

# ELTE LAW JOURNAL



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# The Criminal Justice System and Tools of Investigating International Organised Crime

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## I Introduction

The aim of the research is to assess the presence of international organised crime in Hungary. In our research, we focused on the investigation of crimes classed as priorities by the European Union under EMPACT<sup>1</sup>. The research focused on the exchange of information between law enforcement and judicial bodies participating in the investigation of cross-border crime. As lead researcher Tamás Bezsenyi also points out, ‘...the most dangerous form of international crime is criminal organisations, which have and operate using international connections.’<sup>2</sup> For this reason, Hungary, as a member of the European Union, and the Hungarian police dedicate special attention to their active participation in the exchange of criminal information in Europe. Europol<sup>3</sup> draws up the so called SOCTA report every year, based on the reports of authorities in the member states.<sup>4</sup> Mapping the characteristics of organised criminal groups and their areas of operation are essential for successfully combating their activities.<sup>5</sup>

This study presents those findings of the research that are related to the structure and operation of the criminal justice system engaged in investigating transnational organised

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\* Assistant Professor Eötvös Loránd University, Faculty of Law, Department of Criminology. This study was prepared under Project 5.2.2 ‘Research of the investigation of international organised crime from the point of view of the exchange of information’ of the Internal Security Fund supported by the Ministry of the Interior in Hungary.

<sup>1</sup> European Multidisciplinary Platform against Criminal Threats.

<sup>2</sup> Bezsenyi Tamás: ‘A magyarországi nemzetközi jellegű szervezett bűnözés információáramlásának kutatási lehetőségei’ (Research opportunities for the information flow of international organized crime in Hungary) (2016) (9) Belügyi Szemle 36.

<sup>3</sup> Europol is the law enforcement agency of the European Union. Europol supports the law enforcement authorities of EU member states in their activities aimed at combating crime and terrorism related to illicit drugs, trafficking in humans, organised illegal immigration, cybercrime, crimes involving intellectual property, cigarette smuggling, euro counterfeiting, fraud, money laundering and tracing assets, mobile (moving) organised criminal groups, banned biker gangs, and terrorism. See also: <<https://www.europol.europa.eu/activities-services/main-reports/serious-and-organised-crime-threat-assessment>> accessed 26 February 2021.

<sup>4</sup> Serious and Organized Crime Threat Assessment.

<sup>5</sup> The following study contains the detailed theoretical and practical assumptions of the research: Bezsenyi (n 2) 36–64.

crime. The study focuses particularly on the instruments at the disposal of the public prosecutor's office and the form and framework of its cooperation with investigating authorities.

The methodology of this analysis is aimed at providing the most precise description possible of the work of the authorities using *historical data, the interpretation of legal regulations and also empirical findings*. To this end, the members of the research team conducted *interviews* with staff members of the Rapid Response Police Force, the National Bureau of Investigation, the police headquarters in county seats and Budapest, and also the chief public prosecutor's offices of the county seats and Budapest, and the district prosecutor's offices. The interviewees were all involved in investigating (international) organised crime cases or supervising them.

## II The Definition of Organised Crime

It is nearly impossible to give a definition of organised crime because it is a dynamically changing form of crime, which always adjusts to the opportunities determined by supply and demand. These in return are fundamentally determined by the economic and social structures of any given country and its major legislation (suffice it to mention the prohibition of alcoholic beverages introduced in the United States in 1920s). The fact that one of the outstanding researchers in the field, *Klaus von Lampe*, collected more than a hundred different definitions for organised crime<sup>6</sup> clearly illustrates the diversity of approaches.

*Valér Dános* is of the opinion that 'organised crime is a particular sub-structure of criminality in any given society, consisting of the crimes of career criminals, who commit their crimes as a member (leader) of a criminal group with a strategic division of activities and high levels of conspiracy'<sup>7</sup>.

For the purposes of criminology, organised crime can be classified based on three main criteria. The first is geographically determined groups, which can be criminal groups operating within the borders of a country, or an international (transnational) organisation. The second is ethnic differentiation (e.g. mafia, yakuza, triads, 'Chechen mafia', Russian organised crime in the US). The third involves the main area of activities of the criminal groups, such as trafficking in human beings, drug trade, money laundering, crimes against property, or extortion. In terms of the area of activities, organised crime may be targeted at supplying the demand for illegal goods (e.g. drugs) or services (e.g. prostitution), or illegally supplying the demand for legal goods (e.g. art, alcoholic beverages) or services (e.g. lending), or committing traditional ('street') crimes (e.g. crimes against property) in a criminal organisation. More recent literature divides forms of crime into the following three categories: (1)

<sup>6</sup> Klaus von Lampe, *Organized Crime: Analyzing Illegal Activities, Criminal Structures, and Extra-legal Governance* (John Jay College of Criminal Justice, City University of New York 2016) 34–35.

<sup>7</sup> Dános Valér, 'A szervezett bűnözés' (Organized crime) in Gönczöl Katalin, Korinek László, Lévai Miklós (eds), *Kriminológiai ismeretek (Criminological knowledge)* (Corvina 1996, Budapest) 214.

crimes against life, physical integrity, personal freedom; (2) crimes against property and economic crimes; and (3) crimes related to the illegal trafficking and trade in humans, goods and services. The first group includes murder, assault and kidnapping committed as a form of retaliation, the second includes crimes to the detriment of the community or state budget, extortion (for protection money), fraud, money and securities counterfeiting, product counterfeiting, money laundering, car and art theft, and the third group includes trafficking in human beings and organs, drug trafficking, arms trafficking, and the organised trade in endangered plant and animal species.<sup>8</sup>

According to several researchers of organised crime, it is impossible to give a uniform definition of the phenomenon; it is only possible to define its main characteristics. *Ákos Borai*<sup>9</sup> also believes that it is more practical to enumerate the defining and auxiliary features of organised crime. Borai says that the most important features include the lasting collaboration of several (usually at least three) individuals for activities of an at least partly criminal nature, a hierarchical organisational structure, strategic operation and division of activities, usually covering up illegal transactions with legal activities, and an intention to achieve illegal profit or gain.

