerged a decision-making process based on a wide exchange of information, share of knowledge before

the final decision among the leader with authorization for decision and the organisations representing individuals affected in the given topic.

As a consequence, more exact and more effective solutions may appear, serving better for the concerned parties. In other words: *'The creation of new management forms (by the project partners) can be considered that these are in close connection to economic, social, cultural and / or physical transitions, through that several aspects of collective life can be organised on the given areas and settlements.'* (Heinelt, Getimis, Kafkalas, Smith & Swyngedouw, 2002).

In this paper decision-making meets fields of self-governments' decisions in connection with settlement development. The decisions on these fields have basic effects on the life of people with any activities (residents, workers, sportsmen, road users) in the settlement. These groups are normally organised into units by organisations, associations, expert groups, clubs – based on common activities. The representatives of the individual units are experts and people the best familiar with local conditions. We could also formulate, that these agents have the best preparedness, i.e., additional knowledge or connecting abilities (Horányi, 2007). These skills and this knowledge are not or not perfectly known in their coherences by local leaders, so they can only partially know the interests of the individual groups – and their reasons. The more groups/organisations are out of consideration in decisions on given projects, the higher is the chance of a dysfunctional operative result. So, it can be considered as a general rule, that accuracy in preparation of the individual project will determine the efficiency of the output (Ferik, 2014).

It depends on the perception ability of the leaders – in this case mayors – whether in case of certain conflicts a personal (power, authoritative) decision is taken, omitting a considerable part of people affected – ?and so additional knowledge and preparedness available through them only.

It is important to note that not a revolutionary leader's or decision-makers' change appears in the participation at decision-taking processes, and it cannot be assigned to the *laissez–faire* attitude either, you can only discover here the manifestation of the up-to-date, 21st-century version of a democratic leader's attitude according to Kurt Lewin: *'The democratic leader type: on contrary to authoritative leaders, democratic leaders include team members into the process of decision-making, but they meet the final decisions at the end. These leaders support creativity and the team members are committed to performance of tasks, so can be achieved good results, they are productive and workplace satisfaction is higher, too. The democratic leader style can be good applied in a considerable part of the organisation'* (Lewin, 1997).

In this solution process diversified and heterogenous aspects have to be considered usually, where it is easier and more logical to convene participants with appropriate skills on a given scene and at a given time. So, it gives the opportunity to get all aspects known. It is important to emphasize that preparedness not only means a special, e.g., lexical or practical knowledge but also aspects and experiences of the given organisation or organisational units, their future perceptions and goals in connection with the given topic.

Long distance effects and sustainability of the process

Environment protecting or environment conscious civic initiatives – and also other special civic initiatives – which mean proliferation of the classical term of civil society, emerged first at local levels (Heinelt et. al., 2002). Here it is an entrance of agents with global local knowledge - in comparison with the specified goals- into participative processes. I.e., not the concrete area of decision or one of its characteristics is important but the realisation of the well-defined and clearly scripted common communicative and decision-making process, which means a common agreement of the community based on a consensus.

These kinds of community mediations – just like successfully closed mediations – have a very high realisation and adherence rate. This means, that the participating parties respect the agreement even if they could not or only partially could assert their original perceptions, but they did understand and accept opportunities and limits of the given community. The most important element of the agreement is, that - after a community mediation - dysfunctional elements are rarely realised or conducted (if participants are included from the beginning.) The adherence rate is – in case of mediations with an agreement – 91% (Törzs, 2010).

The sustainability of this participative and consensus forming community mediation is given by the fact that the parties can correct their former agreement on the same scene again, in case of any changes in the environment or other conditions. Consequently, its content will not founder just change in its content. So can be e.g., a delay or withdrawer of a financial source, an act of God, and so on. That means, that the scene for creation of the decision will not be given up and that can sustain the opportunity to create an updated solution, too.

The effects of community mediation

Workers in the organisation, as a community, comply the same job and function day by day. They are exporters and take decisions mainly in subtasks, which are not discussed by a wider public.

Community or participative mediations reveal preparedness of individual participants (employees, associates, members of an organisation, etc.) that cannot be experienced at an average job scene. Under scene we understand here that: *'it does not relate to circumstances of manifestation but to its possible 'interpretations', i.e., how the agent realises everything what is going on around*.' (Horányi, 2007). It means practically in case of a community mediation, that the same person, who is an underling in everyday work, can add to the process of solution search and building interpretation, explanation and approach, that he cannot afford in every day's sphere. This preparedness and knowledge, which are present in the individuals but cannot be revealed at other occasions, are accumulating and forming the solution developed jointly. There are participants who bring just dynamic into the participative mediation group, and there are some bringing content information or others solution patterns gained by experiences elsewhere. Unconsidered the type of contribution to the common process, participants can overview other participants and so supposes will be replaced by common thinking and cooperation (Németh, 2014).

The efficiency of the process is given by interlocking of network-like thinking patterns, which have many outcome solutions. On contrary to authoritarian decision-making '*the chief will decide anyway'* is usual at organisations. Guidance means influencing of several directions, while a chief is an authoritarian unidirectional connection (Algahtani, 2014).

The main difference between the two solutions is, that in case of decision-makings by one person the decision -making agent does not possess the following:

- a) Information relevant for the topic and influencing the outcome of decision-making.
- b) Interpretations and connotations connected to information, which can decidedly influence the rate of applicability of information.

At a participative decision-making the agents possess and share together the upper skills to the best of their knowledge. As a result of that the agents will create a common own world under mutual understanding of each other's reading. In this way, the commonly formed own world will include preparedness, skills and knowledge of those present. Beside them it contains desired needs and interests, which are sufficient for the agent to eliminate the problem. The common

preparedness is available for each party (Horányi, 2007). It results in the new, together constructed and common own world, which make possible for the participating parties to define the difference/change causing the conflict among them. For the solution of the problem, based as above mentioned, the agents can use own or common sources, complemented and coordinated each other (Németh, 2019).

The conditions for spread of good practices

The community or participative decision-making offers considerable affirmation in the perspective of integrity of the organisation. Those people get involved, who will implement the result of the decision-making process. The decision is based on a consensus, so everyone will accept that, not just for the sake of the majority, but at least it is not against him, neither professionally nor ethically, so that it could make an identification impossible with that. It has an importance not only for content implementation, but it also means a paradigm shift in aspect of organisational problem-solving: The leadership of the organisation recognises and applies the fact, that the preparedness of the agents shared in a network system contains an additional knowledge, which cannot be activated at usual organisational conditions. It needs the precondition that the leader of the organisation or organisational unit trusts independent experts to handle participating community groups, who will then manage the process in given time frames (Németh, 2020).

So, the leaders of the organisation export control for a few hours or days but remain – in the majority of the cases – in the process as participants. The members of the organisation get another role in such cases, what they cannot settle in the organisation, due to their everyday role, because:

- The connection and communication to the leadership is decisive for their subsistence.
- The roles in the usual organisational environment do not make possible for the agent to present the own world – he cannot express the own skills, knowledge and preparedness in a self-identified way.

During the process are not only individual skills of the agents activated, but they also interlock and get into interactions. On contrary to an everyday work conference or brainstorming the participants think, do and accept proposals isolated, according to their workplace role and position; at a community mediation they can make proposals and give information on their standpoints, etc. as a fully adequate member of the group. A wider spectrum of ideas can freely

interlock for a solution in any constellation. Further it can be also transformed, developed, etc. A network cooperation can multiply the efficiency of the pursuit of a solution in this led and supported process both in content, and in time. It is important to emphasize that this process cannot be carried out under normal organisational conditions. The workplace, as an institution, is the scene of visualisation of several interpersonal relationships. On the one side it is the scene of actions of employees on the given workplace according to developed and expected protocol. On the other side it is also the scene of private interpersonal connections, developed under interconnected and frequently interrelated duty cycles. The two processes (normal organisational mode of operation, participative consensus building in community) indicate perfectly different communicative structural units – they function alongside of absolutely different organisational and structural regulations. Simultaneously, it is important to note that the latter one can be a useful supplement and indicator of the previous one (Németh, 2018). Community mediation can be similarly a supportive process of building and strengthening organisational integrity at public workplaces, as it is well exemplified at self-governments.

The community mediation at organisational scene is one of the most widespread and most effective method to settle disputes in a community. Mediation itself appeared in the Hungarian Civic Law with entering into force of the *Act no. LV of 2002 On mediator activity* (URL2; Vékár, 2013). In the first few years beside relationship mediations, community mediation took an always greater space. We can differ several versions of community mediation according to characteristics of the individual fields, e.g., settlement, school, etc. (Németh 2020).

One of the most complex form of community mediation is settlement mediation, where many participants are met in questions of a given settlement. The representatives of more local offices, civil organisations, occasional or permanent communities of interest may complete the circle of invitees in this type. Beside the apparent complexity the practical experiences show that it can be considered as one of the most effective type of mediation. From the second half of the 2000s also state budget organizations (OBMB) supported and cooperated in this kind of mediations by applications. An example for that is the case study of Nagymányok, too.

Case studies

Two Hungarian cases are presented in the following. In the first case community mediation has been used in Esztergom exclusively as a conflict-handling and

consensus-building protocol applied by external operators. In the Nagymányok project – which was supported by the National Crime Prevention Council – the representatives of local organisations acquired methodology of conflict handling beside the complete application, and so it can be applied also in other cases later on.

The community mediation in Esztergom

In several historical districts of Esztergom, the considerable re-arrangement of the traffic caused big scandal for the population (URL3, MTI, 2011), this change was captured in a decree of the self-government. In the opinion of citizens and local organisations the changes were not reconcilable neither with local, traffic nor with environment protection interests. Many personal and professional insults did not make possible a dialogue with the leaders of the city.

Aims set in the project

The Association Consensus Humanus was asked by the architect general of the Self-Government of Esztergom to organize a community mediation in order to solve the conflict situation dividing the city.

According to him the Self-Government of Esztergom have had a deficient and bad communication. The problems of communication were manifested, causing difficulties both in the inner function of the office and in its connection with the outworld. During the past years many developments and infrastructural changes without priorities had been formulated for the historical districts of Esztergom, but real resistance and scandal caused the full reorganisation of the traffic, especially the transformed traffic order in the districts Szenttamás, Szentgyörgymező, and further Víziváros and Royale District. A full revision of that was necessary to be able to form a unified system of practical life circumstances and local habits. The representatives of state and civil organisations participated at the mediations, representing the population. The organisations of the city were represented by more than forty persons.

Preparation

Organisations with active preparedness about traffic interests of individual local groups were invited, so e.g., the town bikers' association, the drivers' association,

the public traffic company, the representatives of educational organisations on the given area, etc. A preparation mediator contacted the organisations with relevant preparedness, who got support on one side from the self-government to reach interested parties and on the other side the interested parties informed him about attainability of representatives of further organisations considered important for the case. This gave the mediator the opportunity for a professional prefiltration, so that only organisations with relevant preparedness and affected by the topic of the mediation appeared. Beside reconciliation of a common timing each participant was informed about the duration of the mediation, which took normally four to six hours. In the case of Esztergom each occasion took about five hours.

First community mediation

At the first occasion the mediators gave information about goals, duration and exact timing of the mediation. As a second step, the representatives of the organisations met in a big circle in the festive hall of the Mayor's Office and individually informed the others who they are and whom they represent, in which part of the process they are met and have preparedness first of all in the topic, change of the traffic order in the city.

As a next step – because of the high number of participants – five working groups were formed by the mediators, so that representatives of traffic, educational institutes, civil traffic organisations and associates of the self-government were proportionally present in each working group. These heterogenous working groups noted separated on flipcharts in several points the traffic problems of the city and then classified them. In the third part, the groups shared their own lists with the other groups and formed a big common list, involved each participant. This list was then evaluated by the participants – sometimes agreed without further questions, sometimes argued further, but in each case was an agreement with consensus achieved. After finalisation of the evaluated list, the participants were satisfied with application and efficiency of this technic.

Second community mediation

The second session took place two weeks after the first one, with the same participants, mediators and regulations. In the common opening circle, each participant could give feedback, or add something to the previous occasion, resp.

they could share proposals to newly emerged topics after the first occasion. As a second step, the participants were divided again into the similar workgroups like at the first occasion. The task was this time to give proposals for the registered problems, which can be realised without considerable financial investment and support the goals of the whole community (city). The self-government did not have a special source for this goal available, so that problems could only be solved e.g., with replacement of traffic sights, resp. with repainting of road markings. In the third session the work groups informed about the solutions worked out and compared them with solutions of other groups for the given problem. Also here was the solution registered in the list of solutions, which were considered to be the best by the whole group. Acceptance or refusal of the individual solutions did naturally influence the solution of other problems, too. Therefore, certain questions were occasionally discussed again or two separate problems were contracted. Both the participants and the traffic department of the city – i.e., the purchaser –have received the final list. The implementation did not cause any financial problems for the city, as the participants had already taken it into consideration during the community mediation.

