KATALIN KONCSAG – SOMA MÁROK

The right for the family members of the defendant to refuse testimony in the context of the new Code of Criminal Procedure

This study is a shorter, edited and updated version of an essay awarded 1st prize in the competition run by the Scientific Council of the Hungarian National Police. The original essay examined the right to refuse to testify among family members in Act XC 2017 on the Code of Criminal Procedure Code (Be.) including the examination of basic concepts, such as "civil partner" or "suspected person".

The aim of this study is to examine how the obstacles of the testimony affect the judicial stage of the criminal procedure.

It is to be highlighted that Act XLIII of 2020 modified Be. and introduced the concept of the "person reasonably suspected of committing a crime". Before examining this new concept, we give a short overview of the basic concepts in connection with the defendant.

The defendant

The concept of the defendant has not changed in Be. The defendant is the person against whom the criminal procedure is pursued.[1] The Be. also defines that the defendant is called suspect during the investigation, accused person during the court stage, and convict after the final judgement. The question is *when* we can declare that a criminal procedure is being "pursued" against a certain person.

[1] Art. 43 Section (1) first sentence of Act XIX 1998 on the Code of Criminal Procedure Code (further: previous Be.); Art. 38 Section (1) first sentence of the Act XC 2017 on the Code of Criminal Procedure Code (further: Be.)

This study - in accordance with the professional experience of the author of the original essay - mostly focuses on the concept of the suspect. The reason for this is that the concept of the defendant is less problematic at the court stage, and those problems may mostly arise from the misinterpretation during the investigation.[2]

a.) The suspect

Similarly to Be., Act XIX of 1998 (the previous Be.) says that the defendant is called suspect during the investigation. Strictly speaking the suspect is the person who is interrogated by the investigating authorities *as* a suspect based on a reasonable suspicion of committing a crime. In a broad sense, a suspect is a person against whom a reasonable suspicion exists. This is also called "possible suspect" by academic writers, however, this concept is not defined by the Be. or by any other legal instrument. [3]

In a narrow sense, a suspect is a person who is interrogated as a suspect in a particular case by the investigation authorities. However, it can be notably different when the person is actually interrogated and when the reasonable suspicion is well founded. [4]

The interrogated person is informed about most of his rights and duties just when the first interrogation begins. Some of the defendant's rights are the following:

- the right to be informed on the nature and the cause of the suspicion

[2]. See further in the original essay [Koncsag, Katalin - Egy kihallgató szemszögéből - Hozzátartozók közötti vallomásmegtagadási jog az új Be. tükrében (Rendőrségi Tanulmányok 2018/4)]

[3] Belovics, Ervin (2015): A büntetőeljárás résztvevői. In.: Belovics, Ervin – Tóth, Mihály: Büntető eljárásjog. HVG-ORAC Lap-és Könyvkiadó, Budapest. (further: BELOVICS, 2015) 88; Ambrus, István – Fantoly, Zsanett – Gácsi, Anett – Juhász, Zsuzsanna (2011): Bevezetés a büntetőeljárási és büntetésvégrehajtási jogba. Pólay Elemér Alapítvány. Szeged,. (further: AMBRUS – FANTOLY – GÁCSI – JUHÁSZ, 2011) 55; Belovics, Ervin (2017): A büntetőeljárás résztvevői (In.: Belovics Ervin - Tóth Mihály: Büntető eljárásjog. HVG-ORAC Lap-és Könyvkiadó Kft, Budapest. (further: BELOVICS, 2017) 94

[4] Art. 43 Section (1) of the previous Be. and Art. 38 Section (1) of Be.

- the right to testify and to refuse to testify
- the right to present evidence, submit comments and motions.[5]
- Duties:
- obligation to inform the authorities about any changes in personal data[6]
- obligation to be registered in the criminal records

However, the potential suspect becomes aware of the fact of being interrogated as a suspect before the actual interrogation.