At the 1999 conference of the *International Association of Penal Law (AIDP)* in Budapest, experts also engaged in lengthy discussions and analyses of the defining features of organised crime. It was also significant because, if we intend to sanction crimes committed by a criminal organisation, we need to lay down a clear definition in the interest of legal certainty, among other things. Experts finally arrived at the following definition at the conference:

organised crime is typically targeted at gaining power and/or profit in a highly organised manner. It often has characteristic features that result in uncertainty as regards the application of the traditional concepts and instruments of criminal justice. Such characteristics may include the division of activities and lack of clear responsibilities within the organisation, the mutual replaceability of persons, secrecy, ability to neutralise law enforcement (e.g. by threats or corruption), a combination of legal and illegal activities, and the particular ability to keep profits hidden<sup>10</sup>

*Tamás Bezsenyi* is of the opinion that the AIDP attempted to give a definition of criminal organisations based on their purpose, ‘...as organised crime is essentially targeted at gaining power and/or profit in a highly organised manner’.<sup>11</sup> However, no definition of power was given, therefore this definition requires further clarification.

<sup>8</sup> Tóth Mihály, Kóhalmi László, ‘A szervezett bűnözés’ (Organized crime) in Borbíró Andrea, Gönczöl Katalin, Kerecsi Klára, Lévay Miklós (eds), *Kriminológia (Criminology)* (Wolters Kluwer 2016, Budapest) 615–616.

<sup>9</sup> Borai Ákos, ‘A szervezett bűnözés büntetőjogi kérdései’ (Criminal issues in organized crime’ (1992) (5) *Rendészeti Szemle* 12–20.

<sup>10</sup> Cited by Tóth, Kóhalmi (n 8) 611.

<sup>11</sup> Bezsenyi Tamás: ‘A szervezett bűnözés elleni nemzetközi együttműködés értelmezései a magyar igazságszolgáltatásban’ (Interpretations of international cooperation against organized crime in the Hungarian judiciary) (2015) 11 (1–3) *Polgári Szemle*.



*Mihány Tóth* and *László Kóhalmi* make an attempt at giving a multi-level definition (see *Table 1*).<sup>12</sup> Their starting point is determined by the assumption that, in order to be able to describe the complex features of organised crime, we need to distinguish between ‘three successive levels, which however can be ranked’.<sup>13</sup>

*Table 1: A multi-level definition of organised crime*<sup>14</sup>

	Organisational framework and objectives	Characteristics of operation
Necessary (always)	– coordinated, continuous collaboration of at least three persons based on previous planning	– more serious crimes committed
	– an intention to pursue activities prohibited under criminal law	– longer series of actions over an extended period
Characteristic (regularly)	– intention to achieve economic or financial gain	– repeated and/or interrelated and often expanding series of illegal transactions
	– objective of profit optimisation	– conspiracy
	– forming structured groups, ‘sub-systems’, or potentially networks, with a scope of tasks clearly defined and controlled by the leaders	– international scope
		– using legal forms of operation
		– using the latest technical and logistical solutions
		– rapid adjustment to the changing (legal) environment
		– corruption
– money laundering		
Potential (occasionally)	– paramilitary setup, strong system based on dependence and obligation	– serious violent crimes committed
	– political, ideological motivation	– retaliation against those breaching the conspiracy
	– intimidation	– intention to obstruct justice
	– circle of contributors involved in the crimes (e.g. planners, informants, supporters, whistle-blowers, legalisers)	– ensuring effective legal protection and bail for exposed members of the group, supporting family members

*Tóth* and *Kóhalmi* are of the opinion that systematic operation and the fact that they organise/plan the optimal size of the group based on the goals to be achieved fundamentally determine the activities of today’s organised criminal groups.<sup>15</sup> They distinguish a leadership

<sup>12</sup> Tóth, Kóhalmi (n 8) 611–613.

<sup>13</sup> Tóth, Kóhalmi (n 8) 611.

<sup>14</sup> Tóth, Kóhalmi (n 8) 612.

<sup>15</sup> Tóth, Kóhalmi (n 8) 613–616.

and an operative level (the latter do not necessarily know each other, and communication with the leaders is also often conducted through proxies), who work in close cooperation.

Based on data from the interviews, we can establish that the organised criminal groups operating in Hungary in the past 10 to 15 years do not in general have a hierarchical structure based on the division of tasks and activities, but rather a network or cell structure, which makes it possible for anyone to join; the levels and tasks to be performed are increasingly interoperable, and the activities of a single person may extend to several different areas. We can however say that there are still groups with pyramid-like structures operating in Hungary today.

Another important trend is that organised crime has in recent times lost its violent character, and rather became a series of white-collar, economic crimes. More complex economic crimes require a group with front men, in whose name the companies are registered, bank accounts opened, houses and flats bought, and there is also need for a collaborating lawyer, accountant, and persons masterminding the activities.

## 1 The Palermo Convention

On 14 December 2000, the United Nations Convention against Transnational Organized Crime was signed in Palermo, and it is often referred to as 'Palermo Convention'. The Convention was promulgated in Hungary in the form of Act CI of 2006.

The Convention defines organised criminal groups as follows: 'structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'.<sup>16</sup> Serious crime is defined as 'conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty'.<sup>17</sup>

The Palermo Convention also stipulates what is considered to be of a transnational nature: crimes *a*) committed in more than one state; *b*) committed in a single state, but prepared, planned, masterminded and controlled for the most part in a another state; *c*) committed in one state, but with the participation of an organised criminal group, which conducts its criminal activities in more than one state; or *d*) committed in a single state, but that have a significant impact on another state.<sup>18</sup> The Convention stipulates what actions need to be declared crimes by all signatories. These are participation in an organised criminal group, money laundering, corruption, obstruction of justice. The Convention also stipulates what institutions should assist criminal proceedings in the interest of more effective action against organised crime, such as international cooperation in the interest of confiscation, extradition, transportation of sentenced persons, mutual legal assistance, joint

<sup>16</sup> Act CI of 2006, Article 2, point *a*).

