

# POLICE STUDIES

THE PERIODICAL OF THE POLICE SCIENTIFIC COUNCIL

**BÁCS, ZOLTÁN GYÖRGY**

Some national security aspects of emergencies

**BODA, JÓZSEF – DOBÁK, IMRE**

Transformation of security and intelligence services in Hungary (1990-2018)

**DELI, GERGELY**

The mercy of law

**GÁTI, BALÁZS – TÓTH, DÁVID**

Comparative law analysis of the regulation of stamp forgery

**HEGEDŰS, JÁNOS**

The dynamics of the security policy of the territories with unsettled status in the South Caucasus



2022/1-2



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## **Some national security aspects of emergencies**

### **Possible preventive measures in national security**

#### **Introduction**

The preparation to any emergency on behalf of the national security structures is linked neither to time nor to events. It is a permanent and endless process. The renovation of national security as a comprehensive concept has to go parallel to the changing conditions in this realm and the national security services have to upgrade their tools, methods and tactics permanently to solve any emergency. Thus, the preparation of the national security structure has to start before the challenges of an emergency appear.

#### **Some elements of the legal background and their importance**

Analyzing the effective National Security Strategy of Hungary<sup>1</sup>, we see the description of the security environment of the country and its possible changes in the Chapter 5. In Chapter 7 the lawmakers enumerate the factors qualified as special national security risk, including the field within the competence of the national security services. One of these risks, the consequences of mass migration, is mentioned in point 124 a).

During the decades during which I was in charge as a consul in various countries I had to deal with issues related to the general problems of migration. I confirm that every diplomatic or consular mission abroad has to follow and analyze the migration policy of the host country, how the positions of the state bodies change, how the public opinion changes in this regard. Another basic task is to analyze the readiness and capabilities of the local

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<sup>1</sup> Governmental decree 1163/2020. (IV. 21) on the National Security Strategy of Hungary



official and non-official institutions and organizations to handle the migration waves.

The permanent tasks of the diplomatic and consular missions, such as maintaining the contacts with the governmental and non-governmental bodies of the host country, the exchange of information, the discovery of the fields of possible cooperation are preventive national security activities that do not go beyond the regulations of the Vienna Convention of 1961 on Diplomatic Relations.

To my mind, the ‘sudden armed attack’ mentioned in point 124 b) does go beyond the frames of national security risks because in cases of armed attacks one can suppose that the covert organized preparation and the sudden implementation have been targeted against the governability of our country, against the critical infrastructure and institutions or objects important for public safety and security. These cases of explicit national security threats need immediate response.

Such a situation emerges as the result of a long process, the discovery of which falls within the remit of national security activities beyond our borders. The key element of success in this field is the coordination of the activities of the non-military and military national security services.

Point 124 c) qualifies the “*coordinated and wide-scale diplomatic, intelligence operations and the operations of the secret services along with financial and economic pressure and also speculative financial attacks or military threatening*”<sup>2</sup> as a national security risk. Among other things, the following imminent risks are named in the National Security Strategy quoted already above:

- the cyber-attacks in point d);
- the risk of terrorist attacks mentioned in point e).

The latter makes clear that the information gathering activities abroad and intelligence and counter-intelligence activities within our borders,

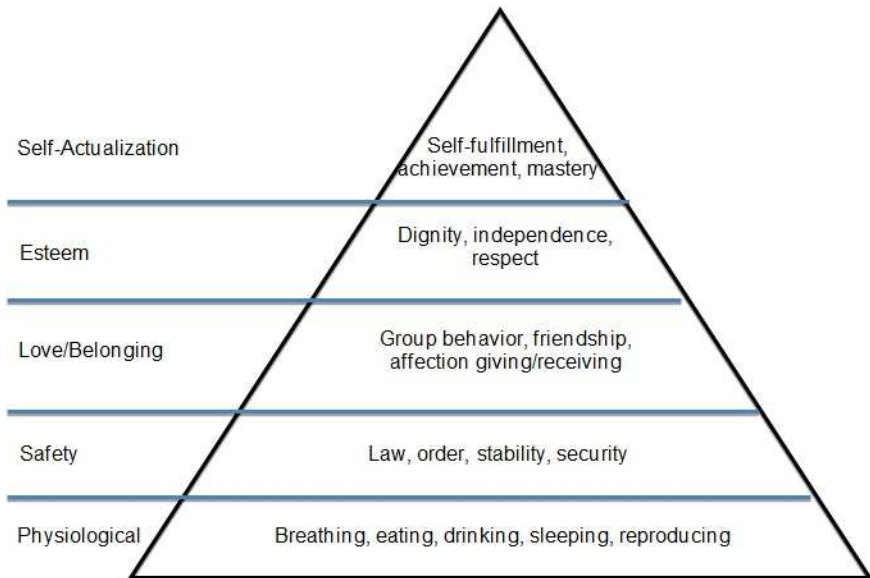
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<sup>2</sup> Ibid.

along with the creation and maintaining of the necessary analytical and assessment capabilities require the cooperation and regular exchange and sharing of information among all the institutions and services of the national security community of our allies. Another important factor might be the ad hoc cooperation with national security services of other states.

### **From theory to practice: the dimensions of security**

Let us overview the question from the other side! What are the fields that the national security services should especially focus on in an emergency? The best way to make the tasks clear is to look at the Maslow-pyramid!<sup>3</sup>



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<sup>3</sup> Maslow, A. H. (1943): A Theory of Human Motivation, Psychological Review, 50, Secondary publication: Study Corgy Free Essays: Maslow's Hierarchy of Needs and Its Criticism. 370-396.

Source: <https://studycorgi.com/maslows-hierarchy-of-needs-and-its-criticism/>

Accessed: 04.08.2022

## **Physiological needs as the components of the physical dimension of safety**

The satisfaction of the physiological needs is easily derivable from the demand of self-preservation and reproduction. To satisfy these needs the population must be supplied with food, gas, electricity and water. This requires the safe functioning of the communal services' networks, roads, sewage system, fuel supply system, telecommunication networks and channels, etc. ... All these are closely linked to governability, to maintaining the operability of the administrative, defence and health care institutions under the special rules implemented in an emergency. Under such circumstances any factor and action threatening the operability of the above-mentioned institutions and services that emerges incidentally or accidentally or on purpose, or threatening with such actions or even the untrue statements spread about the occurrence of such factors and actions require an immediate response on behalf of the national security services. Any delay in taking such measures or failing to take them is not a "simple" threat to national security but it can be seen as an even more serious act, a service offence. In this case, the aggravating factor is the period of non-compliance, that is the period of the emergency. Thus, it becomes clear that the satisfaction of physiological needs also requires certain safety, so the inter-connection of the first and second level of the Maslow-pyramid is imminent. Consequently, from a certain aspect, the satisfaction of the physiological needs may be seen as a part of safety at the second level of the pyramid.

### *Safety as a need (a social value)*

Before we look at how safety changes in an emergency, let us clarify what safety means in general, how this phenomenon may be understood as a phenomenon, as a state subjectively perceived and related to individuals, social groups and their relations to each other. Safety might be described in general terms as a dynamically changing combination of objective and

subjective factors that depend on the historic age, the circumstances and the given individual.

Safety as such a combination should be considered in the context of the above-mentioned factors and their effect on the psychological perception of individuals, groups, communities and society. The basis of dependence on the historic age, the circumstances and the individual features is the level of development of the given society and the interaction of this development level with the objective and subjective factors. It is a frequent theoretical and practical mistake when to identify safety with the lack of threat. Unfortunately, this simplified attitude excludes the specific character of threat and its different levels. Threats may be unknown for us. We may not know their origin, or their direction of spreading, or the target area threatened. A threat may latent or may grow slowly and it may accumulate and become concentrated. Considering the extension of the threat it may affect small areas, it may be locally limited or larger that can be defined geographically. The target of the threat may be of material, technical character, it may be certain individuals or a group of individuals linked to each other. A threat may be aimed at institutions, economic, social, and political bodies or organizations. If we further analyse the features of potential threats, we find that the threats may have a direct or an indirect impact, they may spread from one source or from different sources, the speed of spreading may be constant or it may grow fast or slowly. Now, to determine the threat itself we have to see the types of threats enumerated in the national security strategy.<sup>4</sup>

The previous paragraph has clarified some connections proving the hypothesis that safety means something bigger and broader than its most frequent explanation referring to the frequently fictitious lack of threat. Let us have a look at the content of and the criteria for safety in an emergency!

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<sup>4</sup>Governmental decree 1163/2020. (IV. 21) Ibid.

The meaning and the criteria of safety, found on the second level of the Maslow pyramid undergo a peculiar change in an emergency. The limitation of constitutional rights in an emergency explicitly increases the rights and the responsibilities of the structures of law-enforcement, defence, the armed services and national security. It is clear that the limitations of the rights, as for example the right of assembly, the right of free expression or the right to private property or the limitation of free movement reduce the feeling of safety. These reduced feelings of safety are further diminished when the question is about the right of the authorities to enter a private property and make an inspection there. In similar situations, when the population is more dependent on the minimum safety guaranteed by the activities of law-enforcement, security and national security organizations, the commission of any kind of crime – against property or individuals or against their groups – provokes an increased impact and reaction from the vulnerable population. Any infringement of rights shrinks the feeling of safety amongst the people, whether the perpetrator is an individual criminal or a member of a criminal group, an opposing private or public actor.<sup>5</sup>

In the event of an emergency, along with the defence and law-enforcement structures, national security services are also involved in protecting the operability of critical infrastructure, supply chains and service networks. Maintaining permanent contacts with the population, open source intelligence (OSINT) and intelligence using human resources (HUMINT) have a key role in this work. Intelligence obtained by HUMINT or OSINT may be the most important, since it may give an opportunity to prevent or to react to the risks and threats emerging in closed communities or in different communities communicating with each other as early as possible. It is especially important to prevent the formation of the most harmful ideas generating radicalism within these different communities. This is one of the clearest threats of our days.

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<sup>5</sup> Beside the special units of the regular forces, in asymmetric operations behind the enemy's lines units of non-state actors may be used as well. These may be private structures, the so-called private military companies (PMCs).

## **The dimensions of safety**

Two of the dimensions of safety play a special role in handling the emergencies, in the development, shaping and maintenance of the necessary individual or group behaviour of the population, which is indispensable for governability. These dimensions are mental and psychological safety.

### ***The mental dimension***

The mental dimension includes the satisfaction of the need of the population for knowledge during the emergency, in accordance with the circumstances of the emergency and the interests of sustainable governability. Meeting this need is more than pure information because it involves providing education and training at all levels, including primary, secondary and higher education, as well as continuous professional, further training and retraining, during the emergency, if the situation so requires. The satisfaction of cultural demands and the access to such programmes is also a part of the mental dimension of safety. These factors – along with other sources of the sense of safety – play an important role in the development and maintenance the psychological safety. Among the objective and subjective factors of the latter, it is essential to mention active and passive communication and its platforms.

### ***The psychological dimension***

The psychological dimension of the sense of security is based on the reaction of the individual as the smallest factor in the community to the individual and collective influences. One of these factors is the position of the individuals and social groups regarding the political, administrative, economic, cultural, defence, law-enforcement and national security institutions and their management. The lawful restrictions of the right to free ex-

pression is an inherent phenomenon during an emergency. How the population accepts it and the reactions to the restrictions depend not only on the amount, quality and credibility of the governmental communication. It also depends on the level of knowledge and consciousness of the individuals who make up the groups and society itself, on the development of the social consciousness, on the individual and group psychological capacities and on the factors affecting them. Their effects may be different. In some cases they can lead to individual or group disobedience and in extreme cases to radicalization, perhaps even to organised or armed defiance. It must be clear for everyone how seriously these actions threaten national security and how important the counter-measures are.

### **Communication as a national security factor**

It has already been mentioned that an emergency itself and its restrictions can be considered objective circumstances independent of the individual, which determine the framework of individual, group and social activities during an emergency. To keep them in force and to make them prevail is a real national security challenge. The circumstances are more than complicated. On the one hand, there are the growing accessibility of the information sources, such as the social media platforms, news portals, and on the other hand there is the complexity of domestic and international processes and their interactions. We should not forget the specificities of opinion-forming of the groups that are largely unversed in different fields, either. All these factors make the role of communication reaching out to groups and bigger communities is crucial to maintaining governability.

When we look into the passive side of the communication, i.e. the information-based impact on the individuals and communities communicating with each other, the expected and possibly predictable response, whether it is communicative or an action, is a very important consideration. The communicative reaction is not a passive one any more, since the information acquired passively is transferred in an active way to one or more targeted

persons or communities. It is this ‘multiplier effect’ that may even provoke actions that pose a national security risk in a growing group.

The shrinking of individual and social life in any emergency leads to the growing interest in communication. Communication may be considered as a part of the social demands on the third level of the Maslow pyramid. It is a well-known fact that the development of media devices and technology go far ahead of the human individual and group capabilities of acquiring and processing information for evaluation and assessment. Social media and the written and electronic press as well as the personal or group-based reproduction based on them strongly influence the way and content of communication as a form of satisfying social demand.<sup>6</sup> Mónika Andok writes “*The explanations in the papers on sociology of knowledge was consistent with the hypothesis that hiding the subject is a key part in the process by which the subjectively perceived information is converted into objective knowledge.*”<sup>7</sup> The situation is further complicated the emergence of a cognitive filter bubble based on what is believed to be objective knowledge. This filtering bubble is fundamentally influenced by the life context, family, work and community environment. These interact with the dominant cultural, intellectual, educational and even religious and social views of the individuals, groups and the community. The result of this interaction may be an accumulating potential leading to radicalization. About the internal dynamics, the characteristics and opportunities of the media communities Mónika Andok writes that “*the new communities are voluntarily created, have a temporary character, and their purposes are tactical. Any intellectual initiative in these communities can get stronger through the emotions used to persuade the others.*”<sup>8</sup> Any change that falls into this category will

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<sup>6</sup> Andok, M. (2013): A hírek története. [The History of News.] L’Harmattan Kiadó, Budapest, 44-45

<sup>7</sup> Ibid. 46

<sup>8</sup> Andok, M. (2016): Digitális média és mindennapi élet - Konvergencia, kontextus, közösségi média [Digital media – everyday life – Convergence, context, community media] L’Harmattan Kiadó. Budapest, 74



inevitably have an impact, even if only small, on the evolution of the national security environment. Analysis and assessment of these changes, the preparation of the necessary decisions is a task not only for the national security structures but also for the whole government.

### **Instead of conclusions**

In the past paragraphs, I have intended to make it obvious that the three major levels in the national security field, the challenges, risks and threats constitute a structured network with vertical and horizontal dimensions. All the elements of this network have certain aspects concerning national security, in politics, defence, the protection of public order and safety and countering terrorism. It is also clear that governability, predictability, development, legal certainty and integrity, and the guarantees of sovereignty represent a complex of principles and practices of fundamental interest in the political, economic, social and legal context of the emergency. No doubt, the permanent examination, analysis, assessment and review of the system of guarantees needed to maintain the complex mentioned above has high priority.

As the period between 2014 and 24<sup>th</sup> February 2022 has proved, some conditions threatening the European and global security architecture of the post-World War II period, including the most important regulatory documents, such as the Final Act of the OSCE accepted in Helsinki in 1975, may emerge and escalate in a relatively short time. The restoration of these basic principles will require long decades again.

Unmodelled emergencies may arise for which there has been no opportunity to prepare or for handling of which the modelled emergency scenarios are not or only partially applicable. It may occur that there is no comprehensive, wide-scale protocol for a new type of emergency that combines several elements of different types of emergencies in a new way. Therefore, the timeframe for planning and implementing is very short, and new factors may emerge during this time. This poses a very special challenge to the national security services as the practical implementing bodies of the tasks

and to the political structures as the sources of the request for intelligence and users of the information received, but also to the military, law-enforcement, national security, counter-terrorism and disaster management training centres. Thus, the primary aim of reviewing and examining the national security aspects of emergency is to reduce as much as possible the time needed to take the decisions that are essential in such situations.

## **Transformation of Security and Intelligence Services in Hungary (1990-2018)**

In the period following World War II, the structure and methodology of the secret service sphere in Hungary changed fundamentally. The former structures, based mainly on the professional heritage of the Austro-Hungarian Monarchy and Western patterns, were abolished and gradually replaced by structures and professional principles based on the Soviet pattern.

### **The short history of the State Security Organizations in Hungary**

In Hungary, a State Protection Department was established in 1946, containing several operational support units.<sup>1</sup> Later, on 1 September 1948, the State Protection Authority (SPA) was founded on the basis of the Minister of the Interior's decree No. 288.009/1948, and it was placed directly under the command of the Ministry of the Interior (MI). The foundation and operation of the organizations was "supported" by Soviet advisers until the change of the regime.

The State Protection Authority, now independent (of the MI) was founded by the Council of Ministers decree No. 4353/1949, issued on 28 December, and subordinated directly to the Council of Ministers.<sup>2</sup> The Military Political Department of the Ministry of Defence and the Military State Border Guard were incorporated into the new organization operating from 1950. On Soviet advice, the Council of Ministers made a decision to termi-

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<sup>1</sup>See: Decree No. 533.900 / 1946 (B.M.) and its organizations and tasks were regulated by Decree No. 535.059 / 1946 (B.M.)

<sup>2</sup>See: Historical Archives of the Hungarian State Security.

Source: [https://www.abtl.hu/sites/default/files/raktari\\_jegyzekek/1\\_3\\_2008.pdf](https://www.abtl.hu/sites/default/files/raktari_jegyzekek/1_3_2008.pdf)

Accessed: 31.07.2022

nate the SPA as an independent organization on 17 July 1953 and to integrate it into the Ministry of the Interior. The reintegrated services in the MI were reorganized in December 1955 and named State Protection Directorate.

During the 1956 revolution in Hungary the State Protection collapsed as a body, many members fled or disappeared into illegality or joined the Soviet forces and participated in overthrowing the revolution. The reorganization of State Protection was initiated after November 1956, with Soviet support. As part of the reorganization, all the employees of the previous organization were dismissed in December 1956, they were vetted and, almost without exception, they were employed by the MI.

The central secret information collecting organization was founded in the spring of 1957, the MI Political Investigation Department (thirteen departments) retained the structural organization of the State Protection Directorate, with minor modifications. Based on the command number 12 of the Minister of the Interior, dated on 3 May 1957, the following departments were organized:

- Military Counter-intelligence Department,
- Counter-intelligence Department,
- Intelligence Department,
- Transport Sabotage Counter-intelligence Department,
- Counter-intelligence against Internal Reactionary Forces Department,
- Industrial Sabotage Counter-intelligence Department,
- Agricultural Department,
- Investigative Department,
- Physical Surveillance, Vetting Department,
- Operative Technical Department,
- Operative Registration Department,
- Nationwide Encryption Centre,
- “K” Postal Censorship Department,
- Radio Intelligence Department,

- Central National Authority for Controlling Foreigners and Passport Department.

The MI Main Directorate III (State Security) was founded in 1963<sup>3</sup>, and within this, the III/V (operative-technical) Division, having four departments, as well as the independent operative departments had the responsibility to provide operative support to the whole scale of intelligence activities in Hungary, including the military intelligence that was independent of the MI.<sup>4</sup>

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<sup>3</sup>The first head of the MI Main Directorate III was Police Major General József Galambos. From 1966 until his retirement in 1973, he was the deputy minister of personnel.

Source: [https://www.abtl.hu/ords/archontologia/f?p=108:13:::NO:13:P13\\_OBJECT\\_ID,P13\\_OBJECT\\_TYPE:950138,ELETRAJZ](https://www.abtl.hu/ords/archontologia/f?p=108:13:::NO:13:P13_OBJECT_ID,P13_OBJECT_TYPE:950138,ELETRAJZ)

Accessed: 31.07.2022.

The last leader of the MI Main Directorate III was Police Major General Ferenc Pallagi. From 1 May 1989, he was the leader of the Hungarian State Security as the Head of Main Directorate III and deputy Minister of the Interior. He retired on 21 January, 1990. Source: Historical Archives of the Hungarian State Security

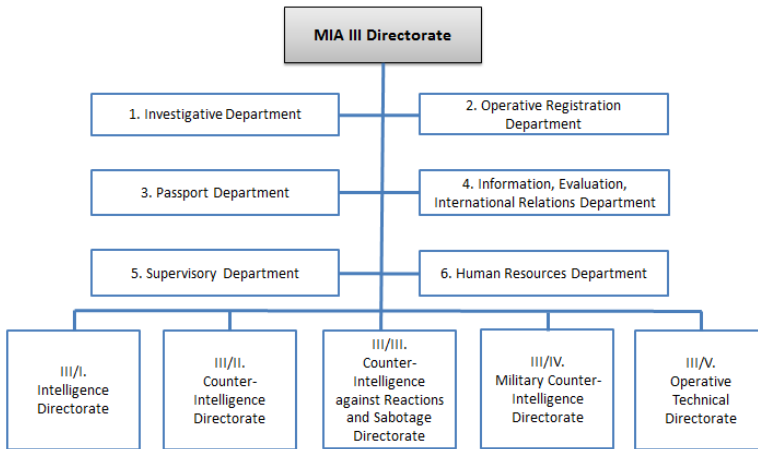
Source: [https://www.abtl.hu/ords/archontologia/f?p=108:13:91275166921175:::NO:13:P13\\_OBJECT\\_ID,P13\\_OBJECT\\_TYPE:12279,ELETRAJZ](https://www.abtl.hu/ords/archontologia/f?p=108:13:91275166921175:::NO:13:P13_OBJECT_ID,P13_OBJECT_TYPE:12279,ELETRAJZ)

Accessed: 31.07.2022-

<sup>4</sup>Kovács, Tamás: Átmentett, vagy megmentett légió, A magyar állambiztonság metamorfózisához 1989-1990. Levéltári Közlemények 82. 2011. [A legion of rescued or protected, for the metamorphosis of Hungarian state security 1989-1990, Archival Communications], 64.

Source: [https://library.hungaricana.hu/hu/view/LeveltariKozlemenyek\\_82/?pg=65&layout=s](https://library.hungaricana.hu/hu/view/LeveltariKozlemenyek_82/?pg=65&layout=s)

Accessed: 25.03.2018



MI Main Directorate III (1963-1989)

The detailed organizational structure of the foundation at the time was the following:<sup>5</sup>

- III/I (Intelligence) Directorate,
- III/II (Counter-intelligence) Directorate,
- III/III (Counter-intelligence against Internal Reactionary) Directorate,
- III/IV (Military Counter-intelligence) Directorate,
- III/V (Operative Technical) Directorate,
- III/1 (Investigative) Department,
- III/2 (Operative) Registration Department (to 1971 and then physical surveillance)
- III/3 Passport Department (to 1971 and then “K” mail interception)

<sup>5</sup> Ungváry, Krisztián: Az állambiztonsági szervek intézménytörténeti struktúrájának vázlat. [Outline of the institutional historical structure of state security bodies, In: Report of the Expert Committee (2007-2008)] 52-53.

Source: <http://mek.oszk.hu/08400/08450/08450.pdf>

Accessed: 05.03.2018

- III/4 Information, Evaluation, International Relations Department,
- III/5 Supervisory Department,
- III/6 Human Resources Department,
- III/7 Operative technical interception Department (form 1967, Secretariat Department from 1975)
- III/8 National Encryption Centre (1976-1978)

In the 1970s, there were more reorganizations in the Ministry of Internal Affairs, even though these resulted in only minor changes in the intelligence organizations. During these, the following still operated as independent departments: III/2 Operative Surveillance and Vetting Department, III/3 “K” Postal Censorship Department, III/4 “X” (information processing) Investigative Department, and III/5 Radio Intelligence Department.<sup>6</sup>

The organization of State Security Main Directorate III went through a major restructuring in 1979, still, this did not have an impact on the names or basic responsibilities of the divisions. However, the independent departments operated in a different structure. The previous III/4 “X” (information processing) Investigative Department was changed into Technical Controlling and Information Processing Department, although the functions basically remained unchanged. The previous National Encryption Centre (III/7 Department) operating within the III/I-13 Department became independent, and started its operation as a new organizational unit, III/6 Operative Short Wave Radio Service Department.

As opposed to the popular belief, secret information gathering in the socialist regime was executed in compliance with strict regulations. However, these decrees were not public, and their primary aim was to serve the interests of the communist party and its leaders.

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<sup>6</sup> Cseh, G. B.: A magyarországi állambiztonsági szervek intézménytörténeti vázlata, 1945–1990. [ Outline of the institutional history of the Hungarian state security services, 1945–1990] In: *Trezor 1. A Történeti Hivatal évkönyve*. Budapest, 1999. 76.

- Decree of the Minister of the Interior No. 535059/1946 on the organization, tasks and responsibilities of the Hungarian State Police State Protection Department.
- Decree of the Council of Ministers No. 3541/1956 (VIII.22.) on the Ministry of the Interior of the People's Republic of Hungary.<sup>7</sup>
- Decree of the Council of Ministers No. 6000/1975 on the responsibilities of State Security.<sup>8</sup>
- Order of the Deputy President of the Council of Ministers No. 1/1975 on the tools and methods applicable to protect the security of the state.<sup>9</sup>
- Command of the Minister of the Interior of the People's Republic of Hungary No. 26/1979 on issuing the order of business of the MI Main Directorate III (State Security).<sup>10</sup>

## The transformation

In Hungary, the transformation of the State Security Services into national security services took place in parallel with the peaceful transition in 1989-1990. As we have mentioned above, during the Cold War, the Hungarian state security structure was connected to a bigger socialist international alliance and served foreign needs. The Hungarian State Security was operated basically in the same structure for nearly thirty years between 1963 and 1990.

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<sup>7</sup>Source: [https://library.hungaricana.hu/hu/view/MNL\\_OL\\_XIX\\_A\\_83\\_b\\_185\\_3516\\_35-45/?pg=291&layout=s](https://library.hungaricana.hu/hu/view/MNL_OL_XIX_A_83_b_185_3516_35-45/?pg=291&layout=s)

Accessed: 25.03.2018

<sup>8</sup>Source: [https://www.abtl.hu/sites/default/files/forrasok/1975\\_6000.pdf](https://www.abtl.hu/sites/default/files/forrasok/1975_6000.pdf)

Accessed: 25.03.2018

<sup>9</sup>Source: [https://www.abtl.hu/sites/default/files/forrasok/1975\\_1.pdf](https://www.abtl.hu/sites/default/files/forrasok/1975_1.pdf)

Accessed: 25.03.2018

<sup>10</sup>Source: [https://www.abtl.hu/sites/default/files/forrasok/parancs\\_2.pdf](https://www.abtl.hu/sites/default/files/forrasok/parancs_2.pdf)

Accessed: 15.01.2018



Before 1990, in parallel with the changes of the international and domestic political environment<sup>11</sup> the MI Main Directorate III faced the need for changes and tried to make preventive steps.<sup>12</sup> In Hungary – similarly to in other post-authoritarian states – the political and professional leaders of the state security organization did not have public models for the reform, so they started to examine and analyze the western organizational models.<sup>13</sup> Several ideas emerged for the restructuring<sup>14</sup> inside the Ministry of the Interior, such as the idea of a unified security service or the functionally divided security services.

During the Round Table Negotiations, the political opposition, negotiating with the leaders of the Hungarian Socialist Workers Party, raised the regulation issue of the enforcement agencies in the second half of 1989. At that time, the communist state party did not support either the separation of the state security service from the police or the subordination of the services to the Cabinet of Ministers.

The political power did not want to form an opinion publicly about the future of the state security services, but in 1989 the Parliament accepted that the rules related to the police and state security needed to be defined in

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<sup>11</sup> Act XX of 1949 was revised and restated by Act XXXI of 1989 (Constitution of the Hungarian Republic).

<sup>12</sup> Kovács, Zoltán András – Dobák, Imre: Korszakváltások a magyar nemzetbiztonsági intézményrendszerben (1990–2016) [Paradigm Changes in the Hungarian National Security Institutions (1990–2016)] In: Finszter, Géza – Sabjanics, István: Biztonsági kihívások a 21. században, Dialóg Campus Kiadó. Budapest, 2017.

Source: [http://www.bm-tt.hu/assets/letolt/BM-konyv\\_1.pdf](http://www.bm-tt.hu/assets/letolt/BM-konyv_1.pdf)

Accessed: 15.01.2018

<sup>13</sup> Kovács, T. (2011): i.m. 69.

<sup>14</sup> Varga, Krisztián: A III/III. Csoportfőnökség jelentései az állambiztonság feladatairól és strukturális átalakításáról 1989-ben [Reports of the III/III Subdepartment on the tasks and structural transformation of state security in 1989]. Betekintő 2007/4.

Source: [http://www.betekinto.hu/sites/default/files/2007\\_4\\_varga\\_k.pdf](http://www.betekinto.hu/sites/default/files/2007_4_varga_k.pdf);

Szakértői Bizottság jelentése 2007-2008 [Report of the Expert Committee 2007-2008]. 12.

Source: <http://mek.oszk.hu/08400/08450/08450.pdf>

detailed laws.<sup>15</sup> It is worth noting that in the period of political transformation the issue of regulations of other law enforcement and military organizations (police, armed forces) seemed to be more important than the regulation of state security organizations.

With regard to the future of the security structure, the opposition acknowledged the need for secret services in democratic countries, but the cardinal points were the issues of their structure and political control. In essence, foreign intelligence and counter-intelligence seemed to be justified, but the establishment of a high-level legislation was considered necessary for their operation. For the organizations of the opposition the internal security branch (Directorate III/III) still symbolized the body responsible for their persecution.<sup>16</sup> During the negotiations, the opposition insisted on the separation of the police and state security,<sup>17</sup> but no decision was made. It is true that after the new Constitution came into force, the department with the right of investigative power in the area of Hungarian State Security was abolished on November 1, 1989. Still in 1989, the term “state security” was gradually replaced by the term “national security”, and its introduction indicated the changing of tasks as well.<sup>18</sup>

In January 1990, the “Duna-gate” scandal suddenly accelerated the transformation process of state security and in the beginning of 1990 the

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<sup>15</sup>Révész, Béla: Dunagate II. Beszélő 2005/1.

Source: <http://beszelo.c3.hu/cikkek/dunagate-ii>

Accessed: 10.12.2017

<sup>16</sup> Ibid.

<sup>17</sup>Révész, Béla: Az állambiztonságtól a nemzetvédelemig [From state security to national defense], *Acta Universitatis Szegediensis Acta Jurida et Politica* Tomus LXIII Fasc. 17, Szeged 2003. 39.

Source: <http://mek.oszk.hu/01500/01582/01582.htm>.

Accessed: 10.12.2017

<sup>18</sup>Ibid. Kovács – Dobák (2017): 179.

former Hungarian state security system was restructured into a new, democratic national security structure.<sup>19</sup>This also meant that the national security services became independent from the Ministry of the Interior and the police.<sup>20</sup>

As a result of the transition, one part of the structure was fully destroyed, but other capabilities were transferred to the new national security system.<sup>21</sup> In 1990, the new structure separated the military and civilian national security services, and the foreign and domestic as well as the intelligence and counter-intelligence directions. Later – especially after the Duna-gate scandal, which led to the creation of the new services – the parties and the Parliament started to deal with the questions of the Law on national security and oversight. After 1990, the oversight of the national security services remained under Government supervision, but according to Act X of 1990 and after Act CXXV of 1995 the oversight of the national security services and secret information gathering were no longer delegated only to the executive branch. Maintaining operational effectiveness became an important goal, simultaneously with the creation of the democratic supervision component.

Concerning the issue of executive control, the first freely elected Parliament placed the military national security services under the authority of the Minister of Defence and the new civilian security services under the authority of a minister without portfolio.<sup>22</sup> Later, Act CXXV of 1995<sup>23</sup> preserved this solution as well, and the Government controlled the civilian national security services through a “designated” Minister. The elements of

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<sup>19</sup>26/1990 Decree of the Council of Ministers (14 February) on the Provisional Regulation of the Fulfilment of National Security Tasks

<sup>20</sup> Ibid. Révész (2003): 6.

<sup>21</sup>Finszter, Géza: Rendészet – rendvédelem közjogi megközelítésben [Law enforcement in a public law approach], In: Gaál, Gyula – Hautzinger, Zoltán (eds.): Pécsi Határőr Tudományos Közlemények IX. Pécs, 2008. 57.

<sup>22</sup> Act LI of 1990 on the Amendment of Law Decree No. 17 of 1974

Source: <https://mkogy.jogtar.hu/jogszabaly?docid=99000051.TV>.

Accessed: 10.12.2017.

<sup>23</sup> Source: <https://net.jogtar.hu/jogszabaly?docid=99500125.TV>.

Accessed: 10.12.2017.

the Hungarian national security structure were changed later (2010, 2012, 2016), so today one military and four civilian national security agencies operate in Hungary. Executive control was changed as well, in 2010, so currently it exists as a three dimensional governmental control model.

### **The role of the Dunagate scandal**

By 1990 the State Security Services had been trying to prepare for the changes of the structure, but the suddenly erupted Duna-gate scandal surprised them. Based on the research results reviewed in this topic, the Duna-gate scandal was obviously the main turning point, which led to this type of transformation of Hungarian State Security. The scandal emerged immediately in January 1990 when it became known that the Hungarian State Security (MI Main Directorate III) had the opposition under surveillance, despite the Constitutional Amendment (1989) and that Hungary had been declared as a Republic (23 October 1989).<sup>24</sup> The opposition published facts about politically motivated domestic secret information gathering.

Several investigations were conducted (e.g. by the Military Prosecutor and the Ministry of the Interior), then the Ministry of the Interior and the Deputy Minister (who was the leader of the State Security) resigned, due to this scandal.