The Be. states that the investigation authorities shall conduct the first interrogation within a "reasonable time" [7] from the reasonable suspicion. [8] However, the exact length of time is not explicitly defined by the Be.[9] [10] This "deadline" is not defined by the current procedural code and it was not defined by previous codes either. One should not draw significant conclusions from the fact that the investigation authority does not address the reasonable suspicion. It might only mean that the authority has not considered the suspicion reasonable yet. [11]

[5] Art. 43 Section (3) of the previous Be. and Art. 39 Section (1) of Be.
[6] Art. 43 Section (5) of the previous Be. and Art. 39 of Be.
[7] Art. 179 first sentence of Section (1) of previous Be. and Art. 39 Section (1) pont b) of Be.
[8] Except the suspect who is deprived of liberty (Art. 179 Section (1) part 2 of the previous Be.
[9] BODOR, 2016 for Art. 179 of Be.
[10] Except the suspect who is deprived of liberty (Art. 179 Section (1) part 2 of the previous Be.
[11] Varró, Krisztián (2008): A megalapozott gyanú közlésének időpontja és az ezzel kapcsolatos dilemmák. Ügyészek Lapja 2008/1. (further: VARRÓ, 2008) 15

b.) "The possible suspect" [12]

Persons to be interrogated are not suspects in a narrow sense, but a reasonable suspicion already exists in their case. However, certain rights (such as the right of defence) and duties are connected to the fact that a person is informed about becoming a suspect in the near future. Restrictively, empowering a defence lawyer is a right for the defendant, and as such, the power of attorney shall be given after the reasonable suspicion has been announced to the suspect. [13] [14] [15] In reality the possible suspect either requests a defence lawyer before the first interrogation, so the interrogation begins in the presence of the lawyer, or the suspect arrives at the interrogation together with the defence lawyer. In all the three cases, the power of attorney is submitted before the interrogation. Seemingly, this practice does not conform with the Be. However, the Fundamental Law uses the term "person under criminal procedure", which means that the right to defence is applicable, therefore an attorney may be empowered at any stage of the criminal procedure.[16] In accordance with this, the Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003 prescribes that the right of the defence must be guaranteed from the first investigative actions of a procedure. This decree does not clearly define

[12] Government Decree 100 of 2018. VI. 8. (Hereinafter: Nyer) already made a distiction between a suspect and a person who is reasonably suspected of commiting a crime.
[13] Art. 6 of the European Convention on Human Rights regulates the right to a fair trial and says everyone charged with a criminal offence has the minimum right to defend himself through legal assistance. In this context "charged" is used as the broadest expression, so it is the same concept as "defendant" in this study.
[14] Art. 44 Section (2) of the previous Be. and Art. 39 Section (1) point b) of Be.
[15] Directive 2012/13/EU OF the European Parliament and of the Council Art 3. (1): *"Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively: the right of access to a lawyer;"*
[16] Art. XXVIII Section (3) of Fundamental Law

what the first investigative actions are. They can be the coercive measures applicable before the first interrogation or it can be the inspection.[17] [18] [19]

The previous Be. also prescribed a guarantee that requests for sensitive data on the possible suspect or on the denounced person can only be made with the authorization of the prosecutor. This condition, however, was not applicable to data requests on witnesses.[20]

In our view extending the concept of the defendant would help to clarify the defendant's rights and it would also solve the legal uncertainties mentioned above

c.) The denounced person

The term denounced person is used, if a denunciation was made against a specific person, and the procedure is pursued against this person until becoming a possible suspect. If a suspicion occurs based on the denunciation, the denounced person is considered a possible suspect. If the suspicion becomes reasonable aginst the denonunced person, he must be interrogated

[17] Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003 Art. 4 Section (2)

[18] Joint Ministerial Decree of the Minister of Justice and the Minister of Interior 23 of 2003, in accordance with Government Decree 100 of 2018 prescribed:
„If the investigation authority reveals that a defence lawyer is a mandatory right before or during the procedural act, and the suspect does not have a lawyer or requests for powering a lawyer
a) the investigation authority provides the possibility for the suspect or the possible suspect to power a lawyer within a reasonable time before the procedural act. The investigation authority shall also interrupt the procedural act to provide such rights for the suspect.
b) assign a lawyer"

[19] Act XLIII 2020 set up the concept of a person reasonably suspected of commited a crime giving certain rigths such as powerig a defence lawyer.

[20] Art. 178/A. of the previous Be. *„After undertaking the investigation, the prosecutor, or the investigating authority (with the consent of the prosecutor) may request for medical records or trade secrets connected to the suspect (or the denounced person or the possible suspect) if it is necessary in order to investigate the relevant facts of the case."*
This regulation has been changed in the Be. giving an exhaustive list of data requests that are subject to authorisation. The regulation is based on the status of the requested data, not on the inspected person. Art. 261-266 of Be.

as a suspect. If certain measures are applied before the interrogation (such as summoning for the first interrogation as a suspect) the concept of a "person reasonably suspected of committing a crime" must be used.