<sup>17</sup> Act CI of 2006, Article 2, point *b*).

<sup>18</sup> Act CI of 2006, Article 3, Paragraph (2).

investigative work and measures intended to improve the cooperation between law enforcement authorities, and also the collection, analysis and exchange of information on the characteristics of organised crime. The Convention encourages state parties to enter into bi- or multilateral treaties for the investigation of certain crimes, which help the countries to make the international cooperation stipulated in the Convention, and the prevention, detection and prosecution of international organised crime more efficient.

In 2006, the protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the Palermo Convention, was adopted, and announced in Hungary in the form of Act CII of 2006. The Convention's protocol against the smuggling of migrants by land, sea and air was also adopted in 2006, and entered into force in Hungary as Act CIII of 2006.

Among others, the Palermo Convention is of outstanding importance, because it is the first binding international document that provides a definition of criminal organisations and organised criminal groups, and categorises the forms and cornerstones of joint action against international organised crime.

## 2 The Definition of Criminal Organisation and Criminal Association under Criminal Law

As we can also conclude from the materials of the 1999 conference of the International Association of Penal Law in Budapest, there was a considerable interest in creating the framework for sanctioning organised criminal groups under criminal law. Hungary was a pioneer in this field, as the *concept of a criminal organisation* was introduced as a definition under Section 9 of Act LXXIII of 1997 – effective as of 15 September 1997 –, which stipulates that ‘criminal organisations: [are] criminal associations based on a division of activities created for the continued perpetration of crimes, which are aimed at obtaining benefits on a regular basis’. This definition was criticised by many, and was consequently modified as follows under Act LXXXVII of 1998, Section 35: ‘criminal organisation: a criminal association based on a division of tasks, hierarchical system and involvement based on personal relations and created with the intention to obtain a benefit through the regular perpetration of crimes’. The effective wording entered into force under Act CXXI of 2001, Section 19, Paragraph 5: ‘criminal association: a group planned for an extended period and operating in concert consisting of three or more persons, the aim of which is the perpetration of intentional crimes punishable by imprisonment of five years or more’. This is the definition applicable to crimes perpetrated after 1 April 2002.

The modification was required partly because of problems with the application of the earlier regulation, and also because of signing the Palermo Convention. The Convention stipulates an obligation of legislative alignment for Hungary, for which reason a new definition of criminal associations had to be found, which was in accordance with international expectations. This definition clearly separates criminal associations from criminal organisations, emphasising the more serious nature of the latter and its threat to society.

According to the reasoning of the competent minister, the cooperation of at least three persons is needed to meet the legal criteria for a criminal organisation. The reference to an extended period wishes to highlight the fact that, in accordance with this definition, the ad-hoc perpetration of two or three crimes does not qualify as perpetration as a criminal organisation.

Tóth Mihály is of the opinion that there are several variations for the creation of a criminal organisation; on the one hand, if the persons active in the criminal organisation are aware of each other's crimes, or commit them in cooperation; and on the other, in a way where the members are not aware of each other's activities, but there is a leading figure who coordinates the activities of the members of the criminal organisation.<sup>19</sup>

In relation to the intentional perpetration of crimes punishable by five or more years of imprisonment as an element of the definition, we need to emphasise that the perpetrator does not necessarily need to be aware of the sanctions, as what matters is rather his awareness of the fact that the goal of the criminal organisation is to commit serious crimes. The perpetrator may be held liable for perpetration as a criminal organisation, even if he is involved in a single crime as a perpetrator or complicit party, provided he is aware of the criteria of the definition of a criminal organisation.<sup>20</sup>

The *Curia* (Kúria; formerly: *Supreme Court / Legfelsőbb Bíróság*) ruled in their *Decision 4/2005. BJE*<sup>21</sup> that perpetration as a criminal organisation<sup>22</sup> also applies to persons who are involved even in a single – one-off – crime as a perpetrator or a complicit party. Only perpetrators may be accused of acts committed as a member of a criminal organisation, who performed their activity within the hierarchical structure based on a division of tasks of the criminal organisation, in full awareness of the organisation, and in continued cooperation with its members. A person outside the criminal organisation does not automatically become its member if they are given an assignment by the organisation as, according to the above decision, this requires actual integration into the organisation, awareness of its internal operation and active participation in it. In the opinion of the review council, a distinction has to be made between the classification under the substantive law of crimes committed as a member of criminal organisation, and crimes committed based on an assignment from a criminal organisation. Perpetration as a member of a criminal organisation only applies if the actions of the defendant fully comply with the criteria of the definition, and the facts of the case allow for these criteria to be applied in full to the activities in question. The perpetrator does not need to be aware of the fact that, according to the criteria stipulated in the legislation, a criminal organisation had been created, but rather that he joins the 'operation'

<sup>19</sup> Tóth Mihály: 'A bünszervezeti elkövetés szabályozásának kanyargós útja' (It is a winding path to the regulation of criminal organization) (2015) (1) *Magyar Jog* 5.

<sup>20</sup> Szomora Zsolt, 'Záró Rész' (Final Part) in Karsai Krisztina (ed), *Kommentár a Büntető Törvénykönyvhöz (Comment on Act C of 2012 on the Criminal Code)* (Complex Kiadó 2013, Budapest) 961–962.

<sup>21</sup> Büntető Jogegységi Határozat, Criminal Justice Unified Resolution.

<sup>22</sup> The decision analyses perpetration in a criminal organisation with reference to the previous Criminal Code, i.e. Act IV of 1978.

of the criminal organisation in awareness of its characteristics in practice and acts as part of the operation. The perpetrator needs to be aware of committing crimes as part of a criminal organisation. The perpetrator needs to be aware of the fact that the intentional crime – stipulated as serious –, in which he is also involved, is perpetrated by a group created for committing several crimes, which complies with the criteria of the definition of a criminal organisation given in the legislation. The criterion of being organised for an extended period does not need to be met by the perpetrator collaborating with the criminal organisation on an ad hoc basis, with involvement in perhaps just a single crime, but rather by the criminal organisation itself.