The scandal created a new situation that negatively affected the State Security Services, so the Government reformulated the whole unified structure and in the early 1990s it repealed the existing regulations on State Security. Without legal succession, they abolished the internal security department (III/III) and established new national security services along the

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<sup>24</sup>Révész, Béla: A „Duna-gate” ügy jelentősége a rendszerváltás történelmében (Politológiai értelmezési lehetőségek) [The significance of the "Duna-gate" case in the history of the shift of regime (Possibilities of political interpretation)] Acta Universitatis Szegediensis Acta Jurida et Politica Tomus LXVIII Fasc. 19. Szeged, 2006. 12.

Source: <http://mek.oszk.hu/04900/04948/04948.pdf>

Accessed: 10.12.2017.

foreign intelligence and counter-intelligence directions (military and civilian).<sup>25</sup> On 25 January 1990, the Parliament adopted the Law on the transitional provisions for the regulation of special intelligence tools and methods.<sup>26</sup> It was the first non-classified Act concerning secret information gathering in Hungary. There was a deficiency in the law, namely that the control system remained unfinished because no provisions on professional or social control were included in it.<sup>27</sup> In 1990 other additional legislations were adopted, too, on national security services, such as the establishment of the committee for the organization of national security services, and some organizational solutions.<sup>28</sup>

According to the political decision, after the transition, the new structure retained the professionals whose expertise was indispensable in the creation of the new civilian national security services. (Most professionals from the MI III/III were retired after the change.) The reorganization had to be carried out by relocating the staff from the Ministry of the Interior.<sup>29</sup> A great number of qualified professionals from other divisions remained in the structure because the total reduction would have resulted in the loss of the national security capabilities. The number of staff was reduced but a vetting / lustration process was not initiated as in other post-communist countries. Later this decision was discussed many times.<sup>30</sup>

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<sup>25</sup>Decree No. 26/1990 of the Council of Ministers (14 February) on the Provisional Regulation of the Fulfilment of National Security Tasks.

Source: <http://www.jogiportal.hu/index.php?id=taipazxcsr4tnkuns&state=19960327&menu=view>

Accessed: 10.12.2017.

<sup>26</sup>Act X of 1990 on the Provisional Regulation of the Authorization of the Special Means and Methods of Secret Services.

Source: <https://mkogy.jogtar.hu/jogszabaly?docid=99000010.TV>.

Accessed: 10.12.2017.

<sup>27</sup> Ibid. Révész, B. (2003): 6.

<sup>28</sup> Referred to by Révész, B. (2003): 6.

<sup>29</sup> Resolution No. 3039 of 1990 of the Council of Ministers on the establishment and operational conditions of national security services

<sup>30</sup>Ibid. Kovács, Z.A. – Dobák, I. (2017): 180.

Between 1991 and 1995 several bills were drafted to regulate the operation of national security services, and a comprehensive Act was established finally at the end of 1995. (Act CXXV of 1995). In recent years, several other changes have affected the security structure, and currently there is a model with five national security services in operation. This Act regulated the framework of operation of the Hungarian national security services at a statutory level and wanted to establish a balance between the effective operation of the security services and the parliamentary control of national security.<sup>31</sup>

In summary, the policy-makers in 1990 and after

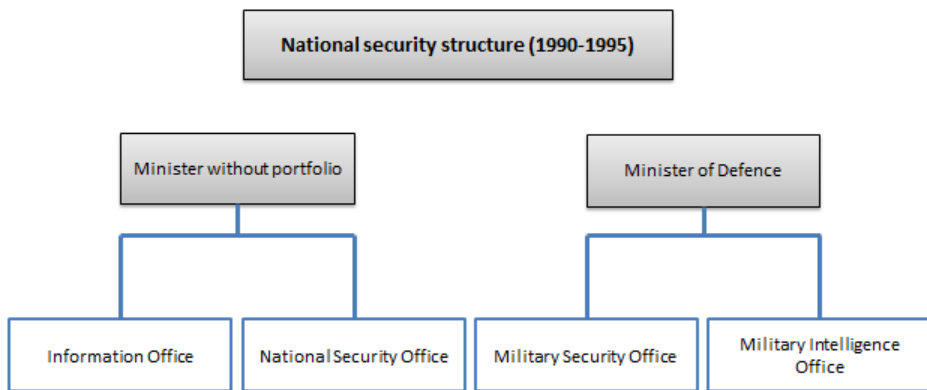
- abolished the centralized structure of the Hungarian State Security and established a new, decentralized national security structure;
- terminated the investigative powers of the secret services;
- gradually created legislation for the national security sector, secret information gathering and control, and parliamentary oversight;
- the military national security services (intelligence and counter-intelligence) were subordinated to the Ministry of Defence, and the civilian national security services were subordinated to a Minister without portfolio;
- after the Duna-gate scandal and demolition of the state security structure, the law enforcement tasks of the police and the intelligence activities of the national security sphere were clearly separated.

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<sup>31</sup>Ibid. Kovács, Z.A. – Dobák, I. (2017): 183.

## The Hungarian national security services after the change of the regime

25 January 1990 the Parliament passed Act X of 1990<sup>32</sup> on the Transitional Rules for the Use of Special Means and Methods of Covert Information Gathering and the Government Decree on the temporary regulation of carrying out of national security duties. When the latter decree entered into force, two civilian (the Information Office [IO – *Információs Hivatal*] and the National Security Office [NSO – *Nemzetbiztonsági Hivatal*] and two military (the Military Security Office [MSO – *Katonai Biztonsági Hivatal*] and the Military Intelligence Office (MIO – *Katonai Felderítő Hivatal*) services started to operate.

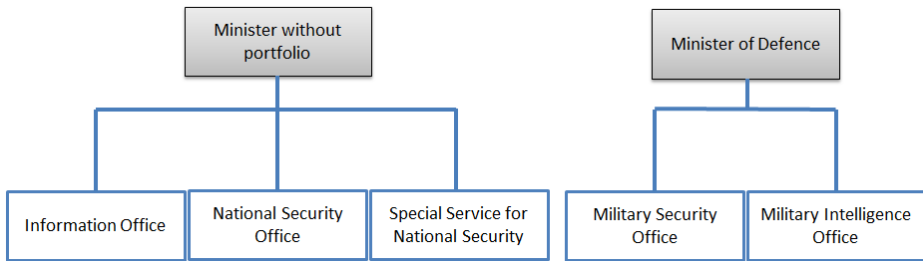


National security structure (1990-1995)

The Parliament passed the law on national security services on 29 December 1995. The law separated the Special Service for National Security (SSNS – *Nemzetbiztonsági Szakszolgálat*), which provided the technical

<sup>32</sup>Source: <https://mkogy.jogtar.hu/jogszabaly?docid=99000010.TV>  
 Accessed: 10.12.2017

background to secret information gathering.<sup>33</sup> Similarly to the control of the civilian intelligence and the civilian counter-intelligence, the control of SSNS was exercised by a minister without Portfolio between 1996 and 2002, as well as between 2007 and 2010, and between 2002 and 2007 by the minister leading the Prime Minister's Office.



National security structure (1996-2002, 2007-2010)

From the summer of 2010, after the modification of Act CXXV of 1995 on national security; the Constitution Protection Office<sup>34</sup> (CPO – *Alkotmányvédelmi Hivatal*), the Special Service for National Security were under the control of the Minister of the Interior. After 2010, the Minister of Foreign Affairs controlled the IO, then on 1 September 2012 the IO came under the control of the Minister of the Prime Minister's Office.<sup>35</sup> From June 2014 to May 2018, the organization was controlled by the Minister in charge of the Prime Minister's Office, and this task is currently performed by the Minister of Foreign Affairs and Trade. The Military Security Office and the Military Intelligence Office remained under the control of the Minister of Defence, but on 1 January 2012 the two military services (MSO and

<sup>33</sup> Boda, József: A Nemzetbiztonsági Szakszolgálat helye, szerepe a titkos információgyűjtés rendszerében [The role of the Special Service for National Security in the system of secret information collection], *Hadtudomány* 2013/1-2. 41-66.

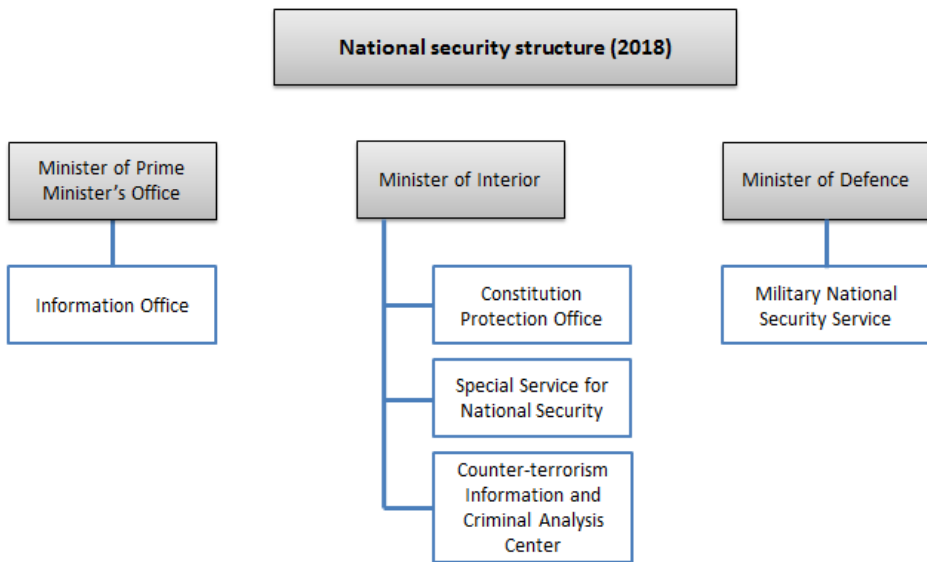
<sup>34</sup>It was formed from the National Security Office.

<sup>35</sup>Act XCVI of 2012.



MIO) merged, and the Military National Security Service (MNSS – *Katonai Nemzetbiztonsági Szolgálat*) was founded.<sup>36</sup>

In 2016 the Government established the Counter-terrorism Information and Criminal Analysis Centre (CTICAC – *Terrorelhárítási Információs és Bűnügyi Elemző Központ*)<sup>37</sup>, which is under the direction of the Ministry of the Interior. In 2011 the Parliament passed the Constitution of Hungary as well, which sets out the basic responsibilities of the national security services.



National security structure (2018)

At present the following organizations are entitled to be involved in secret information gathering:

<sup>36</sup>Act CLXXI. of 2011

<sup>37</sup>See: Act CXXV of 1995 and Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism

### ***Constitution Protection Office (CPO)***

The aim of the operation of the Constitution Protection Office is to protect the citizens and the constitutional order of Hungary and to guarantee their security. The Office executes the responsibilities defined in the Act on national security under the oversight of the Ministry of the Interior. It cooperates with the law enforcement organizations of the Ministry of the Interior, the national security services and the other areas of administration. It works in close cooperation predominantly with NATO member states and the partner states of the European Union. With the help of the available methods and means, whose application is authorised by law, it recognizes and identifies the overt and covert challenges threatening the nation's security, the organizations and people embodying these and efficiently counteracts them. It is a priority to provide the government of Hungary with otherwise unavailable information necessary for decision making.

Its responsibilities are: counter-intelligence, protection of the Constitution, security of the economy, protection of national security, national security controls, involvement in migration procedures, reconnaissance of unauthorized usage of internationally controlled products and technologies, prevention, dissuasion and involvement in the control of their legal trade (proliferation) and industry safety control.<sup>38</sup>

### ***Constitution Protection Office (CPO)***

The Information Office is a civilian intelligence service that is primarily involved in activities outside the Hungarian border. The Office operates under the Minister leading the Ministry of Foreign Affairs and Trade.

The general objective is to gain confidential information regarding foreign countries or originating from abroad, facilitate the effectiveness of the Hungarian national interests, be involved in maintaining the independence of Hungary and the protection of its legal order.

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<sup>38</sup> Source: <http://ah.gov.hu/english/>  
Accessed: 10.01.2018.

The intelligence obtained is used as the foundation of governmental decision making. The government defines the topics it wishes to be informed about through intelligence. Based on these information needs, the Information Office gains such data, information and documents which cannot or can only be gained up to certain limits, through its special system of instruments. In order to complete its tasks, the Office executes operational activities. Using resources created by human and technological means, it gains secret and confidential data, and it uses public sources and gains maximum benefit from the opportunities provided by international cooperation. The gained information is analysed, compared with the available data and evaluated, then the intelligence reports are made and forwarded to the decision makers.

***Military National Security Service (MNSS):***

The MNSS is under the control of the government with jurisdiction in the territory of Hungary, a budgetary authority having an independent budget. The MNSS was founded on 1 January 2012, on the basis of the Ministerial Order 128/2011 (XII. 2.) of the Minister of Defence, which changed the name of Military Intelligence Office of the Republic of Hungary for Military National Security Services, whereas the Military Security Office of the Republic of Hungary was terminated as an independent budgetary authority and its organizational units were merged into the organization of the Military National Security Service.

*Objectives:* The MNSS performs intelligence, counter-intelligence, protection and control tasks defined in Act CXXV of 1995, with the methodology of overt and covert information gathering in its operational territory. It facilitates the enforcement of the national security interests of Hungary, consequently it is involved in the protection of the country's independence and its legal order.

The legal foundations and responsibilities of the operation of the service, the connected organizational system and methodology, the control and supervisory authorization, the legal and political guarantees are ensured by Act CXXV of 1995, modified by Act CLXXI of 2011.

The Military National Security Service is under the control of the government, directed by the Minister of Defence. The authorization of the minister covers a full-scale mandate regarding the administrative and budgetary issues of the MNSS. The general framework of the operation of the service, its structural organization and the specific responsibilities are defined in decrees and orders issued by the Minister of Defence. The head of the MNSS is the Director General, who is appointed and dismissed by the Prime Minister, on the proposal of the Minister of Defence. The Director General has independent accountability, within the framework of laws, rules and regulations and the other legal means of state administration.<sup>39</sup>

Responsibilities:

- to detect and prevent hostile intentions and actions against Hungary, hostile foreign secret service activities, the change or disturbance of the legal regime with unlawful means or acts of terrorism;
- to obtain military information and that of military politics and defence industry and the data needed for the work of the Ministry of Defence and the General Staff of the Armed Forces in the fields of military operations and tactics and information protection planning;
- to gather information about organized crime regarding its area of operation, the crimes threatening the execution of the legal tasks of the Ministry of Defence and the Hungarian Defence Forces, cyber activities violating defence, as well as intentions and activities against the armed elements and their personnel in its operational areas;
- to perform national security tasks related to military research, development, production and trade at the Ministry of Defence and the Hungarian Defence Forces, as well as regarding internationally controlled products and technologies and the detection, prevention

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<sup>39</sup>See: Act CXXV of 1995 §6, and the official website.

Source: <https://knbsz.gov.hu> and <http://www.honvedelem.hu/szervezet/knbsz>

Accessed: 10.01.2018

and deterrence of unlawful circulation of military equipment and services and the control of legal circulation;

- to carry out evaluation, control and protective tasks regarding staff in important and confidential positions, business organizations, special procurements, military events and military exercises within its scope of authorization;
- to execute the tasks arising from military diplomacy assigned to MNSS;
- through the defence, military and aviation attachés, it ensures the preparation and implementation of the programme and the support needed for the implementation of the tasks of the leaders' delegations of the Ministry of Defence and the Hungarian Defence Forces abroad.

### ***Special Service for National Security (SSNS)***

In 1995, Act CXXXV established the Special Service for National Security, which is *“a general background institution for all other agencies authorized to use secret intelligence, including the police. Based on written application, it provides – within the framework of the law – those organizations which have the appropriate legal powers with means and methods of secret data collection.”*<sup>40</sup> It has the biggest budget, the highest headcount and perhaps the most complex scale of responsibilities.

The SSNS is under the control of the government, having jurisdiction of the whole territory of the country. *“Through its highly qualified professional employees, continuously developed methods and tools the SSNS provides classified and covert information and data gathering service, as well as expert support to other national security services and law enforcement*

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<sup>40</sup> Rzeplinski, A.: The Police and the Constitutional Framework, In: Kádás, A. (ed.): Police in Transition: Essay on the Police Forces in Transition Countries. Central European University Press. 2001. 86.

Source: <http://tinyurl.hu/E3Cb/>

Accessed: 05.03.2018

*agencies (together: customers) with legal clearance.*<sup>41</sup>It is not a national security service in the “traditional” sense. The responsibilities of the NSS are defined in §8 (1) of the Act on national security, which (in 2018) included the following:

- It is entitled to provide services with the help of covert intelligence gathering as well as with the aid and methods of covert acquisition of data – upon a written request – within the legal framework for secret information gathering and covert acquisition of data activities of authorities authorized to execute secret information gathering and secret information gain;
- On the basis of needs of authorities authorized by the law to execute covert intelligence gathering and acquisition of data, it provides special technical equipment and materials required for this activity;
- It provides the special telecommunication connections for the users defined by the government;
- It provides the administrative oversight in connection with the protection of security documents;
- It performs expert – and in case of regulations of separate legislation – forensic expert activities;
- It performs the national security check of individuals within its competence, and provides the operational protection of its premises;
- It can perform the supplementary control defined in the government decree of procurements involving classified information regarding the basic security and the national security interests of the country or the procurements requiring special security measures in the case of their own classified procurements.

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<sup>41</sup>See the official website <http://www.nbsz.hu/?mid=14>  
Accessed: 05.03.2018

- In accordance with the provisions of the law, it provides the information security tasks related to the electronic information security of state and local governments organizations.<sup>42</sup>

### ***Counter-terrorism Information and Criminal Analysis Centre (CTI-CAC)***

The purpose of CTICAC is to function as the principal information fusion and information sharing centre for law enforcement agencies, national security services and other administrations acting to avert public security and national security risks, and to be able to support the law enforcement and national security activities against threats to national security or public security, to help governmental and security policy-making and to fulfil their information needs.<sup>43</sup> The new centre was set upon the foundations of the anti-organised-crime coordination centre, as a new national security service.<sup>44</sup>

Reviewing Act CXXV of 1995, among the main tasks of the CTICAC we find the following:

- examining the security and criminal situation of Hungary,
- conducting information and decision supporting activities for the Government,
- strategic analytical activities in security and criminal matters,
- supporting, coordinating and evaluating activities through analysis,

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<sup>42</sup>See Act CXXV of 1995 on the national security services and §8, and the official website. Source: <https://nbsz.gov.hu>  
Accessed: 05.03.2018

<sup>43</sup> See Act CXXV of 1995 §,8./A and the official website. Source: <https://tibek.gov.hu>  
Accessed: 10.01.2018

<sup>44</sup> Counter-terrorism legislative package serves security of Hungarian people. April 27, 2016.

Source: <http://www.kormany.hu/en/ministry-of-interior/news/counter-terrorism-legislative-package-serves-security-of-hungarian-people>

- providing information support to the Government about Hungary's national security, terrorist threats and the criminal situation,
- performing the duties of the Passenger Information Unit (PIU)

### **Civilian democratic oversight over the national security services**

As the DCAF relevant publication<sup>45</sup> states the national security services *"can become threats to society and to the political system they are meant to protect. Therefore there is a great need for clear democratic and parliamentary oversight of the intelligence services in addition to executive control."*

In Hungary the democratic oversight over the national security services basically has the same character as in other democratic countries. Concerning the national security services, Article 46 of the Fundamental Law of Hungary<sup>46</sup> declares that:

- *„The core duties of the national security services shall be the protection of the independence and lawful order of Hungary, and the promotion of its national security interests.*
- *The national security services shall operate under the direction of the Government.*
- *Professional staff members of the police and the national security services may not be members of political parties or engage in political activities.*

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<sup>45</sup> Fluri, Ph. – Johnsson, A. B. (eds.): Parliamentary oversight of the security sector: Principles, mechanism and practices. IPU, Centre for DCAF Geneva. 2003. 64.

Source: [https://www.dcaf.ch/sites/default/files/publications/documents/ipu\\_hb\\_english\\_corrected.pdf](https://www.dcaf.ch/sites/default/files/publications/documents/ipu_hb_english_corrected.pdf)

Accessed: 10.01.2018

<sup>46</sup> The Fundamental Law of Hungary (as in force 1 July 2016)

Source: [http://www.kormany.hu/download/a/68/11000/The\\_Fundamental\\_Law\\_of\\_Hungary\\_01072016.pdf](http://www.kormany.hu/download/a/68/11000/The_Fundamental_Law_of_Hungary_01072016.pdf)

Accessed: 10.01.2018



- *The detailed rules relating to the organisation and operation of the police and the national security services and the rules for the use of special investigative means and techniques, as well as the rules concerning national security activities, shall be laid down in a cardinal Act.”*

One of the main focus points concerning the oversight issue was that the national security services have to operate effectively, secretly, but they have to be work with clear mandates and regulation, so the Parliament created a control mechanism which has the right to supervise and control the national intelligence services.

The services operate under Act CXXV of 1995 on the national security services, which, as a Cardinal Act regulates the national security services and their legal status, their duties, the control and the measures of information gathering, and, of course, the parliamentary oversight.

The responsible Committee for parliamentary oversight of the national security services is the Committee for National Security, which originally was established as an ad hoc committee in 1990. Because the national security sphere has been operating with excluding publicity, this is the most important oversight element in the Hungarian Parliament. The chairman of this permanent Committee is an opposition MP (Member of the Parliament) (See: Article 14). According to this Act, there are two Parliamentary committees having the authorization of control over the national security services:

- Committee for National Security of the Parliament
- Committee for Defence and Law enforcement of the Parliament

The National Security Committee controls the constitutional and legal operation of all the national security services, applying the political means of the Parliament. (The Committee for Defence and Law enforcement controls the general activities of the Military National Security Service from the aspect of military security issues and of the country’s defence abilities

as well). The National Security Committee receives the evaluations and reports for the Government compiled by the Services, regarding national security issues. The committees are regularly informed about the activities of the services, the security situation of the country and the defence areas.<sup>47</sup>

According to the Act the concerned Minister informs the Committee about the general activities of the national security services regularly and at least twice annually. The Committee may request information about the national security situation of Hungary from the responsible Minister and from the general directors of the national security services. It may request information from the Minister of Justice, the Minister supervising the civilian national security services, the Minister responsible for civilian foreign intelligence, the Minister of Defence and the general directors regarding intelligence information gathering. The Committee may examine individual complaints against unlawful activities of the national security services, and if the Committee believes that one of the security services is carrying out unlawful or improper activities, it can ask the minister to conduct an investigation into the matter.

The Committee, among other things, examines the detailed draft budget of the national security services and budget items of other organisations authorised to gather intelligence of relevance to that activity. Prior to the appointment, it hears the persons nominated for the position of general director and expresses its standpoint regarding their suitability for the job.

The Committee for National Security and the Committee for Defence and Law enforcement basically hold closed sessions when exercising their supervisory authorities. It is an important criterion that only those MPs who have passed the national security clearance may become the member of these committees.

Concerning the oversight mechanism of the national security services, in the Hungarian system we can find the complexity of the parliamentary, governmental and the judicial elements. Such specific regulation area is the oversight of secret information gathering in Hungary, where in the case of

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<sup>47</sup>See Act CXXV of 1995 on national security services.

external authorisation of secret information gathering, an external state organ (designated Judge or Minister of Justice) has to give permission to the activities.

## Summary

Thanks to the colleagues and researchers of the Historical Archives of State Security Organizations founded by Act III of 2003, the activities of the Hungarian State Security Services are relatively well-known to the public. The peaceful transition in 1990 indicates that the constitutional democracies also need national security services but with appropriate legal conditions. The role of the Duna-gate scandal, which accelerated the transformation and the demolition of the State Security, is undeniable. Act X of 1990 was a basic step towards democracy and it was the first Law that publicly regulated secret information gathering in Hungary.

As a result of the transformation process in 1990, the established four national security services became independent from each other. Their governmental oversight changed and while the military national security services were directed by the Minister of Defence, the civilian national security services were under the Minister without Portfolio.

Concerning the creation of the oversight mechanism, after the turning point, *"the Hungarian legislation had to face a dual challenge. On the one hand, these mechanisms had to maintain the efficiency of the system and on the other hand, the control bodies had to be able to detect the infringements at the same time."*<sup>48</sup> The solution was the creation of the Act on national security in 1995, which – after several modifications – is still in force.

The issue of the transformation (1989-1990) is widely researched even today.

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<sup>48</sup> Márton, András: A titkosszolgálati tevékenységek parlamenti bizottsági ellenőrzése, problémák, modellek, alternatívák. [Parliamentary committee control of secret service activities, problems, models and alternatives] Nemzetbiztonsági Szemle 2013/1. 39-60.

**GERGELY DELI**

## **The Mercy of Law**

### **Introduction**

In the present essay, I will attempt to answer the question of whether the concept of mercy can be used in relation to law – if so, in what ways – or whether this concept is, on the contrary, foreign to the world of law. While exploring the topic, I will use analogies that will hopefully make my argumentation interesting for professionals working in law enforcement, traffic and border police, or, at least for those who are willing to approach issues of their respective fields of specialization in abstracto, from a more theoretical perspective.

First, I attempt to define the concept itself, then I will investigate the characteristics of mercy in law. I will subsequently test the concept of legal mercy with the help of hypothetical cases and see whether it has its own explanatory power. If it does, and at the end of my investigation I will conclude that indeed it does, a meaningful debate can be initiated about the mercy of law. My final conclusion is that there is a need for safe spaces, in traffic or border protection alike. I am confident that my reasoning will be of interest to my readers.

### **The concept of mercy and the mercy of law**

The Latin equivalent of “mercy” is *miser cordia*, meaning “heart open for suffering”. This suggests that the concept of mercy pertains more to the realm of emotions rather than that of rationality or other constructions of the mind. According to the Hungarian Catholic Lexicon<sup>1</sup> the concept of

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<sup>1</sup> Diós, István–Viczián, János: Magyar katolikus lexikon I–XV. Szent István Társulat. Budapest, 1993–2010.

mercy is closely related to maternal love and comprises the openness and receptivity with which a mother bears her child in her womb.<sup>2</sup> She tolerates another body in her own knowing that bearing a child might involve discomfort, and that giving birth is inevitably painful. From a Catholic theological perspective, the incentive for mercy is the need that the person practising mercy is confronted with.<sup>3</sup>

Let me consider two specific examples from the Gospel in which the word “mercy” appears: the Parable of the Good Samaritan<sup>4</sup> and that of the Prodigal Son.<sup>5</sup> What substantive characteristics of mercy can be distinguished based on these two parables?

Jesus used the parable of the Good Samaritan<sup>6</sup> to shed light on the meaning of the word “neighbor”. According to the parable, a man traveled from Jerusalem to Jericho and fell into the hands of thieves. He was robbed, beaten and left half-dead on the side of a road. Both a priest and a Levite saw him suffer, but they did not stop to help him. Finally, a Samaritan passed by, took pity on him and decided to take care of him. From the parable, it was obvious for the lawyer who questioned Jesus what the word “neighbor” meant, i.e. when the command of “love your neighbor as yourself” had to be applied.

Let me make a short digression since it is extremely intriguing to briefly analyze the parable as a legal argumentation technique. A legal approach can be applied without any doubt, as the parable is essentially an interpretation of the law. The term “neighbor”, part of the Greatest Commandment, must be defined so that it can serve as a normative guideline for the lawyer. How does Jesus define the notion of “neighbor”? He does not analyze the

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<sup>2</sup> Ed. Herbert Haag. Tr. Ruzsiczky, É.. Budapest. (1989): See also *Bibliai Lexikon.*, 694 and Schütz, Ch.: *Praktisches Lexikon der Spiritualität.* Freiburg, Tr. Búzás, J.. Budapest. (1993): (1988): In Hungarian: *A keresztény szellemiség lexikona.* 155

<sup>3</sup> Compare Lk. 10:25-37; Matt. 25:31-46

<sup>4</sup> Lk. 10:30-35

<sup>5</sup> Lk. 15:11-32

<sup>6</sup> See in detail in Schramm, O.: *Die Parabel vom Barmherzigen Samaritaner.* Münster, 1953-54.

concept in the abstract, as is usually done nowadays, but describes a situation. This technique is all the more efficient since it ensures the atemporal normativity of Jesus' answer. Instead of a conceptual analysis<sup>7</sup> (currently trending mostly in American legal theory) focusing on the "static" meaning of terms, Jesus' parable provides an interpretation through human relations. This is also the reason why his teaching is atemporal. Indeed, the meaning of words might undergo substantial change over time, but the characteristics of basic human relations remain the same regardless of eras or cultures.

The parable is presented in such a way that there is no doubt as to what the answer is. It shows unequivocally and immediately that the Samaritan is the neighbor. This is also a very important quality. The clearer the guideline is, the stronger its normative force will be. However, perhaps the most important technique that Jesus uses is the change in the normative perspective. The lawyer asks Jesus who his neighbor is, i.e. to whom he must show mercy. In other words, how does the lawyer, in the role of the person who practises mercy, know who he needs to be merciful to? It is important to note that Jesus reverses the perspective when answering the question: he shows who the neighbor is from the perspective of the person who receives mercy. From this perspective, the answer seems obvious. First, it excludes the difficulty of knowing whether a person wishes to receive mercy at all. It is after all possible that some like to be left robbed and half-dead on the side of the road. Who knows? Remember the case of the "Rotenburg Cannibal",<sup>8</sup> who found a victim via the internet who volunteered to be eaten. And his actual victim was not the only volunteer. In Jesus'

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<sup>7</sup> For an excellent summary of legal argumentation see Kent Sinclair: *Legal Reasoning: In Search of an Adequate Theory of Argument*. *California Law Review*, Vol. 59, No. 3. A Tribute to Hans Kelsen (May, 1971). 821-858.

<sup>8</sup> For the sentence closing the case see BGH vom 16. Februar 2007. For a detailed accounting of the case see Egon Petricius, Bernd Ramm: *Der Kannibalen-Fall von Rotenburg*. *Branchenforum Schmidt*, Alheim 2004. For a short summary see Petra Klages: *Der Fall Armin Meiwes*.

Source: <https://www.ngo-online.de/2010/11/28/der-fall-armin-meiwes>

Accessed: 04.03.2022

solution, this doubt does not arise since one must decide who the neighbor is from the perspective of the person receiving mercy. Hopefully, one knows whether one likes to lie severely battered on the side of the road! The essence of Jesus' method is that he provides a self-explanatory situation (not an abstract notion!) and a change of perspectives. To what extent this technique could be used to make a decision in other difficult legal cases would require an article of its own. Let me now return to my original point.

Regarding the concept of "mercy", the Parable of the Good Samaritan<sup>9</sup> brings to the forefront the sort of universalism of values I have been alluding to so far. Deciding whether something is objectively good or bad is based on general human experience.<sup>10</sup> According to this general measurement of values, being safe and sound is good, and being robbed and wounded is bad. It exemplifies universalism – or a kind of "dictatorship" – of values. Another often mentioned postulate concerning the parable is that all human lives are equally valuable, regardless of origin or ethnicity.<sup>11</sup>

The other parable from the Gospel I mentioned earlier is that of the Prodigal Son.<sup>12</sup> A man had two sons. His younger son asked for his inheritance and recklessly wasted all his fortune until he became destitute. He then reconsidered and went back to his father, who forgave him and decided to celebrate his return. The older son resented the merriment, since he did not receive the same treatment, even though he had always faithfully served his father. His father reprimanded him, saying: "Son, you are always with me,

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<sup>9</sup> Engelbert, S.J. (ed.) (1968-1972): On representations of the parable see Kirschbaum,: Lexikon der christlichen Ikonographie. Allgemeine Ikonographie. vol. 1-4. Rome, vol. 4. 24; Sachs, Hannelore-Badstübner, Ernst-Neumann, Helga: Christliche Ikonographie in Stichworten. Leipzig, 1980. 52.

<sup>10</sup> Compare with Waldron, J.: Welfare and the Images of Charity. In: Waldron, J.: Liberal Rights. Cambridge University Press. Cambridge. 1993. 225-50, at 239

<sup>11</sup> Bernard, T.: Adeney-Riskotta: Strange Virtues: Ethics in a Multicultural World. Intersvarsity Press. 1995. 114.

<sup>12</sup> For its representations see Kirschbaum, Engelbert, S.J. (1968-1972): Lexikon der christlichen Ikonographie. Allgemeine Ikonographie. vol. 1-4. Rome, , vol. 4., 172.; Sachs, Hannelore-Badstübner, Ernst-Neumann, Helga: Christliche Ikonographie in Stichworten. Leipzig. 1980. 357.; A keresztény művészet lexikona. [Lexicon of Christian Art]. Budapest. 1986. 300.

and all that I have is yours. But it was fitting to be merry and be glad, for this brother of yours was dead and is alive again; he was lost and is found.”<sup>13</sup>

This parable draws the attention to the indifference of merit when practising mercy. One can receive mercy without deserving it. The prodigal son is aware of the fact that he did not deserve the welcome feast he received. He lived a reckless life, wasted his own inheritance and lessened his brother's with the celebration of his return. The indifference of merit when someone practises mercy may often entail an infringement of third-party interests.

As I have already mentioned, the concept of mercy also describes the relation of a pregnant woman to her fetus. It is easy to acknowledge that, for a pregnant woman, the qualities pertaining to mercy, i.e. the universalism of values and the indifference of merit, are both present. There is a universalism of values, since the life to be born is considered valuable and must be protected regardless of whether it is good for the child to be born or, from a different perspective, whether the birth of the child is good for the community. This relation also naturally comprises a change of perspective. That which is valuable is defined from the perspective of the one who receives mercy, not the one who provides it (i.e. the mother), at least according to the value judgement of most European legislation.<sup>14</sup> Similarly, in the mother/fetus relationship, we can talk about an indifference of merit. The fetus, an unborn offspring, cannot have any merits, it simply exists. It definitely does not have its own actions or merits that provide it any kind of legal basis to be treated in a certain way. Furthermore, from the perspective of the fetus, dependent on the mother, limiting abortion equals practising mercy towards the fetus, while possibly harming the mother's

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<sup>13</sup> Lk. 15:31-32. English Bible quotations are taken from the Revised Standard Version (RSV).