If the suspicion becomes reasonable, the concept of the denounced person cannot be used any longer, because after that, the denounced person shall be interrogated as a suspect. In the period between the reasonable suspicion and the actual interrogation the concept of possible suspect may be used.

In private prosecution the denounced person typically becomes the accused person. Some points of the procedural code also refer to the denounced person, however, it is not clearly defined by law, even though in some cases denounced persons have procedural rights, and the authorities also have obligations towards them.[21] [22]

However, the status of the denounced person is not regulated when we come to the right to refuse to testify for family members. In our view the lack of such regulations violates the principle of legal certanity and equal treatment.

d.) The connection among the three above mentioned concepts

As it was previously mentioned, of the three concepts, only the suspect was defined by Be.[23] It is only implied that the possible suspect or the denounced person may also be the subject of the criminal procedure. These three concepts may be interpreted as broader or narrower personal scope, however, this may be misleading.

Namely, not every suspect was a denounced person before, and it is not certain either that a denounced person will become a suspect later. Denunciation can be made against an unknown person. In this case the person who noticed the crime makes a denunciation against an unknown person,

[21] Art. 178/A of the previous Be.
[22] Art. 710 Section (3) of Be.
[23] The concept of the person reasnably suspected of committing a crime is alson defined since 1st January 2021

so there is no denounced person in a classical sense. If a certain person comes to the attention of the authorities, either the (reasonable) suspicion occurs, or the person emerges as a witness. In these cases, this attended person becomes a possible suspect or a witness immediately. It is also possible that suspicion does not become reasonable after a denunciation.

If reasonable suspicion against the denounced person is absent by any reason, interrogation as a suspect will not be conducted.

The connection between the possible suspect and the suspect is the same. It is possible to have a reasonable suspicion against someone without being interrogated as a suspect. It can happen if some kind of justifying circumstance (such as an underaged perpetrator) occurs, or there are grounds for the extinction of criminal liability (such as the death of the perpetrator).[24] On the other hand, the status of being a suspect must always be preceded by the status of possible suspect. The question is the length of time from the reasonable suspicion (becoming a possible suspect) to the first interrogation (becoming an actual suspect).

e.) "A person reasonably suspected of committing a crime"

Act XLIII of 2020 came into force 1 January 2021, and established a new concept of "a person reasonably suspected of committing a crime".[25] It is to be emphasized that such person is not considered as a defendant by the law. Section (3) prescribes that a person reasonably suspected of committing a crime is someone who is arrested because of committing a crime, who is summoned by the authorities as a suspect, or against whom a broadcast or an arrest warrant has been issued.

From another point of view, this new concept refers to someone against whom there is a reasonable suspicion, but who has not been interrogated as

[24] This distinction is not right from the point of view of the substantive criminal law since an underaged or a death person cannot be a perpetrator at all. Grammatical interpretation of reasonable suspicion however requires a human act that may be interpreted from a procedural point of view but not from a substantive point of view.
[25] Art. 38 Section (2) of Be.

a suspect yet. The legislator clearly defines when a person is reasonably suspected of committing a crime.[26] The rights may be executed after these conditions are fulfilled. Accordingly, the concept of a person reasonably suspected of committing a crime is not the same as the concept of the possible suspect.

With this modification of Be. some point of the Nyer. had to be modified and amended. These modifications focus on how the defence lawyer may join the procedure. Art 137 Section (2) of Nyer refers to Art 386 of Be. that defines the obligation of the investigation authority to provide the necessary information, and defines how the defence lawyer may join the procedure. Before 1st January 2021 Art 386 Section (2) of Be. restricted the rights of the defence lawyer before the interrogation as a suspect to the right to conctact their client and to consult without any control.[27] Other rights were not to be excercised at this stage. For example, if the investigation authority did not interrogate the client as a supect based on practical reasons, even if other measures were applied (such as arresting the suspect), the defence lawyer did not have the right to take part in these procedural actions and did not have the opportunity to represent the client.