Establishing *perpetration in a criminal organisation* is important, because, *inter alia*, the effective criminal law stipulates serious legal consequences, such as that the upper limit of the sanction is doubled, but may not exceed 25 years; the imprisonment is implemented in a high-security prison if the perpetrator is sentenced to two years or more; conditional release is not possible; the sentence may not be suspended; compulsory confiscation of assets acquired during the period when the perpetrator was participating in the criminal organisation; and that the perpetrator may not be acquitted of a final and binding ban from exercising his professional activity, if the ban was based on unworthiness, and had final effect. These provisions are included in the General Part of the Criminal Code, and are therefore applicable to all intentional crime, as opposed to perpetration in a criminal association, which, in relation to cases in the Special Part, is stipulated as an aggravating circumstance.<sup>23</sup>

Based on the responses of the interviewees,<sup>24</sup> we can say that if the suspicion arises, the possibility of involvement in a criminal organisation in relation to a crime is always given due consideration. Based on the findings from the interviews however, we can say that actors in the criminal justice system, especially at the beginning of the investigation or during secret intelligence work, do not first observe the elements of the definition of a criminal organisation given in the Criminal Code, but rather the criminological characteristics, such as the different organisational levels (leaders and operatives) and the coordinated and profit-oriented nature of activities.

The definition of a *criminal association* is stipulated under Section 459 (1), (2) of the Criminal Code as follows: ‘shall mean when two or more persons are engaged in criminal activities in an organised fashion, or they conspire to do so and attempt to commit a criminal act at least once, without, however, creating a criminal organisation’. This definition is effective as of 1 April 2012.

*Decision No. IV in principle regarding criminal law* (IV. számú Büntető Elvi Döntés) of the *Curia* (formerly *Supreme Court*) stipulates that the existence of a criminal association

<sup>23</sup> See below.

<sup>24</sup> During the research, the members of the research team conducted *interviews* with staff members of the Rapid Response Police Force, the National Bureau of Investigation, the police headquarters in county seats and Budapest, and also the chief public prosecutor’s offices of the county seats and Budapest, and the district prosecutor’s offices. The interviewees were all persons involved in the investigation of (international) organised crime cases or supervising them.

can also be established if two or more persons arrive at an agreement in advance about the perpetration of identical or different crimes in a concerted manner and, based on that, they have committed at least one crime or attempted to commit one.

It qualifies as concerted perpetration if the members of the criminal association enter an agreement on the perpetration of several crimes; they divide the roles, plan the circumstances of the perpetration, and look for opportunities to commit the crime. However, it is not necessary for them to plan each crime's perpetration in detail; the emphasis is on organising criminal activity. The agreement of the perpetrators has to involve the concerted perpetration of crimes, i.e. criminality itself or the perpetration of several crimes, but how much time the agreement precedes the crime(s) is irrelevant.

Crimes here are understood to mean several intentionally committed acts. The existence of a criminal association may also be established if the perpetrators decide on, start to commit or complete two or more crimes, but their acts constitute a single crime under criminal law.

Based on their behaviour, the persons involved in a criminal association may be principals, accessories, abettors or aiders.

A criminal association may be established to exist in cases where this criterion is stipulated as an aggravating circumstance in the Special Part of the Criminal Code (Btk.). These include drug trafficking [Sections 176 (2) a) and 177 (2) b) of the Criminal Code]; possession of narcotic drugs [Sections 178 (2) ab) and 179 (2) aa) of the CC]; aiding in the manufacture and production of narcotic drugs [Section 182 (3) a), illegal possession of new psychoactive substances [Section 184 (2) a); trafficking in human beings [Section 192 (3) h)]; active corruption [Section 290 (3) b); robbery [Section 365 (3) d)], plundering [Section 366 (2) c)], extortion [Section 367 (2) a)]; theft [Section 370 (2) ba)], embezzlement [Section 372, (2) ba) and fraud [Section 373 (2) ba)].

*Table 2: Elements of the definitions of criminal association and criminal organisation<sup>25</sup>*

Criminal association	Criminal organisation
at least two persons	at least three persons
organised	concerted
not necessarily long-term (agreement on committing at least two crimes)	long-term (agreement on committing more than two crimes)
attempt to commit at least one crime	perpetration of an actual crime is not necessary, an agreement on such an intent is sufficient
perpetration of a crime of any gravity	perpetration of an intentional crime punishable by imprisonment of at least five years or more
to be applied only in cases where in cases in the Special Part it was stipulated as an aggravated case, and as a result it is assessed as more serious	the consequences in the General Part apply to perpetration of an intentional crime punishable by imprisonment of at least five years or more

<sup>25</sup> Tóth (n 19) based on the comparison on p. 6.

We can clearly establish that both criminal organisations and criminal associations are concepts closely linked to organised crime and represent an approach that takes into consideration the elements of organised crime identified by criminology. As the two concepts share several elements, a criminal association is considered to exist until a criminal organisation is created.

### III Evidencing Criminal Organisations

Following the description of the legislative and theoretical framework, we now wish to discuss what experience the interviewees participating in the research have in relation to evidencing the existence of criminal organisations.

It is important to note here that opportunities for obtaining evidence and establishing that the case complies with the elements of a criminal organisation stipulated in the definition differ with the different types of crimes.

‘In my opinion, trafficking in drugs or human beings is not possible without a concerted effort, without a criminal organisation.’<sup>26</sup>

*Case scenario:* there are three people; they know each other; one gets into a tight spot and he approaches an acquaintance working for a transportation company with an idea. He convinces him that they should steal the goods he is to transport abroad. What they do is that the mastermind and his friend unload the lorry in a parking lot in a foreign country. The third person driving the lorry reports the theft to the police in the given country, and the insurer compensates his company for the damage. The court established that the crimes were committed in a criminal organisation in the above case.