Follow-up: Results and sustainability

The mediation of Esztergom got a nationwide publicity, both the leadership of the city and the participating organisations or the processing associations have received clearly positive feedbacks both about the high efficiency of the implementation and about the applicability of the method. The exact implementation of the changes was not made public by the city. But it has been proved that the applicability of the method was not limited by the number of participants or the size of the city. It is further independent from diversity or complexity of the problem, as the list of the elaborated solutions at the mediation in Esztergom included nearly fifty items. Each participating organisation worked in this process – appreciating the community of their own city – with high preparedness and active operations.

The community program in Nagymányok – education and mediation

In the following case the author was one of the participants, the description was made by the project manager, Dr. Zsuzsa Barinkai, and this was published

in Issue 67 of Krimonológiai Szemle in 2010. The following reviewer equals in a considerable part with this case description – as they meet the same case.

The application under the title *'Variations to solve community conflicts in Nagymányok*' obtained the support of the National Crime-Prevention Council (URL4). The project was realised under cooperation of the law office 'Vajna és Szotyori–Nagy Ügyvédi Iroda', the self-government of Nagymányok and the benefit association of the micro-region 'Életút Kistérségi Közhasznú Családsegítő Egyesület'.

Nagymányok is a village with 2640 citizens in the county Tolna, near Bonyhád. In its development played an important role: culture, financial knowledge, advancement of the German people settled down in the village and further mining beginning at the turn of the century. These two elements realised a relatively well organised society, urbanized traditions and urbanized services in the village. In the attraction zone of Nagymányok are the villages Kismányok, Váralja, Izmény and Györe, for them is Nagymányok considered as a centre in healthcare, culture and finances. Nagymányok has primary school, art education institute, kindergarten, library, cultural home and sports hall. Beside the district officer of the police also a civil-defence organisation takes care of security in the settlement. In the village are nearly 30 civil organisations active (Barinkai, 2010).

Goals set in the project

The goal of the project was to realize that conflicts should be locally recognised, cleared, declared and solved. The presentation of means of communication, which help to handle community conflicts locally in Nagymányok, by application of own resources. The long-distance goal of the project was to build in community or participative communication into the toolbar of the citizens and to let them serve as pattern for the new coming generations.

Conflicts emerged at several levels in the settlement:

- There was a common notary office functioning together with the neighbouring settlement, which caused numerous conflicts and due to them the office has been closed. There was a willingness for a repeated cooperation but it was difficult to approximate standpoints. (Administrative leadership.)
- The elderly home of the neighbouring settlement and that of Nagymányok entered into a partnership but many communicative problems emerged during the common operation (Institute leadership).

- In Nagymányok a coal mine had been working since the beginning of the 20th century, which was closed in 1965. The intention for reopening caused serious frictions in the settlement. (Job creation vs. local interests)
- The local school accepts problematic pupils from the surrounding settlements, too. This leads to continuous differences among the leadership of the school, the teachers and the parents. (Quality education vs. central school)

The program was built up – based on previous in-depth interview – from two parts:

- Training of alternative conflict-handling education and of community mediation
- Processing of real conflict situations – which also means practicing of previously learnt technics

Three trainers, mediators, participated at the project, included mediators trained earlier by a partner organisation (Életút Egyesület). In this project 18 persons (teacher, kindergartener, school principal, health visitor, social worker, policeman, civil-defender, public areas supervisory, president and members of parent-teacher association, members of pensioner club, associates of the mayor's office) participated at mediation training and further 16 persons at community mediations.

Training of alternative conflict management and of community mediation technics

Emphasis was put in the curricula on theoretical background, regulation, practice, fields of application of civil and criminal mediation and on transfer of experience. In case of any demand there were possible personal consultations with trainers. The civil mediation training had 17 and the criminal mediation training 16 attendants. Participants were quite different in their social positions: district nurse, cleaner, health visitor, workman, associate of the self-government, kindergartener, teacher, remedial teacher, social worker, policeman, civil-defender, etc.

The satisfaction questionnaire distributed at the end of the training shows that the self-formulated expectations of the participant (to get to know new opportunities for a solution, to gain new knowledge, applicability, casual, open atmosphere) were satisfied. The participants informed about positive experiences, a good harmony of theory and practice. According to them, their connection to conflicts and to others, their attitude was changed. The supervision has shown that the participants gained well applicable practical knowledge.

More of them could use the learnt technic at their workplace, in the family, in their wider environment, and stated that this fact was also for themselves surprising and beyond their expectations. They considered as a good result that a community had been formed.

The processing of real conflict situations – the application of learnt technics

During the in-depth interviews and the trainings turned out that the breakpoint in functioning of the settlement lays in default of community communication, in the information flow of civil organisations among each other's, and in their connection to the self-government and in evaluation and applicability of decisions of the self-government.

According to that the participants chose for topics of the community mediation the questions above. The participants played an important role in the organization, taking common decision about the question, who have to play roles in the community mediation. It has clearly shown that at this point of the project the participants realized the importance of the cooperation. Beside the persons participated at the trainings were present: the mayor, a member of the representative body, a representative of the self-government of the gipsy minority, the leader of the civil self-defence, the leader of the fire fighters, the leader of the miners' trade-union and a local entrepreneur, who is the leader of a lifestyle association in the village.

The proposals after the first round of mediation were as follows: it was useful to have a civil initiative to colligate all civil organisations, in a so-called umbrella organisation (e.g., Association for Nagymányok), and further was very useful for building a community if the village could find out - beside the many small celebrations - a so-called 'Village Day' dealing with local people and local specialities only. The participants of the conference decided that the proposals should be made public in a wider circle for a democratic decision, and therefore they decided to continue community mediation instead of the planned mediation in the school conflict.

The second community mediation

To the second community mediation the participant brought along the proposals of their own community, which were as follows: they rejected setting up

a common umbrella organisation, but they considered it important that the civil organisations of the village worked together in the future in some way. Here they found out to set up a civil forum quarterly with the aim to offer connection for the civil organisations and other organizations of the village, to arrange common programs, to cooperate with each other. As a first step in this direction the Mayor's Office hosted such a meeting in the first week of June. In the agreement were detained in details deadlines and responsible persons for the production and posting of invitations, the content elements of the invitation were recorded, too. In the second circle the participants decided upon the received proposals that this civil forum will have to decide on the *Village Day*.

Follow-up: Results and sustainability

The proposals for sustainability were summarized at the closing conference. In order to have more information about the means of the alternative conflict handling in the area, the participants of the project considered the inclusion of wider target groups, divided into age groups, resp. recipient organisations. So, emphasis was put on the role of children and youth in dissemination of mediation. The documentary film on the local mediation case was also used for knowledge transfer.

Extra highlight was on the training of the members of civil-defence realised within own competencies. Decided was further the regular quarterly meeting of the civil organisations with representatives of the self-government. The participant expressed the demand to organise community mediation, to strengthen community connections once a year. The responsible person for that was chosen at the closing conference.

The documentary film produced in the frame of the application, was also used for spreading of alternative conflict-handling technics: it will be presented at civil panels, in adult education and at lectures about settlement mediations. Further, this film became curricula for several institutions of the higher education. The association 'Életút Egyesület', which has trained mediators among the members, has taken mediation into its scope of activities. In this way mediation can be practiced in an official form, resp. the members of the association can support and develop the communication of community mediation at a higher level than previously. The short deadline of the application limited the number of feasible cases – there were six independent mediations – but it is important that the process of learning could start, which will turn mediation as good practice into everyday technic.

Comprehension

The community – or participative – mediation is a community communication method that has already been proved for decades, its application can be very effective to solve problems of communities and to handle conflicts within them.

The application of this method in Hungary was made possible with the legal regulation of 2002 – in accordance with Directives of the European Union. As first areas of dissemination can be mentioned educational institutions of the state or of self-governments, characteristically secondary schools, where it has been used to solve conflicts among students and the school and to form good practices and protocols. The other field of application is to solve several challenges of settlements' self-governments, for a better cooperation with the local community and for the solution of common problems effecting each local citizen, and further for planning of future developments. The two examples presented in details in this paper confirm clearly the assumption of theoretic professionals, according to that the community solutions realized by an exterior leadership with appropriate knowledge are much more successful than one-person decision-making. Success means, beside outlining of generally accepted ways of solution, also transparency of decision-making and performance. The latter one will end uncertainty by the fact that events become traceable in a wide circle, decreasing considerably the opportunities for corruption in this way.

Based on the good practices mentioned above, the paper draws a parallel and outlines the opportunities of implementation of community (participative) mediation at state-owned companies. There are even two versions of applicability available, based on the examples at self-governments. On one side it is only applied in concrete cases, including exterior experts. On the other side there are opportunities to learn mediative thinking and to apply it independently.

In both cases the integrity advisor of the state-owned organisation has a key role in perception of necessity of the program, and in participation in the preparation in case that the program will be applied. The decision-making leader of the organisation gets the opportunity to find the most useful solution, with involvement of the community of employees affected in the case.

References

Algahtani, A. (2014). Leadership and Management Different? *Journal of Management Policies and Practices, 2*(3), 71–82. https://doi.org/10.15640/jmpp.v2n3a4

Barinkai Zs. (2010). 'Variációk a közösségi konfliktusok feloldására Nagymányokon'. OBmB-pályázati tapasztalatok ['Variations on releasement of community conflicts in Nagymányok' Experiences in OBmB-applications]. *Kriminológiai közlemények, 67*(1) 35-40.

Christakis, N. A. & Fowler, J. H. (2010). *Kapcsolatok hálójában, Mire képesek a közösségi hálózatok, és hogy alakítják sorsunkat* [In network of connections. What are community networks able to and how they form our fates]. Typotex.

Ferik T. (Szerk.) (2014). *Konfliktuskezelési, mediációs módszerek alkalmazása a településfejlesztésben* [The application of conflict handling and mediative methods in urban development]. Kiadvány.

Horányi Ö. (Szerk.) (2007). *A kommunikáció mint participáció* [Communication as participation]. Typotex.

Heinelt, H., Getimis, P., Kafkalas, G., Smith, R. & Swyngedouw, E. (Eds.) (2002). *Participatory Governancein Multi–Level Concepts and Experience*. Wiesbaden GmbH. https://doi.org/10.1007/978-3-663-11005-7

Lewin, K. (1997). *Resolving Social Conflicts: And, Field Theory in Social Science.* American Psychological Association, Harper & Brothers Publ. https://doi.org/10.1037/10269-000

Marcus Aurelius (2006). *Meditations*. Penguin.

Németh V. (2014). Mediation as Problem–Solving Scene in the Light of PTC. *KOME: An International Journal of Pure Communication Inquiry, 2*(1), 3-13. https://doi.org/10.17646/KOME.2014.12

Németh V. (2018). A mediáció jellemzői felhasználási területei szerint [Characteristics of mediation according to fields of application]. *Kultúra és közösség, 9*(2), 21-35.

Németh, V. (2019). Mediáció: A Kommunikáció Participációra Alapozott Felfogása Szerint [Mediation: According to the Approach Based on Participatory Communication]. *Jel–Kép, 9*(1), 17-25. https://doi.org/10.20520/JEL-KEP.2019.1.17

Németh, V. (2020). *A közelség végtelen: A mediáció mint problémamegoldó a PTC tükrében* [Proximity is endless: Mediation as problem solver as reflected in PTC]. GlobeEdit International Book.

Vékás L. (2013). *A Polgári Törvénykönyv magyarázatokkal* [The Civil Code with explanations]. Wolters Kluwer Kft.

Szarvas H. (2019). *Helyi Demokrácia Fejlesztés Magyarországon* [Development of Local Democracy in Hungary]. Doktori Értekezés. Nemzeti Közszolgálati Egyetem.

Törzs E. (2010). A helyreállító igazságszolgáltatás európai jó gyakorlatai a büntetőeljárásban [European good practices of restorative justice in criminal procedures]. In *Közvetítői eljárás – mediáció – Magyarországon, felnőtt korú elkövetők esetén* [Mediation procedure in Hungary in cases of adult perpetrators*]*. Igazságügyi és Rendészeti Minisztérium.

Online links in the article

URL1: *Befejeződött a közlekedési mediáció*. http://onkormanyzat.mti.hu/hir/11655/befejezodott_a_kozlekedesi_mediacio
URL2: *OBmB - TELEPÜLÉSI MEDIÁCIÓS PROJEKTEK 2008-2009*. http://www.foresee.hu/uploads/media/Hatteranyag1_telepulesikonfliktkezeles.pdf

Laws and Regulations

50/2013. (II. 25.) Korm. rendelet az államigazgatási szervek integritásirányítási rendszeréről és az érdekérvényesítők fogadásának rendjéről
2002. évi LV. törvény a közvetítői tevékenységről

Reference of the article according to APA regulation

Németh, V. & Szabó, Cs. (2021). The effect of community mediations in the practice through an analysis of two municipal case studies. *Belügyi Szemle, 69*(SI6), 73-88. https://doi.org/10.38146/BSZ.SPEC.2021.6.5

DOI: 10.38146/BSZ.SPEC.2021.6.6

Lívia Horgos

Thought fragments of Preliminary Session in Relation to Accusation and Evidentiary Procedure[1]

'Aetas semper aportat aliquid novi.'
('Each era brings something new.')