<sup>14</sup> On the protection of fetal life see for instance the decisions of the Hungarian Constitutional Court: decision 64/1991. (XII.17.) ABh. and decision 48/1998. (XI. 23.) ABh.



interest.<sup>15</sup> Here again, practising mercy involves an infringement of interest.

It is also important to note that the concept of mercy should be distinguished from that of pardon. In order to be pardoned, a person must have been first found guilty. Otherwise, they would not be pardoned but acquitted. Pardon also involves universalism of values since it has to be decided, before pardon is given, whether someone is good or bad, guilty or innocent. In contrast, people receiving mercy are not necessarily guilty. They might be suffering or in need of help. Those who are pardoned are not in need in the sense that the difficult situation they have found themselves in is the direct consequence of their own criminal actions. Whereas the person being pardoned is always guilty, the person receiving mercy is not necessarily so. In the first case, indifference of merit does not apply because only those found guilty can be pardoned, a result which they did not “merit”.

The qualities of universalism of values and indifference of merit are not a rare legal phenomena. Legislation is permeated by a universalism of values. For instance, it is generally accepted that public order (a certain public order) is valuable. Indifference of merit is also not uncommon. Consider the example of objective liability structures, for instance, when the operator of a vehicle, not the actual offender, is liable for a traffic offence.

What is then the specificity of the mercy of law?

Mercy can only be practised when assistance is not legally binding. In case there are several conflicts of value, mercy does not even have any moral ground. On what moral ground could we favor, for instance, the mother over an eight-month-old fetus? In legal matters, however, there is the necessity to make a decision, there is no *non liquet*.

At this point in my argumentation, I am able to draw some preliminary conclusions. In the following, I will discuss moral/legal decision-making situations that show the two qualities of the mercy of law – universalism of

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<sup>15</sup> This viewpoint is discussed with great detail in Judith Jarvis Thomson (Fall 1971): A Defense of Abortion. *Philosophy & Public Affairs*. 1971/1. 47-66.

values and indifference of merit – at work. In cases to which the mercy of law applies, legal decision-making does not have a moral basis, yet a decision has to be made. My examples will border the field of law enforcement, more specifically, traffic enforcement, as I will shortly discuss legal dilemmas raised by self-driving vehicles.

## Dilemmas

Let me start with the most famous of these legal dilemmas, the so-called trolley dilemma.<sup>16</sup>

Imagine you can control a trolley with a lever, and an out-of-control trolley is racing towards you. If you do nothing, the trolley will hit five people. If you pull the lever, the trolley will only kill one person. What would you do?

As this question and others similar to it often arise in connection with self-driving vehicles, it is of utmost importance how these situations are regulated. Research indicates<sup>17</sup> that most people find it acceptable to pull the lever and “sacrifice” one life in order to save five.<sup>18</sup> Let us now consider another, numerically similar situation, albeit leading to a different intuitive solution.<sup>19</sup> Five people are waiting for organ transplants in a hospital, and they will all die shortly unless they receive new organs. Independently from them, a healthy man shows up at the hospital for his annual routine medical examinations. Can the doctor take his life and use his organs to save the

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<sup>16</sup> The first to discuss this problem was Foot, P. (1967): The problem of abortion and the doctrine of double effect. *Oxford Review* 5: 5–15. For a worthy continuation of Foot’s reflection see Thomson, J. J. (1985): The trolley problem. *The Yale Law Journal*. 94 (6): 1395–1415

<sup>17</sup> See Gogoll, J., and Müller, J. F.: Autonomous cars: In favor of a mandatory ethics setting. *Science and Engineering Ethics*. 2016. 1–20.

<sup>18</sup> For an argument contradicting public opinion see Nyholm, S. and J. Smids (2016): The ethics of accident-algorithms for self-driving cars: An applied trolley problem? *Ethical Theory and Moral Practice*. 19 (5): 1275–1289, at 1286.

<sup>19</sup> For the example see Thomson, J. J.: The trolley problem. *The Yale Law Journal* 1985/6. 1395–1415, at 1396.

five patients waiting for transplants? The answer is definitely negative. The two hypothetical cases are essentially the same: by sacrificing one, we can save the life of five. Why are the two scenarios still so blatantly different?

In order to answer this question, let me consider a third hypothetical case,<sup>20</sup> in which the trolley is in a situation similar to the first hypothetical case. If it follows its track, it will kill five people, but this time, we do not have a lever to control it. There is, however, an obese person standing by. If we push that person in front of the trolley, we can change its course and save five lives. (It is also implied in this situation that we are thin and could not save the five people in question by throwing ourselves in front of the trolley in an act of self-sacrifice.) The question remains: would it be licit to sacrifice the unfortunate obese person to save five other lives?

I am convinced that our hearts would again say no. What is the difference between the first and the last two dilemmas? The difference might be that in the last two cases direct physical contact is required for the sacrifice. Both removing someone's organs and pushing someone under a trolley requires vigorous physical involvement, as opposed to operating a lever, which is a simple movement directed at an object, without actual contact with another human being. The person is "sacrificed" by the intermediate of a technical device: a lever. The moral of these dilemmas is that our ethical judgment changes when technology is involved, as opposed to cases where there is physical contact between two humans. An example is the horrible technicization of death and mass murder which occurred during World War II, in Nazi concentration camps.<sup>21</sup> This is why it is important to be aware of the interference of technology in ethical issues related to self-driving vehicles. For self-driving vehicles, a self-learning algorithm stands between the person sitting in the car, the programmer and the pedestrian in

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<sup>20</sup> See Thomson, J. J.: The trolley problem. *The Yale Law Journal* 1985/6. 1395–1415, at 1409.

<sup>21</sup> On this problem see Eric Katz: On the neutrality of technology: the Holocaust death camps as a counter-example. *Journal of Genocide Research*. 2005/3. 409-421.

the street. In the event of a fatal accident, the algorithm, i.e. the factor causing the pedestrian's death, is separate from the victim both in time and space.

Showing mercy, however, requires physical proximity. If there is physical closeness, one is less likely to take another person's life, even indirectly. We have also seen the importance of physical proximity in the two parables. The prodigal son had to return to his father's home, and the good Samaritan had to bring the wounded traveler to an inn. Also, when the Samaritan was about to continue his journey, he asked the innkeeper to take care of the ailing traveler and stay by his bedside.

But to continue, let me add a twist to the trolley problem. Suppose there are three tracks, with one person on both the first and second tracks, and five people on the last.<sup>22</sup> If we previously accepted that one person should be sacrificed to save five, now the question arises as to which way the trolley should be directed, and which person standing alone on the tracks should be killed.

If we still think pulling the lever and derailing the trolley is the right thing to do, let us examine a situation a self-driving vehicle might face. In this example,<sup>23</sup> seven people want to cross a two-way road on which a car, observing the rules, is approaching from the left. Of the seven people, the first one sees the car coming and reckons he has time to cross in front of the car and arrive safely in the other lane, which is free. However, the next five follow the first person without checking and step right in front of the approaching vehicle. The seventh and last person is more careful. She can see the car coming and does not step off the sidewalk. What should the self-driving vehicle do? If it goes straight, it hits the group of five trying to cross the road; if it changes its course either way, it will hit only one person, either in the other lane, or on the sidewalk. What should the vehicle base its decision on?

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<sup>22</sup> Lawlor, R.: The Ethics of Automated Vehicles: Why Self-driving Cars Should not Swerve in Dilemma Cases. *Res Publica* 2022/28. 193–216, 196.

<sup>23</sup> I have borrowed the example from Lawlor, op. cit. 195-196

The first pedestrian calculated his crossing correctly and is now safe, the last pedestrian did not even attempt to leave the sidewalk. We assume that these two exercised sufficient caution and do not deserve to get hit. It would seem unfair if the self-driving vehicle were programmed in a way to hit them instead of the careless group of five who jeopardized their own lives. In this particular situation, our intuition seems to contradict the principle of indifference of merit, which we posited as one of the main characteristics of mercy.

Let us then find a dilemma that cannot be solved based on merit. Suppose<sup>24</sup> there are three pedestrians on the road. One of them is pushed onto the sidewalk by a strong gust of wind, but the other two remain on the road, and are about to get hit by a self-driving car. The self-driving vehicle has then three options. First, it could hit the two persons standing on the road; second, it may opt to drive onto the sidewalk and hit the person who was pushed there by the wind; or, third, it changes lanes and crashes into the oncoming car. Maybe I am not wrong to suppose that we would again find changing lanes or driving on the sidewalk unjustified. But why? The reason, at least in my belief, is that the person on the sidewalk is on the sidewalk! And the sidewalk is, for some reason, considered as a “sacred and inviolable” space, a secure place or a *safe space*,<sup>25</sup> where cars can go exceptionally, only to save a life, for instance, and only if they do not endanger another life by doing so.

It can be derived from these ethical dilemmas, relevant for my discussion on the mercy of law, that some spaces are of special importance. This conclusion brings us closer to determining how decisions should be made in situations similar to the ones discussed above. Should we minimize the number of victims? Should we kill one person to save a group of five?

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<sup>24</sup> Lawlor, op. cit. 198.

<sup>25</sup> Lawlor, op. cit. 197.

## **A solution to the dilemmas: the concept of safe spaces**

It has been emphasized that there always needs to be a decision in law. In the situations outlined above, ethics cannot help legal decision-making because all the possible solutions are morally questionable. Killing one person to save five can qualify as a pragmatic decision, but not one which is morally acceptable. In other words, we are not facing problems illustrated by the so-called *hard cases* in the Anglo-Saxon legal literature.<sup>26</sup> Hard cases usually highlight legal gaps or legal norms that contradict and cancel one another so that decisions cannot be made based on legal grounds only. Ethics intervene as the last normative resort to solve hard cases. The cases I outlined exemplify the opposite: a legal decision needs to be made even though there is no morally acceptable solution. Moral considerations are not of any help since, if we abide by the principle of universalism of values (i.e. that all lives are equally valuable and should be judged accordingly), there is simply no morally acceptable decision, regardless of whether five or only one person dies as a result. Moreover, the minimization of the number of victims in the hypothetical cases I discussed did not seem to be a morally acceptable strategy either. Otherwise, we would have allowed the doctor to take the organs of a healthy patient coming to the hospital for his routine medical examinations, in order to give them to five other patients who desperately needed transplants. We also felt there was a need for designated safe places<sup>27</sup> where people can consider themselves absolutely safe, regardless of their merits and regardless of whether they happened to be there by accident, against their will or, on the contrary, as a precaution. How could these moral considerations be accounted for? Is it better not to act than to act when confronted with such dilemmas, assuming that, if one is not involved, one is not liable either? Let me cite an actual lawsuit. It is a basic principle in common law that if there are two innocent persons who

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<sup>26</sup> See Ronald, D. (1977): *Taking Rights Seriously*. Harvard University Press. at 81-130.

<sup>27</sup> See Lawlor, R.: *The Ethics of Automated Vehicles: Why Self-driving Cars Should not Swerve in Dilemma Cases*. *Res Publica* 2022/4. 193–216, at 197.

could be held liable for a tort, the person who did something will be liable whereas the one who did not do anything will be exempted.<sup>28</sup> An example of how this principle is applied by a court is *Kremen v. Cohen*.<sup>29</sup> To explain it shortly, in the early days of the internet, Kremen had registered for free (!) the domain name *sex.com* with a company specializing in domain name registry. A certain Cohen produced a forged letter and made the company transfer Kremen's domain name – which was becoming more and more popular and lucrative – to his own. Cohen later fled to Mexico and could not be located. Kremen suffered a serious financial loss, as he did not get the profit he had rightfully hoped for. As Cohen could not be found, Kremen sued the registrant company, which, misled by Cohen, had reassigned the right to use the domain to the latter. Both Kremen and the registrant company were innocent, but Cohen could not be found, so the question was: who would recover Kremen's financial loss? Judge Kozinski presiding over the case answered the question referring to the principle mentioned above, i.e. the actor is held liable, not the non-actor.<sup>30</sup> As Kremen had not done anything, the registrant company was held liable to compensate for Kremen's loss.<sup>31</sup>

What can we learn from this case that is also relevant for self-driving vehicles: is it better not to pull the lever than to pull it? Not pulling the lever, however, sometimes seems to contradict our moral sense. Is it possible to resolve this contradiction? I reckon it is: the decisive factor is not whether one should or should not act, but keeping the physical proximity, the importance of which has already been demonstrated. What to do if a self-driving vehicle drifts onto the sidewalk and has the alternative to either hit a pedestrian or steer to the left and hit a pedestrian who happens to be on the road? In this case, it must be ensured that the sidewalk, as a safe space, remain safe to restore the safety of spatial relations. Note that the

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<sup>28</sup> See *Rylands v. Fletcher* (H.L. 1868), 3 L.R.-E. & I. App. 330

<sup>29</sup> *Kremen v. Cohen* (9th Cir. 2003). - 337 F.3d 1024

<sup>30</sup> For a more detailed discussion see Richard A. Epstein (2005): *The Roman Law of Cyberconversion*, *Michigan State Law Review* 103, 103-120, at 113.

<sup>31</sup> *Kremen*, 337 F.3d at 1035-36

contradiction is only superficial. Indeed, the person who does not act is either standing or moving in a certain, predictable way, so their position in space can be calculated: spatial relations are predictable. As my answer to the above discussed dilemmas is founded on the concept of safe spaces, it is important to clarify what the characteristics of such spaces are. Firstly and most importantly, the safety of the space has to be made obvious: sidewalks are usually clearly separated from the road by a curb. Secondly, in safe spaces, law is supposed to protect public order.<sup>32</sup> Thirdly, it is expected that safe spaces not be disturbed nor suffer any unfounded or unlawful intrusion.

Favoring a spatial approach in answering the above-described legal dilemmas over other solutions, such as minimizing the number of victims, might seem daring at first. However, in truly difficult decision-making situations, it is always worth returning to the origins. The origins of law reach back to Roman law, more specifically, to the notion of *ius*. *Ius* – “law” in its most ancient meaning – designated an actual place at the Forum Romanum where the praetor administered justice.<sup>33</sup> Also, remember that in the majority of Romance languages the word “law” is at the same time a spatial indicator: *droit*, *direito*, *derecho*, *diritto*, *Recht*, *right*. It is not just any kind of direction: it shows one the “right” way.

## Conclusion

In brief, it can be stated that our expectations concerning the mercy of law apply to safe spaces. First, the universalism of values applies in a safe space, because the force that created it will determine what can or cannot happen there. Second, indifference of merit also applies to a safe space, which means that anybody in a safe space has to be protected, as a general rule, regardless of whether they deserve to be protected or not. Third, the

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<sup>32</sup> Compare with Saint Thomas Aquinas: ST, II-I, Q 95. A 2.

<sup>33</sup> For more details see Leanna, B. (2007): *Actors and Audience in the Roman Courtroom*. Routledge. 14-16.



protecting force in the safe space does not have a first-order moral basis to rely on. Force has no legitimacy, it legitimizes itself. It ensures the protection of the safe space, because there is no other force that is able to protect it. One might rightfully wonder whether there is any moral justification behind the force protecting the safe place and the law established by this force. The answer is that there is a moral basis behind the force protecting a safe space, but it is not “first-order” morality, i.e. it does not determine what is right or wrong. Only a “second-order” morality can be found behind the force and law protecting the safe space, which “only” helps one to relate to a command given by this force. Does one follow the rules set by the protecting force or not?

In spaces secured by the force, there is an inevitable need to make decisions, and generally, all decisions are determined by the force. Outside the safe space, there is suffering and no mercy, since the force protecting the safe space does not protect, but abandons and, in some cases, sacrifices those outside its borders. As that force has its limits, not all spaces can be safe: their number is finite. Let us keep these lessons in mind when it comes to border protection. Borders are not protected because those within the safe space are good, and illegal migrants are evil (they are not necessarily so): as already mentioned, safe spaces are ruled by a universalism of values. Borders are not protected because those living within the borders, i.e. within the safe space, are superior in number, given that, from a moral standpoint, all lives are equally valuable. Borders are not protected because the culture within the safe space is “superior” (it is not) to the culture of those who would like to access it: there is a universalism of values. However, people living within the borders will determine which culture has to prevail within their safe space. We protect our borders to protect a safe space, and this safe space is called Hungary.

**DÁVID TÓTH – BALÁZS GÁTI**

## **Comparative law analysis of the regulation of stamp forgery**

### **Introduction**

The aim of our study is to analyse the criminal law regulation of stamp counterfeiting in a comparative legal approach. The essay is structured in five parts, in the first part we review the stages of the legal history of stamp forgery, in the following part we analyse the effective regulation of stamp forgery in the Criminal Code of Hungary. In the third part, among foreign regulatory models, we focus on the German-language areas of law, as they had the greatest impact on the development of Hungarian criminal law. The fourth part analyses the extent of the crime of stamp forgery. The results of the comparative analysis are summarized in the final section. The focus of our research method is the processing of the legal literature and the analysis of legal regulations.

### **Legal historical aspects of stamp forgery**

Most people when they hear the word stamp, think of a postage stamp, which is an instrument that contains a picture or a pattern and sticks to a letter or a package and verifies the fees of the postage. In addition to its primary function, the stamp also informs about the cultural and ideological situation, history, and everyday life of the issuing state with its pictorial or textual content. Furthermore, it often represents a high aesthetic and professional value. Stamps, as works of art, are distributed in several forms, their diversity and expressive value are incalculable.

The first postage stamp appeared in England. In 1837, at the suggestion of Rowland Hill, the English post office accepted and in 1840 issued the

world's first postage stamp, the so-called Penny Black. The appearance of postage stamps brought a positive change, simplified postal management, and made it more cost-effective.<sup>1</sup>

In Hungary, stamps first appeared in the middle of the 19th century. During the civil revolution and War of Independence of 1848, painter Mór Than designed the first Hungarian postage stamp. However, its publication was prevented by the fall of the war of independence, so it was no longer possible to print it.<sup>2</sup> After the defeat of the freedom war, the Hungarian post office lost its independence. In 1850, Ludwig von Bruck, minister responsible for postal affairs, ordered the use of postage stamps in all countries of the Austrian Empire.<sup>3</sup>

In 1871, the first stamps were put into circulation, which was made by lithography at the State Printing Office. Later, they began the production of copper-printed stamps and eventually with intaglio and offset technology.<sup>4</sup>

Criminals recognized the possibilities hidden in stamps relatively early, so the history of stamp forgery is almost as old as the appearance of the stamp. Stamps were forged in Spain as early as 1856 to defraud the post office.<sup>5</sup>

The crime of stamp forgery was first regulated in Hungary by the first adopted Criminal Code, Article V of 1878 (also known as the Csemegi Code). The Csemegi Code regulated the offence of stamp forgery in Part Two, Chapter XXXIV, § 412. The legal literature of the time and the legislator considered forgery of stamps to be a crime related offence to forgery

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<sup>1</sup>Prokai, Piroska: A bélyeg rövid története. [The short history of the stamp]. Papíripar. Budapest, 2011. 14.

<sup>2</sup>Nikodém, Gabriella –Szabó, Jenő: A magyar bélyeg története. [The history of the Hungarian stamp]. Kossuth Kiadó Budapest. 2010. 21.

<sup>3</sup>Horváth, Károly: A magyar bélyeg története, a kezdetektől a 19. század végéig. [The history of Hungarian stamp from the beginning til the 19<sup>th</sup> century]. Pallas Stúdió. Budapest, 2011.

<sup>4</sup>Prokai, P. (2011): Ibid.

<sup>5</sup>Lőránt, Mihály: A bélyeg. [The stamp]. Az Athenaeum irodalmi és nyomdai részvénytársulat kiadása. Budapest. 1925. 77.

of documents, which is why the Code included the crimes next to each other.<sup>6</sup>

According to the law, the protected legal interest of stamp forgery is the undisturbed legal and commercial circulation of stamps, postage stamps or other stamps issued by the state to ensure tax, and trust in stamps.<sup>7</sup>

The following were classified as stamps according to law:

- stamps and postage stamps issued by the state;
- state or official markers are used for verifying the properties and components of metals.

The Code Csemegi punished imitation, forgery, and the distribution of counterfeit or forged stamps as criminal conducts. The crime was subsidiary in nature, i.e., it was only possible to commit it insofar as the act did not result in a more serious criminal offense. It was only a misdemeanor at the time, and it was punishable by imprisonment not exceeding one year.

Later, the provisions of Code Csemegi regarding stamp forgery were completely repealed by Act XXXVII of 1897. Section 1 of this new act regulated the crime of stamp forgery in much more detail.

It was a novelty compared to the regulations of Code Csemegi that it already granted protection to foreign stamps, on the condition that there must be reciprocity between Hungary and the other state. According to Angyal<sup>8</sup> the perpetration objects of the crime of stamp forgery were the followings:

- stamps (so-called revenue stamps);

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<sup>6</sup>Irk, Albert: A magyar anyagi büntetőjog 2. kiadás. [The Hungarian substantive criminal law. 2<sup>nd</sup> edition]. Dunántúl Pécsi Egyetemi Könyvkiadó és Nyomda Rt. Pécs, 1933. 486.

<sup>7</sup>Irk, A. (1933) Ibid.

<sup>8</sup>Angyal, Pál: A magyar büntetőjog kézikönyve. 5. kötet. Okirathamisítás, bélyeghamisítás, védjegybitorlás, csalárd és vétkes bukás. [The handbook of Hungarian Criminal Law. Volume 5. Document forgery, stamp forgery, trademark infringement, fraudulent and sinful fall]. Athenaeum irodalmi és nyomdai Rt, Budapest, 1929. 126.

- postage stamps that were issued by the Hungarian Royal Post Office
- official stamps used for excise purposes.
- official seals used to verify the volume capacity of barrels;
- state seals used for verifying the properties and components of metals These were separately supplemented by two other acts;
- the test stamps applied to weapons (on the basis of Section 4 of Act XXXIV of 1891 on the mandatory examination of small arms);
- the tax stamps (on the basis of Section 20 of the Act XIX of 1921 on the cigarillo wrapper and cigarillo paper tax).
- The Act included the following criminal conducts:
  - imitation or forgery of stamps;
  - use and distribution of counterfeit or forged stamps.

Anyone who distributed counterfeit stamps for stamp collectors could only be held liable for infringement.<sup>9</sup> According to the judicial practice of the time, if someone sold a copper ring with an imitation gold metal mark as a gold ring, the person was not responsible for stamp forgery, but for fraud.<sup>10</sup>

The act contained another basic case, according to which the reuse of a used stamp was also punishable.

Both basic cases were regulated as misdemeanors, in the first case they were punishable by imprisonment of up to two years, in the second case by up to one year and a fine.

Anyone could be the subject of a crime. According to the Curia, even in the case of committing the crime by a public official did not influence the classification of the statutory provision.<sup>11</sup>

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<sup>9</sup>1897. évi XXXVII. tc. 2. §

<sup>10</sup>Angyal, Pál: *Ibidem* cites: Curia. Büntetőjogi döntvénytár 17. szám. [Kúria, Criminal law decision archive no. 17.]. 1929. 77.

<sup>11</sup>Angyal, P. (1929): *Ibid.*

In the 1920s, postage and revenue stamps were forged in large quantities, which was often committed by printers, and a single criminal organization was able to cause damage to the state of millions of crowns.<sup>12</sup>

The law created before the turn of the century was in effect for more than thirty years, which was replaced by Act XXI of 1932 on the Protection of Stamps and the Punishment of Illegal Postal Delivery. It was probably due to the long existence of the act that even in 1934, law enforcement authorities filed a report based on the 1897 act.<sup>13</sup>

The Act XXI of 1932 regulated the offense of stamp forgery in detail. According to this Act, the stamp of the Hungarian state, legal authority, city or municipality, or any other Hungarian public institution authorized by law to issue stamps, as well as the international postal reply to coupon and confirmation stamp, received criminal law protection. Foreign stamps were still only protected under criminal law in case of reciprocity.

The crime had two basic cases in the act:

- the offense of stamp forgery; and
- the misdemeanor of fraudulent use of the stamp.
- The first basic case was punishable by up to two years in jail, loss of office, and suspension of political rights and was committed by those who:
  - imitated or forged a stamp with the aim of utilization or distribution;
  - illegally produced or used a stamp, either as an imitation or not as an imitation;
  - or knowingly used or distributed imitated, forged, produced, or used stamps in a manner contrary to the points above.<sup>14</sup>

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<sup>12</sup> 8 Órai Újság (1922): No. 06. 7.

<sup>13</sup> See more in: Jogtudományi Közlöny. 1934/28. 167.

<sup>14</sup> Act XXI of 1932. 3. §

Fraudulent use of the stamp was deemed to be the case, and a person who carried out any of the following was punishable by imprisonment not exceeding one year, loss of office, and suspension of political rights:

- in order to use or distribute genuine stamp (Section 3, para. 2), removes the sign of devaluing, hides the traces of previous devaluing with a new devaluing sign, or covers the stamp with a material suitable for removing the devaluing;
- in the interests of stamp collecting, applies an illegal imprint on a stamp, or otherwise changes its original design (printing, punching, etc.);
- or a stamp changed in a manner inconsistent with the points above is used for any other purpose, or a stamp that has already been used for fee collection, but which has not been marked with the devalued mark by mistake, is knowingly used or put into circulation again for payment of a fee;
- uses a franking machine impression without paying the fee, changes or causes to be changed on a postal franking machine, its official setting or its marking (stamping) to the detriment of the state, or violates the regulations relating to the production, keeping in stock, distribution, making available to others or acquiring the postal franking machine, which are intended to ensure the protection of the state against damage.”<sup>15</sup>

The law specifically emphasized in both basic cases that the attempt is also punishable, which indicates legislative overzealousness. According to the Act, anyone who imitated a stamp not for use or distribution committed an offence.

Overall, it can be said about the text of the law that it was too casuistic, and this probably contributed to the fact that the law practitioners preferred the previous Act.

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<sup>15</sup>1932. évi XXI. tc. 4. §

The specific part of Code Csemegi was replaced by Act V of 1961, the Criminal Code of the Hungarian People's Republic. This Act abolished the separate legal regulation of stamp forgery. The new socialist criminal code classified the delict as a crime against the national economy. The legislator recognized the related nature of the crimes of stamp forgery and counterfeiting currency, so for the first time they were regulated in one chapter.<sup>16</sup>

The text of the Criminal Code of 1961 was no longer as extensive as its predecessor, yet it was differently regulated.

The Act contained two basic cases in the form of a felony:

- any person who has imitated or falsified a stamp with the purpose of distributing or using it, or who acquires a stamp imitated or forged by someone else for the same purpose;
- any person who distributed or used a counterfeit, forged or already used stamp -as genuine or unused.<sup>17</sup>

As a result of the tightening, both basic cases were already punishable by imprisonment not exceeding three years. In the first basic case, the legislator also evaluated the intent, so it could only be realized with a direct intent (*dolus directus*), the second also with a conditional intent (*dolus eventualis*).<sup>18</sup>

It was a novelty in the crime of stamp forgery that two aggravated cases appeared. This was considered a criminal offence when the stamp forgery was committed in in criminal association with accomplices, or when it was committed on a large quantity or value of stamps. Furthermore, the Act also provided a privileged case of the statutory provision which was considered

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<sup>16</sup> Bodgál, Zoltán: Pénz- és bélyeghamisítás. [Counterfeiting money and stamp forgery]. In: Horváth, T. (szerk.): Magyar Büntetőjog II. Különös rész. [Hungarian Criminal law II. Special Part]. BM Tanulmányi és Propaganda Csoportfőnökség. 1973/3. 439.

<sup>17</sup> Act V of 1961. 245 §. (1)-(2).

<sup>18</sup> Földvári, József: Büntetőjog Különös rész. kézirat. [Criminal Law Special part]. Tankönyvkiadó. Budapest, 1972. 298.



a crime when the quantity or value of the stamps used or distributed was not significant.<sup>19</sup>

The Act stated that foreign stamps receive the same protection as domestic ones and no longer included reciprocity as a condition.<sup>20</sup>

Act V of 1961 was replaced by Act IV of 1978 (former Criminal Code), which was enacted on July 1, 1979, by Legislative Decree No. 5 of 1979. The text of the law on stamp forgery was further simplified in its gazette state. The definition of the stamp was defined by the previously mentioned Legislative Decree. According to this, it is considered a stamp in the sense of criminal law:

- a stamp suitable for a postal prepayment, a postal franking machine impression, as well as a postal overprint, inscription or indication related to fees,
- a stamp issued by the authority to fulfil payment obligation.
- any official seal used for excise purposes, official markers used for verifying the properties and components of metals, as well as any official seal used to verify the quality, quantity, and other key characteristics of products,
- stamps and seals used by the metrological authority to verify the certification and testing of measuring equipment and the volume capacity of barrels.<sup>21</sup>

The first two objects of the crime were protected under criminal law even if they had not yet been distributed or had already been withdrawn from the market.

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<sup>19</sup>Molnár, L.: A népgazdaság elleni bűntettek II. cím. [The crimes against the national economy title II.]. In: Halász, S. (Eds.): A büntető törvénykönyv kommentárja. 2. kötet. [The commentary of the criminal code volume 2.] Közgazdasági és Jogi Könyvkiadó. Budapest, 1968. 1132.

<sup>20</sup>Földvári, J. (1972), *Ibid.* 298

<sup>21</sup>Legislative Decree No. 5 of 1979 § 25

## The current regulation (Act C of 2012)

Our fourth written Criminal Code entered into force on July 1, 2013. The new Criminal Code regulates the statutory provision about stamp forgery in Chapter XXXVIII, under the heading of Criminal Offenses Relating to Counterfeiting Currencies and Philatelic Forgeries.

The protected legal interest of the crime is the security of currency and stamp circulation, the protection of trust in the public authenticity of the stamp as an article of value.<sup>22</sup>

The object of the crime is the stamp. The criminal law definition of the stamp is defined in the Criminal Code. These are the following:

- The definition of a postage stamp is defined in Act CLIX of 2012 on Postal Services. It is defined by Section 2 point 27. „*Postage stamp: a stamp issued by the universal postal service provider, which can be used for the prepayment for postal items, with a marking referring to its face value, and which contains the inscription "Hungary" or its "equivalent" in a foreign language*”. In the case of a postage stamp, it is irrelevant whether it was put into circulation or withdrawn from circulation.<sup>23</sup>
- The payment of the fee can be confirmed not only by a stamp, but also by a mark suitable for prepayment for the postal service, an impression of the franking machine, a postal overprint or mark related to the fee, and the international reply coupon. These can only be considered as an object of the crime if the prepayment is evident from them.
- The stamp issued by the authority to fulfil the payment obligation is also considered an object or product of a crime, regardless of

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<sup>22</sup>Molnár, G. M.: Pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Belovics, E. (Eds.) (2016): Büntetőjog II. Különös rész. ötödik hatályosított kiadás. [Criminal law II. Special part. 5<sup>th</sup> actualized edition]. Hvg-orac Lap- és Könyvkiadó. Budapest, 2016. 739.

<sup>23</sup>Molnár, G. M. (2016): Ibid. 739

whether it has not yet been put into circulation or has already been withdrawn from circulation. Such a stamp is protected under criminal law if the state is required by law to redeem or replace it. This includes, for example, stamp duties, the summary rules of which are provided in NGM Decree No. 32/2014 (X. 21.) on the production, circulation, and distribution of stamp duties. For the payment of administrative and court service fees to be paid with stamp duties, as well as other obligations, stamp duties with denominations of HUF 100, 200, 500, 1,000, 2,000, 5,000 and 10,000 HUF can be issued.

- Official markers used for verifying the properties and components of metals: The related provisions are provided by Governmental Decree No. 187/2011 (IX. 14.) on the examination, authentication of precious metal objects and certification of their precious metal content, as well as the equivalence of authentication and certification.
- Official seal used for excise purposes. It is nothing but the excise seal. Previously, in the case of tobacco products, this also included the technical means of tax collection, the tax stamp, but according to the new regulation, an excise seal is also used for tobacco products. The background legislation related to this is the Act on Excise Tax (Act LXVIII of 2016). According to this, the stamp placed on the smallest consumer packaging unit of the excise product subject to a stamp is considered an excise seal (3. § 53). The background legislation entered into force on July 1, 2017, and it abolished the obligation to place a stamp on tax stamps and tobacco products. Forgery of the tax stamp is punishable regardless.<sup>24</sup> Procedural rules are included in NGM Decree No. 45/2016 (XI. 29.) on the

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<sup>24</sup> Karsai, K.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Karsai, K. (Ed) *Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez* [Big Commentary of the Criminal Code]. Wolters Kluwer. Budapest, 2019. 906-918.

implementation of certain provisions of Act LXVIII of 2016 on Excise Tax.

- Stamps and seals used by the metrological authority to verify the certification and testing of measuring equipment and the volume capacity of barrels are also considered a stamp in the sense of criminal law. Act XLV of 1991 on Measurement and the Government Decree No. 127/1991. (X. 9.) related to its implementation are considered the background legislation of these provisions. A legally certified measuring equipment can only be distributed, used, or kept ready for use with a valid certification.

It should also be mentioned regarding the objects of the crime that the foreign stamp also receives the same level of protection as the domestic one.<sup>25</sup>

Today, the crime is mostly committed by the forge of excise seals and use of counterfeit excise seals.<sup>26</sup>

The criminal conducts did not change in the new Criminal Code compared to the previous one, but their number has increased by one. According to the new Criminal Code, criminal conducts are the following:

- imitation of a stamp,
- forgery of a stamp,
- obtaining counterfeit or forged stamps, and
- exporting or importing counterfeit or forged stamps or transporting them in transit through the territory of Hungary. The last criminal conduct was not included in the previous regulation.

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<sup>25</sup>Polt, P.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Blaskó et al: Büntetőjogi Különös rész II. [Criminal law Special part II.] Rejtjel Kiadó. Budapest, 2013. 283.

<sup>26</sup>Molnár, G. M. (2016): Ibid. 740.

