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**THE LEGALITY OF EVIDENCE
IN CRIMINAL PROCEEDINGS**

DOCTORAL DISSERTATION THESES



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I. Research objectives set out in the doctoral dissertation

The punitive power of the rule of law is not unlimited. It exercises its punitive power through the criminal justice system, and the administration of justice through independent courts established by law. The state may only enforce its criminal claims against offenders, and only in proportion to the crime committed and the offender's guilt.¹ At the same time, it must of course take into account the function of criminal law in protecting society.

The state – insofar as it promises society that it will uncover what happened in the past and hold the perpetrator accountable for what they have actually done, and ensures that innocent individuals are not threatened by criminal proceedings – has no choice but to seek the truth, the factual reality, that is, the material truth.

However, the attainment of material truth cannot result from arbitrary and biased procedures, as it would not only contradict society's sense of justice, but also stand in opposition to constitutional criminal law and our international commitments. Human rights, a humane and fair, thus rule-of-law and constitutional criminal procedure, can only be ensured by a procedural law based on strict principles and guarantees.²

If the purpose of criminal proceedings is not to punish the perpetrator at any cost, but to punish the true criminal to the extent of human justice and necessity,³ then, alongside legality, certainty and the unequivocal determination of the facts are required, and only material truth can achieve this. Material truth, therefore, expresses that the state can only exercise its punitive power – and the court can only issue a judgment of guilt – if the defendant has truly committed the crime and is subject to (subjective) criminal liability.⁴ If this cannot be established beyond reasonable doubt, the defendant must be acquitted of the charges against him. All this is evident in mixed-system, continental criminal proceedings – presumably due to the custom established by Act XXXIII of 1896 on Criminal Procedure – due to the public law nature of criminal proceedings.⁵

¹ ANGAL Pál: A magyar büntetőeljárás jog tankönyve I. kötet, Atheneum Irodalmi és Nyomdai Részvénytársulat, Budapest, 1915, 265. o.

² FANTOLY Zsanett: Rendészet és büntetőeljárás az emberi jogok, az alapjogok és az alkotmányos jogok viszonyrendszerében. In: *Belügyi Szemle* 2018/3. sz., 23. o.

³ FINKEY Ferenc: A magyar büntető per jog tankönyve. Grill Károly Könyvkiadóvállalata, Budapest, 1916, 4. o.

⁴ FINKEY, 1916, 108. o.

⁵In civil cases, procedural justice prevails precisely because the proceedings are based on a legal dispute between private individuals rather than public law (cf. FINKEY, 1916, p. 103). In general, the limits of evidence are determined by the contradictions and agreements between the parties, and therefore, given the private law nature of the proceedings, the court clearly has no interest in establishing additional facts not proposed by the parties. This approach is reflected in the fact that in civil proceedings, the court is only entitled to order evidence ex officio if permitted by law. [Pp. 276. § (2) paragraph] The criminal court therefore traditionally has a wider right to conduct evidence ex officio than the civil court.

The task of the criminal procedure law in force at any given time is twofold: to achieve effectiveness and to ensure legality. The former expresses that the law should provide effective protection against crime, while the latter means that the law should prevent the arbitrary use of punitive power.⁶

The state can never allow either the prosecutor enforcing criminal charges or the court to serve a single purpose: the protection of the public interest. It must also serve to protect the defendant, not only to prevent the wrongful conviction of an innocent person, the prosecution of a crime more serious than that committed, or the disproportionate restriction of the defendant's rights, but also because the defendant is always in a less favorable position than the prosecutor. The rights of the defendant must be upheld in accordance with the public interest.⁷

For obvious reasons, the attainment of absolute (unconditional) truth and the complete exclusion of human error is unimaginable.⁸ Jenő Balogh expressed this by saying: "Those who are familiar with the criminal justice process from direct experience must resign themselves with sad resignation to the unchangeable fact that the determination of the facts, the weighing of evidence, and the interpretation and application of specific legal provisions, both criminal courts and juries can and do occasionally make mistakes, so that chance, an unfortunate combination of circumstances, or even the mistakes of witnesses and experts involved in the proceedings, and sometimes even ill will can have a decisive influence on the course of criminal proceedings, leading to incorrect or unjust decisions. Criminal law can only fulfill its purpose if it provides a conscientious and careful means of correcting errors in the administration of justice."⁹

Based on the decision of the Constitutional Court, it is also clear that "the Constitution does not (and cannot) guarantee the right to 'material justice' any more than it can guarantee that no court judgment will be unlawful. These are the goals and tasks of the rule of law, for the realization of which it must establish appropriate institutions, primarily providing procedural guarantees, and guarantee the rights of the individuals concerned. The Constitution therefore

⁶ FINSZTER Géza – KORINEK László: Az eltűnt gyanú nyomában. In: *Belügyi Szemle* 2018/3. sz., 114. o.

⁷ ANGYAL, 1915, 227. o.

⁸ Somogyi Gábor számos olyan érvet meghatároz, amely alapján az anyagi igazság teljes elérése elképzelhetetlen. SOMOGYI Gábor: A bírói igazságkeresés útjai. Az objektív valóság és a processzuális igazság kibékítése. In: MOLNÁR Gábor Miklós – KOLTAY András (szerk.): *Bonus Iudex. Ünnepi Kötet Varga Zoltán 70. születésnapja alkalmából*. Pázmány Press, Budapest, 2018, 335-338. o.

⁹ BALOGH Jenő: Magyar bűnvádi eljárási jog I. Általános Tanok. Grill Károly Cs. És Kir. Udvari Könyvkereskedése, Budapest, 1901, 162. o., hasonlóan VARGHA Ferencz is, In: BALOGH Jenő – EDVI ILLÉS Károly – VARGHA Ferencz: *A Bűnvádi Perrendtartás Magyarázata. I. kötet*. Grill Károly Cs. és Kir. Udvari Könyvkereskedése, Budapest, 1898, 183. o.

grants the right to the procedure necessary and, in most cases, appropriate for the enforcement of substantive justice.”¹⁰

However, this does not mean that we should give up on seeking material truth and (thereby) avoiding errors. The authorities have a duty to set the goal of achieving “humanly accessible” truth: when establishing the facts of a case, they should rely on the facts of the past, and decide on questions of guilt, accountability, and sentencing in accordance with the principles of modern criminal law (humanity, individualization, fairness, prevention).¹¹ Last but not least, justice can only be achieved through a rule-of-law process.¹²

In contrast, procedural (formal) justice systems – such as the Anglo-Saxon systems – view criminal proceedings as a legal relationship dependent on the parties' right of disposal. This does not mean that there is “less” justice overseas. Rather, it simply means that the parties demand that the truth be revealed to the extent that they have determined.¹³ Procedural justice ensures legality and legal protection – but not more, and it is even possible that it does not ensure justice.¹⁴

However, it does ensure a dispute-resolving nature (contest) by making the parties' perspectives on past reality the subject of the dispute, and guarantees the legal framework of the dispute, as well as fair norms.¹⁵ In systems that uphold procedural justice, confession is considered a right of the party, while in procedures seeking material truth, it is merely an evidentiary tool, significant only insofar as it is based on credibility and holds intrinsic value.

In mixed-system criminal procedures, facts may also be examined that the parties have not raised, because the goal is to uncover the complete reality and, thereby, protect society based on material justice. In Anglo-Saxon procedures, the risk of error is higher (and more wrongful judgments are made) precisely because their conception of truth corresponds to formal justice, and thus they rely heavily on the defendant's confession. An undeniable advantage is that their proceedings are faster, but the downside is that – due to false confessions and the many unresolved facts – the risk of error is significantly higher.¹⁶

¹⁰ 9/1992. (I. 30.) AB határozat.

¹¹ FINKEY, 1916, 108. o.

¹² Vö. BÁRD Károly: Az út az igazsághoz – büntetőeljárás törvényünk a jogállami elvek tükrében. In: *Belügyi Szemle* 2019/3. sz., 9. o.