Abstract

The present study focuses on preliminary session, which was altered in its function by the resolutions of the new Law of Criminal Procedure (entering into force in 2018), that is Act XC of 2017 (henceforth LCP) with special regard to the relationship between accusation and evidentiary procedure with the help of a case. I also examine the rules of criminal procedure codified in Hungarian judicature, the function and influence of preliminary session, the main characteristics and the place of preliminary session among procedural forms of court procedures. The study examines whether preliminary session regulated by LCP meets the requirements and checks indictment eliminating unsubstantiated procedures. In case it fails to do so, what further regulations are needed to be added to present ones in order to meet requirements with special regard to codification policy embodied in criminal judicature, especially effectiveness, promptness, simplicity and coherence. I examine in details the possibility whether it could be the right and obligation of the court to examine not only the means of evidence deriving from legal elements and other informative elements contained in the presented indictment but also the legality of preliminary sessions and investigation procedures as a legal condition of initiating a court procedure. The study describes the regulation of LCP concerning evidentiary procedures in the preliminary session emphasizing the modifications by Act XLIII of 2020 concerning the interrogation of the accused. I examine its significance and point out whether anomalies in connection with the limits of evidentiary procedure are successfully eliminated in judicature.

1 The project TKP2020-NKA-09 was completed with the support of the National Research Development and Innovation Fund and financed by the Thematic Excellence Program 2020.

Keywords: preliminary session, unsubstantiated indictment, limits of evidentiary procedure, interrogation of the accused

Introduction

The legislator was influenced by the notion of exceeding and safeguarding when codifying the Act XC of 2017 (henceforth Be). One of its key measures is the reinterpretation of the function of the earlier marginal but now obligatory preliminary session. Besides ensuring guarantees for a just procedure it also created an opportunity for simpler and quicker procedures. During preliminary procedures the content, means and methods of defense and accusation are separated from the administrative measures based on accusation. At preliminary procedures the accused party may realize a complex form of cooperation, and it is also an important scene of the concentration of evidentiary procedure since the parties have the opportunity to decide the direction of evidentiary procedure under judicial control.[2]

A Historical Overview of Hungarian Legal Institutions Concerning Preliminary Procedure

Act XXXIII of 1896[3] (Bp.)

In modern 19th century codes of procedure indictment division was an institution independent from the public prosecutor and had a controlling role after indictment. The indictment division had preventive aims: unsubstantiated accusation could not reach the court, and no unsubstantiated judicial procedure could be initiated.

During its codification the importance and role of just accusation, including the merit or groundlessness of accusation, were debated in Hungary. According to Ferencz Finkey (Finkey, 1903) a condition of a judicial procedure is a substantiated accusation – based on Art. 1 of Bp. – which has to be examined prior to a judicial procedure.

Bp. accepted the notion of judicial procedure from the contemporary British judicature, the institute of indictment division from French judicature and the form of facultative procedure from Austrian judicature. In Bp. accusation was

2 Law XC of 2017 explanation of criminal procedure.
3 Article of Law XXXIII of 1896 of criminal code of procedure.

examined by the indictment division in a so called facultative accusatory procedure. This procedure was oral and contradictorily.

'Prior to the main procedure, since it is open to public and implies greater moral and financial disadvantages for the accused party, in modern codes of procedure based on either accusatorial or mixed systems, a separate judicial body examines the issue thoroughly and impartially […]' (Finkey, 1903).

The members of the indictment division were three judges who may not be judges at the trial. The procedure began after presenting the indictment by the prosecutor, within eight days after the disclosure of the indictment if the accused party filed complaints against the accusation. Bp. ensured the rights to complain about every point of the accusation only for the accused party[4], but if it does not exercise this right the case may proceed to the main trial without this procedural phase.

'The complaint is a kind of defense argument by the accused party, by which he opposes the accusation and not the court […]' (Angyal, 1915-1917). The complaint may refer to the evidence of the accusation and its legal and material conclusions. During the session of the indictment division first the defense and then the accusation could address, but the final address was always made by the defense. It must be emphasized that the members of the indictment division could put up questions but could not present new evidence. As the indictment division considered it necessary new investigation or additional-investigation could be ordered, and if there was no investigation it could order one.[5] In the case of private accusation accusatory procedure was obligatory regardless from the complaints of the accused party.[6]

The indictment division could refer the case, suspend the procedure, order new investigation but it also could terminate the procedure (for example the accusation was unsubstantiated, evidence against the accused party was not enough to prove suspicion beyond reasonable doubt). In the latter case the punitive power of the state could not materialize since the termination decree was equal to acquittal (of res iudicata effect) thus it had to be explained (Finkey, 1903).

The indictment division issued an indictment decree (Angyal, 1915–1917). As the indictment division issued an indictment decree it decided on an indictment[7], and there was no possibility for legal remedy[8], thus the accused became

4 Subsection (3) of Art. 257. Bp.
5 Art. 261–262. Bp.
6 Art. 278–279. Bp.
7 Subsection (1) of Art. 266. Bp.
8 Art. 269. Bp.

the subject of a legal procedure.[9] The indictment division had an option to order additional investigation or obtain new evidence.[10]

Act XXIX of 1921[11]

This law impaired the rights of the indictment division as it narrowed the scope of complaint by the accused party in some cases (e.g., assault, larceny, embezzlement). The accused party could make a complaint against every point of the indictment in a written form, which had to be presented to the court of the trial, which could terminate the procedure with a decree without trial.[12]

Act XIV of 1946[13]

This law eliminated the institution of indictment division. The indictment had to be presented to the court by the accuser to the presiding judge of the judicial body regardless of previous investigations. The accused party still had the right to comment, and the court could refuse the indictment (Belovics, 2018).

Act III of 1951[14] *(II. Bp.)*

The preliminary procedure belonged to the presiding judge, who studied the case and transferred it to court procedure or presented it to the council in order to take necessary measures.[15]

The novella modifying II. Bp – Act V of 1954[16] (Bpn.) – reregulated and introduced the institute of preliminary session. According to it, in serious cases – when punishment exceeded 2 years of imprisonment, or the accused was in pre-trial detention – a preliminary session had to be held.[17]

During the preliminary procedure the following points were examined: whether the committed act by the perpetrator is a criminal act or not, necessary evidence for a substantiated accusation, whether the indictment contains the right legal classification of the act and they are in accordance with the rulings of II.

9 Subsection (4) of Art. 13. Bp.
10 Art. 262. Bp.
11 Article of Law XXIX of 1921 on the simplification of criminal justice.
12 Subsection (2) of Art. 3 of Law XXIX of 1921.
13 Article of Law XIV of 1946 on termination of indictment division, facilitating press procedures and termination of state penitentiary, I chapter.
14 Law 1951 of III. on criminal code of procedure.
15 Subsection (1) of Art. 139. II. Bp. (effective from 22.05.1951.)
16 Law 1954 of V. modification of the Law III of 1951 on criminal code of procedure.
17 Subsection (1) of Art. 139. II. Bp. (effective from 01.08.1954.)

Bp.[18] Based on it the court was entitled to accept the indictment, modify it or order additional investigation – thus accepting the examination of the merit of the accusation – or suspend or terminate the procedure.[19]

During the preliminary procedure the case could not be heard on the merit, it only checked whether the indictment was substantiated and earlier investigation was lawful. The task of the preliminary procedure is to avoid breach of procedural laws and to prevent an unlawful and unsubstantiated case from hearing (Király, 2003).

Law – decree 8 of 1962[20] (I. Be.)

I. Be. modified the rulings concerning the almost universally obligatory preliminary procedure. It narrowed the scope of obligatory preliminary procedure and in certain cases it entitled the presiding judge to order preliminary procedure if he finds it necessary[21] (Király, 2003).

Act I of 1973[22] (II. Be.)

II. Be. codified that as a principle, court procedure may be initiated only on the base of lawful indictment. According to the criminal procedural concept of II. Be., it separated the rulings of preliminary procedure from rulings concerning criminal acts and those of misdemeanor.[23]

The court in basic procedures made decisions at panel meetings during the preparatory phase but if the hearing of the prosecutor or the perpetrator proved to be necessary prior to issuing a decree it held a preliminary session. Preliminary session was obligatory when the court sent back the documents to the prosecutor (additional investigation)[24]. During the preparatory phase II. Be. made besides the suspension or termination of a case an additional investigation possible as well. [25]

In misdemeanor procedures the rulings of criminal procedures had to be applied during the preliminary phase if the judge referred the case to the council. To reveal the complete conclusion of facts the court could send back the documents

18 Subsection (2) of Art. 140. II. Bp.
19 Subsection (3) of Art. 140. II. Bp.
20 Law-decree 8 of 1962 on criminal procedure.
21 Art. 170. I. Be.
22 Law I of 1973 on criminal procedure
23 II. Be. Chapter VIII. Title II. Preparation of the Hearing in Misdemeanour Procedures
24 Subsection (1)–(2) of Art. 176. II. Bp.
25 Subsection (1) of Art. 171. II. Bp.

of the case to the prosecutor if the investigation was conducted according to the rulings of misdemeanor but without its legal conditions.[26]

Act XIX of 1998[27] (III. Be.)

The previous Bp. and the other laws regulating criminal procedure did not codify the notion of lawfulness of accusation but the accusation had to be examined concerning its lawfulness prior to hearing. This examination considered the investigation and the merit of the accusation thus the court was entitled to review it.

The notion of legal charge became part of III. Be. by the Act LI of 2006[28] as this act defined the requirements concerning formality and minimal content.[29] It did not codify the notion of merit as a criterion of legal charge.

According to my viewpoint the accusation is substantiated if the motion to the court contains serious suspicion based on substantiated evidence. If the indictment does not meet this requirement, unsubstantiated court procedure cannot be conducted. One of the reasons for it might be the inadequate investigation full of mistakes, which is due to the inadequate controlling and supervising activity of the public-prosecutor's office. The public prosecutor has to notice if further investigative procedures could lead to any result or not – and it fails to do so and presents and indictment. The demolishing of the punitive power of the state resulting from inadequate work by the public prosecutor must be due to the public prosecutor, who has to be responsible for it (Horgos, 2021).

In the case of III. Be. additional investigation could not be ordered in the preparatory phase.

III. Be. distinguished the obligatory and optional version of preliminary procedure. Preliminary procedure was obligatory if the court decided on pre- trial detention, house arrest or temporary involuntary treatment in a mental hospital or if the accused party or the defense proposed the termination of the special protection of witness.[30] Preliminary session was possible if during the preparatory phase the hearing of the prosecutor or the accused party seemed necessary prior to the verdict.[31]

While in Bp. the institute of indictment division was a checking method in this law it eliminates unsubstantiated accusation. In this process it has the opportunity

26 Subsection (1)–(2) of Art. 186. II. Bp.
27 Law XIX of 1998 on criminal procedure.
28 Law LI of 2006 on modification of Law XIX of 1998 on criminal procedure.
29 Subsection (1)–(2) of Art. 2. III. Bp.
30 Subsection (2) of Art. 272. III. Bp.
31 Subsection (1) of Art. 272. III. Bp.

to accuse the defendant but it also prepared the main hearing at the same time. Contrary to it at the preparatory session indictment was not questioned since the prosecutor had already indicted the accused party.

I agree with the opinion of Ervin Belovics that in the present system the preparatory procedure cannot be equal to the indictment procedure codified in Bp. since the presentation of the indictment has taken place but the examination of the merit of the accusation was omitted because the preparatory procedure aims only ~~at~~ the preparation of the hearing. (Belovics & Tóth, 2020). On the contrary, at the indictment procedure codified by Bp. the indictment division examines the indictment prior to indictment itself. This institute also has a hearing preparatory function.

In my opinion, it is valid only for hearing preparation codified only in III. Be. – similar to operative Be. – since earlier laws offered the possibility of examining the merit of the accusation after indictment.

According to the Curia the acting court is legally not entitled to examine the preparation of the indictment, or the investigation (merit of the accusation), since if it had acted so – ex officio – it would review the decision of the prosecutor concerning indictment.[32] The Constitutional Court separated the issue of the merit of indictment and lawfulness of it, as the lawfulness is a necessary precondition of initiating a hearing while merit can be proved as a result of the activity of the court.[33] Concerning these opinions it is a central issue whether merit is part of the legality of indictment or not. There are opposing views in relevant special literature. According to one view – which I agree with – merit of indictment is part of its legality since legal accusation must be based on evidence gathered legally. Indictment has to contain the argument of the prosecutor that the evidence is sufficient to prove the guiltiness of the accused party beyond any doubt. If indictment fails to meet this requirement it excludes the legality of the indictment based on illegally acquired evidence (Gellér, 2011). According to the other view merit is not part of lawfulness of indictment since the lawfulness of indictment does not require substantiated evidence (Fantoly, 2016).