All criminal conduct has in common that it can only be committed with purpose, namely for the purpose of distribution or use.

Imitation of a stamp is the creation of a replica of a stamp in circulation. Deception is facilitated by the fact that the fiscal stamp is reprinted, with a different denomination, a different year, serrations, watermarks, and other more effective security elements. A more typical forgery is the forgery of a lower denomination (HUF value) into a higher denomination.

Stamp forgery includes any alteration to a genuine stamp that results in the stamp appearing to have a different value, whether smaller or larger, than its original value. Counterfeiting is typical in the case of fiscal stamps, as previously issued stamps are forged into reprinted denominations. The method and quality of imitation and forgery is indifferent.<sup>27</sup>

The common essence of the acquisition of a counterfeit or forged stamp, its importation into the country, its exportation, its transit, as criminal conducts, is possession and taking possession. Acquisition means taking possession with a final purpose, and the way of acquisition is irrelevant. Acquisition can take place either free of charge or with a chargeable transaction, or even without a legal transaction (e.g.: unauthorized access), only the purpose of the acquisition is relevant, and that is the distribution or use of the counterfeit or forged stamp. According to the Criminal Code, forgery of stamps issued for the purpose of stamp collecting is also punishable.<sup>28</sup>

The use can be manifested in the intended use of stamps and other certificates. This usually involves the use of a stamp, as stamps and certificates document a one-time fulfilment. The stamp wears out by sticking it on. If a counterfeit, forced or once-used stamp created by imitation is reused, the fulfilment documented in it is missing. Stamps can not only be used for

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<sup>27</sup>Nagy, Z.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Tóth, M. – Nagy, Z. (Eds.): Magyar Büntetőjog Különös rész. [Hungarian Criminal law Special part]. Osiris Kiadó. Budapest, 2014. 499.

<sup>28</sup>Gál I. L.: Pénz és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Polt, P. (Ed): Új Btk. Kommentár. 7. kötet, Különös rész. [New Penal Code Commentary, volume 7. Special part]. Nemzeti Közszerkesztési és Tankönyvkiadó. Budapest, 2013. 202.

their original purpose but can also be used for collecting. In the collector circulation, the exchange rate of the stamps may be significantly different from their face value. The development of a stamp's exchange rate different from its face value can be influenced by, for example, a production error or special purpose use (such as occasional stamping). With this in mind, the legislator expanded the definition of distribution and forgery.<sup>29</sup>

The second basic case of the statutory provision provides that the distribution of a counterfeit, forged or already used stamp as genuine or unused and the use thereof shall be punished. Distribution and use outside of this scope are not punishable on their own.

The crime can also be committed by soaking and reusing a stamp that has already been used. The first use of the stamp means that it has been "used up", as it documents the one-time fulfilment or payment.<sup>30</sup>

The offense of stamp forgery is carried out if the offender uses stamp images cut out of magazines for postal prepayment (BH1989. 432.).

The subject of the crime can be anyone. In terms of guilt, the form of stamp forgery specified in Paragraph 1 is a deliberate crime, so it can only be carried out with a direct intent. If a person does not recognize that he or she is acquiring or using a counterfeit or forged stamp, the person cannot be punished, as the crime does not have a negligent form.<sup>31</sup> The form specified in Paragraph 2 can also be carried out with a conditional intent.

There are two aggravated cases of stamp forgery: if the crime is committed on a stamp with a particularly large or higher value, and if it is committed in criminal association with accomplices. In such cases, it is punishable by imprisonment between one to five years. According to Section 459

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<sup>29</sup>Molnár (2016): 740-741.

<sup>30</sup>Gula, J.: A pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Horváth, T. – Lévy, M. (Eds): Magyar Büntetőjog Különös Rész. [Hungarian Criminal law Special part]. Complex Kiadó. Budapest, 2013. 590.

<sup>31</sup>Karsai, K.: Pénz- és bélyegforgalom biztonsága elleni bűncselekmények. [Criminal offenses relating to counterfeiting currencies and philatelic forgeries]. In: Karsai, K. (Ed): Kommentár a Büntető Törvénykönyvhöz. [Commentary for the Criminal Code]. Complex Kiadó. Budapest, 2013. 822.

Paragraph 1 Point 2 of the Criminal Code ‘criminal association’ shall mean when two or more persons are engaged in criminal activities in an organized fashion, or they conspire to do so and attempt to commit a criminal act at least once, without, however, creating a criminal organization. Committing the crime to a particularly considerable value, even though according to Section 459 Paragraph 5 Point d) it means HUF 50 million and HUF 500 million, but in this case the upper limit is no longer relevant. In the spirit of tightening, the new Criminal Code increased the minimum sentence for aggravated cases to one year of imprisonment.

In the case of postage stamps, the rating linked to the value is adjusted to the face value. In the case of stamps indicating the fulfilment of the payment obligation, it is not adjusted to the face value, but to the amount that, e.g., the excise seal contains. It is important to note that the unique value of stamps suitable for stamp collecting - unlike the face value - can be worth several million forints (HUF). It is considered very valuable among stamp collectors, for example the Crowned Madonna on the head or the blue Mauritius.<sup>32</sup>

There is also a privileged case of the crime of stamp forgery, if stamp forgery is committed on a stamp of a lesser value or of a value below that, i.e., the upper limit of the value is five hundred thousand forints. The privileged case of the delict is regulated in the form of a misdemeanor.<sup>33</sup>

Looking at stages, the attempt to forge stamps can only be carried out in a narrow circle. It can be assessed as an attempt in the case of acts committed to start imitation or forgery, as well as directly for the purpose of obtaining a counterfeit or forged stamp. The crime is completed with the forgery or handover. In the case of acquiring a counterfeit stamp for the purpose of distribution or use, stamp forgery is considered a completed crime, even if the stamp itself is a forgery incapable of deception. If, after making the counterfeits produced for the purpose of distribution, the perpetrator abandons the purpose of distribution, it cannot be classified as a voluntary

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<sup>32</sup>Karsai, K. (2013): Ibid. 823

<sup>33</sup>Karsai, K. (2013): Ibid. 823-824

withdrawal. At most, it can be evaluated within the scope of the imposition of the penalty.

The statutory provision of stamp forgery does not evaluate results, so it is classified as a formal immaterial delict.<sup>34</sup>

Multiple counts of offenses: A crime committed for several forgeries on the same occasion must be evaluated as a natural unit. A continuous unit is realized if the offender uses the series of counterfeit stamps obtained on one occasion in several parts. The use of a counterfeit trademark is not a stamp forgery, but a violation of industrial property rights (Section 388 of the Criminal Code), as it is not a stamp used by the authorities.<sup>35</sup>

Delineation: distribution of a counterfeit stamp is fraudulent, deceptive behaviour. If the factual elements of the statutory provision of fraud (Section 373) and stamp forgery are both fully realized, only special stamp forgery can be established. If the object of the crime (or its product) does not meet the conditions laid down in the interpretive provision of the Criminal Code [see Section 391, Paragraph 5 Point a)] against the concept of the stamp, if used, the act may still be suitable for establishing the offense of using a counterfeit private document according to Section 345.<sup>36</sup>

## **Regulation of stamp forgery abroad**

### ***The statutory provision of stamp forgery in Germany***

The crime was first regulated in Germany in the Prussian Criminal Code published in 1851 under the name of forgery of stamp paper (Section 253).<sup>37</sup> The delict under the name stamp counterfeiting

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<sup>34</sup>Molnár, G. M. (2016): Ibid. 741

<sup>35</sup>Karsai, K. (2013): Ibid. 823

<sup>36</sup>Molnár, G. M. (2016): Ibid. 741

<sup>37</sup>Beseler, G. (1851): *Kommentar über das Strafgesetzbuch für die Preußischen Staaten*. [Commentary on the Penal Code for the Prussian States]. Weidmann Buchhandlung, Leipzig. 480-481



(*Wertzeichenfälschung*) first appeared later, in the German imperial Criminal Code adopted in 1871.<sup>38</sup> German law dogmatically considers stamp counterfeiting to be a crime similar to currency counterfeiting, and therefore regulates these crimes in one chapter. The stamp is seen as a quasi-currency. Stamp forgery is a special crime compared to forgery of administrative documents.

The German legislator intends to protect the circulation of official stamps as a community interest with the statutory provision. The brands and marks on the stamp prove that the fee or other costs have been paid, and their forgery causes damage to the state and society.<sup>39</sup>

Official stamps are the objects of the crime. The Act does not contain the definition of an official stamp or an exhaustive list of them. The legislator entrusted this to the law practitioners. According to current German jurisprudence, an official stamp is a stamp issued by the state, local governments, legal entities, or public bodies, i.e., it is considered official if it comes directly or indirectly from a state body. Similar to the Hungarian regulations, official stamps include excise seals, stamp duties, seal marks, and stamps certifying court costs.<sup>40</sup> Postage stamps are not official stamps under German law, as the postal sector has been privatized.<sup>41</sup> Invalid or unofficial stamps are not protected under criminal law, so neither are collectable stamps. Section 152 states that forgery of foreign stamps is also punishable. Foreign stamps are also required to be official, and this must always be determined based upon the law of the given state.<sup>42</sup>

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<sup>38</sup>Landes Johannes (2006): *Die Wertzeichenfälschung*. [The stamp forgery] Peter Lang, Europäischer Verlag der Wissenschaften. Frankfurt am Main. 11

<sup>39</sup>Schmidt, R. – Priebe, K. (2012): *Strafrecht besonderer teil. II. Straftaten gegen das Vermögen*. 11. Auflage. [Criminal law special part. II. Offenses against property. 11th edition]. Verlag Rolf Schmidt, Hamburg-Berlin. 339

<sup>40</sup>Wessels, J. – Hettinger, Michael (2014): *Strafrecht besonderer teil 1*. [Criminal law Special part 1]. C. F. Müller, Heidelberg, München, Landsberg, Frechen, Hamburg. 281

<sup>41</sup>Fischer, T. (2013): *Strafgesetzbuch und Nebengesetze (Kommentare)* 60. Auflage, [ ] Verlag H.C. Beck. München. 1059-1060

<sup>42</sup>Fischer, T. (2013): *Ibid.* 1059-1060

According to Section 148 Paragraph 1 Point 1, it is punishable to forge or falsify official stamps. In the case of the latter, an additional condition is that it is done in such a way that the forged stamp appears to be of greater value (this differs from the Hungarian regulations, since any modification to the stamp results in commission of the crime).

Even according to German law, stamp forgery can only be committed on purpose, namely for the purpose of distribution or use. The act is also punishable if the counterfeit or forged official stamp would be sold as a collector's stamp by the perpetrators, as there is a risk that it will later be put into circulation.

It is not a condition that the offender wants to distribute the counterfeit stamp or use it him or herself, it is also sufficient if the offender does it for the purpose of facilitating its distribution. In practice, an example of this is if the perpetrator makes counterfeit stamps in order to pass them on to an accomplice who wants to distribute them.

Changing or removing the validity (value) indication will be punished not according to point 1 of the first paragraph but will be punished according to the preparation of the crime regulated in Section 148 Paragraph 2.

Acquiring counterfeit or forged official stamps means their actual possession. In order to establish criminal conduct, it is necessary, on the one hand, that the counterfeit official stamp be in the possession of the perpetrator, and on the other hand, that he or she also has the right to dispose of it. Thus, it is not considered obtaining a counterfeit official stamp, for example, if it is deposited with the person concerned (at most, it can be punished as an accomplice).<sup>43</sup>

Point 3 of Paragraph 1 orders the following criminal conducts to be punished: using, offering for sale, or distribution of counterfeit or forged official stamps. Offering for sale is nothing more than an attempt for distribution, which is regulated by the German legislature as a completed act.

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<sup>43</sup> Fischer, T. (2013): Ibid. 1060-1061

When using an invalid stamp (Section 148, Paragraph 2), the legislator prohibits the reuse of stamps that have already been validly used. To establish the crime, it is necessary that the validity mark on the used stamp has already been removed from the stamp. Changing the date on the stamp is also considered a removal. From the point of view of establishing the crime, it is irrelevant who removed the validity indication from the stamp. Looking at the subjective side of the crime, the offender must know that the stamp is invalid and that he or she wants to use or distribute it as valid.<sup>44</sup>

Attempts and preparations for stamp forgery are also punishable under German law. The preparation of the crime is carried out by the person who produces, acquires, offers for sale, stores, or passes on to others the necessary tools (e.g., printing equipment, computer programs, security elements) for the purpose of counterfeiting stamps. In the case of preparation, the penalty is naturally lower, punishable by imprisonment for up to two years.

### *The statutory provision of stamp forgery in Austria*

The delict of stamp forgery is regulated in Section 238 Chapter 13 of the Austrian Criminal Code. Similar to the German and Hungarian regulatory solutions, it is included in the same chapter as counterfeiting of currency and counterfeiting of cash-substitute payment instruments.<sup>45</sup>

The Austrian Criminal Code by the statutory provision aims to protect the circulation of official stamps, similar to the German regulations. The Austrian regulation follows the German model to a large extent. The definition of the official stamp is not included in the Austrian Criminal Code either. According to jurisprudence, a stamp is considered official if it was

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<sup>44</sup> Fischer, T. (2013): Ibid. 1061

<sup>45</sup> Schloenhardt, A. – Höpfel, F. (2016): Strafgesetzbuch – Austrian Criminal Code. NWV Verlag, Vienna – Graz. 302

issued by the public authority. Forgery of postage stamps is not a crime due to the privatization of the Austrian post office.<sup>46</sup>

The peculiarity of the Austrian regulation is that it also includes a range of cases excluding criminal liability. If a previously used official stamp is reused or the revoked mark is removed from a previously used official stamp. Like the German regulations, the preparation of the crime is punishable by imprisonment for up to 2 years.<sup>47</sup>

### *The statutory provision of stamp forgery in Switzerland*

Chapter 10 of the Swiss Criminal Code regulates stamp forgery (Section 245), together with counterfeiting currency. In addition, a lesser crime is regulated in Chapter 20, Violation of Federal Law, the reproduction of stamps without the intention of forgery, with the name of their creator indicated.

According to the Swiss Federal Court, stamps should be protected under criminal law because, like currency, they function as means of payment or as proof of payment of fees in circulation. The object of the crime is the official stamp. The Criminal Code does not define the concept of an official stamp, but by way of example, it includes postage stamps, revenue stamps, and a stamp duty. Section 250 extends protection to foreign official stamps. Meal vouchers are not considered stamps, but public documents, so they cannot be the objects of this crime. Most often, criminals make counterfeit postage stamps for stamp collectors in Switzerland.<sup>48</sup>

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<sup>46</sup> Hinterhofer, H. (2002): Strafrecht Besonderer Teil II. §§ 169 bis 321 StGB. Dritte, überarbeitete Auflage. [Criminal Law Special Part II. §§ 169 to 321 StGB. Third revised edition]. WUV | Universitätsverlag, Wien. 152

<sup>47</sup> Bertel, Ch. –Schwaighofer, K. (2008): Österreichisches Strafrecht Besonderer Teil II. §§ 169 bis 321 StGB Achte, vollständig überarbeitete Auflage. [Austrian Criminal Law Special Part II. §§ 169 to 321 StGB Eighth, completely revised edition]. SpringerWienNewYork. 143

<sup>48</sup> Donatsch - S. Flachsmann - M. HUG - H. Maurer - U. Weder (2006): Schweizerisches Strafgesetzbuch. [Swiss Criminal Code]. Orell füssli Verlag AG. 305

## **International conventions for the security of stamp circulation**

Hungary has joined several conventions related to stamps and postal traffic. The promulgating act is Act CXIII of 2012 which is:

- of the Seventh and Eighth Supplementary Protocols to the Statutes of the Universal Postal Union;
- consolidated with the amendments signed at the 2004 Bucharest Congress and the 2008 Geneva Congress of the Universal Postal Convention of the Universal Postal Union;
- of the Final Protocol of the Universal Postal Union signed at the 2004 Bucharest and 2008 Geneva congresses, and
- it is about the publication of the Postal Payment Services Agreement consolidated with the amendments signed at the Bucharest Congress in 2004.

With this legislation, the former General Regulations adopted at the 12th Congress of the Universal Postal Union in Beijing and Government Decree No. 121/2001. (VII. 10.) on the promulgation of the Universal Postal Convention and its Closing Protocol have been repealed.

According to the Universal Postal Convention:

- Member countries undertake to adopt the necessary measures to prevent the following acts and to prosecute and punish their perpetrators.<sup>49</sup>
- Member countries undertake to implement the necessary measures to prevent, prosecute and punish violations regarding the following postal prepayment means under this Convention:
  - postage stamps, in circulation or withdrawn from circulation;
  - prepayment impressions;

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<sup>49</sup> Universal Postal Convention Article 11. 1

- impressions of franking machines or printing presses;
- international reply coupons.
- „*In this Convention, violations concerning means of postal prepayment refer to any of the acts outlined below committed by any persons with the intention of obtaining illegitimate gain for oneself or for a third party*”.
- The following conducts are punishable:
  - any act of falsifying, imitating or counterfeiting any means of postal prepayment, or any illegal or unlawful act linked to the unauthorized manufacturing of such items;
  - manufacture, use, release for circulation, commercialization, distribution, dissemination, transportation, exhibition or display (also in the form of catalogues and for advertising purposes) of any means of postal prepayment which has been falsified, imitated or counterfeited;
  - any act of using or circulating, for postal purposes, any means of postal prepayment which has already been used;
  - any attempt to commit any of these violations.<sup>50</sup>
- The Convention states that, with regard to sanctions, no distinction can be made between the above-listed acts irrespective of whether national or foreign means of postal prepayment are involved, and this provision shall not be subject to any legal or conventional condition of reciprocity.<sup>51</sup>
- The regulation of the Hungarian Criminal Code meets the requirements of the Universal Postal Convention.

## **Criminal statistics**

The table below summarizes the annual number of registered stamp forgeries in Hungary in the past period

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<sup>50</sup> Universal Postal Convention Article 11. 2.

<sup>51</sup> Universal Postal Convention Article 11. 3.

2014	2015	2016	2017	2018	2019	2020	2021	2022.08.
335	75	207	238	91	200	17	13	19

Table No. 1

The number of registered stamp forgeries in Hungary between 2014-2022 on an annual basis.<sup>52</sup>

No clear trend can be observed, but it can be stated that the number of stamp forgeries in Hungary is very low compared to total crime.

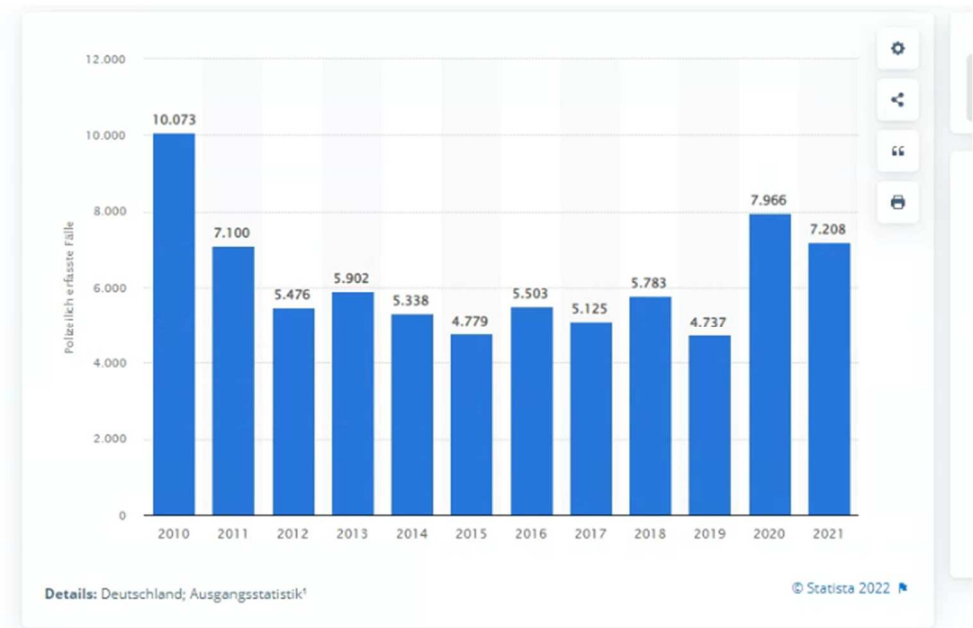


Table No. 2 shows the number of registered currency and stamp forgeries in Germany between 2010 and 2021 on an annual basis.<sup>53</sup>

<sup>52</sup> Source: <https://bsr.bm.hu/Document>

Accessed: 11.08.2022

<sup>53</sup> Source: <https://de.statista.com/statistik/daten/studie/157431/umfrage/polizeilich-erfasste-faelle-von-geldfaelschung-seit-1995/>

Accessed: 12.08.2022

In Germany, the number of stamp forgeries is counted together with the crime of currency counterfeiting in the statistics published annually. A significant percentage of the numbers shown in the chart most likely cover the crime of counterfeiting. If we compare this statistic with the number of money and stamp forgeries committed in Austria between 2019-2020, where stamp forgeries are also counted separately, we can see that out of the 832 total data, only 6 crimes were classified as stamp forgeries.<sup>54</sup>

## Summary

Overall, the regulatory solutions are very similar. German law pursues stamp counterfeiters with the utmost rigour, and the courts have a great deal of freedom in defining the objects of the crime. The advantage of German-language legal areas is that they allow for flexible legal interpretation, but it is also a disadvantage, as arbitrary legal interpretation can occur.

Hungarian regulations comply with international conventions and the formal requirements of criminal legislation<sup>55</sup>: the criminal law disposition is clear; the possibility of arbitrary legal interpretation is excluded due to the exhaustive list of the objects of the crime.

Fortunately, the statistical relevance of stamp forgeries is low these days, which is also thanks to digitization, for example. Considering the above, we do not currently see any justification for amending the legislation.

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<sup>54</sup> Source: [https://www.statistik.gv.at/fileadmin/publications/gerichtliche\\_kriminalstatistik\\_201920.pdf](https://www.statistik.gv.at/fileadmin/publications/gerichtliche_kriminalstatistik_201920.pdf)

Accessed: 10.08.2022

<sup>55</sup> Kőhalmi, L. (2012): A büntetőjog alapproblémái. [The basic problems of criminal law]. Pécsi Tudományegyetem Állam- és Jogtudományi Kar Gazdasági Büntetőjogi Kutatóintézet. Pécs. 37



JÁNOS HEGEDŰS

## The dynamics of the security policy of the territories with unsettled status in the South Caucasus

### Introduction

The coronavirus pandemic — or for short: Covid19 — has formed the health situation in Europe, which has so far had the most severe consequences, and has brought about previously almost unimaginable changes in everyday life, in the system of action of governments and in the state of the world economy. The consequences of the pandemic for the course of normal life management have not yet been fully mapped and processed, since a possible wave again may override even the most optimistic scenarios prepared for the near future. In the field of security policy, it is not new to find that the state of health, including human, animal and plant health, can have a strong influence on the development and dynamics of the security environment and can even represent radical changes in previously established environmental structures and international relations.

In my dissertation, I would like to briefly present the security policy dynamics of three south Caucasus territories during the coronavirus pandemic. The three *de facto* countries — Abkhazia<sup>1</sup>, South Ossetia<sup>2</sup> and Nagorno-Karabakh<sup>3</sup> — share similar historical, political and economic characteristics in several areas. One of the main reasons for my choice of the topic is that in the years 2015-2022, in two terms, I worked for a total of five years in Georgia in the European Union Monitoring Mission in Georgia<sup>4</sup> (EUMM Georgia), in the Hungarian contingent staff, so I was able to

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<sup>1</sup> Area: 8.660 square kilometers, population: 245.000 head, capital city: Sukhumi

<sup>2</sup> Area: 3.900 square kilometers, population: 53.000 head, capital city: Tskhinvali

<sup>3</sup> Area: 3.170 square kilometers, population: 150.00 heads, capital city: Stepanakert

<sup>4</sup> More details about the mission

Source: [www.eumm.eu](http://www.eumm.eu)

Accessed: 01.08.2022.

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gain direct and personal experience of the course and turn of regional security events. The period designated for processing ranges from February 26, 2020 — the date on which the first Covid19 infection was registered in Georgia — to February 24, 2022 — the date of the start of Russian aggression against Ukraine. In my writing, I do not intend to saturate the topic with statistical data, dates, names and locations, but rather I want to prepare a comprehensive presentation work with an emphasis on the processes.

### **Abkhazia, South Ossetia and Nagorno-Karabakh: the roots of the conflicts and the Soviet heritage**

The three areas under investigation have a number of common features, the emphasis of which is represented by the historical heritage and the post-Soviet period, which spans a little more than thirty years. In my writing, for reasons of scope alone, I cannot aim to explore the entire historical dimension, but instead I try to highlight the events that are absolutely necessary.

Throughout history, the Caucasus region has often been the site of great power conflicts of interest, an area designated for the conquest of imperial aspirations, and migration routes have passed through the passes of the high mountains. The Caucasus region<sup>5</sup> extends from the eastern Black Sea basin to the western shores of the Caspian Sea, is bordered by Russia in the north, Georgia, Armenia and Azerbaijan in the south. The dominant geographical formation in its name is the Caucasus Mountains, which are chain mountains stretching for about a thousand kilometers — approximately in an east-west direction. The mountain range embodies a natural dividing line between continental Europe and Asia.

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<sup>5</sup> Thomas De Waal (2010): *The Caucasus, An Introduction*. 1. *Among the Mountains* Oxford University Press.6-9

The ethnic relations of the area are extremely complex, and the ethnographic processing of the area reveals the existence of thirty-six<sup>6</sup> nationalities, a research with more detailed characteristics shows the existence of fifty-three nationalities. It is true that among them there are communities with barely 2000-2500 inhabitants, speaking no independent language, but linguistic dialects and with specific cultural identity traits, but at the same time the ethnographic map of the Caucasus can be considered one of the most colorful in the world. Ethnic and related religious complexity created complex internal relations in the system of bonds of the peoples living in the region. The monolithic form of the common historical heritage of the most recent era was manifested in the existence of the USSR. For almost the entire period of the existence of the USSR until 1991<sup>7</sup>, the Caucasus region was part of the then largest country in the world. Georgia, Armenia and Azerbaijan were soviet socialist republics of the Soviet Union, to which the Moscow leadership of the Communist Party of the Soviet Union has always looked with suspicious eyes. This distrustful political and military approach was no accident and I will name the main reasons below.

The three Soviet republics did not belong to the Slavic family, but their population consisted of a far-reaching proportion of Caucasian mountain peoples, who were closer in historical, linguistic and cultural relations to the Turkish (Turkic) and Iranian (Persian) cultural contexts than to the Russian-Belarusian-Ukrainian axis, located in the center of the soviet mainstream line at that time. Although Orthodox Christianity is determinant from a religious point of view, a significant number of Muslim populations already lived in the territory of the three republics during Soviet times. In addition, the Caucasus region was a special zone from a geopolitical point of view, since NATO member Turkey bordered the southern rim of the

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<sup>6</sup> Source: [www.factsanddetails.com](http://www.factsanddetails.com): People of the Caucasus. Accessed: 01.08.2022.

<sup>7</sup> I deliberately did not write the date that declares the creation of the Soviet Union. Although November 7, 1917 was considered a milestone, it cannot be considered as such even when examined from many aspects. The Soviet invasion of the territories beyond the Caucasus continued even in the 1920s.

region. The internal strife of areas that were geographically, culturally and self-identitally distant from Moscow could not be adequately handled by the Soviet Union either. In the last years of the Soviet Union, the ethnic antagonisms, which were forced into an artificial framework and unresolved, could no longer be concealed from the world or kept beneath the surface.

Of the three named territories, the security policy events of Abkhazia and South Ossetia are closest to each other. The common feature of the two territories is that they emerged from the territory of Georgia, and the years 1992-1993 can be marked as the beginning of the aspirations for independence. In addition to the similarity, a significant difference, however, is that Abkhazia has a Black Sea coastline of about 200 kilometres, while South Ossetia is practically a *de facto* country in the southern foothills of the Caucasus with an area only partially suitable for agricultural cultivation. At the same time, the military-political value of South Ossetia is greatly enhanced by the presence on its territory of the Roki Tunnel, which makes the Caucasus permeable both in winter and summer, which, in a given military situation, can provide a continuous route to Georgia, Armenia and Turkey for the influx of Russian military forces.

### **A comprehensive presentation of the event dynamics of the period from 26 February 2020 to 24 February 2022**

As a prelude to the security policy events of the two years under investigation, it can be said that among them the Armenian - Nagorno-Karabakh - Azeri conflict, which began in September 2020 and lasted until the beginning of November, stands out, which was clearly a series of armed acts with the most serious consequences – fatalities. According to some of the analyses of the conflict, Azerbaijan has knowingly taken advantage of the partially paralyzed state of the world caused by the coronavirus pandemic to turn the issue and fate of Nagorno-Karabakh in a way that suits it. The management of the pandemic and the mitigation of its consequences have

captured the attention of governments everywhere and have also greatly narrowed the space for international organizations.

Fortunately, there was no conflict of interest between the security incidents in Abkhazia and South Ossetia with weapons. The *de facto* governments of both areas have been heavily engaged in dealing with the consequences of the pandemic and in the matter of obtaining vaccines. Based on an analysis of the news reports of the processed period, it can also be stated that the health care system and infrastructure of Abkhazia and South Ossetia are highly outdated, with serious care problems and staff shortages. Far-reaching majority of the medical facilities were built back in Soviet times and are technically stuck at the level of the '70s and '80s. In Abkhazia, the situation was aggravated by the fact that the use of electricity for the "mining" of bitcoin crypto currency put an extremely strain on the energy situation in the *de facto* country. There was not always enough electricity to meet the needs of the population, on several occasions the supply had to be paused in order to have enough electrical energy to operate the artificial breathing ventilators in hospitals for Covid19 infected patients.

When viewed from the point of view of the stability of state power, both areas are characterized by an administrative structure with weak financial resources, a strong presence of internal political struggles and corruption. The political culture depicted is still rooted in Soviet times, and personal relations and family and kinship ties play a significant role in general state administrations. Without Russian financial, economic assistance and expertise, as well as knowledge, "know-how" exports, both Abkhazia and South Ossetia would collapse and plunge into fatal chaos.

In the field of international relations in the region, the two years evaluated did not represent extraordinary changes, but notable events. For Russia, the territory is considered to belong to the "near-foreign" region, that is, to the former Soviet territories. Active Russian behavior is observed on the platforms of diplomacy, intelligence and mass communication. The European Union and NATO are also present in the region through Georgia's Euro-Atlantic aspirations. EUMM Georgia is the only large-scale EU engagement in the common foreign and security policy area and throughout

the Covid19 pandemic, the mission has always carried out its tasks in the operational area, there was no mission evacuation. NATO-Georgia and US-Georgia relations are also at an in-depth stage, even though Georgia's membership of the EU and NATO is far from being in the foreseeable future. China has increased its economic influence in the region, the most visible sign of which is the construction of the Tbilisi — Batumi highway in Georgia.

### **Event dynamics of the period 26 February 2020 to 24 February 2022 factually evaluated along factor strengths**

General security policy assessment: A truly significant security change with cardinal results or consequences did not occur for Abkhazia and South Ossetia. In the political direction, a strong Russian orientation was preserved in both areas. There is no aspiration to reunite with Georgia or to open negotiations and to settle the current *status quo*. Russia sees the region as a definite sphere of influence; Turkey wants to increase its influence in the region. Iran's intentions in its relationship with the region are less revealed, but process analyses show Tehran wants to strengthen its presence and advocacy, especially in relation to energy supply routes. Rating: stagnant factor.

Military policy: Russia has increased its military influence in the region both in reality and symbolically. In Abkhazia and South Ossetia, Russian armed forces and FSB units remain present. The 1970 men strong Russian peacekeeping contingent deployed in Nagorno-Karabakh increased the boundaries of regional projection of Russian forces. An outstanding security event is the Armenian -Nagorno-Karabakh - Azeri War of September 27-November 10, 2020. Rating: strengthening, increasing factor.

Maritime safety, navy: In the two years studied, the Black Sea basin and water surface valued strongly. On November 08, 2021, the visit of the U.S. Navy's 6<sup>th</sup> Fleet's flagship, the *USS Mount Whitney*, and the high-fire power capable *USS Porter*, equipped with guided missiles, to the port of Batumi, Georgia, as well as their official reception, caused a strong swing

in the segment of maritime safety. Along with this, Russia insists on the Abkhaz coast, where it can launch and receive, repair and replenish its ships in a given naval conflict. The geopolitical importance of the Black Sea has increased enormously in parallel with Russian aggression against Ukraine, including the strategic importance of sea routes for energy and grain transport. Rating: strengthening, increasing factor.

Energy security: The energy supply situation has worsened in the two years under review than in the previous period. Due to outdated electricity systems, renovation programs that have been postponed for years and the already mentioned bitcoin "mining", the emergence of electricity supply problems was especially noticeable in Abkhazia. The strategically important location for electricity generation in the South Caucasus region is the Enguri Dam in Western Georgia and the associated power plants, which are already in the territory of Abkhazia. The facility was built back in Soviet times, and it can be said without exaggeration that it was considered a zenith product of Soviet engineering in that era. The peculiarity of electricity generation is that water is collected on Georgian territory along the bed line of the Enguri River, but it is flowed through underground pipes to Abkhazia for electricity production. The complexity of the situation is complicated by the fact that the entire design documentation of the technical facility is placed at a Moscow design bureau. Rating: strengthening, increasing factor.

Health safety: Definitely deteriorating health conditions can be assessed. Without a Russian anti-Covid19 vaccine, the fight against the epidemic would not have been ensured. Cumbersomely procured vaccine doses, stuttering vaccination points and high death rates among those infected. The help of the Tbilisi-based Georgian government to counteract the weaknesses of the Abkhaz health care system, the reception of Abkhazian patients in Georgian hospitals, should be recorded as a positive event. Rating: deteriorating, weakening factor.