The original essay did not examine the concept of a person reasonably suspected of committing a crime,[28] however, it already pointed out some concerns about the approach the previous legislation dealt with the right to refuse to testify. The legislator takes out this concept from the concept of the defendant. The distinction is made later in the Be., where the certain rigths are regulated and also defined in the Nyer. It is, however, a great deficiency that the person reasonably suspected of committing a crime is not listed in at Art 171 of Be. In our view it is not enough to provide the right to the witness not to answer certain questions, but it should be generally provided for the family members of the denounced person, the possible

[26] Art 38 Section (2) of Be.; Art. 144 Section (8) of Act XLIII 2020, Art. 39 Section (8) of Be.
[27] Before the first interrogation as a suspect the defence lawyer only has the right to contact the client and consult without any control.
[28] Art 386-387 of Be.

suspect and the person reasonably suspected of commiting a crime to refuse testimony. With the right to refuse to testify the witness may not only deny the aswer on the particular circumstances that may accuse his/her family member, but may only withhold all the general information that might be imcriminatory to the suspect. This idea is elaborated on in the second part of the essay.

How does the refused testimony at investigation affect the judicial stage of the criminal procedure?

According to the previous Be. if a witness refused to testify either during the investigation or during the court stage, neither this person's previous testimonies and statements, nor the documents or physical evidence provided by the person were allowed to be considered.[29]

This was highly problematic when the criminal offence was committed against a family member of the offender. It was typical in domestic violence cases that at first the victim made a testimony against the offender, however, after they reconciled with each other, the victim refused to testify. It could happen that the prosecution brought charges against the defendant based on the testimony of the victim, but after the refusal of the testimony at the court hearing, the accused had to be acquitted due to the lack of evidence. In a fortunate case, the victim refused to testify during the interrogation, thus the investigation authority or the prosecutor was able to close the case at the investigative stage.

[29] Bodor, Tibor – Csák, Zsolt – Máziné, Szepesi Erzsébet – Somogyi, Gábor – Szokolai, Gábor – Varga, Zoltán (2016): Nagykommentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez. Wolters Kluwer Kft., Budapest. – 82.§ Right to refuse testimony among family members (further BODOR, 2016); BH2015.273 618/2012 EBH; BH1994.470.II. and see further in Gácsi, Anett Erzsébet (2016): A jogellenesen megszerzett bizonyítékok értékelése a büntetőeljárásban. Iurisperitus Kiadó, Szeged. (Bodony, István – Hack, Péter – Herke, Csongor – Ignácz, György – Kadlót, Erzsébet – Mohácsi, Barbara (2015): Kommentár a büntetőeljárásról szóló 1998. évi XIX. törvényhez) (further GÁCSI, 2016)

If the witness refused to testify at the first interrogation, it was not allowed to interrogate the witness later.[30] [31] If the witness later decided to testify, previous testimonies were to be read out or to be reviewed, unless the witness refused to testify again. [32] Special provisions had to be applied on witnesses during the retrial procedure. [33]

The Be. made a significant change in the use of testimonies. The witness must be informed that if he/she decides to testify after the required warnings have been made, his/her testimony may be used in the actual case or in any other cases even if he/she refuses to testify later.[34] This provision is to be applied in criminal procedures started after 1 July 2018,[35], and with some conditions in procedures under the scope of the previous Be. as well. Namely, the testimony of the witness may be used if he/she is warned according to the new Be.[36] Theoretically, this new provision may be applied to testimonies made after 1 July 2018. In practice, it is supposed to be possible to warn the witness again in line with the Be. and ask if the previous testimony is still maintained after the new warnings.

In our view, if the witness is interrogated after 1 July 2018 and the previous testimony after the new warnings is maintained, the previous testimonies are considered to be made with the knowledge of the new warnings. As a result, if the testimony is refused later, previous testimonies may be used as evidence.

The Prosecutor General applied for a uniformity decision at the Curia of Hungary. The application was based on similar reasons mentioned above and it was supported by the Curia as well.

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[30] Erdei, Árpád – Hack, Péter – Holé, Katalin – Király, Eszter – Koósné, Mohácsi Barbara (2015): Büntetőeljárási jog II. Elte Eötvös Kiadó, Budapest. (further HACK, 2015) 49

[31] Art. 296 Section (3) of the previous Be.

[32] AMBRUS – FANTOLY – GÁCSI – JUHÁSZ. 2011. 98

[33] Opinion no 94 of the Criminal Department of the Curia *"At the retrial procedure the testimony of the witness who refused to testify during the main proceeding is considered as a new evidence."*

[34] Art. 176 Section (1) point b) of Be.

[35] Art. 871 Section (1) of Be.