The New and Significant Role of Preparatory Session in Be. and in Relation to Evidentiary Procedure

The institute of Preparatory Section was completed in its function and made more significant by Be. but it did not revive certain rights of the indictment

32 Final ruling of Curia, Bfv. I.1559/2012/4.
33 Rulings by the Constitutional Court, 33/2013. (XI. 22.)

division. Although during the codification of Be. the introduction of additional investigation in accordance with the requirements of contradictorily procedure was considered – albeit in a new form – in order to prepare court hearing (Handó, 2013). It did not happen.

According to Subsection (1) of Art. 499 of Be.: *'The preparatory session follows indictment and an open session in order to prepare the hearing, during which both the prosecutor and the accused party may express their opinion concerning indictment and contribute to the formation of the course of criminal procedure.'* This contribution is ensured for the accused party either confessing or not confessing the criminal act the hearing is based on. Besides ensuring guarantees for the elements of just procedure Be. makes it possible to simplify and accelerate the procedure.

At the preparatory session the presence of the prosecutor and the accused party is obligatory, but evidentiary procedure cannot be conducted due to its open characteristics. The function of the institute is to prepare the hearing. If a public defender takes part in the process, preparatory session cannot be held without a public defender.[34]

After the beginning of the preparatory session the prosecutor reads the essence of the indictment upon the request of the judge and he names the means of evidence. It must be emphasized that the prosecutor may make an alternative proposal concerning the extent and length of the punishment if the accused party confesses guilty at the preparatory session.[35] In this case the accused party can be aware in advance of the preference he may have if he confesses guilty. It is followed by the questioning of the accused party.[36]

The preparatory session – as I have earlier mentioned, the cooperation with the accused party – became an integral part of the complex system of Be. since it provides an opportunity to avoid hearings. If the accused party confesses guilty in the criminal act, the subject of the accusation, and renounces his right to a trial and the court accepts his confession, decision can be made in this phase of the procedure. In this case the procedure is carried out according to rulings valid for confessions of guilt.[37]

If the accused party does not confess guilty at the preparatory session the procedure is carried out according to the rulings valid for confessions of not guilty.[38]

34 Subsection (5) of Art. 499. Be.
35 Subsection (1) of § 502. Be.
36 Subsection (3) of § 502. Be.
37 Art. 504. Be. – Subsection (1) of Art. 505. Be.
38 Subsection (3) of Art. 506-508. Be.

The examination of accusation at the preparatory session

The Be. omitted the adjective 'legal' – constituting a fundamental requirement – in front of the noun 'accusation' and does not define the notion of legal accusation. Be. also abolished the distinction between legal accusation and deficient accusation codified in III. Be. But the legal requirements of the accusation can be derived from rulings of Be. concerning other accusations.

Be. took over the concept from III. Be that it does not examine the merit of the accusation during the preparatory phase or at the preparatory session. Be. does not dispose the formal control of possible unsuitable (unsubstantiated) accusation prior to the hearing during the preparatory phase. At the preparatory session there is no relevant ruling, which should be added. According to my view it would not infringe the principle of the division of procedural functions, since accusation and ruling would not be united at the court. As Pál Angyal wrote: it would concern with formal examination and not substantial evaluation of evidence (Angyal, 1915–1917).

If at the preparatory session after indictment the evidence against the accused party proves to be insufficient then further evidence becomes irrelevant. In this case the termination of the procedure should be allowed at the preparatory session.

I believe that at a preparatory session concerning an accused party confessing not guilty and his defense the presentation of their view on accusation functions only theoretically. If the accused party and his defense refer to the groundlessness of the accusation at the preparatory session, it does not imply any relevance since it does not result in any legal consequence according to the rulings of Be. The hearing will be scheduled, where the court can examine the role and quality of evidence on the merit. In this way the other main function of the new role of the preparatory session, the concentrated hearing preparation is emphasized, when the accused party and his defense play an active role at the preparatory session in shaping the further course of the criminal procedure, defining the direction and limits of evidence.

If the accused party confesses not guilty, he may name those facts of the indictment, the reality of which he accepts at the preparatory session.[39] The accused party and the defense may present an evidentiary motion or evidence excluding motion at this phase.[40] In this case the significance of the preparatory session is realized in defining the later direction of the evidentiary procedure. Thus, the preparatory session has a decisive role in the concentration of evidentiary procedure.

39 Subsection (3) of Art. 506. Be.
40 Subsection (4)–(5) of Art. 506. Be.

It must be added that the preparatory session is the last procedural act where the prosecutor, the defense and the accused party may submit a motion without the consequences codified in Subsection (5)–(6) of Art. 520. Be. The accused party and the defense may be fined by the court if the defense cannot prove that the evidence originated after the preparatory session, or he learnt about it after the preparatory session through no fault of his own, or the motion tries to weaken earlier evidence or denies the result of evidentiary procedure if its method, means became known to him after the completed evidentiary procedure.[41]

The ban and possibility of evidence at the preparatory session

The evidentiary procedure in a criminal procedure is a complex and direct cognitive procedure, whose aim is to define criminally relevant past conclusion of facts of a given case by the acting authority especially by the court. It contains the collection, examination and evaluation of evidence and lasts from the suspicion to the certainty. Evidentiary procedure is the central element of the criminal procedure since the successful realization of the punitive power of the state depends on it and the criminal liability as well. Evidentiary means are procedural activities or objects from which the investigator, the prosecutor, the judge and other parties in the procedure can get information concerning the perpetrator and the criminal act (Király, 2003). The confession of the accused party is means of evidence. Confession is any statement made by the accused party during the criminal procedure after being warned and in which he states any fact relevant to the object of evidence.[42]

At the beginning the preparatory session was equal to the session among procedural forms, but later the preparatory session regulated in Be. became a special form of public trial. Both trials and public trials deny the introduction of evidence, and the evidentiary procedure. In spite of it when Be. came into force the accused party had to be interrogated at the preparatory session according to the capital of XXX of Subsection (3) of Art. 502. of this ruling was modified by Point 87 of Art. 271 of Act XLIII of 2020[43] entering into force on 1st January, 2021. According to it the court has to interrogate the accused party with a social regard *to the character of the preparatory session*. At this modification the legislator took the judicial practice as a basis, but it is expressed unambiguously in the explanation of the modified law.

41 Subsection (1)–(2) of Art. 520. Be.
42 Subsection (1) of Art. 183. Be.
43 Law XLIII of 2020 on modification of the law of criminal procedure and other laws.

Until the modification of Be. judges tried to create a judicial practice in order to prevent the serious infringement of the ban of evidentiary procedure required at public hearings. According to it, evidentiary procedure may take place at preparatory sessions. Evidentiary procedure is allowed only if it is a confession of guilt by the accused party but it is forbidden if it exceeds that. The right of interrogation is valid but it must be documented that there is no possibility to present earlier confessions of the accused party at the preparatory session. Confession made at the preparatory session does not substitute the confession made at the trial (Laczó & Pecze, 2020).

The accused party cannot be obliged to make a confession at the preparatory session, he can live with the right of silence. His silence has to be regarded as a denial of guilt. The accused party can deny to make a confession at the preparatory session. The court has a wide scope of obligations concerning the information and warning of the accused party (Elek, 2018). According to Art. 185. of Be. the court has to inform the accused party about the issues codified in a)–d) Points of Subsection (2) of Art. 500. Be.

Then the court – as I have earlier mentioned – questioned the accused party according to capital XXX of Be. until 31st December 2020, and since 1st January 2021 with *special regard to the characteristics of the preparatory session*. The main question of the court is to the accused party at the preparatory session whether he confesses guilty or not in the criminal act tried at the court.

I must mention that in the procedure of second instance the hearing of the accused party concerning the circumstances of punishment may not be regarded as evidentiary procedure.[44] If the court of second instance wishes to accept evidence it has to function according to trial forms. At trials of first instance, if the accused party made a confession – with the consent of the defense – his interrogation concerning those statements made by him at the preparatory session can be omitted.[45]

A Case[46]

The examination of the case with a final judgement at the trial of second instance focuses especially on the subject of the present study and demonstrates the effect of an unsubstantiated accusation on a court procedure. Furthermore,

44 Subsection (2) of Art. 599. Be. and Point b)
45 Subsection (1) of Art. 222. Be.
46 The detailed account of the trial of first instance and the trial of second instance in not relevant in respect of my study

it provides a case study of accusation and evidentiary procedure (interrogation of the accused party) through the function of preparatory session in judicature.

Investigation, Accusation and Critic

The investigating authority accused M. L., an Italian citizen, with clean criminal record (henceforth the accused in the investigative phase) at his interrogation on 22nd August, 2012 on the base of having committed a criminal offense in breach of § 202/A on the basis of the following facts, based on IV. Act of the Penal Code still in force on 22 August 2012.

The accused met J. O., a prostitute (henceforth the aggrieved) born 13th February, 1998, between October 2011 and February 2012 in Népliget, a park in the 10th district of Budapest, on undefined dates, and they agreed on having a sexual intercourse for consideration. According to this agreement the accused met the aggrieved party about 5 times, sometimes in the flat of the accused, sometimes in the 10th district, in Népliget. At these occasions the accused had oral sex with the aggrieved party several times and the accused had once anal sex with the aggrieved party. The accused gave 10.000–20.000 Forints to the aggrieved party for the sexual intercourse at occasions.

The accused was aware that at the time of the act the aggrieved party was under 18, the aggrieved party told him he was over 16.

The accused, who denied committing criminal act, said during the interrogation that he had been in Népliget several times in order to collect information for his book on sociology, and a planned newspaper article – as he was a journalist – he studied the lives and habits of homeless people. He stated that he only spoke and had no homosexual connections with the men and boys he met in Népliget, not even with the aggrieved party since he did not know him. Otherwise, he is not homosexual, he has a wife, and he is ill, and in the last phase of Parkinson disease.

During the investigation the followings were recorded:

- The aggrieved party describes 'the Italian' as a thin man, 180 cm high, who can speak Hungarian. The aggrieved party met 'the Italian' 5-6 times even in his flat. The accused were suffering from Parkinson disease at this time. The aggrieved did not notice the physiological symptoms, for example trembling of the right hand.
- The investigative authority describes the accused in its report of 8th May, 2012 as a chubby man, walking with a stick, and cannot speak Hungarian. The aggrieved party stated in his confession of 24th July, 2012 that 'the Italian' spoke Hungarian from the beginning.

- Witness M. K. stated on 2nd May, 2012 that when he was looking for his son (the aggrieved party) he saw a black Mercedes, which he stopped and showed the photo of his son. The driver spoke Hungarian, but in a strange way, as if he had accent, he called him 'the Italian'.
- Witness N. Sz. (female) stated on 15th April, 2013 that she also spoke with the accused but in English and not in Hungarian. She stated that the accused was a regular customer of hers. She did not know that the accused had sexual connections with gay and transsexual people.
- Witness R. P. stated on 18th October, 2012 that he had never seen the accused walking with men or boys, he described him as someone who was peeping on pairs. He watches them and it makes him entertained. This statement is contained in the police report, where the behavior of the accused is described. The witness looking at the photo of D. E. said, that he has a black Mercedes and is known as 'Sanyi', with whom she had 'business' several times earlier.

Summary:

1) The investigation did not reveal the number plate and owner of the black Mercedes visiting Népliget during the interval of the case. Relevant evidentiary procedure could not be ordered at the trial.
2) The identity of 'the Italian' and the accused was not examined, whether they are the same person or two different ones, even if there were serious doubts.
3) The physical appearance of the accused was not examined, albeit there were contradictory statements.
4) The aggrieved party made confessions several times during the investigation, which were different and newer and newer statements were added in a way that the recognition of the accused from a photo and at the introduction were not unambiguous. In spite of all this according to the investigative authority and the prosecutor the aggrieved party recognized the accused party.
5) During the investigative procedure the accused and the aggrieved party were not confronted. Due to the deficiency of the investigation (indictment) relevant facts were not revealed, contradictions were not solved, but indictment was made.

Accusation

The District Prosecutor's Office of the tenth and seventeenth districts submitted the indictment to the Pest Central District Court on January 7, 2015. The

facts of the indictment were presented in the same way as the facts at the time of the suspicion, but the offense was classified according to new Criminal Code (Act C of 2012 on the Penal Code). Pursuant to Section 203 (2), the prosecutor's office charged the accused with the crime of using conflicting and qualifying child prostitution. The District Prosecutor's Office of the tenth and seventeenth districts proposed in the indictment that the accused be sentenced to imprisonment, the execution of which should be suspended by the court for a probationary period.

Preparatory Session and Critic

The accused party did not confess guilty at the preparatory session of 4th January 2019 according to the regulations of Be. in force.