However, the persons involved in the criminal organisation do not necessarily have to know each other. In cases involving trafficking in human beings, the perpetrators usually collaborate in smaller cells, within which members are independent. They are speaking in code, i.e. they know they are being wiretapped, and that their conspiracy is no longer a secret. The person whose task it is to pick up five or six other persons on Main Road 55 in the middle of the night near the border crossing to Serbia at Rösztke, and take them to Budapest or Hegyeshalom (a border crossing to Austria) receives the information from another person, but he must be aware that the Afghan, Syrian or Pakistani individuals he is transporting arrived at the border crossing at Rösztke and then to Km x of Main Road 55 with the help of several other persons.<sup>27</sup>

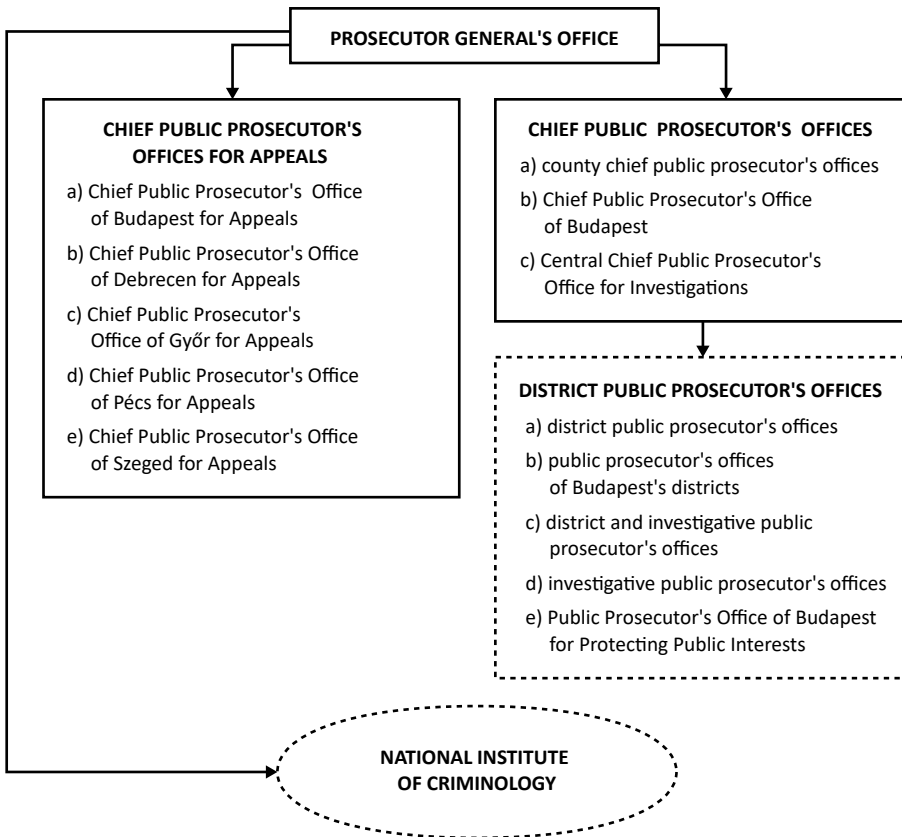
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<sup>26</sup> Excerpt from an interview conducted with a public prosecutor.

<sup>27</sup> Excerpt from an interview conducted with a public prosecutor.

#### IV Organisational Structure, Scope of Responsibility and Competence of the Public Prosecutor's Office, with a Special Focus on the Law Enforcement Instruments in Organised Crime Cases<sup>28</sup>

Prosecuting bodies include the Prosecutor General's Office (which is a public body managed and operating independently), the chief prosecutors' offices for appeals, the chief prosecutors' offices, and district prosecutors' offices and those at district level (see *Figure 1*).<sup>29</sup>



*Figure 1:* The organisational structure of the public prosecutor's office<sup>30</sup>

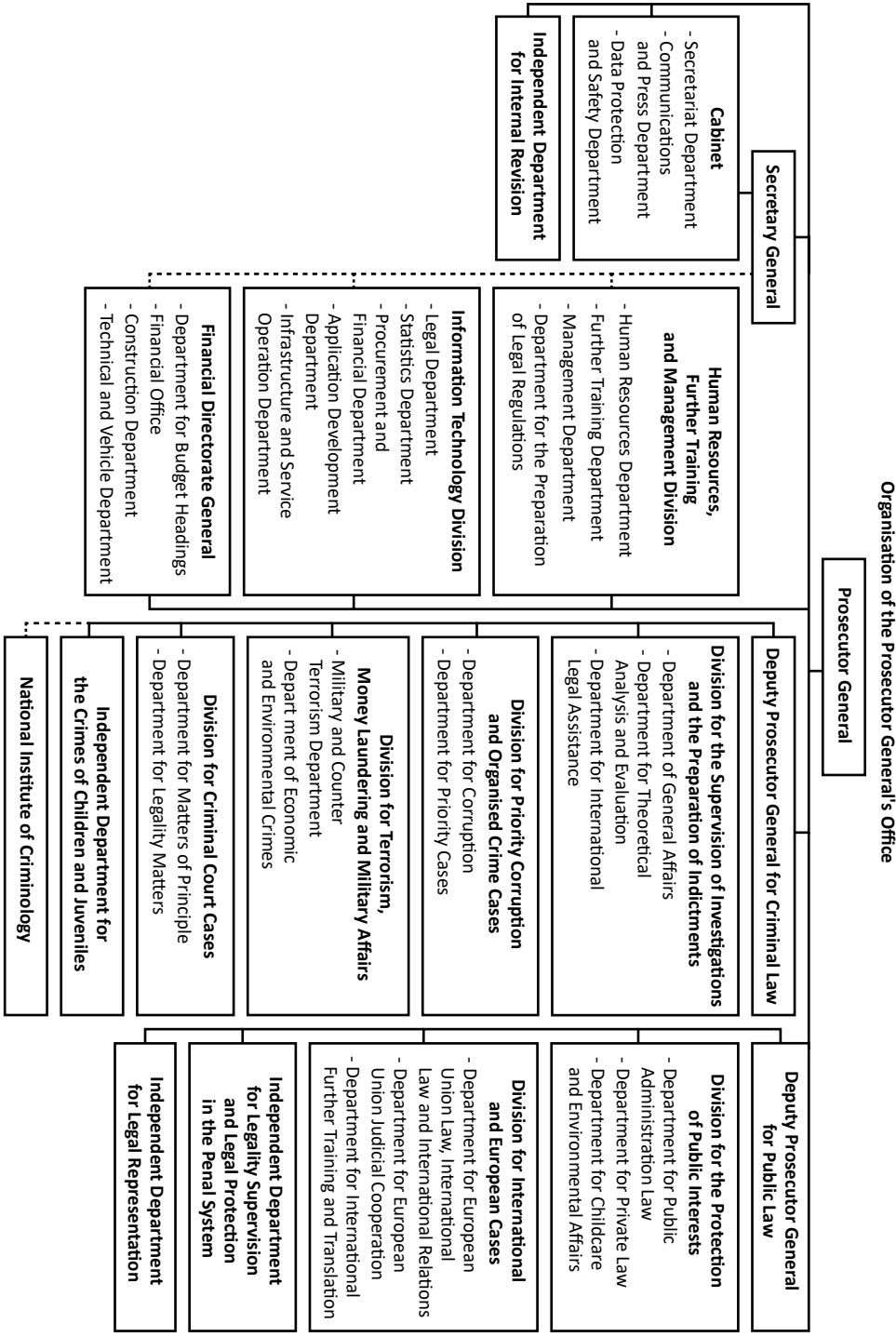
<sup>28</sup> In the following chapter, I will give an overview of questions relevant for the research.