¹³ ANGYAL, 1915, 4. o., 266. o.

¹⁴ FINKEY Ferenc: Az anyagi igazság és téves jelszavak a büntetőeljárásban. Magyar Jogi Szemle, Budapest, 1927, 17. o.

¹⁵ BÁRD, 2019, 9. o.

¹⁶ The cases uncovered by the Innocence Project also clearly show how quickly (e.g., within a year) final decisions were made that resulted in wrongful convictions. <https://innocenceproject.org/all-cases/> (last accessed: May 28, 2025).

The enforcement of material justice is supported by a number of provisions: the fact that independent, impartial courts established by law perform judicial functions; the principle of separation of powers; the rules on jurisdiction in criminal procedure law; the tasks of appeal proceedings aimed at eliminating errors; the legal obligation of all authorities to establish the true facts of the case; the procedural rights of the defendant and the defense, in particular the opportunity to testify ¹⁷, to submit evidence, to ask questions, and to make comments; the system of relatively free evidence, with particular emphasis on the free assessment of evidence; the possibility of ex officio evidence by the court; the principle of in dubio pro reo, and the list goes on.

All of this is significant because, as shown above, both our previous and current criminal procedure laws are based on legal institutions and provisions that promote the discovery of material truth. In contrast, the current legal provisions that restrict the discovery of material truth and gradually shift the focus of proceedings toward procedural justice seem alien to the traditional fundamental approach of the courts. ¹⁸ Meanwhile, the purpose of criminal proceedings for thousands of years has been to seek truth and enforce justice, which (even without qualification) means substantive truth.¹⁹

Fair judgment is undoubtedly a difficult task in every era ²⁰, but – knowing Hungarian criminal law enforcement practice – it is by no means an impossible goal. Criminal judges should never begin a case with the idea that justice cannot be achieved. On the contrary, they must believe and trust in success, as only this attitude can lead to success. ²¹

The role of evidence in criminal proceedings is, in theoretical terms, self-evident and does not require extensive argumentation. Every criminal proceeding “is centered around the evidence, and practically, the fate of the trial always hinges on this, and its outcome depends on it.” ²² From a practical point of view, however, it must be noted that the provisions of the current Act XC of 2017 on Criminal Procedure (hereinafter: Cpa.) allow for the application of

¹⁷ I have included this here because the defendant has the most information about the crime, so his testimony can be expected to establish not only significant facts but also, if he confesses, to confirm that he is indeed the perpetrator. If the defendant does not testify, all other means of evidence serve to compensate for this.

¹⁸ Vö. FANTOLY Zsanett: A terhelti figyelmeztetések rendszere a magyar és az amerikai büntetőeljáráásban. In: MADAI Sándor – PALLAGI Anikó – POLT Péter (szerk.): Sic itur ad astra. Ünnepi kötet a 70 éves Blaskó Béla tiszteletére. Ludovika Egyetemi Kiadó, Budapest, 2020, 167-168. o. és MEZŐLAKI Erik: A bíró meg az árnyéka. Hogyan érvényesül a funkciómegosztás elve? In: *Ügyészek Lapja* 2018/1. sz., 3. o.

¹⁹ Vö. FINKEY, 1927, 3. o. és 17. o.

²⁰ FINKEY, 1927, 23. o.

²¹ FINKEY, 1927, 24. o.

²² FINKEY, 1916, 277. o.

procedural rules that seem to diminish the significance of evidence. While we know that if we are seeking material truth, "the truth of knowledge can be ascertained through evidence."²³

The main objective of my thesis is to demonstrate that the requirement of legality of evidence constitutes a significant obstacle to the simplification and acceleration of proceedings. The provisions of the law may lead to the conclusion that the Cpa. considers material truth to be of lesser importance as the goal of criminal proceedings. If this is the case, it is a crucial question whether it can ensure lawful proceedings. If not, then not only the attainment of truth, but also the fairness of proceedings may be jeopardized.

The legality of evidence serves to uncover the truth, not to punish the accused at any cost. Efficiency, or the expectation of efficiency from law enforcement officials, cannot justify the codification of legal provisions that cannot guarantee the fairness of proceedings. The current Criminal Procedure Act aims to simplify and speed up proceedings, so it is important to examine whether the law has maintained the primacy of evidence in the trial phase over the investigative and examination tasks of the investigation phase. In connection with the most frequent procedural violations under Act XIX of 1998 on Criminal Procedure (hereinafter: 1998 Cpa.), the legislator was faced with the challenge of deciding how to address these violations and their impact on the proceedings. These issues are part of my thesis, and I will also discuss the extent to which the authorities are responsible for this in the course of the proceedings.

The aim of my doctoral thesis is therefore to use the results of my research to draw attention to the legality of evidence, and in particular to the consequences of procedural violations. It is difficult to justify to society why investigative authorities, prosecutors, and, in rarer cases, courts can violate the provisions of procedural law – sometimes due to statutory rules – when they are seeking to hold lawbreakers accountable.

Based on the provisions of the previous and current procedural law, a clear process and legislative intent can be observed, which first allowed for the principle of immediacy to be applied step by step, and then reached the point where evidence, and thus a trial, is not necessary in the vast majority of cases. While efforts should be made to establish the material truth, the law itself creates the possibility for “the criminal justice system to waive this, at least in part.”

²⁴ The message of my thesis – not by my own choice, but because of the provisions of the law – can therefore also be seen as a work defending the legal institution of evidence.

²³ BÓCZ Endre: A büntetőeljárásbeli bizonyítás néhány szemléleti és elméleti kérdése. In: *Magyar Jog* 2008/2. sz., 77. o.

²⁴ CSÁK Zsolt: Ítélet vádlott nélkül. A terhelt távollétében folytatott büntetőeljárás tapasztalatai. HVG-Orac Lap- és Könyvkiadó, Budapest, 2019, 196. o.

II. Hypotheses and methodology of the doctoral dissertation

Based on the aim of my research, I formulated the following four hypotheses.

1. hypotheses:

My first hypothesis is that *the changed rules of evidence – compared to the 1998 Cpa. – have reduced the significance of the principle of legality of evidence.*

In my doctoral thesis, I aim to present the most common procedural violations under the old Criminal Procedure Act that affected evidence, and how the current law has addressed these issues: whether the legislator has tightened the rules of evidence, and what consequences these violations have. This is important because the determination of the defendant's criminal liability depends on the evidence, so the lawful conduct of the evidence – and the enforcement of legality by the authorities – is of primary importance. I will examine this in my dissertation by reviewing provisions that limit evidence and the prohibitions on evidence

2. hypotheses:

My second hypothesis is that *the legislator attaches excessive importance to the defendant's confession.*

It is traditionally and historically acknowledged that a defendant's confession cannot be the “queen of evidence.” The formulation of this hypothesis raises the question: in what respect can the significance of the defendant's confession be excessive? Not only the previously applicable law, but also the legal historical precedents of the consequences of confession itself, as I mentioned, are relevant. My starting point is the lessons learned over a long period of time and, as a result, the possible, reasonable, rule-of-law consequences of confession under the law, and, overall, a regulation that is capable of preventing the conviction of innocent people. In this context, I examine the change in the significance of the defendant's confession in the current law. I chose to examine this hypothesis because, in addition to being related to my first hypothesis, if the two conditions are met, it can also serve as a wake-up call for legal science, legislation, and law enforcement.

3. hypotheses:

My third hypothesis is that *the provisions of the Cpa. do not ensure the attainment of material truth.*

According to the legislative justification of the law, the Criminal Procedure Act ensures that substantive justice is achieved. Therefore, in this paper, I examined whether the provisions of the law meet this expectation or whether they bring criminal proceedings closer to procedural

justice. ²⁵ If the legislator intends for criminal proceedings to be a matter of dispute between the parties, without the primary aim of establishing substantive justice in every case, it is crucial to assess whether the requirement of legality is guaranteed through certain detailed rules related to evidence.