## Summary

The South Caucasus region embodies an extremely complex security environment. The relatively small area is also surrounded by a chain of high mountains and two seas, while the east coast of the region is extremely rich in hydrocarbons. The situation in Abkhazia, South Ossetia and Nagorno-Karabakh was not solved during the period under review. We can still speak of *de facto* countries whose international recognition are extremely scarce, and based on the developments taking place in the world, strong international support for autonomy cannot be predicted in the near future. The coronavirus pandemic has weakened the internal life, social cohesion and economic opportunities of all three areas, tying Abkhazia and South Ossetia more strongly towards Russia. Nagorno-Karabakh's situation has deteriorated, it will have to survive the upcoming years with the support of a weakened Armenia and a strengthening Azerbaijan.



## **Terrorists who make their mark online**

The opportunities provided by the Internet (Internetworking System) are used and exploited by criminals and criminal groups.

The question is whether there are differences between the use of the Internet by the terrorist organizations or their members and the lone terrorists?

There are similarities between the actions of the two groups of criminals:

- The aims and/or motivations. Typically, there is no difference between the two groups of offenders. The goals and motives can include national, ethnic, separatist aspirations, neo-Nazi, white supremacy racist or other extreme political or politically rooted ideology.
- The aims and motives can be intertwined. Violence used in the name of neo-Nazi ideology can be both politically motivated and directed against Jews. The actions of Muslim extremists can also be directed against the Western world's denial of the Christian religion (its political system, lifestyle and value system.)
- The site of potential attacks of both groups of perpetrators can be both the real and the virtual world.

In the case of attacks carried out in the natural sphere, the reasons why Internet monitoring is so important include the clarification of the target, the method of the attack, the communication before and after the commission, the timing of terrorist attacks against the same target and the same method, which can help the investigation in real space with other evidence.

Both the terrorist organization and the lone terrorist can remain hidden during an attack carried out online and offline. Traces and hints of their actions can be found by evaluating the identifiers used (pseudonym, monogram, tricks, TC/IP number, etc.), the method and purpose of the network attack, although other tools are also needed to identify them in this context. There are typical network attacks, such as hacking, malware, DoS, DDoS, blackmails - attacks, the defacing etc.<sup>1</sup>

Differences can also be discovered between two groups of perpetrators:

- Concerning the aims and motives mentioned above, in addition to political and religious motives, as well as similar reasons and goals, attacks carried out with an individual goal, for themselves, e.g. for profit, kidnapping, asserting a particular claim, and motiveless or irrational attacks are characteristic of lone perpetrators.

Psychopaths are especially dangerous.<sup>2</sup>

At the same time, actions aimed at disrupting the social-economic-political order or exchanging hostages can be characterized as the goal of terrorist organizations.

- Attacks carried out by mail are typical of the lone terrorist.<sup>3</sup> Theodore John "Ted" Kaczynski (called Unabomber) was a specialist in letter bombs. But letters containing anthrax are also known cases.

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<sup>1</sup> Dornfeld, L. (2019): Kiberterrorizmus – a jövő terrorizmusa? [Cyberterrorism - the terrorism of the future?]. In: Mezei Kitti (ed) A bűnügyi tudományok és az informatika, Budapest – Pécs. 47-63

Nagy, Z. (2016): Kiberbűncselekmények, kiberháború, kiberterrorizmus [Cybercrime, cyberwar, cyberterrorism]. Magyar Jog 63. 2016/1. 17 - 24

<sup>2</sup> Fanatical psychopaths hide the danger in their name, but so do affective psychopaths, who are characterized by emotional fluctuations and excessive emotional reactions, hysterical psychopaths who often hide from the world, but are often unable to form social relationships, etc.

<sup>3</sup> Simon, J. (2013): Lone Wolf Terrorism: Understanding the Growing Threat, Prometheus Book, New York. 87-88

In terms of appearance on the networks, the differences are:

Organizations declared terrorists by the Western world have a greater personal and material potential in their appearance on the Internet:

- Maintenance of own servers, server parks or raid servers.
- False, so-called use of "traveling" TC/IP numbers to measure computers and servers and prevent their paralyzing.
- Editing and maintenance of an own website in order to provide fast, multilingual, comprehensive multimedia information. The propaganda about their activities exaggerates their successes and trivializes their losses (For example, Chechen kavkazcenter.com – it has not been reached). Remember that there is a solid Wahhabi community in the province of Sandzak in southern Serbia, who, together with their Wahhabi brothers, aspire to create an Islamist state that includes Kosovo, Sandzak and Muslim Bosnia. Many Chechens and al-Qaeda members are Wahhabis belonging to the radical Muslim reformer movement.
- Their pages, with their profoundly religious content (this is typically the case with jihadist sites), also serve as a means of recruiting members with the possibility of exchanging files with young people. In more than one case, a movie can be downloaded from Palestinian sites before it has been shown in Hollywood.<sup>4</sup>
- Information can be hidden on web pages without encryption (steganography – a well-known, established solution), which may contain instructions and information. Images downloaded from websites, for example, can hide completely different content.
- Other options are also known, for example, an FTP network protected by a password or other identifier. Communication takes place through this hidden network, or by opening an e-mail account that does not distribute, but the entrants send their written messages to

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<sup>4</sup> Source: <https://www.cnet.com/tech/home-entertainment/in-refugee-camp-a-p2p-out-post/>  
Accessed: 02.05.2022

the "they communicate by leaving" draft. It is worth paying attention to existing e-mail accounts from which there is no outgoing data traffic.

- Providing news information about the organization, their activities, battles, victories and losses ("their heroes").

News can be published on legal news sites and content providers, the sympathy of the Basque and Northern Irish sites for ETA and the IRA is noticeable. Often ("cover") websites appear, not under the name of a terrorist organization, but essentially promoting their propaganda.<sup>5</sup>

The communication interfaces of lone terrorists on the Internet can be their own web pages, blogs, forums, on social media sites, but – presumably due to the relative complexity of this (creation, maintenance, payment of fees to the service provider and other reasons) – it is more practical to use options that provide space for further communication.

The solitary offender is often characterized by sociability, they are unable to keep their views, opinions and future actions to themselves, they expect confirmation from others or feel compelled to share them and want to brag about their idea.<sup>6</sup>

Anonymity "offers" personality change on a tray. Users often put off their insignificance and greyness, break out of it and hide in a new personality, and they can promote radical views, "create order" and write

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<sup>5</sup> Nagy, Z. (2009): Bűncselekmények számítógépes környezetben. [Computer-related crime]. Ad-Librum, Budapest. 224-226

<sup>66</sup> In addition to the following cases, an example is the crime of ex-Yugoslav origin Muharem Kurbegovic, who carried out the first bombing at Los Angeles airport (hence his name, the so-called "Alphabet Bomber"). In August 1974, he set off an explosive device containing flammable materials, which killed three people. 36 people were injured in the attack.

Source: [http://hadmernok.hu/2009\\_4\\_horvatha.pdf](http://hadmernok.hu/2009_4_horvatha.pdf)

Accessed: 20.05.2022

Kurbegovic spoke about his plans on tapes and shared them over the phone with a close friend. It would be worthwhile to carry out extensive psychological studies in this area as well.

about solving the problems of society, which they will resolve themselves or contribute to the solution. Then this "noble mission" created by them can become a fixed idea, fixed in their psyche, which can be confirmed by others. Ultimately, this obsession typically culminates in an act committed in the real world, such as an armed attack against an enemy fixed in the offender's imagination.

- Apart from web pages, writing blogs, comments on blog posts, communication on video-sharing portals, in "forum sections" organized around the same topic and chat rooms based on the same interests can potentially reach many users, although their range may be smaller in rooms. Still, this communication reaches an unsuspecting audience (sympathetic to him or his actions). And in e-mail, two or a few people can have access to what the lone terrorist has to say.

Let's look at one case from the recent past. An example of communication on someone's own page: Joseph Stack published his farewell letter, which concluded: "violence is not only an answer, that's the only answer" 18 February 2010, on his website, embeddedArt.com. He drove his small airplane to the building of the tax authorities next day.<sup>7</sup> Was his suicidal individual action the inspiration for the coordinated al-Qaeda terrorist attacks on several cities in the United States 11 September 2011? Did al-Qaeda learn from the incident, unlike the CIA?

The various social and video sharing portals are suitable for the exposure of users – often in the strict sense of the word. The messages "Palestine we are with you" and "Sympathy with Gaza" first appeared on the myspace.com profile of Colleen LaRose (later known as Jihad Jane), and then on another social site Dailymotion.com and the video sharing portal Youtube.com. She condemned the Israeli occupation of

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<sup>7</sup> Source: [http://kitekinto.hu/amerika/2010/02/20/kamikaze-tamadas\\_erte\\_az\\_amerikai\\_adohivatal/#.UkCgAtIvnSs](http://kitekinto.hu/amerika/2010/02/20/kamikaze-tamadas_erte_az_amerikai_adohivatal/#.UkCgAtIvnSs).

Accessed: 05.20.2022

Arab territories, the policy of the state of Israel towards the Arabs and its tools, all the while referring to the killing of the Swedish graphic artist Lars Vilks, who made ironic drawings of the defining figures of the Mohammedan religion.<sup>8</sup>

In blogs (web-logs "diaries of the web") communication is typically thematic. Therefore, they are also suitable for forming a community among those with the same interests. The communication can be uploaded in any file format (there are video, music, image blogs). Blogs can bring, „collect” like-minded users together. The criminal proceedings against Ábel Somogyi are still ongoing, it may be proven that he tried to kill several fellow students, and then fired shots in a fast food restaurant in Budapest. However, it is a fact that he wrote hateful and slanderous posts on blog.hu under the pseudonym "Arszák". His writings, which can still be read on the blog and on iviv, bear witness to his hatred: *"I have boundless hatred for all the bastards who stand in front of me in line."*<sup>9</sup>

The Norwegian Breivik also expressed himself in forum columns. On Document.no he voiced his opinion 75 times, which could be classified as extreme. James von Brunn openly voiced his Anti-Semitic views on several forums, operated a Jew-hating website, and later wrote a book with such a tone. He came under the purview of the FBI, but it was deemed that his communications did not exceed the limits of freedom of expression. His hatred of Jews culminated in a murder, 10 June 2009; he killed a guard at the Holocaust Memorial Museum in Washington.

Stormfront, one of the chat-rooms that give room to extreme ideologies, which is still operating today, is where Richard Poplawski often chatted. His antisocial behaviour was indicated by the worst rating he received from the army, when he was discharged. 4 April 2009 Poplawski shot and wounded three police officers.

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<sup>8</sup> n.a. (2012): Internet Radicalization: Actual Threat of Phantom Menace? Analysis and cases. US. Gov. Dep. of Defense, Naval Postgraduate School. 45-49

<sup>9</sup> Sources: <http://blog.hu/user/114820/tab/activity>, and <http://iwiv.hu/pages/user/userdata.jsp?userID=9344869>. Accessed: 05.20.2022

Nidal Malik Hasan of the United States served as a Navy psychiatrist. His relatives still live in Ramallah, the seat of the Palestinian National Authority, in the West Bank. In the United States, he attended the Muslim community that included the two perpetrators of the 9/11 terrorist attack, Hani Handzur and Nawaf al-Hazmi. The latter also fought in Bosnia, on the side of the Wahhabis there and the Chechen and other Arab Wahhabi volunteers who fought with them. At that time, the leader of the Muslim community was called Anwar Al-Awlaki,<sup>10</sup> who left the USA in 2004 and went to Yemen, where he was imprisoned. Awlaki's perception had already been radicalized at the time of the 2001 terrorist attacks, and later this became even more complete. From 2008, Al-Awlaki and Hasan exchanged twenty e-mails with each other (that is all they found on his computer), as a result of the profoundly religious messages, 5 November 2009 twelve soldiers and one civilian were killed in Fort Hood, Texas, which was preparing soldiers for deployment in Afghanistan, and another nineteen people were injured.

Bruce Ivins, a doctor at the US Army Institute of Infectious Diseases, recommended anthrax to his colleagues in an e-mail in 2001. That year, 5 people died in the United States from anthrax powder sent in the mail. Ivins committed suicide at the time of his indictment. The innocence of Ivins is raised, but the investigating authority is convinced of the guilt of the scientist, classified as a sociopath. Ivins researched and perfected anthrax for 18 years. Maybe he wanted to test the killer effect in a real environment? No one else was willing to do it, so he did it?

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<sup>10</sup> Until his death, Anwar al-'Awlakī was one of the most dangerous and effective Islamic proselytes, his name came up due to his contact with the perpetrators, for example, in the 2005 London, 2006 Toronto, 2007 Fort Dix, and 2010 New York assassination attempts and in other cases.

Perhaps the opinion that the chat-room is the most popular and dangerous area for communicating ideas and persuasion on Internet communication deserves attention.<sup>11</sup> Sadly, information about how to create weapons and bombs are easily available on the internet.

However, not all the terrorists appear on some surface of the Internet. We can also find plenty of examples of introverted criminals.

How can users hide? The most obvious is that they register with a fake e-mail address, or they use a mail system that is not located in some remote country, remote island, where they will not be able to catch up.

For anonymity, additional options are also provided.

- using the computer of a real user left on by someone else or sharing their IDs.
- Internet cafes.
- via WiFi connection. In this case, the called server only logs the router's TC/IP number, but the server cannot "know" which of the several users connected to the router's signal (who is behind the router). The router should log in, but there are still technical obstacles to this today.
- In this case, the identity of the users can be found out by using other methods, e.g. testimonies (e.g. in premises, on trains, long-distance buses) or camera recordings of premises (schools, universities, office buildings, catering establishments) and public areas. (If users in public areas do not hide in the camera's blind spot.)

Users can also hide by using an anonymous public proxy server. By the way, it is extremely easy to hide "behind" these servers. The so-called anonymous public proxy is one "degree" more secure. Other methods include:

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<sup>11</sup> Sagemon, M. (2008): *Leaderless Jihad: Terror Networks in the Twenty-First Century*, University of Pennsylvania Press, Philadelphia. 115-116



- distorting proxy servers. This type of proxy intentionally provides a fake IP, i.e. it also hides the location of the proxy server. The "safest" though is:
- the high anonymity proxy. These don't even show themselves as proxies to the outside, it appears as if the user himself were calling the targeted server, at most the TC/IP number is either fake (does not match the country assigned by the geographic-mathematical formula) or does not exist.

Communication can be easily hidden if the messages are left in the "draft" application of the e-mail account, and then they can be read and deleted after logging in, or a new one can be written to others. However, a common difficulty during the investigation is that, although the subscriber's name and address can be clarified based on the IP number – in a matter of seconds –, the question is still who used the computer (and the Internet) at the time in question. To find this out, classic forensic methods, tools and methods are used. Manipulation (forgery) of the TC/IP number requires more serious preparation.

What can we do against threats from virtual space?

The fight against terrorism, like the phenomenon itself, is complex in nature, and it is necessary to "fight the battle" simultaneously in real and virtual space.

1. Theoretical knowledge of IT dangers and abuses.
2. Defence and prevention are not different from the otherwise necessary physical protection of electronic data processing and transmission systems.
3. Part of the anti-terrorist strategy is the unification of national databases, the mutual and rapid exchange of information about terrorist manifestations appearing and available on the networks.
4. The monitoring of networks should extend to destructive web pages (blogs, forum sections), WAP and chat rooms, especially the chats of people exchanging ideas about extreme views. Attention should

be paid to radicalizing users, e.g. to identical or nearly identical aliases on different forums, blogs and chat rooms. The content of communication, the same expressions and turns of phrase can help with identifying the perpetrator's profile.

5. Monitoring and limiting the Internet in democratic conditions is not an easy issue. German Minister of the Interior Hans-Peter Friedrich stated after Breivik's "rampant" that this assassination made it obvious that the general anonymity of internet blogs and online speech must be abolished, just as the spread of "horde ideas" must somehow be restrained.
6. Continuous training of "good hackers" and increasing their numbers in the various services, national defence, and the police by promoting them to status. (Priority scholarships for students at technical faculties, students majoring in computer science.)<sup>12</sup>
7. More frequent advertising of tenders (e.g. fight against destructive websites, involvement of the Internet community in the fight against them).
8. It is clear that the fight against terrorism involves the possibility of increased control over members of society. There is no such thing as a "what if" question, i.e. asking if Breivik's horrific assassination plan had been known sooner, perhaps his actions could have been prevented. However, regarding the future, serious, reasoned thinking is needed in order to detect the dangers (views, harmful content) and dangerous people inherent in the World Wide Web, and to create legal frameworks against them.
9. This harmful effect of the Internet must also be presented. It is necessary to illustrate with concrete examples and cases why it is important to curb the freedom of the Internet (credible, real registration of the authors of blogs, and even so the user could write or upload data files under a pseudonym or phantom name). It could be paralleled with other, albeit restrictive, measures that serve our

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<sup>12</sup> Ibid. 115-116

safety, e.g. with airport baggage inspection. These could perhaps help to establish the rules for acceptance of control.

It is an interesting contrast that while one part of society is eager to guard personal data and information belonging to the intimate sphere, another part freely shares their personal data, horrible dictum – their current locations, helping criminals to obtain information. Education in responsibility would be needed in this area as well.

Terrorism is today's reality, terrorists live here, walk and are brought up among us. They differ from us only in their vile thoughts, in their intent to do horrible destruction. The lone perpetrators are mentally ill, struggling with personality disorder, “grey” people who find their evil selves on the Internet, wanting to break out of their insignificance. It is there that they shout out their distorted, crazy thoughts to the world, there they find companions who are the same or are close to them, and with whom they can shout together, ... so that they can then go to their doom, to kill and drag many with them .... into death.

In order for society to be able to protect itself, these shouters must be detected and isolated. Let us not regret the price. The loss of fellow human beings would cost much more than that!

## **Pandemics, epidemics, bioterrorism: challenges against public order**

### **Introduction**

Covid-19 is a highly contagious, coronavirus-caused disease of zoonotic origin, characterised mainly by respiratory and general febrile symptoms, which represents mainly public health risks, while its veterinary significance is minimal<sup>1</sup>, though some animal species are susceptible which may represent ecological risks<sup>2</sup>.

The first reports arrived from Wuhan city in the Hupei region of China, the first officially admitted positive sample was taken 8<sup>th</sup> December 2019.<sup>3</sup> The virus spread to several countries of East-Asia, and later it also appeared in Europe. The first officially recognized positive sample was collected in Italy 23<sup>rd</sup> January 2020. The World Health Organisation declared the infection as pandemics in March 2020, and in April 2020 already 210 countries and geographical entities reported the presence of the infection.

Covid-19 is the abbreviation of the full name of the disease (**corona viral disease - 2019**), and is caused by the SARS-CoV-2 virus (**S**evere **A**cute **R**espiratory **S**yndrome **C**oronavirus type **2**). A close relative of this virus appeared in the beginning of this century in 2002, and was designated as

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<sup>1</sup> Tiwari, R., Dhama, K., Sharun, K., Yatoo M. I, Malik, Y. S., Singh, R. (2020): COVID-19: animals, veterinary and zoonotic links, *Veterinary Quarterly* 40, 169-182

<sup>2</sup> Palmer, M. V. et al (2021): Susceptibility of White-Tailed Deer (*Odocoileus virginianus*) to SARS-CoV-2, *Journal of Virology*, 95.

Source: <https://journals.asm.org/doi/epub/10.1128/JVI.00083-21>

Sharun, K. et al. (2021): SARS-CoV-2 in animals: potential for unknown reservoir hosts and public health implications, *Veterinary Quarterly* 41, 181-201

<sup>3</sup>She, J., et al. (2020): 2019 novel coronavirus of pneumonia in Wuhan, China: emerging attack and management strategies. *J. Transl. Med.* 9 (1), 19–19.

doi: 10.1186/s40169-020-00271-z

the SARS virus, but since the appearance of the new type it has been re-named as SARS-CoV-1. This virus caused an epidemic between November 2002 and June 2003, and, although 8096 proven infections were reported from 16 countries of the Earth, the infection disappeared, partly due to the introduced control measures. It must be mentioned that 774 patients died from the infection (9.56%), which means a much higher mortality rate than we experienced in the present Covid-19 epidemics (1.3%).<sup>4</sup>

SARS-CoV-1, SARS-CoV-2 and their closest relative of animal origin RaTG13, demonstrated in horseshoe bats, although they are very close phylogenetically, are significantly distinct genetically. The difference in the nucleic acid genome is about 4% (this genomic difference in the case of humans and chimpanzees is about 1%), which suggests the mediatory role of a so far unidentified animal species in the transmitting of the virus from bats to humans. SARS-CoV-2 seems to be a virus highly adapted to humans, and not a virus which shifted its host recently. The cause of the changes resulting in the enhanced capacity in infecting humans was investigated, and the role of an otherwise not too difficult artificial genetic modification arose, because these evolutionary gaps have generated debates from the beginning regarding the laboratory origin of SARS-CoV-2. Though no solid evidences support these theories, they were enhanced when it turned out that in the Wuhan Institute of Virology (WIV) experiments financed by the American National Institute of Health (NIH) were carried out to adapt bat viruses to human cells to produce vectors used in gene therapy (<https://www.niaid.nih.gov/diseases-conditions/coronavirus-bat-research>). Despite these speculations, presently the dominant opinion of the virologists and epidemiologists is that the SARS-CoV-2 is not a laboratory escapee, even though the animal species transmitting the virus from bats to humans has not been possible to identify so far.<sup>5</sup>

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<sup>4</sup> Kumar, A. et al. (2021): Wuhan to World: The COVID-19 Pandemic, *Frontiers in Cellular and Infection Microbiology*, 11.

Source: <https://doi.org/10.3389/fcimb.2021.596201>

<sup>5</sup> Holmes, E. et al. (2021): The origins of SARS-CoV-2: A critical review, *Cell* 184, 19, 4848-4856

## **Epidemiology**

Though the virus is of animal origin, now it spreads among humans mainly by aerial route (droplet infection) and eventually by contact contamination. The surgical masks or even homemade textile masks have effectively inhibited the spread of the virus by preventing the droplet infection, while the frequent washing of hands, the disinfection of surfaces (handles, door-knobs, handrails etc.), avoiding the traditional greetings (handshakes, kisses etc.) have reduced the possibility of contact contamination. Still, the most important factor to slow down the spreading of the epidemic was the reduction of social contacts: closing the schools, the introduction of online education, encouraging home office working, imposing visit bans in certain institutions (hospitals, nurseries etc.). The countries introducing these measures fast and effectively to alleviate the pressure on the healthcare system by flattening the epidemic curve mostly could avoid the rapid increase of case numbers and mass infections. The role of the law enforcement organizations in the maintenance of the epidemic controlling measures (border control, enforcement of curfew restrictions, supervising home quarantined patients and mask wearing in public places etc.) is summarized elsewhere.<sup>6</sup>

The genome of the SARS-CoV-2 coronavirus mutates rapidly, and several variants of the virus have emerged in the past two and a half years. After the original “Wuhan” strain soon emerged the British (Alpha), the South-African (Beta), the Brazilian (Gamma) and another South-African (Omicron) mutant, which led to new epidemic waves worldwide,<sup>7</sup> including Hungary.

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<sup>6</sup> Gömbös, S. (2022): Rendőrség a koronavírus-járvány elleni küzdelem szolgálatában.[Police in the fight against the coronavirus epidemic] Rendőrségi Tanulmányok, 2022/2

<sup>7</sup> Schwarzendahl, F. et al. (2022): Mutation induced infection waves in diseases like COVID-19, Scientific Reports 12.

Source: <https://doi.org/10.1038/s41598-022-13137-w>

Each new variant had a higher infectivity, but reduced virulence compared to the previous ones. This fact was reflected in the epidemiological data, since the number of people infected per day peaked always higher, but the number of hospitalized people did not run at the same time. It was highest in the 3<sup>rd</sup> wave caused by the Alpha variant, it was significantly lower during the 4<sup>th</sup> (Delta) and even lower in the 5<sup>th</sup> (Omicron) epidemic wave. The same phenomenon can be observed in the number of Covid-19 casualties and in the number of people needing intensive care (life support machine treatment): both were the highest in the case of the 3<sup>rd</sup> (Alpha) wave.

### **Pathogenesis, symptoms**

The early variants (Wuhan, Alpha) of the virus caused occasionally unapparent infections or mild respiratory symptoms, but the consequence was a severe illness in most cases. It is well-known that the severity of the Covid-19 is age-dependent, and the most severe symptoms are expected in elderly people, though there are exceptions to this rule. Age is a risk factor, since with growing age the chronic health problems like diabetes, hypertension, cardiovascular diseases (coronary stenosis, previous heart attack, chronic heart failure etc.) are more frequent. Covid-19 may lead to the misbalance of treated hypertension, keeping this vital biological parameter among physiological values. This may lead to a life threatening condition which may even be fatal, since the virus multiplication causing focal heart muscle cell necrosis also contributes to the reduction of cardiac output and the collapse of the blood circulation. Overweight is also a risk factor, since it also represents an extra burden to the circulatory system. Moreover, the most important risk factors (obesity, hypertension, diabetes) very frequently appear simultaneously.<sup>8</sup>

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<sup>8</sup> Zhang, J. et al. (2020): Risk factors for disease severity, unimprovement, and mortality in COVID-19 patients in Wuhan, China, *Clinical Microbiology and Infection*, 26, Issue 6, 767-772

Patients usually have high fever accompanied by the usual, general, febrile symptoms: apathy, inappetence, nausea, muscle pains, fatigue etc.). Acute pneumonia is developed, and after 8-10 days the inflammatory process may turn into an escalating immunological overreaction called “cytokine storm”, which may be fatal. In these cases, it is not the viral damage of the organs that will cause the problems, but the too strong (allergic) immunoreaction may lead to the paralysis of the vegetative functions.<sup>9</sup> If the cytokine storm is avoided and the patient survives the acute pneumonia, the replacement of the pneumocytes will start, connective tissue cells will proliferate and lung fibrosis may be the consequence.

The most frequent symptoms of Covid-19 are listed in the table below:

<b>Symptoms</b>	<b>Occurrence</b>
Fever	83–99%
Cough	59–82%
Inappetence	40–84%
Fatigue	44–70%
Dyspnoea	31–40%
Bronchial exudate	28–33%
Muscle pain	11–35%
Ageusia/anosmia	10–30%
Skin rash	10–15%

The lung oedema and the exudate accumulating in the lower parts of the respiratory system due to pneumonia will lead to puerile breathing and causes clearly recognizable alterations in X-ray and CT examinations.

The infection frequently causes loss of sense of taste and smelling (ageusia and anosmia), presumably because of the degeneration of the supporting

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<sup>9</sup> Ye, Q., Wang, B., MaoJ, .H. (2021): The pathogenesis and treatment of the 'Cytokine Storm' in COVID-19, *Journal of Infection*, 80, 607-613.

Source: <https://doi.org/10.1016/j.jinf.2020.03.037>



cells around the olfactory and taste receptors, which causes a usually transitional functional disturbance in these sensors. (The neurons and the receptors themselves usually do not degenerate; hence the functional changes in the smelling and tasting ability are only transitional.) The occasionally observed diarrhoea is the consequence of the intestinal epithelial degeneration caused by the virus inducing enteritis.

The lung is usually not damaged in the infections caused by the recently emerging mutants (most of all the different strains of the Omicron variant), mostly symptoms of the inflammation of the upper respiratory tract are characteristic (sore throat, asperity of the voice, coughing, nasal discharge etc.). Besides these, general symptoms (fever, inappetence, headache, fatigue, depression) are also frequent, as well as the ageusia and anosmia. Since pneumonia does not develop, in the infections caused by the Omicron variant the cytokine storm seldom evolves. That is why the number of patients needing intensive care or dying because of health problems due to Covid-19 has been much lower since the Omicron variant became dominant.<sup>10</sup> Evidence suggests it is less severe than previous variants,<sup>11</sup> especially compared to Delta.<sup>12</sup> BA.1 might be less able to penetrate deep lung tissue. Omicron infections are 91 percent less fatal than the delta variant, with 51 percent less risk of hospitalization.<sup>13</sup>

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<sup>10</sup> Fan, Y. et al. (2022): SARS-CoV-2 Omicron variant: recent progress and future perspectives, *Signal Transduction and Targeted Therapy* 7.

Source: <https://doi.org/10.1038/s41392-022-00997-x>

<sup>11</sup> Bálint, G., Vörös-Horváth, B., Széchenyi, A. (2022): Omicron: increased transmissibility and decreased pathogenicity, *Signal Transduction and Targeted Therapy* 7:151.

Source: <https://doi.org/10.1038/s41392-022-01009-8>

<sup>12</sup> Nyberg, T. et al. (2022): Comparative analysis of the risks of hospitalisation and death associated with SARS-CoV-2 omicron (B.1.1.529) and delta (B.1.617.2) variants in England: a cohort study. *Lancet*. 2022 Apr 2;399(10332):1303-1312. doi: 10.1016/S0140-6736(22)00462-7. Epub 2022 Mar 16.

Martins, M. et al. (2022): The Omicron Variant BA.1.1 Presents a Lower Pathogenicity than B.1 D614G and Delta Variants in a Feline Model of SARS-CoV-2 Infection. *Journal of Virology*, 96:17.

Source: <https://doi.org/10.1128/jvi.00961-22>

<sup>13</sup> Lewnard, J. A. et al. (2022): Clinical outcomes among patients infected with Omicron (B.1.1.529) SARS-CoV-2 variant in southern California. *Nature Medicine*.

If symptoms emerge or re-emerge 4-6 weeks after the onset of the disease, it is called long-Covid or post-Covid syndrome. The most frequent symptoms are fatigue, dyspnoea, chest pains, lack of concentration, insomnia or nightmares. The syndrome may last for several weeks.

The most frequent post-Covid symptoms:<sup>14</sup>

Symptom	Occurrence
Fatigue	(58%)
Headache	(44%)
Loss of hair	(25%)
Dyspnoea	(24%)
Ageusia/anosmia	(23%)
Joint pains	(19%)
Mental disorders	(16%)

In children even inapparent infection may lead to multisystem inflammatory syndrome (MIS-C), when severe inflammation of one or more vital organs is observed, indicated by high fever and caused by panarteritis.

## Diagnostics

As in the case of most virus infections, for the demonstration of SARS-CoV-2 the polymerase chain reaction following reverse transcription (RT-PCR) 2 is considered the most sensitive method internationally. While PCR demonstrates the presence of the viral genome in the samples, the rapid antigen-detection tests are also widely used, and demonstrate the protein

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doi: 10.1038/s41591-022-01887-z.

<sup>14</sup> Han, Q., Zheng, B., Daines, L., Sheikh, A. (2022): Long-Term sequelae of COVID-19: A systematic review and meta-analysis of one-year follow-up studies on post-COVID symptoms, *Pathogens*, 11(2), 269;

Source: <https://doi.org/10.3390/pathogens11020269>

components of the virus. Viruses are obligatory cell parasites, they penetrate into the cells, and force them to produce their genome and proteins. This process causes cell damage, and the cells usually die and are lysed at the end of the virus production. The different body fluids and products (i.e. nasal discharge, saliva) contain the viral genome and viral proteins (antigens) in high amount in certain periods of the disease, when a lot of cells are damaged. The rapid antigen-detection tests are able to detect the antigen if it is present in high concentration, but the PCR is able to detect even a few genomes. That is why the golden standard method of the SARS-CoV-2 coronavirus diagnosis is the PCR. The virus can be detected a few days earlier in the body fluids by the use of this method, and the genome can be detected days or sometimes weeks after the antigen demonstrating tests turn negative. Altogether, in the case of an infection, the PCR turns positive sooner, and remains positive longer than the antigen demonstrating tests. PCR is also suitable for the identification of the types and subtypes of the SARS-CoV-2 causing the infection.<sup>15</sup>

The virus multiplying in the intestinal epithelium will be excreted with the faeces, while the virus multiplying in the kidney will appear in the urine, but these body products play minor role in the transmission of the disease, that is why mainly the respiratory excretions are used for diagnostic purposes. At the same time, due to the presence of the virus in the stool and urine, the sewage indicates the amount of the virus circulating in the population well. If there are many infected people in a city (region), then in the samples taken at the regional sewage plant the concentration of the coronavirus genome will be high. This is a very important predictive indicator, since if the concentration increases or decreases in the second of two samples taken at different times, then presumably the number of the infected people will rise or drop respectively in that region in the next few days.<sup>16</sup>

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<sup>15</sup> Aliabadi, H. A. M. et al. (2022): COVID-19: A systematic review and update on prevention, diagnosis, and treatment, MedComm Wiley Online Library. Source: <https://doi.org/10.1002/mco2.115>

<sup>16</sup> Shah, S. et al. (2022): Wastewater surveillance to infer COVID-19 transmission: A systematic review. *Science of The Total Environment* 804.

The infection activates an immune response, antibodies are produced, and the virus will disappear from the body after two or three weeks, or at least it cannot be detected by direct methods from the nasal and pharyngeal samples. The indirect methods proving the survived infection are based on the detection of SARS-CoV-2 specific antibodies. Most of these tests are based on enzyme reactions and will indicate the presence of antibodies in the blood or serum with colour reaction. The fast tests working with full blood samples (i.e. rapid test kits working with one or two droplets of fingertip blood) are usually less sensitive and specific. The laboratory ELISA (Enzyme Linked Immuno-Sorbent Assay) tests are suitable for serological investigations, and are more exact and reliable.<sup>17</sup>

## **Treatment**

In the early phase of the pandemics, drugs developed and used previously for the treatment of other infections (“repurposed medicines”) were applied to hinder the multiplication of the virus in the human body, and mitigate the symptoms of Covid-19. These were the Favipiravir developed against influenza and the Remdesivir used in the treatment of Ebola fever. Many pharmaceuticals were tested, but proved to be inefficient, such as chloroquine and hydroxychloroquine used in the treatment and prophylaxis of malaria, and the antiparasitic ivermectin. The efficacy of these drugs was not unambiguously proven in clinical trials. In the later phase of the pandemics, specific chemotherapeutic agents against SARS-CoV-2 (polymerase and protease inhibitors) were designed; the best known and widely used among these are molnupiravir and Paxlovid.<sup>18</sup>

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Source: <https://doi.org/10.1016/j.scitotenv.2021.150060>

<sup>17</sup> Aliabadi, H. A. M. et al. Ibid.