The accused did not want to make a confession at the 'interrogation' but answering to the questions of the acting judge he made a detailed confession, as a result the questioning of the accused at the main trial was not necessary. Answering the questions, he said the most important things that he had already said during the investigation. The court of first instance presented the confession of the accused.

The court of first instance neglected the preparatory characteristics of the session, the earlier mentioned judicial practice, according to which evidentiary procedure may not be held to such a degree at a preparatory session.

The defense presented its viewpoint and motion in a written form in connection with the accusation according to Subsection (3) and (4) of Art. 506. Be. – mentioning the contradictions perceived during investigation.

At the preparatory session the defense presented its viewpoint on the accusation referring to the unsubstantiated accusation according to Subsection (1) of Art. 499. Be. The defense mentioned that only that fact in the indictment can be accepted that the accused party had been in Népliget several times, he watched the people there and had no homosexual connection with either boys or men, and he did not pay for any. The defense pointed out that the accused party had not committed the criminal act stated in the accusation thus his culpability cannot be defined.

Other motions by the defense were in connection with the conduct of evidentiary procedure and other procedural activities based on Subsection (4) of Art. 505. Be. proposing questioning of witnesses and the delegation of a psychiatric expert.

Trials at the court of first instance

The date of the first trial was on 6th March, 2019, later the court of first instance set 4 days of hearing during which it conducted the evidentiary procedure. The accused party renounced his right to be present at the trial after the first occasion.

At the trial on 22nd November, 2020, the court of first instance found the accused party guilty in absentia in the cumulative offence of child prostitution codified in Subsection (2) of Art. 203. Btk. based on the evidentiary procedure. The court sentenced the accused party 6 months of imprisonment – with a probation of 1 year.[47]

The state-attorney appealed for severity while the accused party and the defense appealed firstly for acquittal, secondly for mitigation of the sentence.

Trial at the court of second instance

Based on the appeal the court of second instance set the date of a public hearing on 21st October, 2020 based on the Subsection (1) of Art. 590. Be. and reviewed the previous procedure in full length and the appealed sentence.

The court of second instance – partly because of the content of the appeal by the defense – found a new evidentiary procedure and the questioning of witnesses substantiated – based on Subsection (1) of Art. 600. Be. – and set the date of a hearing based on Subsection (1) of Art. 600. Be. At this hearing on 27th January 2021 the court completed the evidentiary procedure and delivered a judgement of second instance.[48]

The court of second instance modified the sentence of the court of first instance based on Point b) of Subsection (1) of Art. 604. Be. and acquitted the accused party from the accusation with the culminate offence of child prostitution referring to Subsection (2) of Art. 606. Be. and Point c) of Subsection (2) of Art. 566. Be. stating that the accused party did not commit the criminal act.

As a result of the evidentiary procedure at the procedure of second instance, the court of second instance completed and modified the judgement of the court of first instance in its judgement.

It documented in its judgement that the aggrieved party was the inhabitant of a child care institution K. L. in Budapest in 2011 and 2012 between October 2011 and February 2012 he escaped from the institute with some of his friends

47 The judgement of first instance 14.B.X.31.202/2018/88. of Pest Central District Court of 22nd November, 2019.

48 Final judgement of second instance 32 Bf 8316/2020/36. of Budapest Court of Law of 27th January 2021 coming to force on 28th April, 2021.

and worked as a prostitute in the 10th district of Budapest, Népliget – for pecuniary consideration. The accused party, an Italian man suffering from Parkinson disease, walking with the help of a stick, and not being able to speak Hungarian, visited Népliget in his Mercedes. He usually watched couples in Népliget and asked them if they agreed on having sex with him. If they agreed he stayed there, if not, he simply left.

Based on the evidentiary procedure conducted by the court of law, it stated that it could not be proved without reasonable doubt that the accused party would have committed the crime. In the given case the confessions of the aggrieved party concerning the accused party were full of contradictions.

The judgement of second instance was accepted by the accused party and his defense, but the state attorney appealed it within 3 workdays. The sentence was rendered definitive in the procedure of second instance since the state attorney withdrew the appeal and there was no need for a hearing ~~of~~ at third instance.

Closing remarks

According to my viewpoint the new, concentrated hearing preparing function of the preparatory session, which helps to realize the content, means, and methods of accusation and defense at the same time, can be regarded favorably.

I believe that the institute of preparatory session codified in Be. does not meet the requirements according to which unsubstantiated accusation could be selected out by examining the accusation, especially in the case of inadequate accusation. No preparatory session meets the requirements of a constitutional state, which allows court hearings in case of inadequate accusation. It seems to be necessary to broaden the rulings of Be. in a way that the accused party and the defense may propose objection besides presenting their viewpoints concerning inadequate accusation. Based on this objection the court would have to control the formal merit of the accusation besides examining the legal means of evidence deriving from the presented indictment. In this way the court should have the right to terminate the procedure based on Art. 492. of Be.

The legislator did not elaborate completely the rules of the breach of the ban of evidentiary procedure concerning the accused party at the preparatory session. In this respect the above-mentioned modification of Be. did not result in significant development. It remained an unfinished task for the legislator.

I believe that anomalies concerning the limits of evidentiary procedure should not be resolved by judicial practice at the institute of preparatory session, but it should be codified. It seems to be necessary that the breach of the ban of

evidentiary procedure at the preparatory hearing would be allowed only in case of *'Procedure in case of confessing guilty'*.

'The closer we are at the goal, the more complete is the ruling' (Degré, 1914). It is a guarantee for a due process of law as one of the cornerstones of a constitutional state.

References

Angyal, P. (1915-1917). *A magyar büntetőeljárásjog tankönyve* [Course book of Hungarian Criminal Procedure.] Athenaeum.

Belovics, E. & Tóth, M. (2020). *Büntető eljárásjog* [Criminal Law]. HVG-ORAC Lap és Könyvkiadó.

Belovics, E. (2018). Az előkészítő ülés szerepe a 2017. évi XC. törvényben [The Function of Preparatory Session in Law XC. of 2017.]. In Molnár, G. M. & Koltay, A. (Eds.), *Bonus Iudex. Ünnepi kötet Varga Zoltán 70. születésnapjára* [Bonus Iudex. Festive volume for Zoltán Varga's 70th birthday] (pp. 39-53). Pázmány Press.

Degré, M. (1914). A vád alá helyezési eljárásról [About Indictment Procedure]. In *Büntetőjogi dolgozatok Balogh Jenő születése évfordulójának ünnepére* [Criminal law papers for the celebration of the birth anniversary of Jenő Balogh] (pp. 78-93). Wessely és Horváth Könyvnyomdája.

Elek, B. (2018). *Előkészítő ülés* [Preparatory Session]. In Polt P. (Ed.), *Kommentár a büntetőeljárási törvényhez. 2. kötet* [Commentary on the Code of Criminal Procedure] (pp. 1064-1079). Wolters Kluver.

Fantoly, Zs. (2016). Törvényes legyen-e a vád, avagy újabb gondolatok a vádelvről – egy törvénytervezet tükrében [Criminal Law]. In Gál, A. & Karsai, K. (Eds.), *Ad Valorem. Ünnepi tanulmányok Vida Mihály 80. születésnapjára* [Ad Valorem. Festive studies for the 80th birthday of Mihály Vida] (pp. 55-66). Iurisperitus Kiadó.

Finkey, F. (1903). *A magyar büntető eljárás tankönyve* [Course Book of Hungarian Criminal Procedure]. Politzer Zsigmond és Fia.

Gellér, B. J. (2011). A vád törvényességének egyes aspektusai [Certain Aspects of Lawful Indictment]. In Belovics, E., Tamási, E. & Varga, Z. (Eds.), *Örökség és büntetőjog. Emlékkönyv Békés Imre tiszteletére* [Inheritance and criminal law. Memorial book in honour of Imre Békés] (pp. 35-48). Pázmány Péter Katolikus Egyetem, Jog- és Államtudományi Kar.

Handó, T. (2013). *Előterjesztés az új büntetőeljárási törvény koncepciójáról szóló Kormányhatározat tervezetéhez,* 4. [Proposal to the Draft Of Government Decree on the Concept of New Criminal Procedure] (az OBH Elnökének 30237-32/2013. számú előterjesztése).

Horgos, L. (2021). A ius puniendi jogállami tartalmának kiteljesedése [The accomplishment of the constitutional content of ius puniendi]. In Szabó, Cs. & Molnár, D. (Eds.), *Studia Doctorandorum Alumnae. Válogatás a DOSz Alumni Osztály tagjainak doktori munkáiból. II. kötet* [Selection from the doctoral theses of the members of the DOS Alumni Department. II. volume] (pp. 11-260). Doktoranduszok Országos Szövetsége.

Király, T. (2003). *Büntető-eljárásjog* [Criminal Procedure Law]. Osiris Kiadó.

Laczó, A. & Pecze, T. (2020). *A 2017. évi XC. tv. (Be.) a bírósági eljárást érintő leglényegesebb újításai* [The Most Important Issues of Law XC. of 2017 on court procedure]. Online Lecture 22nd October 2020.

Reference of the article according to APA regulation

Horgos, L. (2021). Thought fragments of Preliminary Session in Relation to Accusation and Evidentiary Procedure. *Belügyi Szemle, 69*(SI6), 89-106. https://doi.org/10.38146/BSZ.SPEC.2021.6.6

NATIONAL RESEARCH, DEVELOPMENT AND INNOVATION OFFICE HUNGARY

PROJECT FINANCED FROM THE NRDI FUND

DOI: 10.38146/BSZ.SPEC.2021.6.7

Ivett Nagy

Drug crime transformation under the effect of online platforms

Abstract

Many types of drug crimes are already known, but it is common to offender groups to implement them in an organised, coordinated, multi-level framework. Affected by online platforms, drug crimes are undergoing a transformation that presents new challenges for the authorities. Criminal groups also like to (re)take the opportunities offered by the Internet. Platforms that connect to the Dark Web, the Dark Internet (secret network form), have become increasingly popular over the past few years, thanks to the fact that there are also services available which are not available by traditional browsers. Coordinated cooperation between several countries, over several years, is needed to ensure successful detection in cyberspace. This is illustrated by a current EUROPOL report, published on 12 January 2021, which shows that a successful liquidation has occurred in the case of DarkMarket, one of the largest illegal marketplaces, requiring the cooperation of several European Union Member States and several non-European Union countries. In the face of the coronavirus epidemic, organised crime groups are still trying to remain active and resilient, which is not a challenge in the online space at this time, although drug delivery models needed to be changed, but they are trying to maintain the constant cycle of the market through their hiding methods. In my study, I am also looking for answers how the detection and recovery of criminal property is carried out at national and international level, in cases where drug crime takes place in the online space. What is the path of illegally acquired criminal property, how can financial profiling be carried out in these cases? In case of drug offences, we are talking about a special asset recovery where is no victim demanded, because there are very few known victims existing. With my study, I intend to capture the current topicality of drug crime, by detecting methods of committing crimes in the online space, internationally and domestically, and by exploring the current processes of asset discovery and recovery. In this way, I wish to provide results that can be used by the profession.[1]

1 The project TKP2020-NKA-09 was completed with the support of the National Research Development and Innovation Fund and financed by the Thematic Excellence Program 2020.

Keywords: cybercrime, dark web, drug markets, asset recovery, coronavirus pandemic

About organised crime and the link between drugs and crime

Organised crime is one of the most complex phenomena, the causal and other forms of which have long been dealt with by various experts, since the fight against organised crimes is constant, just as the typical characteristics of certain crimes of organised crime are considered to be constantly changing in the system (Szűcs, 2020). All organised crimes require serious logistics, consistency, trust and organisation from the perpetrator's side. Just think of how much resources it takes to run a people-smuggling network, which requires both material and human resources. The fight against organised crime is a priority for most countries. This is not different for Hungary, but the opportunities offered by the European Union also contribute greatly to successful action. In case of drug offences covered by organised crime, the need to act within the European Union appeared at a time when the Schengen Area was also established in 1985, allowing the free movement of capital, goods, services and persons without control at borders. At the same time, however, a number of security risks have emerged in countries (in the member states of the European Union) that have not been seen before. At the end of the 1980s, restrictions were introduced to curb the free movement of drugs within the European Union. The emergence of regulations for new synthetic drugs (known by their name: for example, crocodile, crystal) was also urgent in the legislation. As a result, new authorities were created within the European Union and within the United Nations which include the EMCDDA[2] or the UNODC[3], but there have also been a number of forward-looking models with the establishment of EUROPOL[4], CEPOL[5], or EMA[6]. Some statistics show the importance of the topic in the European Drug Report published in 2021:

'In 2019, an estimated 1.5 million drug law offences were reported in the European Union, an increase of almost a quarter (24 %) since 2009. Most of these offences (82 % or 1.2 million) are related to personal use or possession.'

2 European Monitoring Centre for Drugs and Drug Addiction.
3 United Nations Office on Drugs and Crime.
4 European Union Agency for Law Enforcement Cooperation.
5 European Union Agency for Law Enforcement Training.
6 European Medicines Agency.