[36] Art. 871 Section (2) of Be.

In concrete cases, courts had hearings after 1 July 2018, but warned the witnesses according to the provisions of the previous Be. In other cases, courts made warnings according to the Be. in every hearing after 1 July 2018 even if the criminal procedure began under the scope of the previous Be.[37]

In agreement with the panel of Budapest-Capital Regional Court, the Curia made the following decisions on the necessary warnings and the usage of previous testimonies:[38]

"Where a witness entitled to refuse to testify but not having refused to testify under the rules of the former Act on Criminal Procedure wishes to avail himself of this right and refuses to testify at his repeated hearing made after the entry into force of the Act on Criminal Procedure, his formerly given testimony shall not be used after the entry into force of the Act on Criminal Procedure."

The uniformity decision, however, did not deal with other concerns, such as how can courts and investigation authorities retake evidence that has been lost due to the refusal of testimony. It is still a question if the court is allowed to summon a witness who previously refused to testify. It is possible that a witness who refused to testify during the investigation changes his/her mind and is willing to testify at the court stage.

The procedural code allows interrogating anyone who may have knowledge of the relevant facts of the proceeding.[39] The question is if the judge needs to review this after each hearing.

In our opinion, this would make procedures unreasonably longer. Although it is not impossible that a witness still wants to testify. This decision is a discretion of the witness and as so he should not be summoned before

[37] Order no. 24.Bf.5552/2019/2. of Budapest-Capital Regional Court

[38] If a witness who has the right to refuse to testify made a testimony under the scope of the previous Be.than, after hearing the different warnings in accordance the Be.refuses to testify, his previous testimony may not be used. 4/2020 BJE

[39] Art. 168 Section (1) of Be

the court. The court, however, may inform the witness about the hearing and the fact that he/she can testify if he/she changes his/her mind.

Due to the above mentioned concerns we suggest the following modifications to the refusal of testimony.

Possible solution 1

In order to create a comprehensive regulation, it would be possible to prescribe the constitutional principle of *nemo tenetur* at the rights to refuse testimony. The exact wording of Art. 171 of Be. would be "*the family members of the defendant, the denounced person, the possible suspect or the persons reasonably suspected of committing the crime may refuse to testify. The testimony may be refused if the witness would incriminate himself."*

This would be applicable only if the investigation authorities do not want to interrogate the witness as a defendant later. It would be unfair to interrogate the denounced person or the possible suspect as a witness, just because the witness is obliged to tell the truth.

Restrictive interpretation of the concept of the defendant has caused many problems during the investigation or at the court stage even under the effect of the previous Be. On the other hand, an arbitrary broad interpretation of the concept could cause unacceptable differences in the jurisprudence, and as such it would violate the right to fair trial and equal treatment. In our view, either the concept of the denounced person or that of the possible suspect should be defined, and they should be guaranteed the right to refuse to testify.

Clear definition and consistent application of these concepts would solve the above-mentioned problems. If the Be. is not modified, these questions may be corrected at the court stage by the following interpretation of the existing regulation.

Under the scope of the previous Be. restrictive interpretation of the concept of the defendant may have caused difficulties at the court stage. If the family member of the denounced person or the possible suspect had not

been warned on Art. 82 Section (2) Point a), the witness could only have the right to refuse to testify based on Point b). Later, if the family member of the witness became an accused person and refused to testify at court, the previous testimony was also excluded from the procedure. Because of this, the accused person could have been acquitted due to the lack of evidence. This unwanted scenario could have been prevented if the witness refused to testify during the investigation, and so charges had not been brought either.[40]

According to the Be. modified warnings shall be communicated to every witness at the beginning of the first interrogation. It would be unproportionate and unfair to warn the witness for Art. 176 Section (1) Point b), but not to warn the person for Art. 171 and use his testimony later.

The following case could have happened under the scope of the previous Be. so the provisions of the previous Be. should be applied.

Criminal proceedings were initiated against a gardener called B.Z. of committing professional misconduct. 22 May 2018, at 2:25 pm, B. Z. stabbed a spade in the foot of his co-worker, who is also his wife, when they were working in the garden. The victim was immediately taken to the doctor and then she was transferred to the regional hospital, where she immediately underwent a surgery. According to the first medical report, she suffered a serious injury that took more than 8 days to heal. Criminal proceedings were initiated ex officio based on the denunciation of the doctor.