Based on all this, I decided to examine the material truth because it could be cause for concern if there were no strict consequences for violating the rules of evidence and if the purpose of criminal proceedings were not even to uncover the truth.

4. hypotheses:

My fourth hypothesis is that *the consequences of relative procedural errors must still be maintained*.

In my doctoral thesis, I examine which relative procedural violations lead to annulment and new proceedings in practice. In doing so, I also examine whether it is necessary to grant the review forum cassation powers in cases of relative procedural violations. The reason for my investigation is that the consequences of procedural errors – particularly, but not exclusively, those affecting the legality of evidence – can reveal whether the fairness of proceedings can be ensured on the basis of legal provisions.

In my research and the examination of my hypotheses, I applied qualitative methods and, only occasionally, quantitative methods.

My methods included literature review, legal analysis, statistical data collection and analysis, and empirical research. Using the latter method, I researched case files and conducted semi-structured anonymous personal interviews. I examined anonymous decisions published in the Collection of Court Decisions, as well as the annulment orders granted by the courts in response to my research request. In terms of the interviews, I contacted the Supreme Court, as well as the courts of appeal and the district courts located in the judicial districts of the courts of appeal (in the case of Budapest, the Budapest Metropolitan Court and the Budapest District Court).

For the examination of the first and third hypotheses, I used literature research, legal analysis and interpretation, as well as empirical research methods.

To examine the second hypothesis, I applied literature research and legal analysis and interpretation.

²⁵ Bartkó Róbert szerint az anyagi és az eljárási igazság köztes – „hibrid igazság” – állapotában vagyunk. BARTKÓ Róbert: Searching for truth – A historical analysis of the Hungarian Criminal Procedure. In: *Jog-Állam-Politika* 2024/3. sz., 69. o.

For the examination of the fourth hypothesis, I used literature review, legal analysis and interpretation, statistical data collection and analysis, as well as empirical research methods.

In the case of scientific papers dealing with current law, legal analysis and interpretation, as well as research into literature, are obviously essential research methods. In contrast, although in smaller quantity, I chose statistical data collection and analysis as a method because, in the main topics addressed by my thesis, national-level conclusions can be drawn from these data. I used empirical research methods, such as interviews and case file research, because beyond literature review and legal analysis and interpretation, this method provided me with a real, authentic picture of judicial practice. In addition, this method helped me to look behind the statistical data and examine the characteristics on which these data are based. I applied the individual research methods as follows.

I researched the literature from two perspectives: on the one hand, I used monographs, studies, and doctoral dissertations that dealt specifically with the topic of proof in detail; on the other hand, I also used the works of renowned legal scholars in the field of criminal procedure law, as well as textbooks on criminal procedure. Based on these objective criteria – which are, of course, subjective in terms of the topic of my research, namely evidence – I aimed to present all authors and works that could assist in my research and the examination of my hypotheses. I hope that this does not leave anyone feeling that something is missing, but if it does, I would be grateful if, despite my unintentional oversight, those who notice this would assist me in my further work by recommending other academic works to my attention. Literature research contributed to my work as a method used in the preparation of the entire doctoral dissertation, particularly in the preparation of the first (Chapters I-VI) and second main parts (Chapter VII) of the thesis.

I used most of the international literature to prepare the international subchapter that forms part of my research. In connection with my research, it arose in two cases that presenting international experiences could contribute not only to my research but also to making the current system more effective. One case is related to the defendant's warnings (Subchapter VII.3.2), which has Anglo-Saxon roots. By using American legal literature, I was able to present not only the current legal debate related to warnings, but also what guarantee rules could be used to ensure the legality of suspect interrogations. In the other case, I examined the international characteristics of the exclusion of evidence (Subchapter VIII.3). In doing so, I selected the works of authors who evaluated the methods of excluding evidence not only in a single state, but more comprehensively, by examining the criminal justice systems and fundamental characteristics of several states. Through international literature, I was able to

make statements regarding the current law which, even without legislative amendments, would be suitable for both the stricter exclusion of illegal evidence and the lawful use of certain types of evidence (which are currently excluded).

I mainly applied the method of legal analysis and interpretation to examine the relevant provisions of Act XC of 2017 on Criminal Procedure, which, similar to the literature review, covered the entire dissertation. I applied the methods of legal interpretation known in jurisprudence, such as systematic, teleological, grammatical, and logical interpretation. I used historical interpretation and, through this, the examination of previous legislation on a case-by-case basis (e.g., when examining hypothesis 2). The reason for this is that my research is fundamentally based on the current Criminal Procedure Act, but at the same time, it was necessary to examine certain legal institutions and provisions historically in order to answer a number of questions and test hypotheses. I considered it particularly important to apply teleological interpretation throughout my research due to the provisions of Article 28 of the Fundamental Law. In addition, I used legal uniformity decisions, collegial opinions, court decisions, analyses of the case law of the Supreme Court, decisions of the Constitutional Court, and comments by representatives of professional associations in my analysis and interpretation of the law.

I applied quantitative research methods only to a very limited extent. The application of this method was based mainly on the evaluation of existing statistical indicators published by the National Judicial Office and the Prosecutor General's Office and, to a lesser extent, on the preparation of additional statistical data by me from these statistical data sets. I used the statistical data to examine and evaluate the timeliness of criminal proceedings (such as the length of proceedings, provisions accelerating and simplifying the process, including those relating to evidence) and the reasons for their dismissal.

During my research, I conducted thirteen semi-structured interviews. Within this, one judge each from each court of appeal, four in total (one court of appeal did not allow my research), and one at each of the courts of law, for a total of six (two in the case of one court of law), with presiding judges adjudicating criminal cases in the second instance, while I was able to interview three presiding judges of the Criminal College of the Supreme Court. I chose the semi-structured interview method because I wanted to conduct an in-depth, complex, comprehensive study, as this method is fundamentally participant-centered, thus focusing maximally on the interviewee, and also allows for a certain degree of flexibility due to the nature of my topic. All this allows the interview to be interactive, while discussing the questions in detail and according to the interviewee's experiences.

In my research request, I only specified by name the individuals I would like to interview in the case of the Supreme Court; in the case of the courts of appeal and tribunals, my request only stated that I would like to ask questions of the presiding judge in criminal cases at the second instance. The selection of courts was based on the following criteria.

In the case of the Curia, I interviewed the chairpersons of the three chambers of the Criminal College. This allowed the judicial experience from all three chambers of the Supreme Court to be represented in my research, ensuring representativeness from the highest judicial forum. The interviewees were judges who had previously adjudicated in both the first and second instances, so their practical experience contributed significantly to the credibility of my research and findings.

In the case of courts of appeal and district courts, I determined the selection criteria in relation to the courts of appeal. I contacted each court of appeal and selected the district courts where the courts of appeal are located. The reason for this was that these courts have the heaviest caseload. All this contributed to my ability to make findings relating to national characteristics. In all cases, the presidents of the courts of appeal and district courts appointed judges with extensive professional experience as chairpersons, who not only shared their relevant experience related to their judicial activities in response to my questions, but were also extremely helpful in my research.

The interviews followed the questions listed in the appendices, but partly due to this research method and partly due to the openness of the judges, I was able to obtain answers to any further questions that arose from the individual responses

I also submitted a request for access to case files to the courts of appeal and the courts of first instance where the courts of appeal are based. My request for access to case files was necessary because, under current legislation, orders repealing previous decisions and ordering new proceedings are not included in the Collection of Court Decisions.^mThe courts – in accordance with my request and the recommendation of the President of the National Judicial Office No. 3/2019. (XI. 28.) OBH of the President of the National Judicial Office – have authorized the search for decisions that were made by the courts under the current Cpa. and became final at least one year prior to the date of the search request.

Accordingly, I examined a total of 169 decisions issued by courts of appeal and tribunals in the second instance between February 2018 and February 2024 due to relative procedural violations. I set the starting date for the period in 2018 for two reasons: 1. I wanted to examine decisions made under the new Cpa., as the thesis was also prepared on the basis of the legislation in force; 2. the Curia's case law analysis group examined the reasons for the

annulments in 2012, so in my opinion, examining the five years between the case law analysis and the entry into force of the new Cpa. would not have provided any further relevant information compared to the Curia's findings.