'Of the estimated 1.5 million drug law offences, the drug mentioned in the offence is reported in just over 1 million offences, of which 826 000 were for possession or use, 176 000 were for supply related offences and 7 500 were for other types of offence.' (URL1)

In addition to the above, the European Union's ambitions are illustrated by the part related to the supply of drugs within the drug strategy issued for the following period. *'In the field of drug supply reduction, the objective of the EU Drugs Strategy 2013-2020 is to contribute to a measurable reduction of the availability of illicit drugs, through the disruption of illicit drug trafficking, the dismantling of organised crime groups that are involved in drug production and trafficking, efficient use of the criminal justice system, effective intelligence-led law enforcement and increased intelligence sharing. At EU level, emphasis will be placed on large-scale, cross-border and organised drug-related crim*e.' (URL2). Strategies however do not mention drug crimes in cyberspace back in2012. The links between drugs and crime are part of another area of research, but I think it is important to note that the important thing for the investigation is that drug-related crimes are carried out depending on the motivations of the perpetrators, which may have different outcomes. Where production, trafficking and consumption of drugs take place in an organised framework, it can be said that other crimes, including corruption offences, also take place during these processes. But there are other identifiable crimes in which it is common that they occur in parallel with drug offences, such as economic crimes (fraud, embezzlement, money laundering, typically white-collar crimes) or crimes committed for profit, which can even happen on an occasional basis (burglary, robbery, theft) (URL3). In contrast, the study will also present, among other issues, typical cases of drug offences in the online space.

The boundless cyberspace

Cyberspace as a concept has been enriched with countless interpretations in recent times, depending on the area in which we deal with the subject. Cyberspace crimes, also known as cybercrimes, are considered important for the study. Since the emergence of the Internet people's lives have become easier, the flow of information and globalization have accelerated as well. When it comes to the benefits of them, it is enough to think only about the pandemic period, when you did not even have to go out and yet everything was 'available' over the Internet. In terms of disadvantages, it can be observed that organised crime groups are also increasingly present in cyberspace, thus creating threats and an increase

in the number of victims. The following three categories of cyber-crime can be distinguished (URL4):

'I. 'Classic cybercrime': phishing, cyberattacks, internet scams, online banking scams
II. Online sexual exploitation of children: child pornography, other crimes against sex (sexual blackmail, recruitment) and sexual morality
III. Credit card crime' (Gyaraki, 2017).

The above-mentioned crimes may also be committed by using the most commonly used web browsers, such as Google Chrome or Internet Explorer. In particular, a classic internet scam may be carried out on social media platforms as well, which – however - do not fully ensure the identity of the perpetrator. Although he wishes to be anonymous (registering with a fictional profile hiding an IP address), he is still unable to do such thorough work. The investigating authorities are using all means at their disposal to ensure that anonymity is broken. A much more hidden side of cyberspace is the deep web. *'Anonymous networks: Different sub-networks of the Internet, such as Tor, Freenet and I2P, inside of which the users' identities and locations are masked and all the communication is encrypted. Also referred to as the Darknet or the Dark Web.'* (URL5). One of the main features of deep web is that it is not indexed by search engines, which allows users to browse networks that are not present on other networks. The use of the darknet gives perpetrators access that is anonymous and untraceable, yet the investigating authorities have the methods by which this can be overturned. One of the best known among the perpetrators is the deep web search engine TOR[7], but in addition to that, there are many other networks, such as I2P and Freenet. Perpetrator groups treat these networks as marketplaces where goods are traded that are typically illegal (such as weapons, drugs, various services). On the international outlook, I would like to mention some successful investigations. One of these successful investigations was the FBI[8]'s dismantled Silk Road in 2013 (also known as 'Amazon to drugs' or 'Ebay of drugs'), one of the most well-known online drug markets of that period. In terms of revenue, it was about USD 22 million. The site's operator, 'Dread Pirate Roberts,' was arrested and charged with multiple crimes (such as computer hacking and money laundering conspiracy). The FBI said that in addition to all this, Bitcoins worth of USD 3.6 million were seized, which also meant that cryptocurrency trading

7 The Onion Router.
8 Federal Bureau of Investigation.

was already in full swing in 2013 (URL6). In connection with that, it is to be noted that several types of cryptocurrencies are known, but one of the most well-known is Bitcoin, which is also a popular currency on black markets because it is not necessary to reveal the identity of the bitcoin owner for trade. As regards the concept of bitcoin can be summarized as *'Bitcoin is a decentralized digital currency that you can buy, sell and exchange directly, without an intermediary like a bank. Bitcoin's creator, Satoshi Nakamoto, originally described the need for an electronic payment system based on cryptographic proof instead of trust.'* (URL7). As illustrated by a more recent example, on 12 January 2021 the EUROPOL report was published, which reads that a successful unmasking took place on DarkMarket, one of the largest illegal marketplaces, it was a successful reconnaissance requiring cooperation from several European Union Member States and several non-European Union countries (e.g., Ukraine, the United States of America, Australia), resulting, inter alia, in the arrest of the suspected operator of DarkMarket. The illegal marketplace DarkMarket had almost 500,000 users, trading drugs, stolen credit card data, and malicious codes suitable of launching cyberattacks, among other things. In addition, 320,000 illegal transactions were carried out (URL8). Through successful detection, it became clear that there had been a rise in drug crime that had hitherto been unknown to the authorities.

Ways of committing drug crimes online

Anyone can browse the various search engines (in addition to other browsers) mentioned above, which are called the 'Surface Web'. The question arises, observing the realizations of drug crimes in recent years, whether it is the conceivable deep web that could be the new way to trade drugs? In addition to this, anonymous systems have been created on the black market to which access is granted without an IP address, i.e., identification by the investigating authorities is made difficult. According to an article of June 2019, the big drug lords and drug traffickers known to everyone, who have accumulated billions of dollars, are nothing compared to the revenues of cybercriminals. *'By 2021, cybercrime is expected to cost the world $6 trillion yearly, making it more profitable than the global illegal drug trade, according to data provider Cybersecurity Ventures.'* (URL9) Furthermore, according to some researchers, there is a growing industry in terms of cybercrime. Offenders target people who live in a jurisdiction other than their own. Another interesting point is that central countries for cybercrimes include India, Vietnam, Brazil and North Korea (URL10).

With regard to Hungary, the crime of drugs in the online space has become more and more frequent in recent times. According to the experts, this is not related to the coronavirus pandemic, although it was considered important to point out in connection with the study that the crime is increasingly shifting towards the online space.

At the beginning of the research, the question arose how and from what source the investigating authorities would become aware of drug offences committed in the online space. During discussions with professionals, they said that in the vast majority of cases, there are three sources of suspicion, one based on signals from the co-authorities, information from human intelligence, and, most rarely, real sources of information from whistle-blowers who call incognito. The rarest method, used after becoming aware of it, is to create a profile that is suitable for trading on the dark web, or at least a potential buyer. In these cases, however, the investigating authority makes use of the possibility that, when employing an undercover investigator, there is a greater chance that the perpetrator may be identified in the future. Let's look at how this will ensure the success of the investigation. *'The Hungarian solution is, in fact, the continental equivalent of public authority defense in American law: under U.S. law, a formally illegal act does not constitute a crime if it is committed by a police officer for law enforcement reasons and is proportionate to the objective pursued.'* (Mészáros, 2019). As described above, the investigating authorities shall endeavour to make sufficient use of the possibilities provided by law which may subsequently be suitable for reasonable suspicion. Because browsers within the dark web are available to anyone, they can be used indefinitely, the use of which is not considered a criminal offence, but if someone engages in illegal activity over the dark web, they can be held liable for crime. However, experts in the field have said that despite the fact that there are all options for creating a 'fake profile', search engines running on the dark web are constantly filtering profiles, so they are trying to filter out users who may even be present through some kind of law enforcement activity. For example, you always get to search for products, but you never order goods, or any other profile that poses a risk to them is filtered out. Therefore, it is typically for this reason that the authorities choose other possible sources, such as human intelligence and co-administration signals. All of these may provide a basis and a suspicion that reconnaissance will also take place in cyberspace, but it is almost certain that reconnaissance will also have a physical realization. The indications of the co-authorities are cases such as the realization carried out by a district or city precinct, where the drug consumer tells in his suspect's testimony that he ordered the drug from the Internet and can even tell the origin of the drug. Then the seized equipment may be used to

verify what he has said, and from there a search for an unknown culprit begins in cyberspace. I would like to mention here that some types of drug offences carried out in Hungary, which are relevant to the study, i.e., in cases of international organised involvement, provided by a specialised unit of the Rapid Response and Special Police Services National Bureau of Investigation, the Drug Crime Division (Készenléti Rendőrség Nemzeti Nyomozó Iroda Kábítószer Bűnözés Elleni Osztály). This does not mean that they do not cooperate with other departments or units (such as Cybercrime Division or Asset Recovery Office) for a successful investigation, since the detection of a crime committed in cyberspace also requires a specialized expertise, similar to property discovery, asset recovery, analysis-evaluation work, and the work of the forensics, since they are responsible for information that can be extracted from mobile phones or laptops. Therefore, it can be said that the investigation of drug offences requires a deep, coordinated cooperation between all police units. It is surprising according to professionals, that typical elements of organised crimes in the classical sense do not materialise in cyberspace, and we can hardly even talk about organised crime. However, this also requires at least the same logistics as in the classical sense of drug smuggling, so that the shipment from one part of the world to another arrives. Among the drugs, the new psychoactive drugs typically come from China, which can be ordered via the dark web, just as cocaine and heroin typically come from South America, and other amphetamine derivatives can also be found, under production, in the form of powder or tablets. But it remains a popular drug route when it comes to smuggling in the Balkans. Some of the steps of drug trafficking in the online space are well known to the investigating authorities, but they are not able to respond to this, given that they are not present at the time of the order at all. All the information they have is ex post, deducible information that they can no longer respond to. In connection with drugs ordered on the Internet, the question also arises how it is sent to the customer, what are the most common methods of successful purchase. Nowadays, the market has expanded with services that bring not only positive results, but also negative ones. While in the past smuggling was carried out by couriers, who were at great risk, (e.g., drug runners from Africa were quick to travel on a flight to take risks, but they realised that it was a much simpler method if smuggling was carried out legally). Therefore, drug shipments arrive by boat or plane (whether cocaine shipments from South America or new psychoactive substances from China) to Spain or Portugal, and from there through courier services that deal with delivery around the world, such as DHL Express[9]

9 Dalsey Hillblom Lynn: it is a German logistic company.

as an international courier service, a popular means of getting the drug to the drug buyer. The packages are designed to use the best possible hiding, and it is also important that when you reach the parcel courier, the shipment is customs-cleared, so you will no longer pass further checks if the smuggling at the airport or on the boats has been successful. In the vast majority of cases, DHL Express drivers know nothing about what might be in the package, delivering between 18,000 and 20,000 packages a week. In addition, all other means of transporting drugs are suitable to ensure passage through countries, so any road transport company can be suitable. Then the package is picked up by the customer and he has already got the drugs he ordered. Again, why do domestic consumers/traders choose this method of access to drugs? There are several reasons for this, which according to Hungarian scouts have made this popular in recent years, one reason is that they have cheaper access (for example, online ordering is better directly from Turkey), the other is that there is a greater choice on the dark web and a lower risk of getting caught, since it hardly requires personal contact, and the customer also tries to secure his identity in the online space in the same way, as a trader. So, this is already a relatively proven method, that the drug manufacturer does not send a courier, but mails the package. In the course of the study, as I became more and more immersed in drug crimes committed in the online space, question followed question how big the latency might be in this area, whether there was any information, data, or study available that had already addressed this. I also asked the professionals (at the Drug Crime Division) what they assume the latency might be (however this is not part of the study, but it is important when we talk about drug crimes committed in cyberspace). To which the answer was that it is huge, we cannot imagine it, and then they said that for Hungary, in previous statistics, there are about 200 regular consumers who need 5g of cocaine a week (and thus, according to them, they have underestimated the consumption volume), so in a total of one year only cocaine consumption is 52 kg (for these 200 people). In comparison, let's look at the amount of cocaine seizures in Hungary in the past, which shows exactly which latency we are talking about. On the basis of the high latency, it is also clear that in the vast majority of these cases the investigating authorities can only realise if there is some certain information that a parcel shipment is arriving in Hungary and the place and time of arrival of the package is expected. Then searches, seizures and suspect interrogations will take place (if necessary, in more than one location) at the property of the person ordering the package in order to obtain as much information as possible about the sender of the package. Another method used in practice is to establish the identity of the perpetrator in cyberspace, via digital profile identification, which

means that any information in the communication between the seller or the buyer that refers to the seller may be suitable for searching further databases. If you have an e-mail address, phone number, nickname, or anything else, you can start searching the available databases. The SIENA (Secure Information Exchange Network Application) channel is most commonly used by the Hungarian authorities, but also by other countries within the European Union, which, as a kind of e-mail system (developed by EUROPOL), ensures the exchange of information between member states and can therefore be considered as a database. If any authority has information on a drug offence committed in a cyberspace, it may share that information with other Member States, trusting that they will provide a relevant response. If the information is not related to a Member State, it may be worth contacting Interpol (The International Criminal Police Organization), who also has an office in other countries of the world, so it is possible that a reply will be received via Interpol in connection with a South American country. It is important to know at which point the most information is generated from the processes of drug crime committed in cyberspace. As far as the language of communication is concerned in the darkweb, it is typically in English or possibly French between the seller and the customer (according to the experience of professionals), and Telegram Messenger and Viber are also commonly used interfaces, which is also a difficulty for the investigating authorities, since their observation is hindered.

