

ÁRPÁS, BÉLA

Expedient system of homicide prevention

Introduction

As a professional member of the Police force, I served for nearly twenty years in the field of homicide. I directed the investigation of numerous cases that were based on the crime of preparation for homicide. All of this occurred before Act XC of 2017 entered into force on the current criminal procedure – hereinafter referred to as [CP]. In my research, I aimed to examine the current situation regarding the prevention and detection of preparation for homicide. To this end, taking into account the relevant jurisdictional and competence rules, I conducted interviews with investigative officers, detectives, examiners, leaders, and a senior executive working in the field of life protection, all of whom had more than a decade of professional experience, across six counties. Following this, I drew possible conclusions.

Legal background

The Act XC of 2012 on the Criminal Code (hereinafter: [CC]) defines the basic factual situation of homicide as an open factual situation, not tied to a method of commission: *"Anyone who kills another person shall be punished by imprisonment for a term of five to fifteen years."* The legislator defined a total of twelve qualified cases, taking into account the perpetrator's background, the identity of the victim, the method of commission, motives, and other factors, which allowed for the permanent exclusion of the offender from society. In privileged cases, such as negligent commission or homicide committed in a state of strong emotional disturbance as a separate factual situation, milder sanctions are associated compared to the basic

case.¹ Determining the necessary intent for the correct legal assessment of the act is often difficult, especially in cases that have reached the stage of preparation, as the perpetrator's state of mind is not present in the external world or only appears in small traces, thus there are objective obstacles to understanding.

The [CC] only prescribes punishment for preparatory conduct if the specific factual situation in the special part provides for its punishability. A person is punishable for preparation if they provide the necessary or facilitating conditions for the commission of the crime to commit the given crime, call for the commission, offer, undertake, or agree to commit jointly. However, a person is not punishable for preparation if they voluntarily abandon their intention, resulting in the failure to commence the commission of the crime, nor is a person punishable who withdraws their verbal declarations that would otherwise qualify as preparatory conduct or seeks to persuade others to refrain from committing the act. However, a conjunctive condition for this is that the commencement of the crime is omitted for any reason. Finally, a person is exempt from punishment if they report the preparation to the authorities before the commencement of the crime. The only exception is when the preparation itself constitutes another crime. In this case, the perpetrator is punishable for that reason.²

Methodological differences

In the investigation and proof of homicide that has reached at least the attempted stage, classical investigative methods – data collection, scene examination, autopsy, interrogation, search, and expert examinations – still dominate today.

However, preparatory cases necessitate the application of a special procedural model, especially in cases of more sophisticated commission – for example, involving a hired killer – or in the investigation of crimes that are

¹ The Act C of 2012 on the Criminal Code, Sections 160 and 161

² The Act C of 2012 on the Criminal Code, Section 11

much more difficult to prove, realized only through the communication of thoughts. In the former, the conspiratorial commission is present, while in the latter, the nature of the crime results in a much more limited application of tools, which justifies the use of a special investigative method.

The methodological model is characterized by the fact that among the classical investigative tools – in the absence of on-site measures and forensic experts – greater emphasis is placed on interrogation, presentation for recognition, and confrontation. The personal proof of the investigation becomes prominent, with the main goal being the proof of intent. The problem arises with the validity of the evidence and the questionability of the witnesses. Therefore, the investigation must have a threefold focus: the prevention of the crime, the collection of evidence, and, as a third pillar, its substantiation. All of this must be accomplished in such a way that when involving the suspect in the proceedings, there must already be sufficient evidence for indictment, as the opportunities for evidence collection significantly narrow thereafter. Since the commission of the crime is ongoing, it is not sufficient to follow events; a specifically rapid proactive approach is necessary. But does this appear in the investigative timeline? To gain insight into the so-called case duration, I submitted a data request to the National Police Headquarters Criminal Directorate Criminal Analysis Evaluation Division, but this time I requested data over a broader time interval to gain a wider understanding of the processes. The response is contained in Table 1.

The average case duration of completed investigations in homicide criminal proceedings. based on the Unified Investigative Authority and Prosecutor's Criminal Statistics (2016-2023)							
crime (stage of re- alization)	2017. yr	2018. yr	2019. yr	2020. yr	2021. yr	2022. yr	2023. yr
other criminal cases	110,3	133,8	169,5	195,9	225,0	226,8	n.d.
Intentional homicide	499,8	749,1	729,3	872,9	653,1	674,4	626,8
preparation for murder	403,3	560,4	626,4	614,2	540,9	545,5	504,6

Figure 1: Criminal Statistics Data
Source: NPHC CD CAED, self-edited

The most striking data for me is that the investigation of homicide generally takes three times longer than investigations related to other crimes. At the same time, the time spent on investigations for the preparation of homicide is 70-85% compared to the investigations of completed homicides. In my study, I considered the year 2017 as the base year because it was the last full year when investigations were conducted under Act XIX of 1998 on criminal proceedings. I compared this with the year 2019, which was the first full year following the entry into force of Act XC of 2017 on criminal proceedings.