In addition, I searched for and examined second-instance court decisions in the Collection of Court Decisions – handed down between 2018 and 2025 – in which procedural errors did not give rise to a decision to set aside the judgment. All this helped me in my research to demonstrate and evaluate what it means in cases of relative procedural violations whether a procedural error has or does not have a “significant effect” on the conduct of the proceedings, the determination of guilt, the classification of the offense, and the determination of legal consequences. In the Collection of Court Decisions, I searched for decisions that might refer to material effect, using key terms and limiting the search to the specified time period. In doing so, I reviewed approximately 300 decisions covering all courts of appeal and tribunals, of which I used 55 for my research. The reason for this is that in all other Collection of Court Decisions hits, although the term appeared in the decision, the court merely stated briefly that the court of first instance had not committed an absolute procedural violation or any procedural error that would have had a significant impact on the conduct of the proceedings. In the 55 cases mentioned, there was a procedural error in which the court of second instance had to consider the effect of the procedural violation.

The interviews and the examination of court decisions helped to reveal the most common procedural errors affecting evidence during the adjudication process, as well as the relative procedural errors (not only affecting evidence) that can lead to annulment, and the types of errors for which this legal consequence cannot be applied. Accordingly, I used the results of my empirical research in the chapters on evidentiary prohibitions, the consequences of evidentiary errors, and relative procedural violations (Chapters VII-IX).

III. The results of the research

III.1. Verification of the first hypothesis

The first hypothesis of my doctoral dissertation was that *the changed rules of evidence – compared to the 1998 Cpa. – reduced the significance of the principle of legality of evidence.*

In my thesis, I reviewed a number of provisions through which I was able to examine this hypothesis. The legislator justified the change in the rules of evidence (among other things) by simplification and acceleration, which is why its effects are also significant. This hypothesis could be tested through prohibitions on evidence, particularly prohibitions on the method of evidence.

During my research, the hypothesis was confirmed as follows. The significance of the principle of legality of evidence was reduced by the following rules of evidence: there is no need to prove facts that are accepted by the prosecution and the defense; the changed consequences of failure to give warnings; provisions that undermine the principle of immediacy, such as repeating the trial with only a reading of the minutes, broad opportunities for written testimony, written submission of pleadings, and the inclusion in the trial materials of testimony taken during the investigation but not otherwise recorded by audio or video. reading out and presenting the statements made by witnesses during the investigation without questioning them at the trial. In addition, the general and special rules of procedure, which provide ample opportunity to dispense with a trial, have also contributed to the decline in the importance of this principle: for example, settlement proceedings, proceedings for the imposition of a penalty order ²⁶, and sentencing at a preparatory hearing.

These provisions are not reassuring, given that their application may lead to decisions based on evidence that is potentially unlawful. ²⁷ It is undeniable that the examination of case files is necessary even in the case of separate proceedings and the application of rules to expedite preparatory hearings, but such an examination, by its very nature, replace the presentation of evidence in a hearing conducted with the participation of the parties.

These provisions are not reassuring, knowing that their application may lead to decisions based on potentially unlawful evidence. It is undeniable that in the case of specific procedures and the expedited rules of the preparatory hearing, it is necessary to examine the case files. However, this examination – by its nature – cannot replace the trial evidence conducted with the participation of the parties.

Given that these provisions allow judgments to be based on investigation files, the need to comply with the rules on the legality of evidence becomes even more important during the investigation phase.

²⁶ Contrary to its legal history, the procedure for passing a punishment order no longer allows for the adjudication of lesser offenses. It is also worrying that, as of March 1, 2024, even crimes punishable by up to eight years' imprisonment may be adjudicated using this special procedure, without a trial. Interestingly, in comparison, the legal consequence may be no more than a suspended prison sentence. It is obvious that imposing a prison sentence without a trial is inconceivable in criminal proceedings under the rule of law, but at the same time, it is clear that the range of acts that can be adjudicated is not in line with the legal consequences. For the historical development of criminal proceedings, including the significant expansion of the range of acts that can be adjudicated and the legal consequences that can be applied, see: GIMESI Ágnes, In: ERDEI Árpád – ERDEI-KIRÁLY Eszter – GIMESI Ágnes – HACK Péter – HOLÉ Katalin – IGNÁCZ György – KELEMENNÉ CSONTOS Laura – KOÓSNÉ MOHÁCSI Barbara: Büntetőeljárás jog II. (szerk.: HACK Péter). ELTE Eötvös Kiadó, Budapest, 2024, 318-320. o.

²⁷ There is no doubt that the examination of case files is necessary even in the case of separate proceedings and the application of rules to expedite preparatory hearings, but this examination cannot, by its very nature, replace the examination of evidence conducted with the participation of the parties

In my dissertation, I demonstrated that the most common procedural errors affecting evidence in the application of the 1998 Cpa. were related to the warnings given to witnesses and defendants, the use of secret means of investigation, and the rights of the defense.

Anonymous interviews and case file research confirmed that procedural errors related to these issues, which can result in unlawful evidence, are still common today.

The legislator attaches different, milder legal consequences to the failure to warn witnesses and defendants than in the 1998 Cpa. The failure to record the warnings (and the responses thereto) no longer leads to the exclusion of evidence (means of proof) in all cases, but under certain conditions they may be used legally in the proceedings. Given that warnings were often omitted (or incomplete) even under the 1998 Cpa., the new law's lenient provision is not suitable for ensuring the legality of evidence.

The legislative change relating to warnings cannot be interpreted in any other way than as an attempt to preserve evidence at any cost. This comes at the price of curtailing the rights of those subject to the proceedings (witnesses, defendants) and, at the same time, legalizing (legitimizing) the unfair practices of the authorities. It is clear that the same conclusion could be reached even if no problems had arisen in connection with the warnings. At the same time, the previous and current practices are well known to everyone, and it can be said that these procedural violations are common, which is why it is undoubtedly a flawed legislative solution that the legislator did not attempt to curb procedural errors, but instead made them legal.

It is not only theoretically true that legislative relief clearly cannot prevent these errors, but I have also demonstrated in my thesis, based on the decisions available in the Collection of Court Decisions and the experiences of anonymous personal interviews, that the lack of warnings is still a serious problem. In numerous cases, deficiencies in warnings arose during the investigation phase, but this error is by no means unprecedented in the court phase either. These violations concerned the warnings given to witnesses and defendants (as well as experts) and the violation of the right to remain silent.

Procedural errors related to the use of covert devices are also common nowadays (the most frequent being exceeding the scope of judicial authorization: the use of covert devices lasts longer than authorized or affects persons not specified in the authorization). In this regard, I have spoken about the applicability of covert measures in the absence of suspicion (preliminary proceedings), as well as the possibility of extending them to persons or objects, or to both persons and objects. Based on the legal provisions and practice examined, it can also be concluded that the aim is not so much to ensure the legality of evidence (and fundamental rights) as it is to obtain evidence, which is not permitted under the 1998 Cpa.

In the case of prohibitions relating to the method of proof, my essential and summary conclusion was that evidence obtained through criminal activity or other prohibited means must be excluded absolutely, without consideration. In contrast, in the case of the third clause of the general clause of the Cpa. ²⁸, the law enforcement authority must consider whether the procedural error in question resulted in a significant violation of the rights of the person involved in the proceedings. In the latter case, only an affirmative answer will result in the exclusion of the evidence. In the third round of the general clause, the court must examine the extent to which the infringement of rights affected the acquisition of the evidence, i.e. whether the evidence in question could have been obtained while ensuring the rights of the person participating in the proceedings. However, the extent to which the evidence carried by the means of evidence has an impact or is relevant in the criminal liability proceedings is not to be examined. The reason for this is that the legislator prohibits the method, not its result.