Detection and recovery of criminal property, especially in cyberspace (Is it possible to carry out financial profiling in the online drug market?)

With the practice of organised crime, criminal groups make a huge fortune, which they try to hide in a way that does not give the investigating authorities any basis for suspicion. On the one hand, they try to manage the process in such a way that it can be reinvested in their activities and the other part is hidden (typically tax and customs). The discovery of criminal property has been increasingly pronounced in recent years by the Hungarian authorities, which is also an investigative act carried out in parallel with the opening of the investigation. The detection of property and its way is different for certain crimes. I have already dealt with the techniques used by perpetrator groups, whether we are talking about drug crimes or not. The most commonly used techniques include, for example, buying real estate, buying a car, setting up fictitious companies, saving criminal property abroad, hiding cash at a relative, and using

cryptocurrencies. Prior to the study, the above question is one of the questions that I formulated in myself and searched for the answer with the help of professional investigators. Although the question may seem realistic, given that the investigating authorities carry out financial profiling in parallel with the investigation, given that in the case of organised crime, the recovery of income and property is also in the interests of the victim or the state. It is important that, from the very beginning of the investigation, special attention should be paid on how and where the criminal property was hidden. Part of this financial profiling is whether, for example, the perpetrator/perpetrators has/have bank accounts, motor vehicles, real estates or other movable property, or whether other major investments have been made in the past. In case of a drug crime, as with other property-generating crimes, they make significant profits, but in case of classic drug crimes (drug offences requiring personal links, i.e., not in the online space), financial profiling is easier for the investigating authorities. In addition to the fact that it is already possible to know what asset-making techniques are preferred by a particular group of perpetrators, for example, couriers from Africa store the illegal income in cash. The process of financial profiling is more complex than drawing conclusions based on characteristics specific to a particular group of perpetrators. Specific investigative measures are necessary in order to establish a financial profile of a particular perpetrator. In addition, OSINT (Open-Source Intelligence) puts emphasis on open-source data collection, which can be carried out independently by investigating authorities if they know what information they need and from which interfaces they want to obtain that information. In this case, data collection can be carried out through social media platforms, online news portals, online media service providers or blogs, which can be part of asset discovery, so that the investigators can get a more comprehensive picture of the perpetrator, his assets, investments, or savings. In case of cybercrime, it is possible to collect open-source data when the investigators can already establish something specific, for example, from a conversation between a drug seller and a buyer. Requests and observations should be used, and in the available databases such as the vehicle register, Takarnet system (Hungarian system, where the real estate is registered) is justified to conduct searches that can provide information in the future and thereby ensure the extent of the assets subject to confiscation. Another term associated with the aforementioned digital profile identification is the digital clues used by OSINT Company. This should be thought of as the fact that in today's world, there is no one who does not leave behind a digital footprint. Any information can be a digital clue, it advances the effectiveness of the investigation, so it even leaves its mark through a shopping application. Why is important that it is

a source of information that ensures you to know the financial background? This is also linked to the term electronic investigation (e-investigation), *'e-investigation means that the investigating authority requests information from databases directly or indirectly available for detection and proof, where it uses tactical recommendations to ensure the success of the investigation'* (Nyitrai, 2020). The answer to the question formulated at the beginning of the research is clear, that financial profiling is almost impossible. There are speculations and conclusions, but they do not know anything specific (exact amount, location of the property drop) until, after the online return, the execution of investigative activities takes place in the offline space. For example, a specific procedure can be realized, in which data arise on a computer, laptop or phone that the trade, as an example, took place in cryptocurrency, or the type of currency is expressed in a telephone conversation. On the online drug black market, trading with cryptocurrency is also practised because, just as anonymity is ensured on the dark web, cryptocurrencies such as Bitcoin ensure that the identity of the perpetrator is not possible. For the above reasons, the recovery of property as a whole proves impossible. What happens if the research reveals that the trade was conducted in cryptocurrency? One is that in the property, for example, a so-called Bitcoin wallet is invented, which is very similar to a flash drive. Bitcoin is stored in it, but they are encoded, access codes are required to determine how much it is at all. If the bitcoin wallet owner owns the login codes, then the situation is simpler. The Bitcoin account itself is the perpetrator's account, but just as other accounts held for individuals or companies have a banking system in the background, in these cases there is no banking system, but the transaction itself has value, which constantly changes in relation to the market prices. So, if the criminal property is seized, it is perfect for the withdrawal of assets, but if the investigators want to reinvest it in the systems of public finances, it is cumbersome, even almost impossible. Because as long as a drug is invested in cash, it can be paid in the required official form, that is not the case with Bitcoin. If Bitcoin would also be seized, the question arises how much it is expressed in Hungarian Forint, what is the exchange rate, since in the case of a Bitcoin account seized 3-4 years earlier, the amount can be worth more than 10 million Hungarian Forints more than the time being seized. In the oral conversations with staff at the Rapid Response and Special Police Services National Bureau of Investigation Asset Recovery Office for an earlier investigation, they said that there was a need to establish a proper legislation or to amend the law that governs exactly how to proceed if cryptocurrency arises as criminal property. Previous precedents have tried to follow similar procedures, but for the time being their work is made significantly more difficult by the fact that it is not regulated,

despite the fact that more and more individuals and companies are investing their assets in cryptocurrency. In addition, a foreign financial service provider may store the cryptocurrency (e.g., Kraken, Bitfinex, Binance). There is another asset-making technique that is also very popular not only among drug dealers, but also in other wealth-generating crimes, called Revolut, which is a company that provides banking services at a much cheaper price than other banks. From the point of view of the investigating authorities, it is a challenge if the perpetrator has a Revolut account, since it has no branches, no regional offices, and no ATMs. In the event that information had to be obtained from Revolut, it is almost impossible, they do not respond to official requests, there is no official communication channel, as with other banks, if it is necessary to establish for the purposes of the investigation to whom the account is managed by the credit institution.

Impact of the COVID-19 pandemic on the online black market

The coronavirus pandemic has had a big impact on every single area of life. Life had to be reorganized in such a way that the usual lifestyle, standard of living was maintained or felt less. It was not different with crime. If we look back to spring 2020, it seems as if everything has stopped at the same time, in addition to the sudden measures introduced. Citing my previous note on this, in July 2021, I asked three prosecutors how they see the impact of the coronavirus on organised crime after more than a year. According to what they said, the stoppage and the decrease in the number of crimes were felt in the spring of 2020, as seen from the investigating authorities, but there was a reason to perform other duties there. Nevertheless, organised crime groups had lost their usual income, so immediately after a month or two of downtime, they started to assess the market for what was needed, and then began to deal with the claims depending on it. It is alleged that the drug traffickers were the earliest to react to the consequences of the virus. According to prosecutors, there were also organised crime groups who chose another activity instead of the usual one, or at least adapted to the situation, in order to make the most profit possible. The transport of drugs was the biggest challenge for the perpetrators, as border checks and mandatory antigen tests did not make their situation easier. Therefore, the drugs were hidden in trucks, refrigerated cars, train wagons that ran across borders on a daily basis without any other more comprehensive controls, which has also become a feature and is expected as crime has moved into virtual space. However, the

black market for drugs is said to be flexible and highly adaptable. Although in the summer of 2020 the summer festivals, which had been held every year until then, were cancelled, the drugs offered for sale there decreased. According to EUROPOL's report of 30 April 2020, which specifically relates to the COVID-19 situation and its effects on serious and organised crime, it can be read that the trade in cocaine, heroin and cannabis continued during the epidemic, albeit at a lower level (McGuire, 2012). With regard to prices, it can be said that there is expected to be an increase in the drug market, given, among other things, cumbersome care. In addition, due to economic difficulties, it is also expected that people will find it easier to go into job offers that are already criminal in order to ensure their earnings are secured, so they go to work on cannabis plantations or as drug runners. As far as cybercrime is concerned, also referring to the EUROPOL report (European Drug Report 2021: Trends and Developments), most of the crimes were carried out in cyberspace, whether it be organised crime, or a crime committed by a person. As the epidemic progressed, cybercriminals' methods of committing crimes became more sophisticated and they even recruited to help them overcome the initial problems. There has been an increase in cyberattacks, phishing[10] (URL11). The coronavirus pandemic has not been an obstacle to drug crimes, smuggling has not ceased, the number of online orders has only increased in recent times. It is clear that crime has clearly shifted towards the online space, but there has not been significant impact on drug offences committed in the online space.

Proposals for the future

In the course of the short but concise research necessary for the preparation of the study, I have come across several unexpected facts that cannot be compared with my partial research carried out so far. It is definitely interesting that organized crime, which is drug-related in cyberspace, is not typically encountered. Furthermore, before the investigating authorities dealing with this in Hungary, an area that requires much more knowledge than the current expertise is IT, and technical tools is still another area. The discovery takes about half a year (based on personal conversations with professionals), the greatest result of which is the identity of the customer and the drug ordered by the perpetrator. I also asked the professionals what kind of things they could mention, which are

10 This is also social engineering, when the attacker sends a false (forged) message, which is intended to persuade the human victim to obtain data and personal information.

factors that would significantly help their work and contribute to the efficiency and effectiveness of the investigation. the technical equipment. The technical equipment was first highlighted be, since if they could work with more advanced tools than those they currently have, they think it would be easier to work on a daily basis. In case of drug crimes committed in cyberspace, analytical thinking is needed very much, that can support well-founded suspicion. As an example, it has been mentioned that companies or different brokerage firms (such as e Toro) operating in Hungary, that deal with customers investing in Bitcoin, are strongly motivated to have closer relations with the Hungarian police departments, and there have even been examples of a training course on Bitcoin for investigators, given that this is a relatively complicated new system and its understanding is essential in the work of the investigating authorities (Clough, 2015). What makes these companies want to strengthen cooperation? It is to provide support to investors in revealing those who invest in Bitcoin for illegal activity, in order to filter out these illegal businesses. Training would be needed to equip these authorities with analytical skills, which would be one of the most usable capabilities in reconnaissance. What has been highlighted is that there is a pressing need for an elaborate description about cryptocurrencies, on the basis of which they can act professionally. As to what cooperation is needed with neighbouring countries and whether it is necessary to cooperate with other countries in the event that the drug is ordered in the online space, it has been established that cooperation in this area is also essential, where, fortunately, the cooperation with the surrounding member states is good. However, what is surprising that cooperation with the repositories of countries such as the Netherlands, Spain or Portugal is not working effectively enough, in the opinion of domestic scouts, this may be due to the fact that the aim for them is to make as many drug seizures and realizations as possible, so it is not of utmost importance for them to cooperate with our country in the detection of small quantities of drugs arriving in Hungary. In my opinion, the investigators with expertise in the profession have indeed made proposals that contribute to the effectiveness and success of the investigation. In addition, it would be necessary to provide further training to support the methodology of cyberspace investigations, as this is a truly rapidly changing type of behaviour where it is necessary to take action. As far as the recovery of property is concerned, it is certainly justified to cooperate with the partner bodies, since without their expertise the work was complicated, but it is also important that the investigating authorities continue to seek for recovery of the criminal property in parallel with the discovery.