<sup>29</sup> Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 1.

<sup>30</sup> See <<http://ugyeszseg.hu/fooldal/az-ugyeszseg-szervezete/>> accessed 26 February 2021.



Figure 2: The organisational structure of the Chief Public Prosecutor's Office



Source: see <<http://ugyveszesseg.hu/fooldal/az-ugyveszesseg-szervezete/>> accessed 26 February 2021.

In accordance with Directive 12/2012. (VI. 8.) of the Prosecutor General on the organisation and operation of the public prosecutor's office, the following affairs *belong under the exclusive competence of the Prosecutor General* based on the act on international legal assistance in criminal cases: *acknowledging a foreign sentence*; stipulating guarantees for providing legal assistance in criminal cases; *accepting conditions* for Hungary's legal assistance; issuing a permit for *the creation of a joint investigative team* [Section 36 (5) of the act on criminal proceedings<sup>31</sup>]; and adopting decisions in relation to international cooperation in criminal cases within its scope of competence.<sup>32</sup>

*The division of the Prosecutor General's Office for the supervision of investigations and the preparation of indictments* adopts its decisions on transferring criminal proceedings to a foreign authority, on reporting the crime, on taking over the criminal proceedings offered by a foreign authority within its field of expertise<sup>33</sup> based on delegated powers, and conducts the consultation proceedings and adopts the decision in conclusion of them, while at the same time it informs the competent prosecutor of it,<sup>34</sup> and also decides on the *legal assistance* to be provided to or requested from the foreign authority in the given procedure.

*The division of the Prosecutor General's Office for priority cases, corruption and organised crimes*<sup>35</sup> takes action in cases involving participation in a criminal organisation (Section 321 of the Btk.) and all crimes committed in a criminal organisation [Section 459, (1) of the Btk.], and also all crimes within the scope of competence of the Central Investigative Chief Prosecutor's Office.<sup>36</sup>

Decree 25/2013 (VI. 24.) of the Minister of the Interior brings up an interesting question as regards certain provisions of the act on the *responsibility and competence of the investigative authorities of the Police*. The National Bureau of Investigation of the Rapid Response Police Force (NBI)<sup>37</sup> has competence to investigate, if the suspicion arises that the crime was committed in a criminal organisation and it is of an international character in accordance with Article 3, Paragraph (2) of the Palermo Convention.<sup>38</sup> The NBI has competence in cases

<sup>31</sup> With the permission of the Prosecutor General, the investigative authorities may, for a single case or a group of cases, create joint investigative teams with the investigative authorities of the member states of the European Union and the European Union Agency for Law Enforcement Cooperation (EUROPOL), if special conditions are met, as stipulated in separate legislation.

<sup>32</sup> Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 3, Paragraph (3) l) and m).

<sup>33</sup> Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 16, Paragraph (1) k).

<sup>34</sup> If Act CLXXX of 2012 on the cooperation with member states of the European Union in criminal proceedings, and Act CXVI of 2005 on the announcement of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and the Additional Protocol of 16 October 2001 to the Convention do not stipulate otherwise.

<sup>35</sup> Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 17 a).

<sup>36</sup> Excluding the exceptions stipulated under Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 17/A (1) a).

<sup>37</sup> The NBI has nationwide competence, has the legal status of a directorate within the Rapid Response Police, is engaged in investigative and intelligence activities, and operates in the interest of public safety and internal order in accordance with legislation and legal instruments regulating its organisation under public law.

<sup>38</sup> Decree 25/2013 (VI. 24.) of the Minister for the Interior, Section 2 (2) b).

involving the crime of participating in a criminal organisation as stipulated under Point 13.6 of Annex 2 of the Decree of the Minister for the Interior and as regulated by Section 321 of the Criminal Code, if it is of an international nature.