If we wish to hold the perpetrator accountable in the absence of a trial – meaning without the court's direct evidence recognition activities, such as direct witness examination, expert hearings, defendant interrogation, or direct examination of physical evidence (e.g., in the case of a criminal ruling, admission of guilt at a preparatory session, judgment, or an agreement) – then the observance of procedural rules and the examination of the lawfulness of the evidentiary acts in the investigative phase must be carried out through a strict standard. This is the most important guarantee to ensure that the proceedings are fair.

The legality of evidence is important partly in terms of establishing the material truth and partly in terms of the fairness of proceedings. The determination of the defendant's criminal liability depends on the evidence, so the lawful conduct of the evidence – and the enforcement of legality by the authorities – is of primary importance. The requirement to exclude evidence ensures that unlawful evidence cannot form the basis of a court's judgment and that no one can be convicted on the basis of unlawful evidence. According to my research, courts consistently exclude unlawful evidence in the vast majority of cases. However, this also requires that courts be able to examine such evidence, which, due to the numerous expediting and simplifying provisions presented, is undoubtedly not the case in the vast majority of cases, in the absence of a trial.

III.2. Verification of the second hypothesis

The second hypothesis of the dissertation was that *legislators attach excessive importance to the defendant's confession.*

²⁸ Be. 167. § (5) bekezdés.

In this study, I took as my starting point the fact that it is traditionally known, and also a lesson from legal history, that the defendant's confession cannot be the queen of evidence.

In this dissertation, I examined the consequences of the defendant's confession at each stage of the proceedings. At the investigation stage, the consequences may be the termination of the proceedings or the prosecutor's motion for separate proceedings. The common feature of these separate proceedings is that they lead to the criminal prosecution of the defendant (with his or her consent) in a simple and quick manner, without a trial (except for immediate summary procedure), and consequently with procedural rules that offer fewer guarantees.

If, in the absence of the above, the defendant makes a confession (statement) during the court proceedings, this will lead to the case being concluded at the preparatory hearing, i.e. without evidence being presented at the trial; if the defendant decides to do so during the trial, this will render further evidence unnecessary.

I highlighted the research of the American Innocence Project, which emphasizes the importance of examining the credibility of confessions and avoiding wrongful convictions, and how false confessions can be filtered out. According to the “minimum standard,” the court should hear the defendant in detail about the crime and record all of their statements using video and audio recording devices. This is also in line with the principle of immediacy, which, in addition to establishing the material truth, serves to avoid wrongful convictions (e.g., conclusions can also be drawn about the credibility of witnesses who are questioned in person before the court). It has also been established that, despite this, Hungarian criminal procedure laws have previously tended to deviate from the principle of immediacy for the sake of speed and simplification. This is objectionable because the current rules allow courts to convict someone even if they haven't gone through the “minimum standard” (detailed questioning).

I believe that the provisions described in the dissertation clearly show the weight of the defendant's confession (which significantly speeds up the adjudication of the case) and, in comparison, how few guarantee provisions are associated with it (which significantly simplifies the procedure). In the absence of a trial, merely examining the conditions set out in Section 504(2) of the Criminal Procedure Code and questioning the defendant not in detail but to the extent necessary to examine these conditions does not satisfactorily meet the legislative expectation that only the guilty should be held accountable. Furthermore, the expedited provisions also limit the possibilities for legal remedy. Additionally, it is also questionable whether the objectives of punishment are achieved, while only the prosecutor's motion – possibly the questioning of the defendant on sentencing circumstances – influences the sentencing.

I also pointed out that in cases decided by summary judgment, the court does not even meet with the defendant, but relies solely on the investigation files when making its decision. These summary judgments remain almost completely hidden from society. These decisions do not have to be published in the Collection of Court Decisions, although anonymous criminal judgments can still be found. In these cases, the courts examine the conditions by repeating the legal provisions, which in itself is not necessarily problematic, but it is not clear from them why the case was simple to judge²⁹ or why the legal consequences applied are suitable for achieving the objectives of punishment.³⁰

This type of simplification of the procedure, which consists of the court only examining the existence of evidence but not examining the evidence itself, contrary to the principle of immediacy³¹, carries the risk that guilt will not be determined in accordance with the material truth. It may also carry the risk that the real perpetrators are not necessarily held accountable, and not necessarily for what they actually did. During the preparatory hearing, comparing the defendant's confession with the case files is not actually about uncovering the truth of the past, but merely about examining whether it is consistent with the charges.

The principle of immediacy is not intended to slow down proceedings, but rather to ensure that decisions on criminal liability are well-founded and as close as possible to the reality of the past. Therefore, I believe that it is not possible to make a well-founded decision without examining the evidence, based solely on the one-sided investigative phase and the evidence gathered without the participation of the defense.

The legislator predominantly (and not coincidentally) saw the possibility of expediting proceedings in the defendant's confession, while at the same time establishing the material truth, which, according to the explanatory memorandum to the law, is also an objective³², is less feasible in these proceedings in the absence of a trial.

Based on the provisions of the law, it can be stated that the legislator did not take into account the risk that was characteristic of inquisitorial systems in connection with confessions: the inquisitor used all means available to obtain confessions. Even today, it is common practice

²⁹ In a case concluded with a punishment order, the indictment described a situation of presumed legitimate defense, but the court failed to recognize this and handed down the criminal judgment. The defendant was acquitted by the Supreme Court in a review procedure. Kúria Bfv.I.928/2023/7.

³⁰ Péter Vass lists a number of criteria that are necessary for examining these two – otherwise subjective – conditions. VASS Péter: kommentár a Be. 740. §-ához. In: Jogtár.

³¹ Zsolt Csák and András Czebe also drew attention to the violation of the principle of directness.. CSÁK Zsolt – CZEBE András: Jogértelmezési kérdések az öt éve újragondolt büntetőeljárás kódex tükrében. In: *Közjogi Szemle* 2023/3. sz., 27. o.

³² Lsd. pl. Indokolás I. pont, továbbá Részletes indokolás a XXVIII. Fejezethez.

for authorities to consider obtaining confessions a priority.³³ Knowing the reasons for false confessions, or precisely because of the fact that confessions can be influenced³⁴, it is less understandable why the legislator is so confident that the regulation cannot be abused.

One of the main guarantees of material justice is that the defendant's confession is not binding on the court and is not sufficient to establish guilt. Legal scholars at the beginning of the century came to this conclusion because they saw the consequences of attaching excessive importance to the defendant's confession: not only was the practice of coercive interrogation endangered, but substantive justice was also seriously threatened. Balogh, Finkey, and Angyal concluded that the binding system of evidence was unsuitable for establishing material truth.³⁵ Accepting the defendant's confession as unconditional evidence leads to a conviction that undermines material truth.³⁶ Although the current legislation does not allow for unconditional conviction³⁷, it is closer to the 1998 Cpa. in terms of the rules of criminal proceedings and the passing of judgment at the preparatory hearing: based on case files, without direct knowledge of the relevant evidence. As has been seen, it is not possible to examine the defendant's confession to the same extent as a court would do at a trial, so it is beyond dispute that the truth of the confession cannot be fully ascertained.

The confirmation of the first and present hypotheses further reinforces the main message of this dissertation, namely that it is necessary to ensure that the investigation phase is free of procedural errors. Both the examination of the first hypothesis and the determination of the significance of the defendant's confession made it clear that in the vast majority of cases, court decisions are based not on evidence presented directly at the trial, but on evidence obtained during the investigation phase, which is conducted unilaterally, without the participation of the defense. If the investigating authority commits a procedural error that may affect the evidence, it does not follow from the provisions of the law that the court would be able to detect it. Another consequence of this is that, unlike its predecessors, the current law gives primary importance to the investigation phase rather than the court phase.

³³ BELOVICS Ervin – ERDEI Árpád (szerk.): A büntetőeljárás törvény magyarázata. HVG-ORAC, Budapest, 2018, 257. o.