<sup>18</sup> Cantini F., Goletti D., Petrone L., Najafi Fard S., Niccoli L., Foti R. (2020): Immune therapy, or antiviral therapy, or both for COVID-19: a systematic review. *Drugs* 80, 1929–1946.

Source: <https://doi.org/10.1007/s40265-020-01421-w>

Besides chemotherapy, different immunotherapeutic treatments were also used, mostly monoclonal antibodies, usually as mixtures (“cocktails”), distributed under different names (Bamlanivimab, Sotrovimab, Casirivimab, Imdevimab etc.), but all common in their mode of action: they adhere to the spike protein of the SARS-CoV-2 and block the adherence of the virus to the cell receptor, hence reduce the chance of infection and the number of the infected cells. The use of the sera of convalescent people in the therapy (plasma therapy) was based on the same theoretical background.<sup>19</sup>

All these therapeutic products are able to reduce the virus multiplication and alleviate the symptoms, giving time and chance to the immune system of the treated patient to overcome the infection. During the cytokine storm and the breathing difficulties oxygen inhalators or, in the most severe cases, intubation in anaesthesia, furthermore anti-inflammatory treatment were employed to prevent the harmful effects of the immunological overreaction.<sup>20</sup>

## Prevention

Presently 13 vaccines of different types are approved for the prevention of Covid-19 in Hungary.<sup>21</sup> They contain either the inactivated SARS-CoV-2 virus, or the nucleic acid carrying the genetic information of the spike protein. Inoculation of these vaccines aims to increase the resistance of the organism by inducing immunity artificially. Antibodies generated in the higher organism following the vaccination will react with the spike protein and prevent the attachment of the virus to the surface of the cells, block its penetration and the consequent virus multiplication. Following vaccination

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<sup>19</sup> Ibid.

<sup>20</sup> Wen, W. et al. (2022): Efficacy and safety of three new oral antiviral treatment (molnupiravir, fluvoxamine and Paxlovid) for COVID-19: a meta-analysis. *Annals of Medicine* 54, 516-523, Source: <https://doi.org/10.1080/07853890.2022.2034936>

<sup>21</sup> Source: <https://covid19.trackvaccines.org/country/hungary/>

a certain level of immunity will develop against the pathogenic microorganism, and if enough people are immunized, population-level immunity, commonly called “herd immunity” will be reached within the given society. Besides being less susceptible to the infection, immunized people produce less severe symptoms even if infected, and much fewer viruses are produced and shed by them, hence their role in the spreading of the disease is not significant.

The six vaccines from among the 13 approved ones used from the second year of the pandemics in Hungary were the following:

1. BBIBP-CorV (produced by Sinopharm) is a traditional, first-generation vaccine containing formalin inactivated complete virus, adjuvated with aluminium salts to increase its immunogenicity, and completed with preservatives to elongate its tenability.
2. Comirnaty (produced by Pfizer/BioNTech) is a third-generation, nucleic acid (mRNA) based vaccine, which contains the mRNA of the spike protein as active ingredient. The entrance of the molecule into the cells near the site of the inoculation is helped by different stabilizing additives and adjuvants (polyethylene glycol, lipids). The mRNA is translated by the protein synthesizing system of the cells following the penetration, and the synthesized spike protein provokes an immune response.
3. The mRNA-1273 (produced by Moderna) works on a similar basis, but the ingredients used for stabilization and absorption of the active compound are different.
4. AZD1222 (produced by Oxford/AstraZeneca) is a vector based vaccine; the cDNA of the coronaviral spike protein is inserted into the genome of an adenovirus vector (chimpanzee adenovirus, ChAdV) penetrating into the cells, which synthesize the spike protein. Two doses of the vaccine are used for immunisation.
5. SputnikV (produced by Gamaleya) works on a similar basis, but this vaccine uses two different human adenoviruses (HAdV5 and

HAdV26) in the first and second dose to transfer the spike protein gene into the cells.

6. Jcovden (produced by Johnson&Johnson/Janssen) is also a vector vaccine, but reaches the basic immunisation with a single dose. Its vector is also a human adenovirus (HAdV5).

Vaccine side effects may appear in a certain number of cases and in different forms.<sup>22</sup> These are sometimes natural reactions at the site of the injection following the inoculation (local pain, swelling, and erythema). Another portion is natural, even if unpleasant, and is caused by the enhanced activity of the immune system. Some of these are general symptoms, reactions of the whole body (fever, shivers, fatigue and weakness, headache, joint and muscle pains) or localized to the injection site. Inappetence, nausea, swollen and painful axillary lymph node rarely may appear. A very rare but life threatening adverse reaction is the anaphylactic shock, which is an allergic overreaction resulting in breathing difficulties, collapse of the blood circulation, unconsciousness and occasionally death. Adverse effects lasting for several weeks or even months were also reported (skin alterations, rushes, myocarditis, tachycardia, thromboembolism, hormonal imbalances in women). Medical consultation is strongly recommended in these cases.

Covid-19 vaccine hesitancy must also be mentioned, since it could be observed in rather high portions of the population,<sup>23</sup> and as a consequence the vaccination rate remained under 70% in Hungary, while in several West-European countries it exceeded 90%. This concerned the law enforcement organizations in two respects. On the one hand, they had to take actions against the too aggressively demonstrating “anti-vaxxers”. On the other hand, vaccine scepticism also appearing within the law enforcement organizations represented risks. Vaccination rates within these bodies did not exceed the rate observed within the population, even if vaccination was

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22 Source: <https://www.gov.uk/government/publications/coronavirus-covid-19-vaccine-adverse-reactions/coronavirus-vaccine-summary-of-yellow-card-reporting>

23 Chevallier, C., Hacquin, A.-S., Mercier, H. (2021): COVID-19 Vaccine Hesitancy: Shortening the Last Mile. *Trends in Cognitive Sciences*, 25, 331-333

obligatory in a certain period. Deadlines for getting vaccinated were repeatedly postponed, and finally cancelled; therefore it remained unanswered whether these forces could have maintained their operability in all areas (police work, prison guarding, disaster recovery, fire guard and border patrol system) if the vaccine sceptic members had rather left the service then got vaccinated. This problem needs a solution even in the future if obligatory mass immunization may become necessary, either in case of a new pandemic or due to bioterrorist attacks. It must also be emphasized that the law enforcement and disaster management workers are usually second on the list of the vaccine action plans in most countries, right after health care system workers. Had that been so in Hungary, these forces would have faced the problem much sooner, in the first months of 2021. If vaccination is not obligatory, the high number of diseased staff, if it is obligatory, the high number of dismissed and quitting staff may paralyze these organizations, representing a risk in maintaining operability when the demand is the highest.

## **Conclusions**

We may presume, based on the knowledge accumulated during the Covid-19 pandemics and other coronaviral epidemics that the SARS-CoV-2 will become endemic in most countries of the World. It means that it is constantly present in the population of a certain country, and every autumn, in the season of respiratory infectious diseases, we can expect the emergence of the SARS-CoV-2 also in Hungary. Common cold, influenza and Covid-19 will be observed simultaneously. Whether this constant presence will cause epidemic waves periodically or will appear in the form of occasional sporadic cases among the population is still in question.

We can deduce that three epidemic waves have caused high mortality and strain on the health care system in Hungary up to now: the second wave in the autumn of 2020, the third in the spring of 2021, and the fourth in the



autumn of 2021. The first and the fifth waves were less significant, although during the latter the number of infections was high. Despite the fact that at the peak of the fifth wave on 20<sup>th</sup> of January 2022 the number of the daily registered infections exceeded twenty thousand (0.2% of the population), it strained the health care system less than the fourth wave. In this respect the third wave (caused by the alpha variant) was the most critical, the number of hospitalized people, the number of patients needing intensive care and the number of Covid-19 casualties were the highest during the third wave.

The differences in the identification of casualties as “Covid casualties” do not change the disadvantageous position of the so called post-Soviet countries in the statistics. The next table shows the top ten states on the list of the countries suffering the highest losses to the Covid-19 pandemic from its beginning till 23<sup>rd</sup> June, 2022. Nine of the ten countries are in the post-Soviet region.<sup>24</sup>

	<b>Country</b>	<b>Covid-19 casualties/1M inhabitants</b>
1.	Peru	6,300
2.	Bulgaria	5,438
3.	Bosnia and Herzegovina	4,875
4.	Hungary	4,851
5.	Northern-Macedonia	4,475
6.	Montenegro	4,334
7.	Georgia	4,237
8.	Croatia	3,955
9.	Czech Republic	3,750

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<sup>24</sup> Source: <https://www.worldometers.info/coronavirus>

10.	Slovakia	3,685
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Another method is also used in the statistical analysis of the losses caused by the pandemic to evaluate the effect of Covid-19 due to the differences in the definition of the term “Covid-19 casualty”. This is the so-called “excess mortality”, which means comparison of the average mortality in the two total years of the epidemics (2020 and 2021) to the average mortality of the five years preceding the pandemic. This excess mortality was 14% in Hungary.<sup>25</sup> The top twelve countries in the European Union are listed in the next table. Nine of the top ten belong to the so-called post-Soviet countries.

	<b>Country</b>	<b>Excess mortality (%)</b>
1.	Bulgaria	26
2.	Poland	24
3.	Slovakia	23
4.	Romania	21
5.	Czech Republic	20
6.	Slovenia	17
7.	Cyprus	15
8.	Croatia	15
9.	Lithuania	15
10.	Hungary	14
11.	Spain	14
12.	Malta	14

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<sup>25</sup> Source: <https://telex.hu/defacto/2022/05/31/sok-vagy-keves-embereletet-vesztettunk-covidban>

The data show that Hungary performed rather poorly in both evaluations. The causes of these high losses should be investigated (sociological reasons, level of public health standards, health destroying lifestyle and habits, health education etc.). It must be emphasized that the countries of the so called post-Soviet region (including Hungary) are overrepresented according to both statistical evaluation methods (number of Covid-19 casualties per one million inhabitants and excess death rate).

We can conclude that the infectivity of SARS-CoV-2 has increased by time due to the mutations, while its virulence has decreased significantly. Accordingly, at present the introduction of obligatory vaccination is not necessary among law enforcement organizations, teachers, public service workers etc. Furthermore, it would raise resistance and protests among them. Since in the last year the health risks decreased markedly, presumably no general restrictions will be necessary (curfew, obligatory online-education, travel restrictions etc.) in the future and Covid-19 vaccination will be optional in the population, similarly to flu control. Consequently, the documentation of immunity to SARS-CoV-2 will not be compulsory to run a normal life. More and more people will prefer getting reconvalescent immunity and vaccination will be necessary only in the risk groups. Voluntary immunisation should be offered in campaigns, mostly in autumns in the season of respiratory infections, giving a chance to get immunized against flu, Covid-19 and pneumococcal pneumonia.

While in Europe the decision makers concluded that the population has to learn to live together with SARS-CoV-2, some countries chose different strategies. The “zero Covid strategy” of China is in greatest contrast with the European approach. “zero Covid strategy” is very difficult to maintain for economic and social psychological reasons, and means a surplus burden on the health care system and law enforcement organizations due to growing public resistance. In the long run coexistence with the virus seems to be more feasible.

Mutants emerging in the future must be intensely monitored; their significance depends mainly on the changes in infectivity and virulence. The

tendencies and consequence of changes in these characteristics are summarized in the next table.

<b>Infectivity</b>	<b>Virulence</b>	<b>Consequence to the population</b>
Decreases	Decreases	<b>Beneficial</b> , since SARS-CoV-2 will become alike the four previously known, classical coronaviruses causing common cold.
Increases	Decreases	<b>Beneficial</b> , because the new variant will immunize more people through natural infection without causing severe illness and without causing a strain to the health care system.
Decreases	Increases	<b>Indifferent</b> , because a less infective variant may not become dominant over the present omicron mutant, and dies out soon.
Increases	Increases	<b>Hazardous</b> , but the population is at least partially immune (vaccination, reconvalescence) so the risk is negligible.

Anyhow, the pandemic has proven the vulnerability of society and economy based on globalisation, since the previous way of life, economy, tourism and global trade still has not been restored after two years, either on local (national) or on global levels. It gave a chance to the law enforcement forces, health care workers, decision makers and, most of all, to the population to face the epidemic situations, handle and recover from other disasters, even at the cost of heavy sacrifices. Several conclusions can be drawn by these actors, including the law enforcement forces, regarding the control of epidemics. First of all, we cannot be sure that the next pandemics will

be caused by a relatively mild pathogen causing losses mainly among elderly people suffering mostly from chronic health problems. A microorganism causing foethopathy, paediatric disease, haemorrhagic fever or encephalitis would represent a much higher risk and imperil children, pregnant women and active, working people, hence may cause panic. The consequences of vaccine hesitancy may be much more severe in the case of such a pathogen both among the population and within the law enforcement forces. There would be hardly enough time to convince anti-vaxxers following a deliberately generated bioterrorist action with a highly pathogenic, genetically modified microorganism to ensure the efficacy of the necessary control measures. The Covid-19 pandemic was useful as an exercise and to evoke attention; the health care workers, the decision makers, the media workers, the population and also the law enforcement forces passed the exam more or less successfully, though the rather poor position of our country in the international statistics shows that there is room for further development. The experiences gained by the handling of the Covid-19 pandemic were good to call our attention to the problems which should be taken care of, in order to overcome similar situations in the future.

**JÁNOS SALLAI – JUDIT BORSZÉKI**

## **The beginnings of international police cooperation**

### **Introduction**

The history of international police cooperation has been studied by many Hungarian and foreign researchers, but many aspects of Hungarian participation in this field have remained unexplored. Firstly, the initial steps in the fight against international crime are presented and how they were reported in the Hungarian police journals of the time, and then the assessment of the same period by a few foreign researchers of today is summarised.

### **The beginnings of international police cooperation according to contemporary Hungarian law enforcement periodicals**

In the Middle Ages, the lack of modern means of travel and roads and the peculiarities of feudalism made travel possible for very few people. Only the wealthy, merchants, diplomats, explorers and great travellers were able to cross national borders and travel long distances. The industrial revolutions changed all that. First macadam, then high-quality roads were built, where postal and private carriages became more widely available, and then railways and steamships began to take masses of people on journeys. With the creation of major industrial centres, people flocked to the cities, and with the discoveries of new continents, millions of people, mainly from Europe, migrated to new places in search of better livelihoods.

At the same time, the era of simple highway bandits, robbers and thieves who proliferated in the markets came to an end, and in their place, cross-border crime took hold in Europe and around the world, in the hope of greater profits and escaping prosecution. For example, we know from foreign news published in the first issues of our first law enforcement journal, Public Safety (Közbiztonság), in 1869, that in Vienna a man from Romania,

posing as a baron, seduced several young girls to satisfy his lust, but was arrested by the police authorities in Vienna<sup>1</sup>. Paper money, securities, shares and bonds appeared on the international market, and this offered great opportunities for fraudsters and counterfeiters, who took advantage of the lack of centralised state law enforcement agencies and rapid news coverage at the dawn of the industrial revolution. The London Stock Exchange, internationally renowned resorts, spectacular tourist destinations, gambling halls, all attracted the rich, who could be stripped of their wealth by fraud or violent robbery and the criminals would leave the given country with the stolen goods. The cross-border criminals needed to sell the acquired assets as soon as possible, because storing them increased the risk of being caught. Counterfeiting currency and the sale of its products required a high level of skill in international criminal circles. *"Almost without exception, large-scale counterfeiting now thrives internationally. It is precisely in order to make counterfeiting impossible that the states have perfected the art of producing both paper money and coins. The perfect imitation of money is therefore only possible with the help of an expert. To obtain such an expert in the country and to make him acquainted with the criminal intent is not only difficult, but also fraught with dangerous risks. For this reason, the larger-scale counterfeiters proceed in the following way: The counterfeiter travels to various capitals and orders only a certain part of the necessary plate in each place, e.g. a figure on the banknote in one place, a marginal note in another, etc."*<sup>2</sup> It is clear from this description that counterfeiting was carried out internationally by well-organised and trained criminals, who were very difficult to crack down on if the law enforcement officers of the individual states were only doing the investigation on their own.

In addition to the production and distribution of counterfeit currency, the acts and devices offensive and contrary to public morality that started

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<sup>1</sup> Közbiztonság, 1869. augusztus 22. 1.

<sup>2</sup> A nemzetközileg szervezett gonosztevők. [Internationally organised villains] Közbiztonság, 1911. április 23. 223

dominating international trade and entertainment industry as a "by-product" of the industrial revolutions were a major challenge. These included pornographic literature and printed matter and the internationalisation of the "ancient" craft of international prostitution, one of the flourishing services of which was white slavery at an international level. Thus, for example, at the end of the 19th century in Hungary, young waitresses were sought in Bavaria through advertisements in Hungarian newspapers, disguising what in fact was white slavery. According to a report made by the Ministry of the Interior on the downside of emigration and labour flows, Hungarian girls applied for passports to work as waitresses, mainly in northern Germany, but many of them became victims of prostitution. According to the report, white slave trade in Hungary was a rich area, which was further exacerbated by the fact that Hungarian girls<sup>3</sup> were favoured in Europe. For this reason, the Home Secretary said they needed to be protected because many of them could and did fall victim in the Western European market.

In Europe, *"the export markets for white slavery at the moment are mainly the Polish territory of Austria and Russia. In Russia in particular, where especially the Jewish population is subject to so much persecution and where the economic and cultural conditions are so miserable, the agents of the traffickers are always in a good position to carry out their criminal activities. The victims are often seduced with the promise of marriage. In many cases, however, they themselves are aware of their fate and are willing to succumb to the bright but deceptive promises. The consignments usually leave from Austrian and Italian ports and their destination is usually North America"*<sup>4</sup>. In order to prevent white slavery, several bilateral agreements were concluded in the late 19th and early 20th centuries,

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<sup>3</sup> White slave trade in from Hungary was relatively simple. Agents travelled around Hungary, especially in the country, offering the prettier girls jobs as cooks, waitresses or artistic positions, then taking them away, and very many were never seen again in their place of residence.

<sup>4</sup> A nemzetközileg szervezett gonosztevők. [Internationally organised villains], Ibid.



followed by an international treaty, signed by Hungary, Germany, Belgium, Denmark, Spain, France, England, Italy, Germany, Portugal, Russia, Sweden, Norway and Switzerland in Paris in 1904. This international agreement foretold the future as the signatory states committed themselves *"to the establishment of centres for the regular monitoring and mutual exchange of information on all phenomena relating to the trade in women". They will inform each other of the arrival of suspected traffickers, monitor their activities and arrange for the return of any victims discovered.*"<sup>5</sup>

At the dawn of the rise of cross-border crime, Dr. Lindenau, a government adviser in Berlin, classified international criminals into the following five groups:

- "(a) Criminals fleeing from the place of the offence to a new land.*
- b) Foreign criminals who have settled in the country.*
- c) International vagrants.*
- d) Certain professional criminals travelling from country to country.*
- e) Internationally organised villains"*<sup>6</sup>.

For national police forces, it was already clear at the end of the 19th century that developments in the criminal world had led to the creation and the flourishing of the most modern types of internationally organised villains, the organised crime groups. *"The internationally organised criminal resides in a permanent residence and weaves and spreads his web from there to other countries. It is here that international connections are most typically at the forefront. The danger to the public posed by this international organisation is not merely the extent of its area of operation, but above all the fact that the perpetrator and victim are usually from different countries."*<sup>7</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

Effective action against the above encouraged police forces and diplomats of different nations to cooperate and establish institutions and organisations for international police cooperation among themselves. Simple as the formula may seem for the police forces of the states to cooperate against international, cross-border crime, international police conferences, meetings and organisations were slow and difficult to set up, probably because some states were concerned about their own interests and feared that political influence would gain ground in some international police organisations. Despite these apprehensions, international police cooperation was achieved; the states recognised the need to build bridges between them to reduce crime. The most important domestic and international milestones in this process before World War II were the following.

The explanatory memorandum of Act XXI of 1881 on the Police of the capital city Budapest already refers to the costs associated with the pursuit of criminals abroad. Also, the Decree of the Minister of the Interior issued on 27 May 1898 under No. 46.826/98 B.M. *"expressly authorises the Chief Constable of Budapest and those of the towns to approach the foreign authorities directly for urgent investigations or public safety measures."*<sup>8</sup>

The Police Instruction on Investigation issued in 1899 (Decree No. 130.000/1899 B.M.) *"deals specifically with the action to be taken in response to a foreign request, and also regulates the procedure to be followed when a delegate of a foreign authority comes to the authorities to carry out an investigation (§§ 18-19.) In our country, therefore, the investigating police authority, on the basis of long-standing legislation, communicates directly with foreign police authorities that are prepared to provide us with legal assistance in this way."*<sup>9</sup>

In 1898 in Rome and in 1904 in St Petersburg, international conferences were convened to fight anarchism (Sallai-Borszékí, 2021). The International Union of Penal Law, at its meeting in Hamburg in 1905, decided that it *"considers it necessary to set up central offices in all states, which should*

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<sup>8</sup> Dorning H. (1937): A bűnügyi rendőrség nemzetközi összeműködése. [International collaboration of the criminal police]. Pallas. 336

<sup>9</sup> Decree No. 130.000/1899 B.M.

*be in direct contact with the police authorities of the capitals, and should have the task of combatting international crime."*<sup>10</sup>

In 1909, the International Conference on Motor Vehicles<sup>11</sup> was held in Paris, the resolutions of which led to the issuance of the Circular 57.000/1910 B. M., the first highway code regulation in Hungary.<sup>12</sup> In 1912, the German Police Conference in Berlin dealt with international relations exclusively from the police point of view. The police forces of the *"big German cities had been maintaining foreign relations for a long time – although their instructions still forbade it and the German Foreign Office did not even consider giving them the authorisation. The conference finally adopted the principles that an international convention should be sought which would permit the large police authorities to communicate directly with each other in the prosecution of individuals suspected of crimes and in other important police matters."*<sup>13</sup>

In 1914 in Monaco, at the first International Congress of Criminal Police (Premier Congrès de Police judiciaire internationale), the idea of what later would become Interpol was born. 300 officials from 24 countries discussed possible international cooperation in the fields of crime investigation, identification techniques and extradition, and called for direct contact between criminal police forces.<sup>14</sup> This was followed by a gap in international criminal cooperation, the main cause of which was world history, namely World War I, which lasted more than four years between the Central and Entente Powers.

In 1922, the International Police Conference was organised in New York. As a result of the conference, a special telegraph code was introduced to facilitate and cheapen communication between police authorities of different states. This ensured the confidentiality of the text of telegrams and

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<sup>10</sup> Dorning, H. (1937): A bűnügyi rendőrség nemzetközi összeműködése. [International collaboration of the criminal police]. Pallas. 337

<sup>11</sup> The conference was attended by 111 delegates from 53 countries. Several Hungarian proposals were adopted during the meeting.

<sup>12</sup> A Rend, 1926. Vol. VI, Aug. 25

<sup>13</sup> Dorning, H. (1937) Ibid.

<sup>14</sup> Tóth, V. (1937): Európai rendőrség, [European police]. Magyar Rendőr, 1937/24. 30

reduced the cost of telegraphic service announcements.<sup>15</sup> In 1923, following the initiative of the President of the Vienna Police, Johannes Schober, the International Criminal Police Commission (ICPC) was established at the International Police Congress in Vienna, with delegates from European and Asian countries and the USA. The ICPC met annually in the capitals of various European countries from 1924 to 1938.<sup>16</sup> Representatives from Denmark, Sweden, Norway, Poland, the Netherlands, Austria, Czechoslovakia, Switzerland, Japan, Hungary and Poland, were sent, along with a large number of representatives of the German Empire to the International Police Congress in Sopot in 1924<sup>17</sup>.

An interesting aspect of what happened there was that the presentation of the theory and practice of the remote identification procedure system, which was to be given by the Danish side, was, at the request of the Danish government and the participants in the conference, delivered by a Hungarian police chief constable Dr. Binger, a delegate who, later conducted two more courses on a similar subject in nearby Gdansk. The conference also featured a presentation by Dr. Sonnenberg from Warsaw on international patrols, by a Siemens chief engineer on the latest police signalling equipment, and by an engineer from Berlin on the use of radio in police work.<sup>18</sup> Signifying the boom in international police science, the Prussian Minister of the Interior in Germany opened the Police Science Week at the Berlin Academy of Public Administration. In 1924, barely after the First World War and the revolutions, the German public safety situation already allowed hundreds of police officers to leave their posts and attend the event.<sup>19</sup> The first international police exhibition took place in Karlsruhe in 1925.

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<sup>15</sup> Circular No 127.742/1925 B.M.

<sup>16</sup> Tóth, V. (1937) Ibid.

<sup>17</sup> According to the news reports of the time.

<sup>18</sup> A zoppoti rendőrkongresszus és rendőr szakkiállítás. [International Police Congress and police exhibition in Sopot]. *A Rend*, 1924. Vol. IV 59 1

<sup>19</sup> *Polizei-Führungsakademie* (2002): 100 Jahre Bildungsarbeit in Der Polizei. 43.

After the 1923 police congress in New York and the ones following in Vienna, the next stop on the study trips of police officers abroad was Budapest. The Hungarian colleagues who received the foreigners drew their attention to "... *the Hungarian police in general as a unique, unified police organisation, the Hungarian national criminal record as a long-standing, exemplary and special institution, and finally the Hungarian police training as the most definite and consistent solution of its kind.*"<sup>20</sup>

In 1926, the Berlin International Police Exhibition was held.<sup>21</sup> Foreign countries played only a representative role at the exhibition. "*However, in addition to a number of other meetings, discussions and presentations, the International Police Congress and the subsequent general police conference, which were truly international, were also linked to the exhibition. The former, for example, attracted 253 participants, 141 of whom were foreign. (19 of them Hungarians.) The permanent body of the Congress, the International Criminal Police Commission, also met in relation with the Congress.*"<sup>22</sup> The main message of the exhibition was that police forces should be equipped with wireless telegraphs.

In 1926, the following important topics were discussed at the Criminal Police Congress in Bern:

1. the international police telegraph;
2. the International Criminal Dictionary;
3. international public safety;
4. uniform cards for the identification service;
5. international remote identification bureau in Copenhagen;

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<sup>20</sup> Nemzetközi konferencia Párizsban [International Police Conference in Paris]. *A Rend*, 4 September 1926

<sup>21</sup> "*The historical exhibition in Baden is very interesting. You can see many old police-related documents. Most of them date from the 18th century and the early 19th century, but some date back to the 13th century and even earlier. There is a decree threatening Gypsies with hanging if they do not leave the country and granting impunity to anyone who kills a Gypsy after the deadline for leaving.*" (*A Rend*, 4 September 1926).

<sup>22</sup> Dörning, H. (1926): A berlini rendőri kiállítás. [Police exhibition in Berlin]. *A Rend*, 1926 Vol. VI 81 1

6. international register of public offenders;
7. collection of photographs of international criminals;
8. international police radio waves;
9. the introduction of criminology files;
10. international fight against drugs;
11. facilitation of extradition procedures;
12. international deportation<sup>23</sup>

One of the most important results of the Bern Congress was that the issue of the police radio and radio waves<sup>24</sup> were discussed and their final version was prepared for the New York Congress. Another achievement was the presentation of the International Criminal Dictionary in French and the translation of the Police Telegraph Code into several languages.<sup>25</sup>

The 1926 Paris International Motor Vehicle Conference discussed ways of facilitating international transport in the fields of motor vehicle, railway and air traffic and border policing and customs administration. The Hungarian delegation made the following proposals.

*"1. As long as the need for passports remains, the delivery of passport visas should be facilitated.*

*2. The entry visa should entitle the holder to stay for at least two months without any special permit (carte d'identité).*

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<sup>23</sup> A berni bűnügyi kongresszus [The Criminal Police Congress in Bern]. A Magyar Detektív, 1928/19 7

<sup>24</sup> *"The most interesting of the individual programme items is the police radio issue. The matter of separate "police waves" is at an advanced stage, and the radio congress to be held in Washington at the end of this year will provide the waves for a separate police radio service, so that this modern device for combatting crime may soon be available for police purposes."* (A Magyar Detektív, 1928, Ibid.)

<sup>25</sup> Sallai, J. – Borszéki, J. (2021): Egy megvalósítható utópia? Közös munkanyelv keresése a nemzetközi rendőri együttműködés kezdetén. [A feasible utopia? The search for a common working language at the start of international police cooperation]. In: Csaba, Z – Ficskovszky, Á. (eds.) Tehetség, szorgalom, hivatás. Magyar Rendészettudományi Társaság Vám- és Pénzügyőri Tagozat, Budapest

*3. Passport control and customs checks should be carried out everywhere on board trains and boats, without passengers having to disembark.*

*4. Closed groups of more than 20 incoming foreign passengers can benefit from a 33-50 percent fare discount."*<sup>26</sup>

The above Hungarian proposal on transport and border management was unanimously heard and supported.

In 1927, the Amsterdam Congress passed a resolution calling for the establishment of a National Central Office in each member state for liaison purposes. As a result of the Budapest congress on police radios in 1930, the development of the police radio network continued. An article on international criminal cooperation was published in the periodical *Magyar Detektív* (Hungarian Detective) in 1930 by Dr Bruno Schultz. According to the internationally renowned police officer, the director of the Vienna police the criminalistic focal point of the international criminal convention in Vienna were the questionable principles of extradition, the fight against counterfeiting of dollars within the field of counterfeiting, and the international police radio service. In the same year, the 6<sup>th</sup> regular session of the Criminal Police Commission was held in Vienna. The aim of the closed meeting was to bring the police authorities of the participating member states as close as possible to cooperate in the fight of public interest against international professional crime, as well as in the field of extradition and the fight against counterfeiting.

In 1930, the Antwerp Congress, as a continuation of the Vienna Conference, was held at the end of the year. The 148 participants included an eight-member Hungarian delegation. As a result of the Congress, the Vienna International Registry Office was given a broader remit, including the international registration of dangerous persons, drug abuse, lost and found objects and unidentified corpses.<sup>27</sup>

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<sup>26</sup> Nemzetközi konferencia Párizsban [International Police Conference in Paris]. Ibid.

<sup>27</sup> A Magyar Detektív, 1930/9 3

In 1931, a meeting of the International Office for Refugees and a conference of representatives of the central police authorities were held in the framework of the League of Nations (the predecessor of the United Nations). The main task of the police conference was to improve cooperation between the police authorities of the various states, particularly with regard to counterfeiting.

The 1932 Rome Congress on Crime elected Dr. Henrik Dorning, a Hungarian criminal expert of international reputation, as vice-president of the organisation. *"Lithuanian delegate Jones Statkus reported on the plans and preparations for the International Day of Criminal Police. The interesting plan is that on a certain day of the year, the fifty-six states belonging to the International Criminal Police Commission would all organise an International Day of Criminal Police, with a parade of police officers, theatre and cinema performances, readings, pageants on the streets, etc., to promote the work of the criminal police."*<sup>28</sup>

In 1934, the International Central Office in Vienna was expanded by four departments to deal with the counterfeiting of money, cheques, passports and securities, the sharing of fingerprints and photographs of international criminals and the registration of internationally wanted criminals and persons dangerous to society.<sup>29</sup>

In 1938, just before the outbreak of the Second World War, 23 member states sent their forensic representatives to Bucharest. In elegant surroundings, on a vessel on the Black Sea, the International Congress of Criminal Police adopted the following conclusions. The Congress:

*"I takes note of the report of the leadership of the Commission on its annual activities.*

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<sup>28</sup> A bűnüldözés nemzetközi szervezete. [The international organisation of law enforcement]. A Magyar Detektív 1932/23-24

<sup>29</sup> Tóth, V. (1938): Egységes nyelv a közbiztonság nemzetközi vonatkozásaiban. [A single language for the international aspects of public security].

. Magyar Rendőr, 1938/3 56



- 2 takes note of the report of the rapporteur on the preliminary negotiations on the simplification of the "portrait parlé".*
- 3 will appoint committee to study possibility of transmitting fingerprint images by telegraph.*
- 4 proposes various measures to prevent passport forgeries.*
- 5 adopts the report on the functioning of the International Centres in Vienna.*
- 6 makes appropriate recommendations to prevent trafficking in narcotics.*
- 7 takes note of and makes recommendations concerning the statements of various states on the refusal to issue passports.*
- 8 orders the further collection of data relating to the punishment of activities or conduct showing an intention to commit a criminal offence.*
- 9 orders further discussion with a view to a uniform listing of the data in the notices on wanted persons.*
- 10 accepts the arrangements made for the issuance of international notices on wanted persons and orders the cost of publishing such a notice in a new language to be determined.*
- 11 establishes the ways of cooperation with the international "Academies of Criminalistics".*
- 12 decides to devote one day at each forthcoming session to the discussion of problems of practical criminology. (The Practitioners' Day.)*
- 13 takes note of the annual report of the Radio Sub-Committee.*
- 14 takes note of the final accounts of the Committee."*<sup>30</sup>

Subsequently, with the outbreak of the Second World War, international historical events accelerated, which brought the prosperous period of international law enforcement cooperation to an end. Previously cooperative states became enemies, and Europe and later the world, became a theatre of war.

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<sup>30</sup> Ibid.

## Evaluation of the topic in today's English-language literature

Foreign experts on the subject also agree that the historical roots of international law enforcement cooperation go back to the expansion of nation-states in the 19th century. As Deflem argues in several of his works,<sup>31</sup> there was a general historical tendency for police institutions to gradually abandon political policing tasks in favour of a clear focus on criminal objectives, and to move from temporary and limited forms of cooperation to more permanent and comprehensive ones. International police bodies with a broad international presence were only established when police institutions had sufficient autonomy, could be independent of the political centres of their nation-states and thus, were able to function as relatively autonomous professional organisations.