The predecessor of the *Central Investigative Chief Prosecutor's Office (Központi Nyomozó Főügyészség)*, the Bureau of Investigation of the Central Prosecutor's Office (*Központi Ügyészségi Nyomozó Hivatal*) was created by Prosecutor General Dr. Péter Polt on 1 June 2001 as a part of the Municipal Chief Prosecutor's Office of Budapest. The independent Central Investigative Chief Prosecutor's Office was formed by the decision of the Parliament of 12 January 2006. The next important organisational change entered into force on 1 January 2012, when military prosecutors were integrated into the organisation of prosecutors. The district military prosecutor's offices – which were operating in Budapest, Debrecen, Győr, Kaposvár and Szeged – became regional departments of the Central Investigative Chief Prosecutor's Office. The Central Investigative Chief Prosecutor's Office has nationwide competence, and is responsible for investigating the majority of crimes committed by and against persons with immunity (members of parliament, judges, prosecutors, etc.), military crimes, and crimes delegated to its competence by the Prosecutor General's Office, and if it comes to an indictment, representing the prosecution in court.<sup>39</sup> The Central Investigative Chief Prosecutor's Office conducts investigations in cases delegated to its competence by the Deputy Prosecutor General for Criminal Proceedings, the division of the Prosecutor General's Office for priority cases, corruption and organised crime, and the division of the Prosecutor General's Office for terrorism, money laundering and military affairs.<sup>40</sup>

## V Communication and Cooperation between the Police and the Prosecutor's Office

We can say that police officers and prosecutors communicate in person, by phone, fax and e-mail. All official exchange of information happens in writing, in the form of a transcript. There is usually one transcript per month in the cases, but phone or personal communication may even occur on a daily basis in some cases.

Whatever is the easiest and most efficient: personal contact, phone; rarely e-mail, mostly phone, Viber. WhatsApp, if the exchange is not official. If it is official, we use writing. With trusted partners, communication takes place over the phone as much as necessary. I am always available on my mobile, only a restricted circle know my number (based on mutual trust).<sup>41</sup>

<sup>39</sup> See <[http://ugyeszseg.hu/pdf/sajto/sajto\\_20131010\\_knyf\\_kozlemeny\\_szekhaz.pdf](http://ugyeszseg.hu/pdf/sajto/sajto_20131010_knyf_kozlemeny_szekhaz.pdf)> accessed 26 February 2021.

<sup>40</sup> Directive 12/2012 (VI. 8.) of the Prosecutor General, Section 42 (1) a).

<sup>41</sup> Excerpt from an interview conducted with a prosecutor.

In addition to the relationships between the given police officers and the prosecutor, the frequency of communication also depends on whether the nature of the given case requires continuous discussions.

...if the policeman is not sure about something, he reaches out and asks me; there is also an element of dodging responsibility in this.<sup>42</sup>

...if they can't take care of something internally, they often expect the prosecutor to decide, for example, when during wiretapping it turns out that a new drug shipment is arriving. We don't know who is coming, where they are coming to and from, and an arrest would have been premature. If it's about drugs, the attitude of the police is bang-bang and immediate arrest; this is policy with high-ranking policemen. But I think we don't have to cut yet another head off the dragon, but rather stab it through the heart. We have to map out the middle level, the organisers.<sup>43</sup>

## **VI The Manner and Speed of the Exchange of Information between Foreign and Hungarian Law Enforcement and Judicial Authorities**

The efficient exchange of information between different Hungarian bodies and between Hungarian and foreign law enforcement and judicial authorities is of outstanding significance in the investigation of transnational organised crime. We can distinguish several different forms of communication and exchange of information. There is direct contact, which is based on the assumption that the member of the Hungarian investigative authority knows the member of the foreign investigative authority, knows his contacts and can ask him directly for information.

If there is no direct contact, or the information to be obtained cannot be discussed directly, several other forums are available for the authorities to get in contact, such as the International Law Enforcement Cooperation Centre (*Nemzetközi Bűnügyi Együttműködési Központ*), the Hungarian liaison office of Europol,<sup>44</sup> the Hungarian liaison office of Interpol,<sup>45</sup> the SIRENE office, the South-East European Law Enforcement Centre (SELEC), and Joint Contact Service Centres (*Közös Kapcsolattartási Szolgálati Helyek*).<sup>46</sup>

*The International Law Enforcement Cooperation Centre* is a central public body with nationwide competence created in accordance with Act LIV of 1999 on the cooperation and exchange of information in the law enforcement information system of the European Union and the International Criminal Police Organisation, and is under the direction of

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> European Union Agency for Law Enforcement Cooperation.

<sup>45</sup> International Criminal Police Organisation.

<sup>46</sup> International legal assistance in criminal proceedings will be discussed in the following chapter.

the National Police Headquarters (*Országos Rendőr-főkapitányság; ORFK*) in accordance with Government Decree 329/2000. (XII. 13.) on the responsibilities and competence of police bodies, operating as an organ for specific tasks of the body created for general police tasks.<sup>47</sup>

The *Hungarian liaison office of Europol* operates as an external organisational unit of the International Law Enforcement Cooperation Centre at the headquarters of Europol in The Hague, and is charge of direct international communication with other EU member states, and the offices of third countries and international organisations at the headquarters. They are available 24 hours a day in order to support strategic and operational activities in Hungary.<sup>48</sup>

*The Office of Interpol in Hungary* is an organisational unit with the legal status of a department directly reporting to the Head of the Department for Cooperation in Criminal Proceedings. It is in charge of the international exchange of information, and also cooperates with foreign partner organisations. Main tasks: issuing an international arrest warrant based on international or European arrest warrants in the Interpol Information System; participating in the international search for missing persons; performing notification, information and organisational tasks related to the trial and the resulting decision in relation to persons apprehended for extradition/hand-over; coordinating and participating in the implementation of extraditions, hand-overs, and the transportation of sentenced perpetrators; taking measures for the search for internationally wanted objects and documents; and, in urgent cases, submitting an international request for legal assistance.<sup>49</sup>

*The SIRENE Office* is an organisational unit under the direction of a head of department with the legal status of a department directly reporting to the Head of the Department for Cooperation in Criminal Proceedings. It participates in the coordination, training, legislative and representational activities related to police cooperation measures in the Schengen area, and coordinates the quality controls of the warning signs put up by Hungarian authorities.

It was found during the analysis of the interviews that a lot of information is obtained directly, based on personal contacts, or relies on the help of liaison officers.

Discussions at the Joint Contact Service Centres, for example regarding the criminal record of a suspect or identifying the owner of a vehicle based on its registration plate, work very efficiently. The option of communication through the International Law Enforcement Cooperation Centre is chosen when the Joint Contact Service Centres are no longer sufficient. Communication with Romanian, Slovak, Austrian, Croatian and Serb authorities

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<sup>47</sup> 3/2015. (12. 23.) The measure of the director of the International Law Enforcement Cooperation Centre on the rules for its organisation and operation.