³⁴ ELEK Balázs: A vallomás befolyásolása a büntetőeljárásban. Tóth Könyvkereskedés és Kiadó Kft., Debrecen, 2008, 100. o.

³⁵ Vö. a kötött bizonyításról szóló II.2.1. alfejezettel.

³⁶ ANGAL, 1915, 363. o.

³⁷ Unless otherwise provided for in the Cpa., other evidence must also be obtained for a conviction [Cpa. Section 183(4)]. According to the commentary, the different provision applies only to plea bargaining, because in this special procedure, the court bases the defendant's guilt on the confession, the approval of the plea bargain, and the case files. Tibor Ibolya: commentary on Section 183 of the Cpa. In: Péter POLT (editor-in-chief): Jogtár Nagykommentár [Legal Commentary] on the 2017 Act on Criminal Procedure. Wolters Kluwer. On these grounds, however, the exception also applies to judgments handed down at preparatory hearings, in which case the finding of guilt is based on the acceptance of the guilty plea (and the case files). See Section 504 of the Cpa.

III.3. Verification of the third hypothesis

The third hypothesis of the doctoral thesis was that *the provisions of the Criminal Procedure Code do not ensure the discovery of material truth.*

Numerous legal provisions stand in the way of the requirement to uncover material truth. In the case of rules relating to evidence, the provision that facts jointly accepted by the parties – the prosecution and the defense – do not need to be proven limits the discovery of the whole truth. This does not mean that these facts are prohibited or subject to a prohibition of evidence, but only that it is not necessary to pursue evidence, i.e., they must be accepted as true in the absence of evidence. Generally speaking, any provision that ties the hands of the courts in the course of evidence also hinders the discovery of the truth.

The discovery of the material truth is also made more difficult by provisions that accelerate and simplify the procedure compared to 1998 Cpa. Among these, it is worth highlighting the acceptance of the defendant's confession at the preparatory hearing, which may result in a judgment even in the absence of evidence. Similarly, there is a separate procedure based on a settlement, in which a judgment may also be rendered at the preliminary hearing. The punishment order is not a new legal institution³⁸; it could already be applied under the 1998 Cpa., but the thesis showed that it was applied in a third of cases compared to today. Currently, approximately two-thirds of cases are concluded in the procedure for passing a punishment order. The key difference compared to the general procedure³⁹ is that, in the case of a criminal judgment, the facts, classification, and legal consequences are determined based on the case files, without a trial – notably, without a declaration of the defendant's guilt. Since the legal history of this specific procedure, which was only possible in minor cases and only allowed for the imposition of fines, procedural justice has been sufficient.⁴⁰ The reason for departing from material truth was that the legal institution was based on the principle that in cases of minor significance and thoroughly investigated, the defendant would not challenge the decision if a fine was imposed.

It is beyond dispute that these specific procedures and rules of evidence make it difficult to ascertain the material truth by disregarding the principle of immediacy and adversarial proceedings. The purpose of the hearing is precisely to ensure that no decision can be made on a person's criminal liability without the court's direct examination of the evidence. However, it

³⁸ In the terminology of the 1998 Cpa. omission of a trial special proceeding.

³⁹ The procedure that is commonly referred to as the general procedure – and is regulated as the main procedure in procedural laws – is the most common method of criminal prosecution.

⁴⁰ ANGyal, 1915, 270. o.

is also indisputable that in many cases, in matters of minor importance – especially in proceedings ending with a fine – it is indeed sufficient to issue a criminal order. In contrast, however, the imposition of more severe penalties (in particular suspended prison sentences) on the basis of case files is undoubtedly questionable in the absence of the principle of immediacy.

Direct evidence, conducted with the participation of the defense in accordance with the adversarial principle, influences the formation of the judge's opinion and the decision based on that opinion. In other words, the judge's conviction can only be formed through direct knowledge of the facts. At least in the sense that the presiding judge can minimize the risk of his own error and demonstrate to society in a real and verifiable way that the decision reached is the result of a thorough examination.

These specific procedures and rules of evidence disregard all of this, thus jeopardizing the discovery of the material truth by violating the principle of immediacy. It is also beyond dispute that the direct examination of the defendant and witnesses at trial is also suitable for avoiding errors and miscarriages of justice. After all, questioning cannot be compared to the mere reading of statements taken during the investigation: during questioning, the court itself ascertains not only the facts known to the witness, but also the credibility of the witness

Given that current legislation has gradually shifted the focus of criminal proceedings from the trial to the investigation phase, particular attention must be paid to compliance with the procedural rules governing the investigation phase. If a guilty verdict or a punishing order imposing legal consequences can be handed down based solely on the evidence gathered during the investigation, as described above, there is no doubt that we must ensure the integrity of the investigation phase.

With the Cpa., the proceedings were accelerated in a way that significantly shortened the duration of the court phase. While the length of the court phase had already been continuously decreasing even before the adoption of the Cpa. ⁴¹, the duration of the investigation phase was steadily increasing.⁴² (Between 2013 and 2023, the length of the court phase gradually

⁴¹ Average duration of the court phase from indictment to final decision: in 2013. 410,6 days; in 2014. 396,6 days; in 2015. 390,8 days; in 2016. 361,5 days; in 2017. 347,2 days; in 2018. 337,4 days; in 2019. 321,1 days; in 2020. 261,5 days; in 2021. 271,7 days; in 2022. 260,3 days; in 2023. 231,6 days. Bűnözés és igazságszolgáltatás. Legfőbb Ügyészség, 2024 <https://ugyeszseg.hu/wp-content/uploads/2016/02/bunozes-es-igazsagszolgalatas-2014-2023.pdf> (utolsó letöltés: 2025. február 8.), Bűnözés és igazságszolgáltatás. Legfőbb Ügyészség, 2023 <https://ugyeszseg.hu/wp-content/uploads/2023/10/bunozes-es-igazsagszolgalatas-2013-2022.pdf> utolsó letöltés: 2025. február 8.)

⁴² Average duration of investigations: in 2013. 220,6 days; in 2014. 230,8 days; in 2015. 243,7 days; in 2016. 244 days; in 2017. 248,3 days; in 2018. 257,8 days; in 2019. 288,1 days; in 2020. 303,9 days; in 2021. 335,3 days; in 2022. 349,1 days; in 2023. 341,3 days. Bűnözés és igazságszolgáltatás. Legfőbb Ügyészség, 2024 <https://ugyeszseg.hu/wp-content/uploads/2016/02/bunozes-es-igazsagszolgalatas-2014-2023.pdf> (utolsó letöltés: 2025. február 8.), Bűnözés és igazságszolgáltatás. Legfőbb Ügyészség, 2023 <https://ugyeszseg.hu/wp-content/uploads/2023/10/bunozes-es-igazsagszolgalatas-2013-2022.pdf> utolsó letöltés: 2025. február 8.)

decreased from 410.6 days to 231.6 days; while the length of the investigation phase gradually increased from 220.6 days to 341.3 days; in 2020, the length of the investigation phase already exceeded the length of the court phase, and this trend also holds true for the last statistical year).

Act XLIX of 2025 on the amendment of laws relating to justice comprehensively amended the Cpa. and other legislation, and decided to extend the time limit for investigations – starting from the notification of suspicion – to three years.⁴³

In my view, the increase in the duration of the investigation phase is not a problem in itself. Since a guilty verdict or punishment order can only be based on this phase of the proceedings, it is expected that these decisions will be preceded by a thorough investigation. The increase in duration can also be attributed to the fact that the Criminal Procedure Code adopts a divided investigation system, meaning that since July 1, 2018, the investigation phase has been left without prosecutorial supervision. This obviously placed a greater burden on the investigating authorities in the first few years compared to previous years. “It is often difficult to correctly identify and determine relevance and the scope of evidence, which was previously resolved or at least resolvable through closer cooperation with the prosecution. This causes problems in the professional and timely preparation of the substantive investigation phase, which can determine the time required for the entire case (including the length of the investigation).”⁴⁴ Based on all this, by dividing the investigation phase into two parts, the legislator has undermined timeliness – which is its main objective – not only in the case of detection but also in the case of investigation, while the length of the court phase had already been steadily decreasing for years before the Cpa.