Jäger points out<sup>32</sup> that in the 19th century, the police forces of different states could not respond to requests from foreign police forces, could not establish direct channels of communication between themselves without the consent of their superiors and the relevant ministries. Also, extradition procedures, which required diplomatic involvement, were extremely lengthy. In his view, the debate on international police cooperation was triggered by various factors, such as:

- the growth and modernisation of transport networks and the increase in international travel opportunities;
- the constant expansion of the police and in particular of criminal and political police organisations;

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<sup>31</sup> Deflem, M. (2002a): Policing World Society, Historical foundations of International Police Cooperation. Oxford University Press Inc; Deflem, M. (2005): History of the International Police Cooperation. In: Miller, M. & Wright, R. (eds.), The Encyclopedia of Criminology, Routledge, 795-798

<sup>32</sup> Jäger, J. (2019): The Making of International Police Cooperation, 1880–1923. In: Härter, K. et al. (eds.) The Transnationalisation of Criminal Law in the Nineteenth and Twentieth Century, Vittorio Klostermann, 176

- the increase in crime (as a statistically tangible and measurable phenomenon) and the growing threat to public safety;
- a general trend towards international cooperation;
- major developments in the sciences, including criminology.

From the mid-19th century onwards, most European police cooperation in the states concerned was concerned with the political tasks of defending conservative rule. Perhaps the best example of this is the alliance of (secret) police forces from seven German-speaking states including Prussia and Austria (Geheimer Polizeiverein, Police Union of German States) that worked to suppress political opposition (made up of democrats, anarchists and socialists) between 1851 and 1866. The cooperation mainly took the form of exchange of information based on printed material, and then ceased with the Prussian-Austrian War of 1866.<sup>33</sup>

Jäger mentions<sup>34</sup> the International Penal and Prison Congress of 1878 as an important event, which, in addition to extradition procedures, also raised the need to set up an international police bureau to register internationally known criminals, national criminal records offices, to allow for the exchange and sharing of this data, and to publish an international police journal. There was also a proposal to harmonise police training. In the end, however, more than half of the delegates only accepted the proposal to harmonise extradition laws, so the issue of police cooperation was not included in the congress resolutions.

Although there was a noticeable shift towards criminal policing in international police cooperation in the second half of the 19th century, political goals, including the fight against anarchism, continued to play the main role.<sup>35</sup> In this spirit, an international conference was held in Rome in 1898

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<sup>33</sup> Deflem, M. (2002): Policing World Society, Historical foundations of International Police Cooperation Ibid., 79; Calcara, G. (2020): A transnational police network co-operating up to the limits of the law: examination of the origin of INTERPOL, Transnational Legal Theory, 11:4, 524

<sup>34</sup> Jäger, J. (2019): The Making of International Police Cooperation, Ibid. 183

<sup>35</sup> Deflem, M. (2005): History of the International Police Cooperation, Ibid. 795-796; Jäger, J. (2019), Ibid., 186-187

with 54 delegates from 21 European countries, the minutes of which proposed the establishment of an international system through which the would-be national anti-anarchist agencies could exchange information. The conference also reached agreement on modern methods of identifying criminals and extraditing those who commit assassinations of heads of state. However, at the national government level, where international treaties had to be ratified, anarchism was not approached from a purely criminal perspective. Ideological differences in international politics also played a role in the fact that the Rome conference against anarchism and the subsequent St Petersburg conference in 1904 (which attracted much less interest) ended without any practical policing outcomes, and the planned information centre was not established, either.<sup>36</sup>

English-language literature on the topic also highlights another area of international police cooperation in the early 20th century, namely the fight against white slavery. To coordinate this internationally, meetings were convened in Paris in 1902, 1904 and 1910. Twelve European countries signed the conventions of the last two congresses, but these too, although not political in nature, were only intergovernmental decisions formulated in the language of international law and resulted in changes in the activities of national police forces rather than in international police cooperation. Deflem and Jäger, however, note<sup>37</sup> that these conventions already indicate the growing influence of a European, expertise-based police culture, which was already striving towards international policing activities.

Looking at the Americas, the Latin American efforts similar to those in Europe are worth mentioning. International police conferences were convened in Buenos Aires in 1905 and 1920, and in Sao Paulo in 1912, but their primary aim was not to curb international crime but to strengthen relations between the police forces of the participating countries, and they ended without any major professional results. In 1922, the International

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<sup>36</sup> Deflem, M. (2005), *Ibid.*

<sup>37</sup> Deflem, M. (2005), *Ibid.* 796; Jäger, J. (2019), *Ibid.* 189

Police Conference (IPC) was founded in New York, which, although intended to promote international cooperation, was mainly concerned with the professional development of local law enforcement organisations in the United States of America.<sup>38</sup> Deflem sees the reason for this, apart from the geographical distances separating the US from Europe and other continents, in the fact that at that time the US had not yet experienced a large-scale internationalisation of crime and the federal police had not yet been established.

The structural changes in national police forces made in the direction of institutional autonomy and their independence from national governments led to real international cooperation on a professional basis, which started in the first few decades of the 20th century. Indeed, the first step towards the establishment of an international police organisation was the first International Congress of Criminal Police, held in Monaco in 1914, which focused exclusively on police work. Deflem claims<sup>39</sup> that the Congress did not produce any significant results. It was still not organised by police officers but by politicians and lawyers (it was initiated by Prince Albert I of Monaco!) and the negotiations were still about the legal framework. Discussions were on international legal issues, such as extradition problems, and police action was only discussed in the context of legal principles. The International Police Organisation had still not been established at that time, and did not come into being until 1923.

The creation of the International Criminal Police Commission (ICPC, hereinafter: Commission), the direct predecessor of Interpol, was no longer the result of diplomatic initiatives, but of the independent efforts of police forces in different countries (mainly in Europe). The delegates did not attend the Vienna Congress, which led to the establishment of the Commission, as representatives of their governments, but as individuals or observers, and did not sign any international conventions or instruments. The or-

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<sup>38</sup> Deflem, M. (2005), *Ibid.* 796

<sup>39</sup> *Ibid.* 797

ganisation, whose activities were organised by police officers through deliberations and correspondence, independently of their respective governments, long lacked internationally recognised legal status. Even police forces were admitted as members without a legal process. Jäger and others highlight<sup>40</sup> the significant role played by Johannes Schober, who was the then Chief Constable of Vienna, and also an influential politician. By providing premises (and even initially police staff, databases and funding) for the international bureau with the support of his government,<sup>41</sup> he managed to institutionalise international police cooperation without extensive political negotiations.

The operation of the Commission was motivated by the proliferation and internationalisation of cross-border forms of crime after the First World War. New types of crime emerged in countries that had also experienced rapid social and technological development. Above all, the Commission set up a modern technical system for international police communication and called for direct contacts between police forces in the countries concerned, rather than the cumbersome extradition procedures.<sup>42</sup> Deflem also notes that the significance of the organisation, among other things, was that it was not run by 'external experts' but by practitioners involved in police work. Serious crime against property was no longer treated as a threat to local, internal safety, but as an international problem that emerged as professional crime became operational, which, however, was manifested in thefts, fraud, etc., in individual countries. International police cooperation was a logical consequence of several processes. Firstly, criminal investigation departments were set up within the police forces of the various countries, independent of the political police. Also, crime statistics showed that

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<sup>40</sup> Jäger, J. (2019), *Ibid.*, 191; See also Deflem, M (2002a) *Ibid.* 125-129; General History of Policing, In: Kurian, G (ed.) *World Encyclopedia of Police Forces and Correctional Systems*, Second Edition, Thomson Gale, 2006, 9

<sup>41</sup> Calcara, G. (2020): A transnational police network co-operating up to the limits of the law: examination of the origin of INTERPOL, *Ibid.* 533

<sup>42</sup> Deflem, M. (2005), *Ibid.* 798, Deflem, M (2002a) *Ibid.* 150-152

criminals fleeing to other countries to escape prosecution were able to operate unhindered. The problem could only be solved by international sharing of data on criminal convictions, suspects and wanted persons. However, cooperation was possible only provided that the criminal records and identification techniques were identical or at least comparable. Thus, international police cooperation also contributed to the spread of fingerprinting and Bertillon's then popular anthropometric method (*portrait parlé*) in many countries.<sup>43</sup> The Commission, too, put indirect pressure on national police organisations to centralise, modernise and standardise. The foreign authors mentioned above also note that by 1934 the Vienna headquarters had already had specialised departments dealing with fingerprints and photographs, the counterfeiting of currency and other valuable documents, and the sharing of various information on international criminals and suspects. In addition to printed publications distributed to member states, the Commission also established systems of advanced technical means of international communication, such as the telegraph code and radio communication systems, which were effective tools for direct international cooperation between police forces.<sup>44</sup>

The English-language literature also highlights the Commission's apolitical nature and its functioning as a transnational network.<sup>45</sup> This enabled police forces from states with different political orientations, legal systems and cultural traditions to cooperate effectively on the basis of their knowledge of international crime and the requirements for effective policing. Paradoxically, it was this apolitical nature that led to National Socialist Germany monopolising the organisation.

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<sup>43</sup> Deflem, M. (2002b): Technology and the Internationalization of Policing: A Comparative-Historical Perspective. *Justice Quarterly*, 19(3), 460

<sup>44</sup> Deflem, M. (2002b), *Ibid.* 464; Jäger, J. (2019), *Ibid.* 195-196

<sup>45</sup> Calcara, G. (2020), *Ibid.* 530

## Conclusion

Instead of a summary, we conclude with the thoughts of Henrik Dorning, vice president of the Commission between 1932 and 1934, who was recognised by and made a lasting contribution to both Hungarian and international police science. *"For the police of every country, international relations are important. They are the roots to which common threads run from all sides and this has made necessary and possible the need to build a foundation for international relations. The police protect public order everywhere, guarding the safety of persons and property. Even though each state organises its police force in a different way, there are many similarities and some of the tasks are the same. Frequent international communications make it impossible for police measures taken by the states to be confined to their own territory. In the modern world of technology, criminals travel at a high speed and become international in the shortest possible time. Theft, fraud or even more serious criminal offences are often planned in one distant country, then committed in another, but the loot is taken to a third country, while the perpetrators and their accomplices flee to a fourth or fifth country. That is why the modern police, especially the criminal police, try to establish direct contacts with the police of other states as far as possible and make a concerted effort to prevent the spread of international crime and to pursue fugitives."*<sup>46</sup>

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<sup>46</sup> Dorning, H. (1942): A bűnözés nemzetközi hálózata. [The international network of crime]. In: Borbély Z. & Kapy R. (eds.) A 60 éves magyar rendőrség 1881-1941. Halász irodalmi és könyvkiadó vállalat. 167-168



**Law and order issues in emergency situations,  
with special reference to tourism safety**

**Pandemic 2020-2022**

During the pandemic caused by COVID-19, law enforcement agencies were tasked with enforcing government and public health measures to contain the spread of the disease, while carrying out their core responsibilities. Law enforcement staff were therefore exposed to the increased risk of infection due to their close contact with the public.<sup>1</sup>

Most countries took similar measures, such as closing schools and workplaces, switching to working from home, cancelling events, restricting gatherings, public transport and travel and imposing temporary curfews. From the spring of 2020, law enforcement agencies were responsible for having these measures implemented and for monitoring their execution. The increased presence of law enforcement agencies in public places was intended to prevent mass gatherings and prevent the rapid spread of the virus in the community.<sup>2</sup>

The past two years have shown that the epidemic has had an impact on the functioning of law enforcement agencies and the organisation of services, as well as on the economic, social and health situation.<sup>3</sup>

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<sup>1</sup> Jennings, W. G. – Perez, N. M. (2020): The Immediate Impact of COVID-19 on Law Enforcement in the United States, *American Journal of Criminal Justice*, Vol. 45, No. 4, 690.

Source: <https://link.springer.com/article/10.1007/s12103-020-09536-2>  
Accessed: 11.03.2021

<sup>2</sup> Leung, G. M. et al. (2004): The Epidemiology of Severe Acute Respiratory Syndrome in the 2003 Hong Kong Epidemic: An Analysis of All 1755 Patients, *Annals of Internal Medicine*, 662. doi: 10.7326/0003-4819-141-9-200411020-00006.

<sup>3</sup> Brito, C. S., Luna, A. M., & Sanberg, E. L. (2009): Benchmarks for developing a law enforcement pandemic flu plan. US Department of Justice: Bureau of Justice Assistance.

When the virus went on a rampage, the countries closed their borders and restricted entry, except for the free movement of goods. The mass availability of vaccines, the rise in vaccination rates and the signing of bilateral agreements helped to facilitate travel and thus revive tourism.

### **The Operative Board**

31 January 2020, Hungary was one of the first countries to set up an Operative Board to manage the coronavirus infection, which took more stringent and comprehensive measures than international recommendations to prevent and combat the epidemic. The Operative Board reported to the public through daily press conferences and announcements. At the time of the closure of this manuscript, only weekly information is available on the central information website.

At the height of the coronavirus epidemic, Hungary reintroduced border controls at all its internal land, air and water borders. This was necessary to avert the consequences of the human pandemic (COVID-19), threatening the safety of life and property, and to protect the health and lives of Hungarian citizens. The measure was extended several times.

The police constantly monitored compliance with the epidemiological measures (curfews; compliance with official house quarantine rules; breaches of protection measures related to wearing masks, the opening hours of shops, holding events and travel restrictions) and took immediate action against offenders.

### ***Special rules of the special legal order***

During the epidemic, several criminal acts of lesser danger to society have been brought into focus. By declaring a state of emergency, the Government amended Act II of 2012 on minor offences, offence procedures and the registration system of offences in several cases. Also, the offence of

breaching the epidemiological rules laid down in the Criminal Code can only be committed during an epidemic period.

Epidemiological surveillance and quarantine became applicable to a person who had been in contact with a person infected with coronavirus and was likely to have contracted the disease himself. In its strict form, the person was "condemned" to official house quarantine, with restrictions on his freedom of movement, right of contact and exercising of his profession, and could be held criminally responsible for any breach of it.

There was a lot of real and almost as much fake news about the coronavirus (crime of scaremongering<sup>4</sup>). The confusion caused by the pandemic led to a massive increase in fake news about COVID-19, which the police were actively involved in combating.

Amendments to the above-mentioned Minor offences Act adopted in March 2020 (they have since been repealed) created a sui generis minor offence liability for being in a catering establishment, event, theatre or other premises at an unauthorised time or in an unauthorised manner. It was also an offence to break the curfew in force at the time

The most common offences related to the pandemic were:

- scaremongering,
- threat of public endangerment,
- fraud,
- breach of epidemiological rules.

While the most common offences were:

- violation of curfew rules,
- violation of the rules of official quarantine,

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<sup>4</sup> Section 337 of the Criminal Code: Any conduct of uttering or publishing before the public at large a statement one knows to be false or with a reckless disregard for its truth or falsity at the scene of some emergency by which to violate public order or disturb the public peace at a place of public danger is guilty of a felony punishable by imprisonment not exceeding three years.

- breaking the rules on restricted opening hours of shops.<sup>5</sup>

In Hungary, there was a significant increase in certain types of crime, while, of course, other types of crime decreased. There was a marked increase in cybercrime (phishing, ransomware, malware), trade in counterfeit medicines and health products, economic crime, document forgery and in other forms of abuse at the European level, too. These were generally committed individually or within the framework of a criminal organisation.

The European Police Office (Europol) had been monitoring the impact of the virus situation on crime since March 2020. Fraudsters went even as far as posing as public officials to "take action" against violators of epidemiological measures, imposing on-the-spot fines.<sup>6</sup> This type of fraud occurred in Hungary, too, in several cases.

According to the Hungarian Criminal Statistics System, although the number of registered thefts decreased nationally during the coronavirus epidemic, there was an increase at the local level in several counties.

In Hungary, in addition to theft, the number of vandalism offences also decreased, while the number of forged documents, fraud and misuse of personal data cases increased. This trend was also observed at European level. It is perhaps not surprising that both of the last two categories of crime are

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<sup>5</sup> Dr. Draskovich, E. (2020): A koronavírus járvánnyal kapcsolatos jogsértések.[Infringements related to the COVID-19 pandemic] In: Infojegyzet, Országgyűlés Hivatal, Közgűjteményi és Közművelődési Igazgatóság, Képviselői Információs Szolgálat, 2020/36. Source: [https://www.parlament.hu/documents/10181/4464848/Infojegyzet\\_2020\\_36\\_COVID\\_19\\_jogsertesek.pdf/2eaa554e-ed9e-1bfd-3b4d-7c8ec8737205?t=1589189206805](https://www.parlament.hu/documents/10181/4464848/Infojegyzet_2020_36_COVID_19_jogsertesek.pdf/2eaa554e-ed9e-1bfd-3b4d-7c8ec8737205?t=1589189206805)

Accessed: 04.05.2021

<sup>6</sup> Felméry, Z (2021): Hogyan hatott a COVID-19 járvány a bűncselekmények alakulására? A 2020. november 11-i Europol jelentés ismertetése [How has the COVID-19 pandemic affected crime trends? Presentation of the Europol report of 11 November 2020]. Stratégiai Védelmi Kutatóintézet Elemzések 2021/9. 2021. április 16. NKE Stratégiai Védelmi Kutatóintézet Elemzések (ISSN 2063-4862)

closely linked to epidemiological measures. Moreover, the forgery of public documents by means of an immunity certificate<sup>7</sup> also emerged as a new offence.

### *Security provided by restriction*

The measure that had the biggest impact on the lives of the population was the introduction of the curfew.<sup>8</sup> The right to leave a private home, place of residence or stay was subject to a list of well-founded reasons, which were listed in the government decree currently in force. This strict measure was the most stringent during the first wave of the epidemic, it was much more lenient during the second and third waves, and was repealed in subsequent periods.

In the event of a breach of the rules on social distancing, the police were entitled to take the following measures: a warning, a fine and a report of an offence. In this case, the offence of "breach of the rules of conduct relating to the curfew" was considered to have been committed.

The introduction of this measure and the associated increase in the presence of police (and military police) in public places could have helped to ensure the safety of the settlements and to protect them against the virus.

Prior to the above measure, 12 March 2020 the Government decided to temporarily reintroduce border controls at the borders between Hungary and the Republic of Slovenia and between Hungary and the Republic of Austria, with the establishment of a transit route. This was implemented following the entry into force of the Government Decree 40/2020 of 12 March (11. III.) declaring a state of emergency and considering the Government Decree. 41/2020 (11. III.) on measures to be taken in the event of an emergency situation to prevent a human pandemic that threatens the safety of life and property and to avert the consequences of such an emergency situation.

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<sup>7</sup> According to Section 23/A of Gov. Degree 84/2020, as of 01.05.2021.

<sup>8</sup> Gov. Degree 71/2020. (III. 27.) on the breach of the rules of conduct relating to the curfew.

It should be noted here that the rapid decline in tourism also started from this date. Entry into the country was possible only at the designated border crossing points and at Liszt Ferenc International Airport after border control. With regard to this government decree, entry into the country was prohibited for foreigners<sup>9</sup> unless the Deputy National Police Commissioner issued a decision granting an exemption in a particularly meritorious case, by establishing a specific rule of conduct. Examples of exceptions included, but were not limited to, the transit of military convoys, transit for humanitarian purposes on a designated route, commuting for work purposes or entry in the interests of the national economy.

In the case of an offence, in view of health protection, the police officer taking measures could not use a verbal warning instead of imposing a fine, which showed how high the level of protection against the virus and the prevention of its spread was set.

In Hungary, after the outbreak of the COVID-19 pandemic, 11 March 2020 the government declared a state of emergency. People's normal lives were changed by curfews, and parts of the economy and many institutions were shut down. It was typical of the socio-economic consequences of the pandemic crisis nationally that, while the negative effects could be felt by anyone, certain sectors such as tourism, hospitality, culture and those working in these sectors were particularly affected.

### ***Legislation after the COVID-19 pandemic***

Following the end of the COVID-19 emergency, changes in criminal law were introduced. 8 February 2021 the Government declared a state of emergency for the entire territory of Hungary in order to avert the consequences

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<sup>9</sup> According to the provisions of the Fundamental Law, a Hungarian citizen can return home from abroad at any time. (Art. XIV, par. (2) of the Fundamental Law)

of the coronavirus pandemic and to protect the health and lives of Hungarian citizens.<sup>10</sup> During this period, the following acts were adopted in the field of criminal law:

- Act LVIII of 2020 on the transitional rules and epidemiological preparedness related to the termination of the state of emergency,
- Act CIV of 2020 on establishing certain rules relating to epidemiological measures and amending certain acts relating to epidemiological measures (this act does not affect procedural rules and remains in force after the end of the emergency),
- Government Decree 220/2021 (1. V.) on combating the misuse of the certificate of immunity,
- Government Decree 543/2021 (24. IX.) on the different application of Act XC of 2017 on the criminal procedure during a state of emergency,
- Government Decree 714/2021 (20. XII.) on certain rules of criminal procedure and prison rules during a state of emergency.

Prior to the end of the state of emergency, the Government submitted Bill T/27 on regulatory issues related to the termination of the state of emergency, which established transitional rules related to extraordinary measures taken during the state of emergency. The bill was adopted by the National Assembly.

However, this bill does not contain the transitional rules concerning criminal law. They are in chapters 3-4 and 6 to 10 of the already adopted Act CXXX of 2021 on certain regulatory issues related to the state of emergency.

Pursuant to Section 104 (4) of the Act, the transitional rules related to criminal law entered into force when the state of emergency under Government Decree 27/2021 (I. 29.) was terminated. By Government Decree

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<sup>10</sup> See Government Decree 27/2021 (29. I.) on declaring a state of emergency and putting emergency measures into effect.

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181/2022 (24. V.), the Government provided for the terminating of the state of emergency declared by Government Decree. 27/2021 (29. I.) as of 1 June 2022.

Thus, after the end of the state of emergency related to the coronavirus pandemic:

- Act LVIII of 2020 was repealed (Section 408(1)),
- the government decrees issued during the state of emergency were repealed,
- the transitional rules are governed by Chapters 3-4 and 6 to 10 of Act CXXX of 2021.

Law enforcement agencies were held primarily responsible for enforcing the measures. The police also played a key role in the protection by temporarily reintroducing border controls, monitoring compliance with protection measures, sanctioning offences and operating the hospital command system, thus contributing to Hungary's effective protection against the coronavirus. International research has also shown that law enforcement agencies are subject to increased stress in the course of their work, so it is of paramount importance to pay attention to the mental and psychological state of police officers, and the work of commanders must also address this. The collection of examples of international events can greatly help the work of the leaders at the national level and can highlight possible internal problems of the staff, which can be triggered even more by the increased work pace in a state of emergency.

### **Emergency 2.0, or armed conflict in a neighbouring country, war situation**

The government lifted the state of emergency declared due to the coronavirus pandemic 31 May 2022, but in view of the armed conflict situation in



Ukraine 24 February 2022, the state of emergency remains in force, in accordance with the 10th Amendment to the Constitution<sup>11</sup>. According to the constitutional amendment "The Government may declare a state of emergency and introduce extraordinary measures, as provided by a cardinal law, in the event of armed conflict, war or humanitarian disaster in a neighbouring country, or in the event of a natural disaster or industrial accident threatening the safety of life and property, or in order to avert the consequences thereof."<sup>12</sup> The special legal regime of the accentuated period was thus maintained. The government still has the power to adopt decrees by which the application of certain laws may be suspended. However, to the best of our knowledge, there is no information to suggest that the normal rules of law and the transitional criminal law, as described above, in effect as of 1 June 2022, will be affected by the state of emergency caused by the war in the neighbouring country.

- Act No VI of 2022 on the elimination of the consequences caused by an armed conflict or humanitarian disaster in a neighbouring country in Hungary, which entered into force at 21:00 on 8 June 2022<sup>13</sup> and whose section 4 stipulates that the National Assembly approves Government Decree 190/2022 (26 May) on the entry into force of certain Government decrees issued during the emergency declared to avert the consequences of the coronavirus pandemic and on emergency measures (hereinafter the Decree), by which the Government, pursuant to Article 53 (2) of the Fundamental Law, as an exceptional measure, repeals Decree No 478/2020. (XI. 3. 2021) on the declaration of a state of emergency and on the entry into force

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<sup>11</sup> In view of the armed conflict and humanitarian disaster in the territory of Ukraine, and in order to avert the consequences thereof in Hungary, the Government declared a state of emergency as of 25 May 2022 by Government Decree 180/2022 (24. V.).

<sup>12</sup> Paragraph (1), Art. 53, Fundamental Law

<sup>13</sup> Published in the Hungarian Gazette No 95 (published 8 June 2022)

Source: <https://magyarkozlony.hu/dokumentumok/a49a699a8c20d157bc4eb68f768-14e783bc71df9/megtekintes>

Accessed: 14.06.2022

of emergency measures, including the following decrees, which were issued during the state of emergency under Government Decree 27/2021 (29. I.) on the declaration of a state of emergency and on the entry into force of emergency measures, as a special measure, with the text in force 31 May 2022, with the derogations contained in the Decree:

- Government Decree 521/2020 (25. XI.) on the derogation from certain provisions on data requests in times of emergency,
- Government Decree 150/2021 (27. III.) on the reintroduction of special rules for the use of the Széchenyi Recreation (SZÉP) Card in emergency situations,
- Government Decree 402/2021 (8. VII.) on the registration procedure and other measures to be taken for the purpose of economic recovery in relation to the export of raw materials and products of strategic importance for the security of supply in the construction industry,
- Government Decree 781/2021 (24. XII.) on the different use of the Széchenyi Recreation Card in emergency situations,
- Government Decree 86/2022 (7. III.) on emergency rules for persons recognised as entitled to temporary protection and on the different application of the rules of Act CVI of 2011 on public employment and amending other regulations related to public employment and other acts,
- Government Decree 94/2022 (10. III.) on the different application of the rules of Act CXXX of 2021 on certain regulatory issues related to emergency situations,
- Government Decree 147/2022 (14. IV.) on the provision of child-care to accompanied children arriving from Ukraine in view of the emergency.
- Government Decree 203/2022 (VI. 8.) extending the validity of the emergency measures related to the state of emergency declared 25 May 2022, which entered into force at 22.00, 8 June 2022, with the exceptions provided for in paragraphs (2) and (3), and in which the

Government extended the following decrees on the elimination of the consequences of armed conflict or humanitarian disaster in Hungary in a neighbouring country until the expiry of Act VI of 2022:

- Government Decree 521/2020 (25. XI.) on the derogation from certain data request provisions in times of emergency,
- Government Decree. 150/2021 (27. III.) on the reintroduction of special rules for the use of the Széchenyi Recreation Card in emergency situations,
- Government Decree 402/2021 (8. VII.) on the registration procedure and other measures to be taken for the purpose of restarting the economy in connection with the export of raw materials and products of strategic importance for the security of supply in the construction industry,
- Government Decree. 781/2021 (24. XII.) on the different application of the Széchenyi Recreation Card in emergency situations,
- Government Decree. 814/2021 (28. XII.) on the different rules of the central budget of Hungary for the year 2022 in connection with the emergency situation,
- Government Decree. 14/2022 (I. 20.) on the specific rules for the conclusion of contracts for the acceptance of the Széchenyi Recreation Card,
- Government Decree. 39/2022 (13. II.) on the different application of Act CXXX of 2021 on certain regulatory issues related to emergencies during an emergency,
- Government Decree. 94/2022 (10. III.) on the different application of Act CXXX of 2021 on certain regulatory issues related to emergency situations,
- Government Decree. 147/2022 (14. IV.) on the provision of child-care to children arriving from Ukraine accompanied by an escort in view of the emergency,
- Government Decree 190/2022 (26. V.) on the entry into force of certain Government decrees issued during the emergency declared

to deal with the consequences of the coronavirus pandemic and on emergency measures

### ***The Operational Group***

After the outbreak of the Russian-Ukrainian war, the Ministry of Interior set up the Operational Group to perform Hungarian law enforcement tasks and to help people fleeing the war. The police, the disaster management and the aliens policing authorities are involved in the implementation of these tasks in cooperation with the regional defence committees. The main tasks include providing housing, food and medical care for those fleeing from Ukraine, for which all human and material resources are available in our country.

Crossing the border at the border crossing points is relatively quick and smooth; all those fleeing the war can enter Hungary. Those who have travel documents entitling them to legal entry and stay in Hungary and do not ask for further assistance can continue their journey to their destination on their own. The police also give entry clearance to those who lack a travel document or whose documents have expired or are incomplete. As of 6 March 2022, those who arrive without a travel document or with incomplete documents do not need to go to a temporary refugee assembly point, as police officers provide them with a temporary residence certificate immediately after entry at the border crossing points, which will give them a legal right to stay in Hungary for 30 days. During this period, they have to visit the competent office of the National Directorate-General for Aliens Policing (OIF) in their place of residence to obtain the permanent documents. In order to ensure efficient information provision, volunteer interpreters are available 24 hours a day at the assistance points and temporary refugee assembly centres.<sup>14</sup>

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<sup>14</sup>Source: <https://www.police.hu/hu/hirek-es-informaciok/legfrissebb-hireink/kozrendvedelem/senki-nem-marad-segitseg-nelkul>  
Accessed: 14.06.2022

Ukrainian citizens arriving from Ukraine with a passport can stay in Hungary for 90 days without a special permit. If they wish to stay in the country for more than 90 days (to work, study or for other reasons), they need to submit the appropriate application to the National Directorate-General for Aliens Policing. Ukrainian citizens may also be eligible for temporary protection, as persons who have been forced to flee Ukraine because of the armed conflict. This status is temporary, granting the right to stay for as long as the war continues. However, it does not give the holder the right to travel within the territory of the European Union or to reside in another EU Member State.<sup>15</sup>

At the same time, it is important to stress that no one will become a Ukrainian national enjoying temporary protection on the spot, the police will check the nationality of those entering our country in every case, so the declaration alone is not sufficient.

### **Tourism and/or security?!**<sup>16</sup>

It is the tourist's responsibility to have all the relevant information about the destination he or she intends to visit, and it is the responsibility of the destination to provide this information. However, events in the world are pushing not only tourists but also law enforcement agencies to be more prepared. The attitude of the police staff towards tourists largely depends on the leader or commander. Still, the personal qualities, skills, abilities and experience of the leader who is able to create tourism safety effectively are a complete blank spot in the field of management science. The role of the

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<sup>15</sup> Source: [http://www.bmbah.hu/index.php?option=com\\_k2&view=item&layout=item&id=1733&Itemid=2107&lang=hu](http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=1733&Itemid=2107&lang=hu)  
Accessed: 15.07.2022

<sup>16</sup> To interpret the phrase "tourism safety" I use Michalkó's description. "Tourism safety is the absence of threats that hinder the effective functioning and development of the tourism market. Tourism safety is the reduction or elimination of risks arising from travel and temporary stays, which threaten both the traveller and the destination." Michalkó, G. (2020): 1. A biztonság szerepe a turizmus rendszerében. [The role of security in the tourism system.] In: Michalkó, G. – Németh, J. – Ritecz, Gy. (eds.): Turizmusbiztonság 11.

police is crucial in ensuring the safety of foreigners arriving in Hungary, whether they are transiting, on a hiking trip or staying overnight. The volume of police presence, the quality of the measures, the handling of cases etc. constitute a competitive factor for tourism, and commanders have a key responsibility in influencing this. Police commanders in tourist hotspots, in particular those responsible for the security of a settlement or area, have an even greater responsibility than before, and it is therefore desirable to explore their role in a complex scientific and practical context.

Security has become a complex and growing problem in tourism today.<sup>17</sup> Tourists, generally concerned with a good sense of security and influenced by a wide range of external and internal factors, tend to prefer destinations with a good public safety record, free from terrorist threats and with fewer attacks on persons.

As stated in Rátz's doctoral thesis, "As regards the impact of tourism on public safety, residents' perceptions are that tourism and the presence of tourists inevitably attract crime, so that in the tourist season the number of crimes committed increases and the public's sense of security decreases, which can be considered an adverse change."<sup>18</sup> The study focuses on the impact of tourism on security and public safety, but in addition to the impact of tourism on public safety, it is important to also address the impact of security on tourism, as the improvement and development of security has a positive impact on tourism, too.<sup>19</sup>

The demand for tourism is a major challenge for destination managers and the organisations responsible for tourism safety.<sup>20</sup> It is important to implement tangible measures relating to physical security. This can take

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<sup>17</sup> Friedman, T.L. (2006): *The world is flat. The Globalized World in the Twenty-first Century*, Penguin, London

<sup>18</sup> Rátz, T. (1999): *A turizmus társadalmi-kulturális hatásai*. [The socio-cultural impacts of tourism], Budapesti Közgazdaságtudományi Egyetem, Budapest. 147

<sup>19</sup> Horváth, D. (2013): *Magyarország helyzete turizmusbiztonsági szempontból* [Hungary's situation in terms of tourism safety] TDK dolgozat, Szent István Egyetem, Budapest. 8

<sup>20</sup> Jacobsen, J. (2000): *Anti-tourist attitudes: Mediterranean charter tourism*. *Annals of Tourism Research*. 27(2): 284–300

the form of increased police presence, security guards, identity checks, border patrols and checkpoints. As local authorities of a tourist destination may introduce strict measures to ensure the safety of visiting tourists, this can help to change the touristic perception of the given tourist destination. The image of a tourist destination in the eyes of tourists is essential as it reflects the individual's image of a particular destination and the country. This can provide a competitive advantage if the reflection is positive.