It is immediately apparent that the average time spent on investigating crimes increased by 54% by 2019, and then the rate of increase reached 205.6% by 2022. In contrast, the time spent on investigating homicides shows a more differentiated picture. Between 2017 and 2019, the investigation time increased by 45.91%, and then by 2020 – the year of significant case number increase – it reached 75%. At this point, the situation consolidated, and by 2023, when the number of homicides decreased, the time spent on investigations was only 26% longer compared to 2017. Regarding the preparation for homicide, the investigation time increased by 55% by 2019 compared to 2017. By 2023, this figure showed only a 25% increase, corresponding to the homicide pattern.

The prolongation of investigations is primarily attributed by my interviewees to personnel issues (staffing, professional competence, expertise), administrative, and IT problems. The staffing and material-technical gaps are also present in the expert field, which also affects investigations. Considering that the number and professionalism of life protection units are relatively constant, there is significantly less expert activity in preparatory cases, which is why the aforementioned problems appear only to a small extent in the vertical of investigation performance time, resulting in a much smaller increase in deadlines compared to the average.

Special substantive legal tools

The detection and proof of preparatory behavior manifested in actions (e.g., tampering with the victim's car brake system) is a relatively simpler task. The difficulty arises in the case of preparatory behaviours that manifest solely in verbal form. The "invitation" to commit a crime by another person or the "offer" of another person is a unilateral but ultimately a bilateral activity between two individuals. The "agreement to commit jointly" is also a bilateral act, but it is a partner activity. These are clarified forms of behaviour. Since the situation involves multiple participants, the proof is less cumbersome than in the case of "undertaking" to commit a crime. This behaviour merely signifies the acceptance of some activity in common parlance.

The Curia's decision No. 3/2019 issued by the Criminal Law Unification Council on October 7, 2019 (hereinafter: [CLU]) brought significant changes to investigations. It clarified that *"the expression of intent to commit a crime without an invitation may also be suitable for establishing the crime."*³ In other words, an undertaking does not merely mean accepting an invitation or offer made by another; it becomes a factual situation when someone resolves to carry out their will or even their already established plan – namely, to kill another person. Based on this, one might think that

³ The decision No. 3/2019 of the Criminal Law Unification Council of the Curia

the investigation has become much simpler. The investigative authority only needs to understand and record the conversation between the parties, and the evidence is available. However, it should not be forgotten that a single word can have multiple meanings or be interpreted differently in various cultural contexts. In everyday life, there may be expressions of intent without actual intent to kill. Therefore, while interrupting the flow of the crime is indeed easier, establishing the truth remains a complex task.

During the interviews, I learned that since the entry into force of the [CLU], numerous proceedings have been conducted for the preparation of homicide, resulting in final, convicting judgments. The respondents stated that for crimes realized merely through the communication of thoughts, relatively mild but appropriately weighted penalties are usually imposed, avoiding deprivation of liberty. Additionally, in cases showing more serious determination or a higher degree of organization, the court regularly imposes custodial sentences. In my opinion, the [CLU] has clarified the administration of justice for the courts by providing guidance and has even allowed the investigative authority to take timely preventive action.

Another legal tool for prevention, which aids in prevention not through sanctions but by exempting from punishment, is the very fact of preparation. Section 11 (2) of the [CC] provides, to a certain extent, immunity from punishment for a person who demonstrates behaviour aimed at preventing the commission of a crime in a manner contrary to the act itself, as an additional reason excluding criminal liability. An exception to this is the crime already committed by the subject of the crime, such as illegal arms purchase. However, this may even assist in the investigation if there is a possibility for a later discussed agreement.

Special procedural tools

I have mentioned above that the [CP] provides several consensual options, similar to plea bargaining well-known in Anglo-Saxon law, regarding the perpetrator's impunity. Accordingly, the prosecution has the option to refuse the report, terminate the investigation, propose prosecutorial measures

or decisions, or enter into an agreement with a suspect or a person who can be suspected of committing a crime, provided that their confession and cooperation in crime detection and evidentiary procedures are significant enough to outweigh the societal interest in holding them accountable. The options – except for the agreement – cannot be applied if the cooperating person has committed a crime that involves the intentional extinguishment of another's life or intentionally causing permanent disability or serious health deterioration, and here the legislator uses the past tense, implying the perpetrator's behaviour that presupposes the occurrence of the result. Cooperation can be based on reports made about all essential aspects of the case, or even on the use of a natural person as a covert tool. In the latter case, there is an opportunity for the secretly cooperating person to assist the investigative authority in obtaining further evidentiary tools by using other covert tools subject to judicial or prosecutorial authorization.