When it comes to the length of proceedings, I think we should realize that timely proceedings aren't the same as fast proceedings. Timely proceedings take just as long as it takes to make a well-founded court decision so that it doesn't need to be changed much during the review. In other words, a timely procedure lasts as long as is necessary for an effective judgment – no longer and no shorter. The task of the courts of second instance is not to act as courts of first instance, but rather to eliminate any factual or legal errors made by the court of first instance.

In contrast, the legislative justification for the Cpa. and the statistical analyses of annual court caseloads suggest that courts are facing a kind of statistical pressure. This is dangerous

⁴³ In the case of criminal offenses punishable by imprisonment of eight years or more. This amendment shall enter into force on September 1, 2025, cf. Section 189 of Act XLIX of 2025 and Section 351(3)(c) of the Criminal Code.

⁴⁴ TÓTH Mihály: Megjegyzések a nyomozás körüli „időutazás” régi és újabb állomásaihoz. In: *Belügyi Szemle* 2024/10. sz., 1911. o.

because in criminal proceedings we decide on the fate of human lives ⁴⁵, and this decision cannot be tied to objective time, expectations, and statistical indicators applicable to every case. With such an expectation, we risk the soundness of our decisions and, ultimately, increase the possibility and danger of error.

All this clearly shows that although the legislator did not want to compromise on the requirement of substantive justice, the application of the law leads to this for reasons of expediency, acceleration, and simplification. ⁴⁶ Legal science has already recognized that, compared to substantive justice, it is possible to codify procedural rules – precisely for reasons of timeliness – that are sufficient for procedural justice in certain cases. However, on the one hand, these should be applied as exceptions to substantive justice, and on the other hand, they cannot abandon the principle that the guilt of the accused can only be determined on the basis of truth. ⁴⁷

In the statistical environment described and given legislative expectations, it is certainly an important question whether, if we give in to the need to uncover material truth (reality), can we in return guarantee a fair trial for the accused and ensure that crime does not go unpunished – with consequences that are proportionate but also take the perpetrator into account ⁴⁸ – through which the purpose of punishment can also be achieved (general and specific prevention). ⁴⁹

The essence of systems based on procedural justice lies precisely in the fact that, even if they do not reveal the truth, they are satisfied with the agreement between the prosecution and the defense, but they do so with a high degree of procedural certainty. ⁵⁰ In other words, even a minor procedural violation – which is less serious in the continental system – can have serious consequences, which in some cases may even prevent criminal prosecution. The dissertation showed that, despite the previous sentence, the United States is currently trying to get rid of the serious consequences of procedural rules, but it can't do it completely, since ensuring the fairness of proceedings is still a top priority.

⁴⁵ KIRÁLY Tibor: A védelem és a védő a büntetőügyekben. Közgazdasági és Jogi Könyvkiadó, Budapest, 1962, 121. o.

⁴⁶ ERDEI Árpád: Újítások, találmányok, felfedezések a büntetőeljárás bizonyításban. In: *Belügyi Szemle* 2018/3. sz., 8. o.

⁴⁷ ERDEI Árpád: Az igazságon alapuló büntető ítélet ideálja és a valóság. In: ELEK Balázs – HÁGER Tamás – TÓTH Andrea Noémi (szerk.): *Igazság, ideál és valóság. Tanulmányok Kardos Sándor 65. születésnapja tiszteletére*: Debreceni Egyetem Állam- és Jogtudományi Kar Büntető Eljárásjogi Tanszék, Debrecen, 2014, 83. o.

⁴⁸ GÖNCZÖL Katalin: Kriminálpolitika és bűnözéskontroll Magyarországon. In: *Kriminológiai Tanulmányok* 2010/47., 80. o.

⁴⁹ Citizens do not even consider the possibility that a court ruling might not reflect reality. According to Békés, this is precisely why the public reacts so sensitively to judicial errors. See Ádám BÉKÉS: The search for material truth, the discovery of formal truth. In: TÓTH J. Zoltán (szerk.): *250 éves a Dei delitti e delle pene: tanulmányok Cesare Beccariáról*. Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest, 2015, 104. o.

⁵⁰Of course, the facts established in these systems may also correspond to events that actually took place in the past. TÓTH Mihály: Néhány megjegyzés az új büntetőeljárás törvényhez. In: *Belügyi Szemle* 2018/3. sz., 65. o.

In the American system, in the event of a dispute, a fact is considered proven against the defendant if there is no reasonable doubt ⁵¹ as to its veracity. The continental system is based on complete certainty, whereby a fact that has not been proven beyond reasonable doubt cannot be used against the defendant. In Hungary, if we consider that the goal is to establish the material truth, in most cases this actually means requiring complete certainty based on the investigation files. Bencze argues that, as in the Anglo-Saxon system, reasonable doubt could be the standard for establishing facts. He considers reasonable doubt to be a moral standard: the expectation of a fair-minded, reasonable average person. ⁵² I believe that reasonable doubt precludes the possibility of challenging the confession of a defendant who falsely admits to committing a crime. But even if it can be disputed, this view does not take into account the fact that in continental law, the prosecutor must prove what he or she alleges, while Anglo-Saxon law is based on the concept of a “battle of the parties” and builds on what is said between the parties in the courtroom.

It is precisely because of this latter situation that the Anglo-Saxon system needs to use the term “reasonable” – in order to legitimize its method of determining the truth. Because what is happening between the parties (legal dispute) must be decided, and this can only be done in a reasonable manner. In this context, “beyond reasonable doubt” means that the fact is “proven.” While the meaning of “beyond reasonable doubt” generally includes the solution that the opposite of the fact has not been proven. There is a significant difference between the two.

Based on all this, I have come to the conclusion that the current criminal procedure law is not based on substantive justice (with procedural justice being the exception), but rather, as a result of the above – especially the closure of cases without trial – the situation has been reversed: the most frequently achievable goal is merely procedural justice, and achieving substantive justice is exceptional in comparison. Therefore, I believe that the Cpa. has broken with the principle of substantive justice and has embraced the primacy of procedural justice – albeit only at the ministerial and legislative level.

III.4. Verification of the fourth hypothesis

According to the fourth hypothesis of the doctoral dissertation, *the consequences of relative procedural violations must continue to be upheld.*

⁵¹ BENCZE Mátyás: A bizonyítékok értékelésének összehasonlító vizsgálata a tisztességes eljárás szempontjából. In: BADÓ Attila (szerk.): A bírói függetlenség, a tisztességes eljárás és a politika. Összehasonlító tanulmányok. Gondolat Kiadó, Budapest, 2011, 222. o.

⁵² BENCZE, 2011, 225. o.

In the doctoral dissertation, I examined which relative procedural violations under the Cpa. (and the 1998 Cpa.) lead to invalidation and instructions for new proceedings in practice. Relative procedural violations undoubtedly include violations of the rules of evidence, but they cannot be identified solely by these. (In the chapter of the dissertation on relative procedural errors, I did not repeat the errors of evidence that I had already discussed in the chapter on prohibitions of evidence.

When examining this hypothesis, I relied on empirical research, including the results of anonymous personal interviews and case file research, in order to draw well-founded conclusions.

I examined the consequences of procedural errors at each stage of the proceedings. I found that if a procedural error during the investigation stage resulted in unlawful evidence and that evidence was not excluded, the court is obliged to decide on the fate of the evidence affected by the procedural error after the indictment. Therefore, errors committed during the investigation phase that affect the evidence may also have consequences in the court proceedings (exclusion of evidence). However, other procedural errors have no effect on the court phase, which is correct.

If the court of first instance itself commits a procedural violation that affects the legality of the evidence – similar to the investigation phase – it is expected to detect and eliminate the error. If this does not happen, the court of second instance may examine this issue in the context of relative procedural violations (and exclude the evidence). Based on my empirical research, it was evident in numerous cases that the court of first instance detected the error it had committed and remedied it.