In his study, Rácz writes that "Tourism is essentially a trust-based industry, and security is one of the most important foundations of its complex system. The issue of security is extremely complex, ranging from natural disasters, financial processes and terrorism to the safety of accommodation services, of the environment, food, health and transport. In the tourism system, all the factors that influence security have an impact on the decision to travel, and thus the determining factors of a destination are preconception and experience."<sup>21</sup> Safety is now so predominant in the operation of a tourist destination that it can be seen as a fundamental safety factor in tourism.<sup>22</sup> The answer to the security challenges is therefore not clear-cut, as it is not possible to list the factors for which it is possible to prepare at police level in exhaustive terms. Although several police leaders identify the classic criminal risk factors specific to public safety, their relationship with the subjective perception of safety is not directly proportional.

While the consequences of the coronavirus outbreak are not yet clear, we can establish that its impact on security in the future will bring complex,

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<sup>21</sup> Rácz, A. (2019): Magyarország országgépe és a turizmusbiztonsággal kapcsolatos attitűdök empirikus vizsgálata 2018-ban. [An empirical study of the image of Hungary and attitudes towards tourism safety in 2018] *Turizmus Bulletin* XIX. 4. 41-48

<sup>22</sup> Michalkó, G. (2012): *Turizmológia – Elméleti alapok*. [Tourismology - Theoretical bases] Akadémiai Kiadó, Budapest

wide-ranging changes. The impact of the outbreak has been felt by all economic actors concerned, but mainly by those involved in tourism.<sup>23 24</sup> The immediate impacts can only be assessed on a broad scale once the epidemic has finally run its course. However, it is obvious that the impacts of the epidemic are very diverse, affecting almost all areas of society and the economy.<sup>25 26 27 28</sup>

All these impacts were further exacerbated when the Russian-Ukrainian war broke out in the neighbouring country, as the perception of security of foreign visitors can be greatly affected by the war and the refugee influx that has started in the meantime, the recovery of the tourism sector after the effects of the pandemic will be an even longer process.

The complexity and dynamism of the notion of security is also illustrated by the fact that a decade ago most people might have been thinking about the security of their possessions. Six or seven years ago, increased external migration and now the threats of epidemics and a war in a neighbouring country have a much stronger impact on the perception of security

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<sup>23</sup> Kovács, L. – Keller, K. – Tóth-Kaszás, N. – Szőke, V. (2021): A Covid19-járvány hatása egyes turisztikai szolgáltatók működésére: azonnali válaszok és megoldások. [The impact of Covid-19 on the operation of some tourism operators: immediate responses and solutions] *Turisztikai és Vidékfejlesztési Tanulmányok*. 6:2. 6-24.

<sup>24</sup> Németh, K. et al. (2020): Can energy be a “local product” again?: Hungarian case study, *Sustainability* 12.:(3) 1118

<sup>25</sup> Kovács, L. (ed.) 2020: *Globális Kihívás – Lokális válaszok, A Koronavírus (Covid 19) gazdasági és társadalmi összefüggései és hatásai*. Savaria University Press, Szombathely, ISBN 978-615-5753-50-3; ISSN 2631-133X, 6,

<sup>26</sup> Pintér, G., Zsiborács, H., Hegedűsné Baranyai, N., Vincze, A., Birkner, Z. (2020): The Economic and Geographical Aspects of the Status of Small-Scale Photovoltaic Systems in Hungary - A Case Study, *Energies*, 13: 13

<sup>27</sup> Németh, J., – Tokodi, P. (2020): A turizmus és az egészségügyi biztonság összefüggései. [Links between tourism and health safety] In: Marton, Zs. – Németh, K. – Pelesz, P. – Péter, E. (eds.) *IV. Turizmus és Biztonság Nemzetközi Tudományos Konferencia*, Pannon Egyetem, Nagykanizsai Kampusz, Nagykanizsa 341-349

<sup>28</sup> Németh, J. (2020): *Turizmusbiztonság Magyarországon*. [Tourism safety in Hungary] In: Michalkó, G; Németh, J; Ritecz, Gy (eds.) *Turizmusbiztonság, Dialóg Campus Kiadó*, Budapest. 443-460



than before. However, the need for security, whose range has widened considerably, cannot be satisfied by the police alone. While the management of migratory threats will remain largely the task of the police, the security of property, transport or the control of epidemics can only be of a high standard if it reflects not only societal demand but also the responsibility of individuals and society.

## **Prison problems in Hungary and Poland**

### **Introduction**

Both Poland and Hungary have a high prison population rate, in Poland there are 194 and in Hungary 180 individuals in prisons per 100.000 people. At first glance, they might be seen as not large numbers, but when we compare them with those of other European countries, we will see that these rates are at the forefront.

<b>Country</b>	<b>Prison population rate (per 100.000 of national population)</b>
Turkey	374
Russian Federation	323
<b>Poland</b>	<b>194</b>
Slovakia	186
<b>Hungary</b>	<b>180</b>
Czech Republic	178
Estonia	162
United Kingdom	132
Portugal	116
Spain	116
Italy	93
Austria	92
Belgium	90
Germany	71

Netherlands	66
Norway	58
Finland	43
Monaco	34
Lichtenstein	31
San Marino	26

Table 1  
Prison population rate in some European countries<sup>1</sup>

Imprisonment is the most severe punishment; however, as seen in both countries, it is often imposed on the perpetrators of crimes. It is obvious that if the state punishes using this penalty, it must provide the convict with the basic conditions for serving it.<sup>2</sup>

However, practice is not always perfect...

Imprisonment must always comply with the requirements of respect for human dignity and treatment of a sentenced person as a human.<sup>3</sup> The legal status of an inmate must always be regulated because it is a way to show

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<sup>1</sup> World Prison Brief

Source: [https://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=14](https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=14)

Accessed: 04.05.2022;

See also: <https://www.prisonstudies.org/country/poland>

Accessed: 04.05.2022

<sup>2</sup> Pallo, J.: A szabadságvesztés célja, alapelvei. [The purpose and principles of imprisonment] In: Koósné Mohácsi B. (ed.): Büntetés-végrehajtási jog. ELTE Eötvös Kiadó. Budapest, 2017. 47-48

<sup>3</sup> Vókó, Gy.: Fogvatartotti jogokról emberi jogi követelmények tükrében. [On prisoners' rights in the light of human rights requirements] In: Deák, F. – Palo, J. (eds.): Börtönügyi Kaleidoszkóp. Ünnepi Kötet Dr. Lőrincz József 70. születésnapja tiszteletére. Büntetés-végrehajtás Tudományos Tanácsa. 2014. 232-233

him human respect.<sup>4 56</sup> This status consists of two basic elements: the status at a particular prison and the status of the convict as a party in enforcement proceedings. Each of them is characterized by certain rights and obligations of a prisoner, and one of them is the right to living space.<sup>7</sup> The fact is, overcrowding is also related to security problems, violence and the pathologizing of the goals of imprisonment<sup>8</sup>, moreover, it is one of the obstacles to progressive development because it is harder to organize adequate cultural or educational activities for prisoners.<sup>9</sup>

### **Expectations versus reality of the prisons' situation in Poland**

According to the European Committee for the Prevention of Torture (CPT) the minimum standard for one person in prison is 6 m<sup>2</sup> for a single room and 4 m<sup>2</sup> per person in multi-occupancy cells.<sup>10</sup> Moreover, the sanitary annex (excluded from the total place for one prisoner) should be added.<sup>11</sup>

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<sup>4</sup> Hołda, Z. ( ): Ochrona godności ludzkiej skazanego na karę pozbawienia wolności. Pałestra 1988/7. 110-112

<sup>5</sup> Nawój-Śleszyński, A.: Przeludnienie więzień w Polsce – przyczyny, następstwa i możliwości przeciwdziałania, Łódź: Wydawnictwo Uniwersytetu Łódzkiego. 2013. 46

<sup>6</sup> The same statements can be found in the judicature, see e.g. Judgement of the Supreme Court: of 17 March 2010, II CSK 486/09; of 28 February 2007, V CSK 431/06

<sup>7</sup> Nawój-Śleszyński, A. (2013) Ibid., 47

<sup>8</sup> Nawój-Śleszyński, A. (2019): 'Rozmiary i zróżnicowanie populacji więziennej w Polsce w okresie obowiązywania ustawodawstwa karno-wykonawczego z 1997 roku', In Kaliszka, T. – Kwiecinskigo, A. (eds.): Nowa Kodyfikacja Prawa Karnego Tomus 54. 140

<sup>9</sup> Zybert, E. B. (2011): Prison Libraries in Poland: Partners in Rehabilitation, Culture, and Education, Library Trends, vol. 59, no. 3, 424

<sup>10</sup> Raffaelli, R. (2017): Prison conditions in the Member States selected European standards and best practices, 3

Source: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL\\_BRI-\(2017\)583113\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583113/IPOL_BRI-(2017)583113_EN.pdf)

Accessed: 15.07.2022

<sup>11</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Living space per prisoner in prison establishments: CPT standards. 2015. 3-4.

Source: <https://rm.coe.int/16806cc449>

Accessed: 08.08.2022

This problem was noted by the CPT more than once in reports to the government, which indicated that despite its repeated previous recommendations, the official minimum standard of living space per prisoner remained unchanged.<sup>12</sup>

In Poland, regulations about living space in prisons have changed many times. Firstly, there were cubature standards in force until 1998, and the living quarters were to be provided, depending on the period of validity of the regulations, between 6 and 13 m<sup>3</sup> for multi-person cells. This regulation, however, met with criticism because, firstly, it was not precise, and secondly, it often led to hiding poor conditions when the rooms in which the convicts were detained were very high.<sup>13</sup> In addition, between 1989 and 1998, the conditions were distinguished depending on gender – as a standard, the area could not be smaller than 3 m<sup>2</sup> for men and 4 m<sup>2</sup> for women.<sup>14</sup>

Nowadays, according to Art. 102.1 of the Executive Criminal Code (ECC), a convicted person has the right to adequate food, clothing, living conditions, accommodation, health services and adequate hygiene conditions. There is also a special norm about the accommodation of prisoners in Art. 110 of the ECC, according to which the convicted person is placed in a multi-person or single-person cell, in which the area cannot be smaller than 3 m<sup>2</sup> per person, it should be equipped with a separate sleeping place for every convict, appropriate hygiene conditions, sufficient air supply, temperature and lighting for reading and work. This is the general rule.

However, in exceptional cases i.e. in the event of a war, epidemic, or threat to the safety of the prisoners or prison, the governor may place the convict in a cell where there is at least 2 m<sup>2</sup> per person, however, the period

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<sup>12</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 31.

Source: <https://rm.coe.int/16808c7a91>

Accessed: 08.08.2022

<sup>13</sup> Szymanowski, T.: Przeludnienie zakładów karnych, jego następstwa i metody ograniczenia tego zjawiska, *Czasopismo Prawa Karnego i Nauk Penalnych* 2007/11. 284-285

<sup>14</sup> Nawój-Śleszyński, A. (2013) *Ibid.*, 53-55

of staying in such a small cell may not exceed 90 days. The second exception, when the governor may relocate the inmate into such a small cell, is the necessity related to overcrowding in a particular prison, where there are no vacancies, and simultaneously it is necessary to detain the most dangerous prisoners immediately. They include those sentenced to imprisonment for more than 2 years, recidivists, members of an organized crime group, those convicted of crimes against sexual freedom, and convicts who have previously escaped from a prison. However, in these cases, the period of staying in such a small cell may not exceed 14 days (or, if a penitentiary judge agrees, 28 days). The inmate may bring a complaint against each decision of relocation into such a small cell to the penitentiary court, which examines it within 7 days. However, the main question that arises as part of the analysis of this appeal is whether penitentiary courts have a real influence on this decision of the governor, whether they have means and possibilities to challenge such a restriction if the governor makes this decision only exceptionally. Placing an inmate in a cell of less than 3 m<sup>2</sup> is possible again after 180 days from the end of the previous limitation of his or her rights to a sufficient amount of area.

Recently, the problem with overcrowding has not been as large as it was a few years ago, now there are still places for sentenced people. According to Polish prison officers' data, the number of population in prisons is 87.46% of all the places established for them<sup>15</sup>. This number has been similar in the last 5 years, with a slight decrease.<sup>16</sup> However, it is still visible

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<sup>15</sup> Data about population in Polish prisons from the day 29.04.2022.

Source: <https://www.sw.gov.pl/strona/statystyka--komunikat>

Accessed: 29.06.2022.

See also: Prisons and Prisoners in Europe 2021: key findings of the SPECE I report. 10.

Source: [https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago\\_2022\\_Prisons-and-Prisoners-in-Europe-2021\\_Key-Findings-SPACE-I\\_-220404.pdf](https://wp.unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022_Prisons-and-Prisoners-in-Europe-2021_Key-Findings-SPACE-I_-220404.pdf).

Accessed: 8.08.2022).

<sup>16</sup> Data from Eurostat.

Source: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Prison\\_statistics#Overcrowding\\_and\\_empty\\_cells](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Prison_statistics#Overcrowding_and_empty_cells).

Accessed: 25.06.2022

that there is a problem with too many people in prisons. Moreover, the living conditions of inmates, if they are transferred to cells smaller than 3 m<sup>2</sup>, should be assessed as disastrous, since the standard of 3 m<sup>2</sup> per person is already one of the lowest in European countries. For example, in France<sup>17</sup> the living space in cell per one prisoner is 4.7 to 9 m<sup>2</sup>, 9 to 10 m<sup>2</sup> in Spain<sup>18</sup> and 7 to 9 m<sup>2</sup> in Italy.<sup>19</sup>

The problem of overcrowding in Polish prisons has repeatedly been the subject of research by the European Court of Human Rights, which found that the conditions did not meet the European minimum, and therefore indicated a violation of Art. 3 of the European Convention on Human Rights. In individual cases, which were analysed by the ECtHR, the cells had an area of between 2 and 2.4 m<sup>2</sup>, and the inmates stayed in them for several years.<sup>20</sup> This is not something to be proud of, because generally, the ECtHR indicates that until the finding of a violation of Art. 3 of the Convention, there must be an objective condition of inhuman treatment, so that ill-treatment reaches a certain level of severity. This should be assessed on the basis of the following conditions: living space, duration of degrading conditions, psycho-physical effects and personal conditions of the inmate (e.g. gender and health condition), the possibility of access to the toilet in conditions of respect for privacy, air supply, access to natural light, heating and

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<sup>17</sup> Cretenot, M. – Liaras, B. (2013): Prison conditions in France, European Prison Observatory. Detention conditions in the European Union. 10.

Source: <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Prison-%20conditions%20in%20France.pdf>

Accessed: 15.07.2022

<sup>18</sup> Aranda Ocaña, M. (2013): Prison conditions in Spain, European Prison Observatory. Detention conditions in the European Union. 10.

Source: <http://www.prisonobservatory.org/upload/PrisonconditionsinSpain.pdf>

Accessed: 15.07.2022

<sup>19</sup> Marietti, S. (2013): Prison conditions in Italy, European Prison Observatory. Detention conditions in the European Union. 10.

Source: [http://www.prisonobservatory.org/upload/Italy\\_Peniten.pdf](http://www.prisonobservatory.org/upload/Italy_Peniten.pdf)

Accessed: 15.07.2022

<sup>20</sup> Wenerski v. Poland, No. 44369/02, 20 January 2009; Musiałek and Baczyński v. Poland, No. 32798/02, 26 July 2011.

proper hygiene conditions, as well as the attitude of the authorities, whether they have taken steps to improve living conditions.<sup>21</sup>

## Solutions

The fight against overcrowding in prisons can take a variety of strategies. The first is building new prisons or expanding the existing ones, but it is a very difficult and expensive issue.<sup>22</sup> Another possibility is a preventive action on society: supervision and control, activity, and cooperation with law enforcement agencies. The third issue is the criminal policy of the state and the judicial authorities, which may also punish offenders with non-custodial penalties such as fines or restriction of liberty. In specific circumstances it is also possible to suspend the execution of imprisonment<sup>23</sup> or release the convict after he has served at least half of the sentence<sup>24</sup> or under certain conditions the penitentiary court may allow the convict to serve a sentence of imprisonment in the electronic supervision system.

Moreover, in this regard, the Ordinance of 25 November 2009 on the procedure was issued to be followed by competent authorities if the number of inmates in prisons or pre-trial detention centres exceeds the total capacity of these establishments on a national scale. This ordinance does not

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<sup>21</sup> Sikorski v. Poland, No. 17599/05, 22 October 2009; Orchowski v. Poland, No. 17885/04, 22 October 2009.

<sup>22</sup> Moreover, as long as building new prisons is the way to limit the overcrowding, it does not limit criminality. See: Hough, Allen and Solomon, (2008): Tackling prison overcrowding. Build more prisons? Sentence fewer offenders? Policy Press, Bristol. 25 and following.

<sup>23</sup> According to Art. 69 § 1 Criminal Code suspension of the execution of imprisonment is possible when (1) the punishment is under 1 year, (2) the perpetrator has not been sentenced before to the imprisonment and (3) this kind of punishment is sufficient to achieve the goals of punishment especially a return to crime.

<sup>24</sup> According to Art. 77 § 1 CC early release is possible when the attitude and personal conditions of the sentenced person, his behavior after crime and in prison and all other circumstances indicate that this person will obey the legal order and will not commit the crime once again. If the person has previously served a sentence of imprisonment, it is possible after he has served at least two thirds; after 15 years when the sentence was 25 years; and after 25 years if the sentence was life imprisonment.



solve the problem. It is laconic, and it contains only one order for the authorities, saying that after receiving information about exceeding the capacity of the establishments on a national scale, authorities are to make efforts to organize additional cells, while the courts are supposed to verify whether it is possible to postpone the execution of the sentence for some of the convicts.

In my opinion, non-custodial penalties and the electronic supervision system are the best and most effective solutions. Last years' data shows that until 2015 courts sentenced offenders mostly to imprisonment, but the number of these punishments (and of all convicts) decreased every year. While from 2011 to 2015 imprisonment amounted to more than 64% of the punishments, in the last few years this kind of punishment constituted only 37%. Since 2016 explicit change has been seen, non-custodial penalties dominate and the number of them is still increasing. This phenomenon deserves a large approval.

Year	Percent- age of im- prison- ment	Imprison- ment	Non-custodial		
			All non- custodial	Restriction of liberty	Fines
2011	66%	280 023	143 182	49 611	93 571
2012	65%	265 876	142 026	50 730	91 296
2013	67%	235 032	118 046	41 287	76 759
2014	67%	199 167	96 087	33 009	63 078
2015	64%	167 028	92 557	31 096	61 461
2016	43%	125 368	160 496	61 720	98 776
2017	41%	99 346	138 575	53 854	84 721
2018	37%	103 814	168 663	78 172	90 491
2019	37%	105 841	178 835	84 992	93 843

Table 2

The number of penalties<sup>25</sup>

According to the analysis and evaluation of the functioning of the electronic supervision system in Poland<sup>26</sup>, the number of applications for this possibility has been slowly increasing, while in 2011 there were 11 979 applications, in 2012 there were as many as 29 262 and in 2019 there were 38 673. However, the request from the convict or his or her defence lawyer does not mean automatically that the system would be used; the penitentiary court is the only institution that may make this decision. As we can see in the table below, only about one third of the proposals were accepted each year.

<sup>25</sup> Data from the judicial system's statistic

Source: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>  
Accessed: 01.07.2022

<sup>26</sup> Przesławski, T. – Stachowska, E.: Analysis and evaluation of the functioning of the electronic supervision system in Poland in 2018–2019. 2021. 49-50.

Source: [https://iws.gov.pl/wp-content/uploads/2021/05/IWS\\_Przeslawski-T.-Stachowska-E.\\_Analiza-i-oceny-funkcjonowania-systemu-dozoru-elektronicznego.pdf](https://iws.gov.pl/wp-content/uploads/2021/05/IWS_Przeslawski-T.-Stachowska-E._Analiza-i-oceny-funkcjonowania-systemu-dozoru-elektronicznego.pdf)  
Accessed: 02.07.2022

<b>Year</b>	<b>Number of accepted applications</b>	<b>Number of submitted and examined applications</b>	<b>Percentage of accepted applications</b>
2011	3 577	11 979	30%
2012	10 438	29 262	36%
2013	13 289	34 827	38%
2014	11 820	30 980	38%
2015	10 065	29 723	34%
2016	8 252	25 832	32%
2017	12 072	34 651	35%
2018	12 559	36 919	34%
2019	12 427	38 673	32%

Table 3

Number of accepted applications for penalty enforcement in the Electronic Supervision System<sup>27</sup>

As we can see, despite of being desirable among those sentenced to imprisonment, the electronic supervision system is still not used as frequently as it could be. The percentage of accepted applications oscillate between 30% and 38%, which shows that only about one of three persons sentenced to imprisonment serve this sentence in the electronic supervision system (ESS). There is also an important fact that according to Art. 431a § 1 of the ECC the application of the electronic supervision system is possible only if there are some specific circumstances:

- the punishment is not stricter than one and a half years imprisonment and the convict is not recidivist;
- this punishment is enough for perpetrator to resocialize;
- the convict has a permanent residence and the flatmates have agreed to serving the sentence in the ESS in the place of living;

<sup>27</sup> Information collected from Przesławski, T. – Stachowska, E. (2021), Ibid.

- there are technical possibilities for the ESS that will work well in this place.

To conclude, it is also worth emphasizing that, according to the Follow-up Covid-19 related statement by the Council for Penological Co-operation Working Group, most countries coped with the coronavirus pandemic situation well.<sup>28</sup> In some of them, early release schemes, postponing the execution of prison sentences or replacing them with community sanctions or measures were used in order to stop the spread of the virus. As we see, this solution is possible in such a short time, it may be said that in the case of overcrowding in prisons in the future, we would have the best and known measures.

### **Hungarian legal regulation**

The national legislation of Hungary declares that in prison facilities, the human dignity of persons must be respected. Cruel, inhuman, or degrading treatment or punishment may not be used. This is a general treatment clause.<sup>29</sup>

With regard to overcrowding in prisons, the European Court of Human Rights (ECtHR) first addressed the decision of Varga and others of 10 March 2015<sup>30</sup>, establishing that the Hungarian prisons' conditions violate Article 3 of the European Convention on Human Rights, namely the prohibition of torture. The decision of the ECtHR was given special weight to

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<sup>28</sup> Follow-up Covid-19 related statement by the Council for Penological Co-operation Working Group. 2020.

Source: <https://rm.coe.int/pc-cp-2020-10-e-rev-follow-up-to-pc-cp-wg-statement-covid-19/16809ff484>

Accessed: 17.07.2022

<sup>29</sup> Nagy, A. – Dobos, Á. Gy.: Túlszűfoltóság a büntetés-végrehajtási intézetekben és a konfliktusok, [Overcrowding in prisons and conflicts] Publicationes Universitatis Miskolcensis Sectio Juridica et Politica 2019/1. 305-331.

<sup>30</sup> Varga and Others v. Hungary, Nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, 10 June 2015.

examine the conditions in Hungarian prisons according to a pilot procedure, which means that this is not an individual case, but the Hungarian regulation suffers from a systemic problem.

Inadequate movement, air space or hygiene in prisons caused the main problem. The Council of Europe, the Committee for the Prevention of Torture and Inhuman Treatment (CPT), based its position, on the fact that room for movement in many cases did not even reach 1 m<sup>2</sup>. Inadequate hygienic conditions meant inadequate separation of the living space and the toilet, the lack of a sufficient number of washrooms, and the actual obstruction of open air flow for a certain period of time for the convicts.

In the meantime, however, the Constitutional Court was examining freedom and Decree 6/1996 of the Ministry of Justice (MOJ) (12. VII.) on the rules of the execution of pre-trial detention. Later, however, the legislator had to repeal the above-mentioned 6/1996 MOJ Decree with effect from 1 January 2015 and replace it with Decree 16/2014. (XII. 19.) MOJ, which entered into force. However, the impugned provisions, with the same content, were included in Section 121 of the MOJ Decree. According to it, the number of people that can be accommodated in a cell or in a living quarter should be determined in such a way that each convict has as much as 6 cubic meters of air space, with 3 m<sup>2</sup> for male convicts and 3.5 m<sup>2</sup> for women.

For the often-treated problem of the current prisons, we can establish that the current capacity of the Hungarian prisons is associated with the gradual overcrowding of prisons. The decrease in the total number of inmates in recent years is not so clear, but a slight decrease can be observed. While in 2017 the prison population consisted of 17,944 people, in 2018 there were 17,251 people, and 16,664 people in 2019. The expected trend for the next periods will also show a slight decrease.

## **Compensation procedure**

The European Court of Human Rights ruled on 10 March 2015 that overcrowding meant a mass and structural problem with regard to the Hungarian penitentiary system. Therefore, it obliged Hungary to produce a plan within six months to reduce overcrowding significantly and permanently. The deadline for that expired on 10 December 2015.

Building new prisons is not a solution to the above problem. Not only because it is expensive, but also because international experiences show that increasing the system's capacity has been accompanied by the growth in the number of detainees.

On its last visit, the CPT announced that it would like confirmation that the minimum required accommodation area of 4 m<sup>2</sup> per prisoner in multi-seat cells (without toilet and sanitary facilities) has been achieved and the official prison capacities have been recalculated accordingly. Therefore, a compensation procedure was introduced for breach of CPT principles.<sup>31</sup>

## **Solutions**

There are several ways to reduce the prison population effectively. The first is an effective and efficient system of alternative sentences and electronic monitoring, and conditional release. The procedure concerning reintegration surveillance is regulated by Art. 61/A. of the above-mentioned Code, according to which: “the correctional institution proposes to the court to command reintegrational surveillance.” Thus, reintegration surveillance is not implemented by the correctional institution, but the judge of the second instance criminal court. In such cases, the court decides on the basis of the submitted documents, but it may also hold a hearing on the basis of the request submitted by the convict or his defence lawyer.

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<sup>31</sup> Nagy, A.: A kártalanítási eljárás, [The compensation procedure]. Miskolci Jogi Szemle 2019/2. special edition. 221-232.

Reintegration surveillance<sup>32</sup> may be initiated only once during the term of completing the punishment by the sentenced person or his defence lawyer. The request is brought by the correctional institution to the criminal court within fifteen days. The term “once” is important because the convict receives a significant change in his conditions and in his lifestyle and, therefore, this opportunity is only accessible to convicts who are less dangerous to society and who can reasonably be expected to be able to successfully reintegrate into civil society. Although convicts under reintegration surveillance may leave the prison before the punishment is actually completed, they must move to the house or apartment designated by the law enforcement judge and can only leave the designated property for strictly defined reasons, e.g. to ensure the ordinary needs of daily life, to conduct work, education and medical treatment.

Art. 187/A (1) of the above-mentioned Code regulates the conditions under which reintegration surveillance can be ordered. If the purpose of the deprivation of liberty can also be achieved in this way, the convict may be placed under reintegration surveillance before the estimated date of release from punishment. The agreement of the convict is needed and the conditions are as follows:

- he has been sentenced to imprisonment of the crime committed with negligence, or
- he has been sentenced to imprisonment for an intentional crime, then
- not convicted of an offence concerning violence against a person as defined in Art. 459 (1) 26. of the Criminal Code
- he has been convicted for the first time for a non-custodial sentence or he is a non-recidivist criminal, and
- he shall complete a maximum term of detention of five years.

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<sup>32</sup> Nagy, A. – Menyhért, E.: A reintegrációs őrizet egyes kérdései, [Certain issues of reintegration detention] *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*. 2018/2. 227-239.

The duration of reintegration surveillance is

- a) up to one year if the sentenced person is sentenced to imprisonment for negligent crime,
- b) for a maximum period of ten months in other situations.

Reintegration surveillance is also available to minors according to the Code, which lays down further specificities in the application of the above-mentioned reintegration surveillance. Thus, the conditions for the application of juvenile reintegration surveillance, in addition to the general rules are:

- a) attending family therapy or family counselling at least once during the period of deprivation of liberty,
- b) consent of the legal representative to the installation of the electronic monitoring equipment and the lodging of a declaration of accommodation with a statement to escort the detainee.

The Code also implements a multi-directional extension of the institution of reintegration surveillance in order to reduce the saturation of institutions.

On the one hand, it would allow a wider range of offenders to benefit from this institution, as the amendment would extend not only to those who are sentenced for the first time, but also to those who are convicted of negligent offenses and to re-offenders. On the other hand, it determines the length of time spent in reintegration surveillance, depending on the degree of guilt and over a longer period (10 months in the case of intentionality and one year in the case of negligence).

Another way of combating overcrowding in prisons is the effective legal regulation of conditional release from imprisonment and the so-called back-end type of home prison penalty. In Hungary it means that after serving two thirds of the imprisonment, a prisoner can be released according to the general rule of the Criminal Code of Hungary.



## Summary

### **Bács, Zoltán György: Some national security aspects of emergencies (6-16)**

The protection and preservation of national security in both a narrow and a broad sense is a basic task in any emergency. The legal frames of the special measures to be introduced in an emergency are already given by the relevant normative legislation acts. These measures obviously affect the sense of security of the different social layers. The purpose of the present study is to analyze the different dimensions of security based upon the Maslow pyramid and to present the complexity of the possible challenges, risks and threats, taking into consideration the different demands and situations of the different social layers.

### **Boda, József – Dobák, Imre: Transformation of security and intelligence services in Hungary (1990-2018) (17-41)**

The study describes the organisational changes in the Hungarian national security services between 1990 and 2018. In the first part, it covers the organisational history of state security services in the period before the regime change, and then the circumstances of the establishment of the national security services in the period of transformation in 1989-1990. It describes the structure of the national security structure (1990-2018), the tasks of each organisation and the framework of parliamentary oversight.

### **Deli, Gergely: The mercy of law (42-55)**

The present essay attempts to answer the question of whether the concept of mercy can be used in relation to law. Its final conclusion is that the answer is positive and the most salient and practically important case where mercy plays an important role in the legal domain is the phenomenon of the so-called safe places. All the important attributes of a 'merciful' law is present in safe places: universalism of values, the indifference of merit, and self-legitimation. The paper explains how and why these concepts interact

and influence decision-making in highly sensitive areas such as border protection.

**Gáti, Balázs – Tóth, Dávid: Comparative law analysis of the regulation of stamp forgery (56-78)**

Our study examines the crime of stamp forgery in a comparative law approach. In the first part, we review the legal historical aspects of stamp forgery. After that, we compare the regulations of the Hungarian Criminal Code regarding stamp forgery with the regulatory solutions of the German-speaking jurisdictions. In addition, we examine the current criminal statistics of stamp counterfeiting. Finally in the study, along the lines of the above analyses, we formulate a proposal regarding the legal regulation.

**Hegedűs, János: The dynamics of the security policy of the territories with unsettled status in the South Caucasus (79-86)**

Throughout history, the Caucasus region has often been the site of military struggles, heated political and ethnic conflicts. In my article, I would like to briefly present the security policy dynamics of three areas in the South Caucasus during the corona virus pandemic. Between 2015 and 2022, I worked in the region — namely in Georgia — for five years, during which I was able to gather personal experience of the processes that took place.

**Nagy, Zoltán András: Terrorists who make their mark online (87-97)**

There is no single concept of terrorism. It is probably impossible to give a uniform definition of a phenomenon that has a different system of tools, and an extremely differentiated system of perpetrators and targets. The study highlights the diversity of perpetrators of terrorist acts. There are lone terrorists, organized gangs, and even larger organizations that have already shown signs of state organization. Lone terrorists pose the same threat as organized groups, and, because they are out of sight of the authorities, are perhaps even more dangerous.

**Rusvai, Miklós: Pandemics, epidemics, bioterrorism: Challenges against public order (98-115)**

In the last two years the Covid-19 pandemic played a significant role in the life of Hungarian society and in the functioning of the world. The information collected during the five waves of the pandemics caused by the different variants of the SARS-CoV-2 virus in Hungary may be enough to summarize the most important conclusions. The scientific results and the gained experiences added to these conclusions may help to prevent the problems caused by the constant presence of this coronavirus, which is on its way to becoming an endemic. Furthermore, they may help to protect the human population more effectively in the case of freshly emerging infectious diseases in the future.

At the same time this pandemics served as a model for the tasks and challenges the law enforcement and the emergency management forces may face in case of another epidemic appearing accidentally or following a bioterrorist attack. Covid-19 has proven the vulnerability of the human society, since the way of life still has not returned to the normal routine after more than two years, and certain segments of the economy (air traffic, tourism, car industry etc.) still have not reached their previous levels. The pandemics also called the attention to the fact that viruses similar to the highly contagious SARS-CoV-2 or its variants may serve as potential biological weapons following genetic modification. Also, it highlighted that the vaccine scepticism that characterises a significant segment of society, including the members of law enforcement and the emergency management forces, risks the effectiveness of the disease control efforts and the operability of these organizations.

**Sallai, János – Borszéki, Judit: The beginnings of international police cooperation (116-134)**

The study approaches the topic indicated in the title from several aspects. Firstly, it presents the reports published in the Hungarian police journals of the period about the events of international police cooperation that took

place between 1869 and 1938, including the accounts of prominent contemporary representatives of police sciences. Then it compares these views with the evaluation of the era by 21<sup>st</sup> century studies written on the subject in English.

**Tokodi, Panna: Law and order issues in emergency situations, with special reference to tourism safety (135-151)**

The paper explains the role of the police in preventing the spread of the coronavirus pandemic. It also addresses policing issues and the challenges of the war in the neighbouring country since 24 February 2022. These topics are developed around the theme of tourism security.

**Wszolek, Roksana – Nagy, Anita: Prison problems in Hungary and Poland (152-166)**

The aim of the article is to describe and discuss the current problem in prisons' systems –overcrowding in prisons in Hungary and Poland, an essential problem that deserves attention. Prisons' overcrowding has been especially visible in these two countries, so it is important to raise this problem in the dispute of doctrine and try to solve it. This study contains both previous and present information, statistics, and the position of international bodies on the current overcrowding of prison facilities. The legal regulations of these two countries are similar, but they are still far from perfect, which is why this article shows their advantages and drawbacks. The authors try to emphasize that overcrowding is a significant problem, and they also offer some *de lege ferenda* ideas to resolve this alarming situation.