<sup>48</sup> See <<http://www.police.hu/hu/a-rendorsegrol/testulet/teruleti-szervek/nemzetkozi-bunugyi-egyuttmukodesi-kozpont>> accessed 26 February 2021.

<sup>49</sup> 3/2015. (12. 23.) The measure of the director of the International Law Enforcement Cooperation Centre on the rules for its organisation and operation, points 34–35.

mainly runs through the Joint Contact Service Centres,<sup>50</sup> while British and French authorities are usually approached through the International Law Enforcement Cooperation Centre.

The local police leaders don't really like it when I'm using the Joint Contact Service Centres. In the interest of mutual communication, we will spend an hour at the centre in Nickelsdorf, Austria, but it is too much for the system. The thinking is namely territorial, which is a narrower interpretation.<sup>51</sup>

## VII The Means of Access to Information: Requests and Legal Assistance<sup>52</sup>

Due to the length constraints of this study, I do not wish to give a detailed description of the legislation on requests and legal assistance in criminal proceedings.<sup>53</sup> In the following, I will examine the most important aspects of the implementation of regulations in practice.

In accordance with Section 25 (1) of Act CLXIII of 2011, *the Prosecutor General decides* on *a)* transferring the criminal proceedings to a foreign authority or reporting a crime to a foreign authority; *b)* taking over criminal proceedings offered by a foreign authority; and also *c) legal assistance in relation to proceedings* to be provided to or received from the judicial authorities of another state, if the act on international cooperation in criminal proceedings does not stipulate otherwise.

The investigative authority usually requests legal assistance in proceedings in relation to hearing a foreign witness, to obtaining bank account data and account balance information, to opening accounts, to obtaining corporate data, and to conducting house searches and confiscations abroad. One of the key factors of providing legal assistance is time, i.e. how fast the requested action is taken in the given procedure. The actual process of providing legal assistance to those who need it is in itself a lengthy procedure: the police force submits a proposal, the prosecutor's office translates it, and a duly authorised person within the prosecution system – in many cases the Prosecutor General – decides whether the request for legal assistance can be sent out. After that, the request is sent to the foreign authority, who – if all goes well – take the measures requested. A protocol is taken up on these measures, which is translated then sent back. Experience of receiving legal assistance upon a request greatly varies with different bodies and countries as well. The findings of the research are not based on a large enough sample for us to be able to arrive at representative conclusions,

<sup>50</sup> The Joint Contact Service Centres usually respond within four to five hours.

<sup>51</sup> Excerpt from the interview with a policeman working at a county police headquarters.

<sup>52</sup> I do not wish to discuss data on mirror procedures and Joint Investigation Teams in this study.

<sup>53</sup> The two most decisive pieces of legislation, in addition to the Act on Criminal Proceedings and the Act on the Criminal Code, are Act XXXVIII of 1996 on international legal assistance in criminal proceedings and Act CLXXX of 2012 on the cooperation with member states of the European Union in criminal proceedings.

but several interviewees mentioned that their Italian and Spanish colleagues often do not respond, while Finnish, Norwegian, Dutch, Austrian and Swiss police officers respond more often, although we have to note here that local investigative bodies usually have some interest in providing legal assistance – or they may need the given information themselves –, which lies in the fact that they may count on mutual support from the given country, if it submits a request for legal assistance.

We asked for a house search and hearing witnesses in a town a few kilometres from the border in Slovakia – a neighbouring country –, which they managed to do in six months.<sup>54</sup>

It is important to stress that law enforcement bodies can only communicate with foreign law enforcement bodies, while judicial bodies with foreign judicial bodies.

I like it when the police obtains the required information, also because the legal assistance is as limited as possible this way. Wherever possible, the requests are sent through Europol, as Hungarian courts accept such information as evidence. In such a case, the police will ask directly where a given vehicle can be found. Legal assistance is not effective, but in many cases unavoidable. It is the slowest form of information flow, which only arises when time is of no consequence, as the process takes a lot of time.<sup>55</sup>

The excerpt from an interview below also confirms that, wherever possible, the information is not requested in the form of legal assistance.

We try to sort out the issues among mates, but the situation decides. Whatever I can take care of with an official note, I will. It's simpler. Legal assistance is problematic. For example, if a Hungarian citizen is imprisoned in Austria, and we never get his testimony. He could be released soon, and then we will summon him. The decision between a request and legal assistance is also a matter of practicality. Trafficking in human beings is one of the most serious crimes, but they only deal with it in municipal or district prosecutor's offices. Once again, it shows that there is no migration crisis; the prosecutor's offices don't want to distribute the cases, but try to assign them to the same person, which is quite useful. There are also cases where we should apply for legal assistance, but the prosecutor wants instead to go for normal cooperation.<sup>56</sup>

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<sup>54</sup> Excerpt from an interview with a policeman.

<sup>55</sup> Excerpt from an interview conducted with a prosecutor.

<sup>56</sup> Excerpt from an interview conducted with a policeman.

## VIII Summary

In my study, I gave an overview of the framework and main actors of investigating international organised crime, and the interpretations of organised crime given in theoretical and international documents. I gave a detailed analysis of the legal definitions of criminal organisations and criminal associations, and the process of establishing the former. I examined the structure, responsibilities and competence of the prosecution system, and its effect on investigating transnational organised crime. I dedicated special attention to the communication and cooperation between police and prosecution bodies, and also the forms of information exchange between Hungarian and foreign authorities.

Based on the interviews conducted as part of our research supported by the Internal Security Fund and findings from processing case files, we can establish that the different forms of information exchange (request, legal assistance, mirror procedure, creating a joint investigative team) are all effective means of investigating international organised crime, but which instrument will be the most suitable and expedient depends on the case. All in all, it also clearly shows that direct and personal contacts within Hungary and abroad have a special significance in the fast and adequate flow of information.



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