In third-instance proceedings, both absolute and relative procedural violations must be examined in accordance with the law, but the third-instance court does not have the power to decide to set aside the decision and order a new trial in the event of a relative procedural error. In this regard, I also found that, if possible under the law, the court of third instance must nevertheless eliminate the procedural error (e.g., by excluding the evidence), but it is not entitled to issue a cassation decision on this ground alone.

In the case of relative procedural violations, it became evident that there is no mandatory or precisely measurable standard for determining what type or degree of violation is required to justify the annulment of a decision.

It is clear that, within the conceptual framework of relative procedural violations, it is difficult to predict whether similar procedural errors have the same consequences in every case: whether or not they have a significant impact on the conduct of the proceedings. At the same

time, it is also clear that the court applying the law can only examine the specific circumstances of the case if the law grants it discretionary power.

The enforcement of criminal law against citizens is only possible in proceedings in which the authorities are obliged to comply with the procedural rules applicable to them. It is therefore to be expected that the courts will comply with the procedural rules, even in cases where the error does not result in absolute, unconditional annulment. Relative procedural errors can also have a significant impact on the proceedings. However, in my opinion, the fact that the material impact of a procedural error cannot always be predicted in advance is not problematic, as this is precisely what the court's discretionary power is all about – which, as can be clearly seen from the decisions described above, the courts of second instance do not abuse. There is only one relative procedural error that has led to annulment in a striking number of cases: violation of the obligation to state reasons. In this regard, I have proposed that only a partial failure to provide reasons should lead to cassation on relative grounds, while the complete absence of one or more elements of reasoning should result in unconditional annulment. When presenting the decisions examined, it became apparent that only this one specific relative procedural violation would allow for abuse or divergent practices. By the latter, I mean—as also stated in this paper—that in some cases, the absence of a single mandatory element of justification led to annulment, while in other cases, the court of second instance was able to compensate for the complete absence of the given element of justification.

I demonstrated that the issue of eliminating relative grounds for repeal arose among theoretical and practicing lawyers because the Curia's case law analysis group also examined this issue in 2012 when identifying the so-called dysfunctional practice of repeal.

However, the dysfunctional practice of repealing laws was resolved by the law in force: it allows appeals against repealing decisions, so that any cassation decision that violates the law can be repealed. This has clearly reduced the number of repeals, as confirmed by anonymous personal interviews.

Consequently, on July 1, 2018 (the date on which the Cpa. came into force), the reason that prompted lawyers to reconsider the consequences of relative procedural errors ceased to exist. Regardless, I reviewed the possible solutions and their consequences. I raised the applicability of ad hoc decision BH2022. 319. in this matter. If the law enforcement authority interprets this decision broadly, the complete absence of any justification would lead to absolute procedural violation and unconditional annulment [Section 608(1)(f) of the Criminal Procedure Code].

In doing so, I reached the final conclusion that the conclusion that it is impossible to eliminate the consequences of relative procedural errors. If we were to define some of them as

grounds for annulment, while invoking provisions on the legality of evidence in the case of others, the fairness of the proceedings would still not be guaranteed. This is because the violation of the rights of those involved in the proceedings – especially the defense – is a matter of consideration that (by its very nature) cannot be treated as an absolute reason, but cannot be ignored either. If this were to happen, in fact, only after the decision became final would the Constitutional Court or the ECtHR examine the enforcement of these rights in the context of fair proceedings, which would undoubtedly undermine efficiency and significantly weaken confidence in the administration of justice. In other words, the error would not be remedied by the forum and at the time expected, but rather in the context of an examination of the constitutionality and human rights aspects of a judgment that has become final and is thus endowed with legal force.

From another perspective, eliminating the relative grounds for annulment would only result in courts of first instance acting carelessly and paying less attention to such errors, as they would have no consequences.

At the same time, it can be said that courts of first instance have been relieved of the burden of establishing the full validity of the facts, since only in cases of partial invalidity must the court of second instance remedy the deficiencies committed by the court of first instance. In my dissertation, I mentioned that in some cases this may also mean that the court of second instance becomes a court of fact and takes over the function of the court of first instance.

In other words, this type of legislative solution could also lead to courts of first instance acting more lightly not only in establishing the facts of the case, but also in complying with procedural rules. It cannot be ignored that nowadays a very small number of proceedings are initiated under the general rules, and even fewer of these are concluded at trial, so compliance with formal rules is particularly important in these few cases. Compared to the 1998 Cpa., the number of cases overturned due to relative procedural violations has decreased significantly. In discussing the reasons for this in detail, I also found that in fact significantly fewer cases reach the second instance (but otherwise first instance) stage, thus leaving many relative procedural errors hidden.

I therefore concluded my argument by pointing out that eliminating relative procedural violations and their consequences would in fact render the principle of the legality of evidence and the right to defense meaningless.

The erosion of the right to defense is not only problematic from a human rights perspective, but without the participation of the defense, substantive justice cannot be achieved: without

adequate protection of the right to defense, there is a strong risk that it will not be justice that prevails, but a sufficiently unchecked, “one-sided, persecutory position.”⁵³

Maintaining the rules of evidence and other procedural rules serves not only to ensure that the proceedings comply with the letter of the law. It also serves to ensure that criminal proceedings, which carry the most serious legal consequences, remain fair. The legal provisions must guarantee this objective when the law enforcement authority has to make a decision regarding criminal liability. Moreover, it is important to recognize that “a great deal is revealed about a society, a state, and the actors of the justice system by how they relate to the errors in this activity.”⁵⁴

Even in quick and simple proceedings, procedural errors can have consequences for the authority that made the mistake, even in systems that uphold procedural justice. In systems based on procedural truth, it is precisely the flawless conduct of the procedure that guarantees a lawful judgment: few things erode public trust in the justice system more than flawed or incorrect verdicts.⁵⁵

If we legalize procedural errors that previously resulted in the exclusion of evidence, we will continuously narrow the consequences of procedural violations. Furthermore, the legislator's general aim is to preserve unlawful evidence in general, and at the same time, we are replacing the guarantees of fundamental principles with simple and quick provisions, ultimately we are jeopardizing the fairness of proceedings and the conviction of innocent people. Such a system is only suitable for ensuring swift convictions, which has the easily communicable advantage of benefiting society, but it does not take into account the possibility of errors.

Public trust in the justice system is not fostered by speed, but by effectiveness: timely proceedings, free from errors and procedural mistakes, which hold the actual perpetrator accountable for past events – not more, but also not less.

Speeding up and simplifying proceedings is not feasible beyond a certain point: every provision that simplifies and speeds up proceedings must first stand the test of fairness on its own merits and then in its overall effect.

Precisely because the punitive power of the rule of law is not unlimited.

⁵³ ANGYAL, 1915, 220. o.

⁵⁴ HACK Péter: Az igazságszolgáltatás kudarcai. In: A Magyar Büntetőjogi Társaság Jubileumi Tanulmánykötete (szerk.: Fenyvesi Csaba) Magyar Büntetőjogi Társaság, Budapest-Debrecen-Pécs, 2011, 35. o.

⁵⁵ HACK Péter: A büntetőhatalom függetlensége és számonkérhetősége. Magyar Közlöny-, Lap- és Könyvkiadó, Budapest, 2008, 49. o.

IV. Publications related to the topic of the doctoral dissertation

HORVÁTH Georgina: A bizonyítási eszközök és cselekmények. In: FINSZTER Géza – ERDEI Árpád – HACK Péter – HOLÉ Katalin – HORVÁTH Georgina – IGNÁCZ György – KOÓSNÉ MOHÁCSI Barbara – SZOMORA Zsolt – ÜVEGES Eszter: Büntetőeljárás jog I. (szerk.: HACK Péter), ELTE Eötvös Kiadó, Budapest, 2024, 257-293. o.

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