Inspector Krisztina Szabó from Piripócs PD acquired medical records and other documents, interrogated the doctor, the ambulance service and the neighbours as witnesses. The neighbours did not have any relevant information on what actually happened. After that, the inspector interrogated the victim as a witness. She warned her of the provisions of Art 172 of the previous Be. Based on the testimony of the victim, the police interrogated B.Z. as a suspect, and he confessed to committing the crime.

[40] It is to be emphasized that these concerns occur in proceedings where the testimony is a decisive factor (such as the testimony of the victim in a crime of causing bodily harm) or there are more family members to be interrogated (such as domestic violence cases).

Piripócs District Prosecutor brought charges against B.Z. for committing a professional misconduct. At the court stage a medical expert was commissioned to examine the injuries of the victim. The expert's opinion confirmed the charges. At the court hearing, the victim refused to testify and also revoked her previous testimony, and so did the accused person. Both the fingerprints of the victim and of the accused person were found on the spade. The accused was acquitted due to the lack of evidence.

The doctor executed his official duty with the denunciation. When the victim was interrogated, her husband was not a defendant in a narrow sense, and so the victim did not have the right to refuse to testify. The prosecutor put charges, but the court still acquitted the defendant.

The victim was interrogated as a witness on 15 July 2018. She was also warned that her testimony may be used later. After the warnings, the victim did not have to totally refuse to testify. After the prosecution, at the court hearing either the defendant or the victim refused to testify. Since the court had the possibility to use their previous testimonies, the defendant was convicted.

Although the objective truth may be achieved with this new regulation, the outcome can become suboptimal.[41]

If the concept of the defendant would be broader, these concerns could be prevented earlier without bringing accusations before court. Based on the previous example:

Before beginning the interrogation, the inspector informed the victim that the denounced person is her husband, B.Z. and as so, she has the right to refuse to testify. The victim refused to testify. Based on the other pieces of evidence, the police interrogated B.Z. as a suspect, but he also refused

[41] It is also possible that if the family member of the defendant does not have the right to revoke her previous testimony, and because of this she significantly modifies her previous statement at the court hearing.

to testify. The police eliminated the criminal proceedings due to the lack of evidence.

Possible solution 2

If the above mentioned modifications are not accepted by the legislator, these concerns might be corrected in another way during the court stage. To this other solution the warnings of the witnesses need to be amended as follows. Before court, the witness has the right to refuse to testify on the ground of being a family member of a person who was a witness during the interrogation but become a defendant later. In this case the witness was not warned about the right of refusal, because at that time his family member was not a defendant yet. In order to meet fair trial principle, it is possible to solve these cases according to the regulation of the previous Be. This means that if the witness refuses to testify before court, the testimony given during the investigation shall not be used. If, however, the witness maintains the previous testimony after the new warnings, the whole testimony may be used. As an example:

Investigation was ordered due to the suspicion of budgetary fraud on 11 July 2018. The tax authority summoned and interrogated S. L. on 22 August 2018 as a witness. S.L. is the brother of one of the leaders of QUERTZ Co. At that time the procedure was pursued against an unknown perpetrator. As the result of the investigation, more persons, including S.A., the brother of S.L. became suspects. The case was prosecuted without the further interrogation of S.L. S.L. was summoned to the court hearing, where he refused to testify.

In our view in this case the testimony of the witness shall be excluded. Let us take a look at what happens if the witness testifies before court as well.

At the beginning of the hearing S.L. is warned that he has the right to refuse to testify considering that he is the brother of one of the defendants.[42] *If he does not refuse to testify, he needs to be asked if he maintaints his statement given during the investigation. If he answers yes, his previous testimony may be used, because he upholded it even after the warnings on Art. 172 Section (1) of Be.*

This correction should be applied, when the witness is warned for the first time *after* his family member becomes a defendant in a narrow sense. Otherwise, we would do nothing but re-establish the regulation of the previous Be. which is also opposed by the authors.

Final remarks

People working at various stages of a criminal procedure may face problems unknown to each other. The origin of these problems are often ignored, and misinterpretations can lead to severe and unwanted consequenses at the later stages of the procedure. The authors of this study tried to highlight the difficulties faced by the interrogators at each stage of the criminal procedure emphasizing the importance of communication and cooperation. Without this approach, it is not possible to give comprehensive solutions to the problems detailed above.

[42] Only in the parts that are connected to the criminal liability of his brother.