Summary

Drawing the conclusion and summarizing what was described in connection with the study and the investigation that preceded it, it can be said, we are talking about a complex set of crimes when trying to decipher the investigation, success and effectiveness of drug crime committed through cyber space. In the study, I received answers to the research questions that I had previously formulated, but in the light of the answers, it can be said that further research is needed on the basis of the established facts, and it would also be useful for the profession to provide suggestions for solving the problems raised. I believe that the involvement of appropriate professionals, whether civilians or companies or banking sectors, in the near future would make the methods of revealing crimes easier and more understandable for the investigating authorities. It is also important that the co-authorities, within the country but also in other countries, are in constant communication, and that the authorities have information on new crime trends as soon as possible. What is sad to say, that the cooperation of the Member States within the European Union has not continued to deepen, and here I mean the countries of Western Europe. I believe that EUROPOL also has an important role to play in this, in order to disband the existing interests between the Member States, because all countries must fight for the same aim. The free flow of information is also important between partner authorities within the country and the investigative bodies outside the countries. Information obtained by a given authority should not be kept from others, if it is relevant to others, only if it is needed to carry out a successful investigation. After all, the basis of the investigation are also communication and cooperation, which is especially important for a crime that is also involved at international level. That is why the authorities of our country have good relations with the surrounding countries, which will also need to be strengthened with other countries in the interests of law enforcement. As far as the legal environment and background are concerned, the laws currently in force provide the legal framework necessary for certain investigative activities to take place according to the law in force during the investigation. In addition, it would be necessary to regulate the management of cryptocurrencies during the procedure for the reasons mentioned above. I think the profession needs this very much. The coronavirus pandemic has reinforced how much more comfortable the online space can make our days, as well as the lives of criminals, so it can be said that the intention to shift the number of crimes towards the online space has been reinforced. No other influencing factors have been observed whose effects are already measurable or even felt. The online space carries a number of threats

that need to be brought to the attention of all segments of society. Although the victim role is not always present in drug offences, it still poses a risk in other areas. As regards the search for criminal property, the investigating authorities are trying their best to ensure that, in addition to establishing the identity of the perpetrator, the recovery of property is also successful, since drugs are means of crime that generates wealth, and in the case of a criminal offence that generates wealth, huge accumulated assets, which must be considered in the course of an investigation. It is important to take into account that organised crime, and other crimes do not stop, they do not pause, even though there was an epidemic threat or restrictions, the last almost two years have been a precedent that this has not been an obstacle for the perpetrators. Efforts should be made to make law enforcement more effective matched to an accelerated world.

References

Clough, J. (2015). *Principles of Cybercrime.* Cambridge University Press. https://doi.org/10.1017/CBO9781139540803

Gyaraki, R. (2017). A nyomozóhatóság és a katasztrófavédelem feladata a kiberbűncselekmények vonatkozásában [The role of the investigating authority and disaster management in relation to cybercrime]. *Szakmai Szemle, 15*(4), 113-127.

McGuire, M. (2012). *Organised Crime in the Digital Age.* John Grieve Centre for Policing and Security.

Mészáros, B. (2019). *Fedett nyomozó alkalmazás a bűnüldözésben* [Covered detective application in law enforcement]. Dialóg Campus.

Nyitrai, E. (2020). A bűncselekményből eredő vagyon visszaszerzése [Recovery of the property resulting from the crime]. *Ügyészek Lapja, 25*(4-5), 39-53.

United Nations Office on Drugs and Crime (2020). *In Focus: Trafficking over the Darknet - World Drug Report.*

Online links in the article

URL1: *European Drug Report 2021: Trends and Developments.* https://www.emcdda.europa.eu/publications/edr/trends-developments/2021_en

URL2: *EU Drugs Strategy for the period 2013-2020.* https://ec.europa.eu/home-affairs/whats-new/evaluations-and-impact-assessments/evaluation-eu-drugs-strategy-2013-2020-and-eu-action_en

URL3: *Célpontban a kábítószer.* https://www.emcdda.europa.eu/attachements.cfm/att_44774_HU_Dif16HU.pdf

URL4: *Cybercrime.* https://www.unodc.org/unodc/en/cybercrime/index.html
URL5: *Drug related cybercrime and associated use of the Internet.* https://snpf.org/wp-content/uploads/2015/09/Drug-related-cybercrime-and-associated-use-of-the-internet.pdf
URL6: *Deepweb and Cybercrime It's Not All About TOR.* https://www.trendmicro.ae/media/wp/deepweb-and-cybercrime-whitepaper-en.pdf
URL7: *What Is Bitcoin And How Does It Work?.* https://www.forbes.com/advisor/investing/what-is-bitcoin/
URL8: *DarkMarket: world's largest illegal dark web marketplace taken down.*
https://www.europol.europa.eu/newsroom/news/darkmarket-worlds-largest-illegal-dark-web-marketplace-taken-down
URL9: *Cybercrime is bigger than the drug trade: Why small- and medium-sized businesses are more susceptible to online threats.* https://www.bizjournals.com/buffalo/news/2019/06/05/cybercrime-is-bigger-than-the-drug-trade-why-small.html
URL10: *Pablo Escobar is old school. Modern global criminal is a hacker.* https://www.mcclatchydc.com/news/nation-world/national/national-security/article201399274.html
URL11: *Europol: Beyond the pandemic. How COVID-19 will shape the serious and organised crime landscape in the EU, 30 April 2020.* https://www.europol.europa.eu/sites/default/files/documents/report_beyond_the_pandemic.pdf

Reference of the article according to APA regulation

Nagy, I. (2021). Drug crime transformation under the effect of online platforms. *Belügyi Szemle, 69*(SI6), 107-123. https://doi.org/10.38146/BSZ.SPEC.2021.6.7

NATIONAL RESEARCH, DEVELOPMENT AND INNOVATION OFFICE
HUNGARY

PROJECT FINANCED FROM THE NRDI FUND

DOI: 10.38146/BSZ.SPEC.2021.6.8

BOOK REWIEV

Viktor Németh

Neuroplasticity
The MIT Essential Knowledge Series

Abstract
As editor Bruce Tidor sets it in the preface of the book, published in the volume of the MIT Essential Knowledge series: *'Synthesizing specialized subject matter for non-specialists and engaging critical topics through fundamentals, each of these compact volumes offers readers a point of access to complex ideas.'* (Costandi, 2016). In this book of the series Moheb Costandi provides the reader with a celar and coherent picture about neuroplasticity and neurogenesis. Not just at the level of theories and research results, but also regarding various stages of practical application. It is equally applicable for average people in areas of everyday life- adult education, lifelong learning, and mental training, too. Costandi's book is decidedly good background material for Anders Hansen's practical book '*The Real Happy Pill: Power Up Your Brain by Moving Your Body'* (Németh, 2021).

Keywords: lifelong learning, adult education, neuroplasticity, brain structure, neurogenesis, mental training

Preface

Moheb Costandi graduated as a neurobiologist and regularly publishes in his field in world-leading journals like New Scientist, Scientific American, Science, and Nature. Head of the Neurophilosophy section of the renowned British Guardian. In addition, Costandi compiled two scientific volumes, the first of them is the 50 Human Brain Ideas You Really Need to Know. I present in this paper his other book entitled Neuroplasticity, which has been published under the auspices of MIT, one of the leading universities in the world. The topicality

of writing the book was given by the fact that works on neuroplasticity appeared as a panacea one after the other. The author systemizes the topic and guides the readers step by step regarding optional areas of use of neuroplasticity.

Another relevance of this topic was given by the new scientific thesis that: *'The adult brain is not only capable of changing, but it does so continuously throughout life, in response to everything we do and every experience we have'* (Costandi, 2016). In today's world, where lifelong learning and development fulfil a key role in people's lives, hence this discovery is of tremendous significance. Worthy of note, even a few decades ago, the scientific world firmly believed that the brain, along with bodily growth, would transform into a rigid structure and not change more substantially.

Review

The book consists of 192 pages, nine chapters, built in a coherent way from the historical background of neuroplasticity to the increasingly accurate mapping of the brain. The author illustrates the exercises required to preserve the abilities of the adult brain. One of the most significant statements is: *'Neuroplasticity can be seen in various forms at every level of nervous system organization, from the lowest levels of molecular activity to the highest level of brain-wide systems and behavior.'* Two main groups can be distinguished: structural and functional neuroplasticity. In the former one, the strength of the connections between neurons changes. While in the latter one, are continuous changes in synapses due to learning and development.

Summary of the chapters

In the introduction chapter, we can obtain an overview of the concepts of neuroplasticity and neurogenesis. And we can receive insight of the history of the concepts: *'In the early 1780s, correspondences between the Swiss naturalist Charles Bonnet and the Italian anatomist Michele Vincenzo Malacarne discuss the possibility that mental exercise can lead to brain growth, and mention various ways to test the idea experimentally.'* In the second half of the twentieth century, a revolutionary paradigm shift took place in the research of the cell formation of the adult brain. According to the new approach, we distinguish between two primary types of neuroplasticity: functional and structural neuroplasticity.

In the second chapter, we will learn about the functions associated with specific areas of the brain. Formerly, these specific areas were believed to be able to supply only one function of the brain. *'Research shows the cerebral cortex is very malleable because certain areas are able to perform different functions: Early evidence that this localization of brain function was not fixed came from studies by Paul Bach-y-Rita in the late 1960s, who is a tool that allowed blind people to 'see' with their touch.'*

In the third chapter of the book, he presents developmental plasticity. The brain, especially in the postnatal years, continuously develops the connections between neurons located in individual brain areas. It constantly produces more cells than its needs, some of them build in and some of them are dismantled. It soon became clear that extensive cell death is a normal feature of neural development in all organisms. This process is called programmed cell death. It regulates the size of neuronal populations, the proper spacing and positioning of cells, and the emergence of shape and form, among other functions, and is therefore vital to the proper development of the brain. The fourth unit of the book deals with the modification of the synaptic / synapses of the neuronal junctions. This modification we call synoptical plasticity. In this section, we can also understand the function of brain synapses as well as the operational logic of neurotransmitters.

After a thorough presentation of the background, the author describes the essential point of the book in the fifth chapter. Costandi analyses the recent findings on adult brain neuronal formation. Previously, according to the official scientific position: *'The neural pathways in the adult brain and spinal cord are something fixed, ended, and immutable.'* As a result of research that began in the late 20th century, this idea has now completely changed. *'Major breakthrough came in 1998 with the publication of a landmark study that provided the very first evidence that the human brain also forms new cells throughout life.'* The following chapter is about the possibility of shaping neurons. *'Just as weightlifting leads to an enlargement of muscle tissue, so too can mental training expand the corresponding parts of the brain.'* The author illustrates this phenomenon through a number of examples, from the notable case of London taxi drivers to martial artists and classical musicians. The seventh chapter examines the relationship between brain injury and neuroplasticity. During the post-stroke regeneration period, for non-invasive therapies, such as electromagnetic stimulation, the brain showed surprising plasticity: *'Activating alternative motor pathways that run parallel to the damaged one.'* The eighth chapter sheds light on dysfunctional projections of neuroplasticity. In addition to the effective examples until now, it is substantial to mention that the brain's conditioned behavior and the plasticity work not only in one way. Drug addiction demonstrates in the best way that

the reward system of the brain is eliminated and it leads to an unwanted state of dependency. So, if the direction of the process changes, it will perpetually exert a devastating effect on the brain. In the last chapter, the author analyzes lifelong neuroplasticity according to life stages. From the prenatal and postnatal stages through adolescence and young adulthood to the older age groups. It devotes an interesting section to parenting. *'As we get older, most of us experience an age-related decline in mental functions such as attention, learning, memory, and task-switching, but other aspects of cognition – such as memory for facts and figures, and the ability to regulate emotions – can often improve.'*

Summary

In summary, it has presently become an undeniable fact that the human brain is capable to regenerate throughout our lives. Therefore, the human brain is capable of lifelong learning with proper physical conditioning. *'Far from being fixed, the brain is a highly dynamic structure, which undergoes significant change, not only as it develops, but also throughout the entire lifespan.'* The book illustrates all of this with a number of excellent relevant examples and research findings. I recommend this book to all leaders and educators dealing with training and education.

References

Costandi, M. (2016). *Neuroplasticity*. The MIT Press. https://doi.org/10.7551/mitpress/10499.001.0001

Németh, V. (2021). Az edzett agy. Hogyan növeli az agy teljesítőképességét a mozgás? [Trained brain How can movement increase performance of your brain?] *Belügyi Szemle, 69*(9), 1667–1671. https://doi.org/10.38146/BSZ.2021.9.10

Reference of the article according to APA regulation

Németh, V. (2021). Neuroplasticity. *Belügyi Szemle, 69*(SI5), 124-127. https://doi.org/10.38146/BSZ.SPEC.2021.6.8

CONDITIONS OF PUBLICATION

Belügyi Szemle accepts and publishes scientific messages with outstanding alignment to the control and organisational system of the Ministry of Interior, first of all in the topics law enforcement, public order, public safety, safety policy, self-government affairs, social deviances, and further analyses and evaluates the questions of law enforcement from criminological, criminal sociological, criminal legal and policing aspects.

Belügyi Szemle accepts manuscripts of the authors for editing through applying in the Open Journal Systems.

At the conformation of receipt, the Editorship informs the acceptance and the expectedpublishing time of the manuscripts sent in. The Editorship peer reviews the received manuscripts from a professional and scientific point of view and reserves the right for stylisation, correction, typographic adjustment of the manuscripts.

The Editorship does not undertake republishing.

Articles published in Belügyi Szemle do not unconditionally reflect the opinion of the Editorship, any responsibility for their contents bear the authors exclusively. The whole of the periodical, including individual articles, is protected by copyright, any use of them outside of copyright law is illegitimate and prosecutable.

Phone number: +36 (26) 795-900 / 24-600
Email: szerkesztoseg@belugyiszemle.hu
Web: www.belugyiszemle.hu
OJS: ojs.mtak.hu/index.php/belugyiszemle/index


BELÜGYI SZEMLE
BELÜGYMINISZTÉRIUM