In proceedings concerning the preparation for murder, the scope of covert tools is also emphasized. The individual tools are applied without the knowledge of the affected party, severely infringing on their fundamental rights. For these reasons, the legislator has established a three-tier authorization level as follows:

- Not subject to judicial or prosecutorial authorization,
- Subject to prosecutorial authorization, and
- Subject to judicial authorization for the use of covert tools.⁴

The most important principles for the application of these tools are:

- Necessity – it can be reasonably assumed that the information or evidence sought is essential for achieving the objectives of the criminal proceedings and cannot be obtained by other means or only with significant difficulty,

⁴ Act XC of 2017 on Criminal Procedure, Section 214 (4)

- Proportionality – the application of covert tools does not result in an unreasonable restriction of the fundamental rights of the affected or other individuals; and
- Purpose limitation – the application of covert tools is likely to lead to the acquisition of information or evidence related to a crime.⁵

Next, I would like to share a few thoughts on the three most commonly used covert tools in cases of preparation for murder.

The secretly cooperating person

The authority authorized to use covert tools may employ a secretly cooperating person to obtain information related to the crime.⁶ The legislator has also allowed law enforcement agencies to use secret collaborators both in general intelligence activities supporting law enforcement and crime prevention, as well as in specific activities related to obtaining information or evidence for criminal proceedings. However, the use of information obtained by collaborators and the procedural role of the cooperating person is highly situational, depending on the state of progress of the case, the degree of risk, the method of commission, and the determination of the perpetrator.

Covert surveillance

The authority authorized to use covert tools may secretly observe a person, residence, other premises, enclosed area, public or open space, as well as a vehicle or object that constitutes material evidence related to the crime, gather information about the events, and record observations using technical means.⁷ Covert surveillance is as old a tool as the use of informants. However, it is also an extremely costly and dangerous tool. Monitoring the perpetrator of a preparatory act is a guarantee for preventing the crime. Professionally conducted surveillance does not influence the perpetrator's

⁵ Ibid, 214 (5)

⁶ Ibid, Section 214 (1)

⁷ Ibid, Section 214 (5)

behaviour, so there can be no doubt about the objectivity of the evidence obtained (e.g., video recording, photograph).

Wiretapping

The authority authorized to use covert tools may, with judicial authorization, secretly get to know and record the content of communications conducted via electronic communication services through electronic communication networks or devices, or information systems.⁸

The first mobile subscriptions, which have almost completely replaced landline phones, began to be sold in Hungary in 1990 by Westel Rádiótelefon Ltd. According to the Central Statistical Office, in 2023, there were already 1043.3 subscriptions per 1000 people.⁹ Wiretapping involves understanding the communication between two parties, which makes it effective in cases of social perpetration. In our time, it is becoming less emphasized, as perpetrators share less information over the phone, but there remains a realistic possibility that it can significantly aid investigations. According to my interviewees, the information obtained during wiretapping can help authorities timely recognize and establish genuine intentions related to the preparation of a crime, and identify the instigator, or the executor.

Summary

The priority of the investigation into the crime of conspiracy to commit murder, which overrides all else, is the protection of the life of the endangered person. In addition to prevention, it is, of course, important to enforce society's criminal law demands. For these reasons, the situation must be kept under control in a conspiratorial manner. Due to the specific characteristics of the offense, the investigation primarily aims to prove the perpetrator's intent, thus emphasizing personal evidence. This, along with

⁸ Ibid, Section 232 (5)

⁹ Source: <https://www.ksh.hu/kereses?q=mobiltelefon> Accessed: 06.06.2024

the significantly limited application of classical investigative tools, necessitates the use of specialized investigative methodologies in more sophisticated cases. Together, these factors can tie up significant personal and technical capacities, resulting in the rapid and proactive execution of the investigation.

The transition associated with the entry into force of the [CP] and other independent law enforcement (personnel, infrastructural) processes has negatively impacted the investigation time, which has doubled over five years. Although problems have also infiltrated the area of life protection, the situation has relatively quickly and significantly consolidated. One significant reason for this is that there is still no human (staffing or knowledge-based) gap in this field, as there is in other areas. Another reason is the wide range of available legal tools, partly substantive and partly procedural.

The source of the substantive legal tools is fundamentally the Criminal Code itself, which defines the preparatory conduct and, in certain cases, excludes liability, but it should also include the decision No. 3/2019 made by the Criminal Law Unification Council of the Curia. The latter clarified the relatively frequent "undertakes" in committing a crime among the sanctionable behaviours, thereby providing authorities with the opportunity for appropriate action already at the stage of expressing the thought.

The other source of special tools is contained in the procedural law. The [CP] increasingly employs various types of agreements defined as open and covert tools based on consensual foundations. Additionally, according to the opinions of the professionals involved in the research, classical covert tools remain important, among which the most frequently used are the secretly cooperating person, hidden surveillance, and wiretapping.

In my work, I have concluded that the police have all the necessary tools available for cases where, for some reason, establishing the facts is more complicated, or difficulties arise in detection or proof. The range of traditional and special tools provides sufficiently broad options for the authorities to act effectively.