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POLICE IN THE HUNGARIAN CRIMINAL PROCEEDINGS

Abstract: The police play a key role in the Hungarian criminal justice system. In addition to the legality supervision and effective professional management of the prosecution, the police have performed investigative tasks, which has procedural autonomy in initiating differentiated procedural methods in the reconnaissance and examination phase. The investigation consists of reconnaissance and investigation. In contrast, in the examination phase, they work under the direction of the prosecution. In addition to the general police, there are special police bodies in the country that do not have investigative powers but can take part in the preparatory process at the initial stage of the investigation, in particular by collecting data to establish the suspicion of a crime. Such bodies are the National Defense Service for Internal Corruption and Terrorism and the Counter-Terrorism Center. In our article, we provide an overview of the role of the police in a state organization. In accordance with that, we analyze the police's law enforcement role, outline the investigative activities of the Hungarian police and their tasks in criminal proceedings.

Keywords: police, criminal proceedings, investigation, prosecution, reconnaissance, examination.

THE PLACE OF THE POLICE IN THE STATE ORGANIZATION (Introductory remarks)

In the post-compromise era of the development of the Hungarian public administration, the police gradually became a modern public administration body and gained a place in the public administration. There was a consensus among scientists that policing was part of the administration. During the socialist period, this situ-

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ation changed. The political system removed the police from civil administration, placed them under direct political supervision, and kept them out of the state of law for a long time. When the regime changed, the legislation wanted to exclude the police from the civil administration and wanted to give it a specific indirect interpretation between the police and the national defense, so the term law enforcement moved into the terminology. In fact, in the study of Western European police, it can be concluded that there is a party-state police model.[1] However, the police have a different role than the military. Therefore, in a modern constitutional democracy, there is a sharp difference between the military and the police.[2]

The XX of 1949 Act (former Fundamental Law)[3], which is essentially a constitution modeled on the Soviet model, defined four main types of organization: state power, state administration, court, and prosecutor's office. The fifth type of organ, not yet named in the constitution, was violent organizations, including the armed forces, armed bodies, and law enforcement agencies. The basic rules for the armed forces and the police were not included in the constitution until the 1989 amendment.[4] Act XXXIV of 1994 on the Police (hereinafter: Rtv.)[5] adoption of the law created a special situation. Undoubtedly, the legislation once again gave legitimacy to the police and created a transitional state regarding the position of the body in a state organization. He did not return to the solution before 1945, and he did not declare the integration of the police into the civil administration organization. He only said that the police perform state administration tasks, but the whole organization is a state, armed, law enforcement body. In addition to the detailed definition of powers, the legislator did not change the whole organization's legal status and the military nature of internal relations. This approach was subsequently followed by Act XLIII of 1996 on the Conditions of Employment of Professional Members of the Armed Forces (Hszt.)[6] also confirmed by law.[7] After the establishment of their constitutional framework, law enforcement agencies faced a double challenge: they had to guard public order and public safety effectively, but in possession of a legitimate monopoly on violence, their actions had to comply with the rule of law.[8]

1. THE ROLE OF THE POLICE IN LAW ENFORCEMENT

Law enforcement is a public activity that responds to crime as a social mass phenomenon. Law enforcement is the area-and time-bound, including only detect-

1 B. Danielisz, T. Jármy /2008/: *Rendészet Európában*, Budapest, p. 29.

2 G. Finszter /2003/: *A rendészet elmélete*, Budapest, p. 65.

3 "Hungarian Gazette", no. 174/1949.

4 J. Papp /1998/: Rendvédelem vagy rendészet?, *Új Rendészeti Tanulmányok*, nº 1, p. 156.

5 "Hungarian Gazette", no. 41/1994.

6 "Hungarian Gazette", no. 44/1996.

7 L. Korinek /2006/: *Final study of the research*, Part of the research project FAPI_P: 1321/2005, supported by the National Crime Prevention Commission, entitled "Services provided by the law enforcement agencies of the Hungarian state to the private sector, opportunities for cooperation with civil security companies and NGOs, in the field of prevention", Budapest, p. 152.

8 G. Finszter /2008/: Víziók a rendőrségről, *Belügyi Szemle*, nº 1, pp. 10–41.

ing crimes and perpetrators defined by criminal law.[9] Approached from the point of view of criminal proceedings, law enforcement melts into a function serving the prosecution's side in terms of the principle of division of functions (Act CX of 2017 on Criminal Procedure, hereinafter: (Be.) § 1).[10] This principle imposes different obligations on each authority and protection in criminal proceedings.[11] While law enforcement dominates in the investigative phase, the judiciary will be the decisive factor in the judicial phase. Protection is, at best, a defining element of both main stages of the proceedings. It follows from the above that law enforcement serves the enforcement of the state's criminal claim, which can be identified in procedural law with the investigating authority's activities.[12]

The following steps have led to the development of the law enforcement function and modern forensics in terms of its historical aspects:

- nationalization of criminal claims. Public offices were born whose primary task was to learn about the past relevant from the criminal law's point of view, first the prosecutor, then the investigating judge, and finally the criminal police;[13]
- the development of natural science, which in the XIX century, it reached the level where theory and practice could become a means of learning about the past;
- the integration of the fundamental values of the rule of law with the previous ones, which ensured the fairness and humanity of the procedures by guaranteeing human rights, excluding the use of inadmissible methods.[14]

The three preconditions summarized above together formed the rule of law systems today, the Anglo-Saxon-based (but integrating more and more elements of the investigative principle) and the continental system based on the investigative principle (but incorporating more and more elements of the prosecution). It can also be called a mixed system.

Examining law enforcement's concept from a different approach, we can say that it is the activity of society aimed at reducing and combating crime.[15] The state determines exactly which acts it considers a crime: declares it a crime, and describes these human behaviors in the current penal code. Law enforcement does not involve official activity in violations and administrative proceedings but focuses mainly on

9 D. Čvorović, V. Vince /2020/: Police as an active subject of the reformed criminal legislation of Serbia – do we need more control, *Ugyeszek Lapja*, pp. 97–110.

10 "Hungarian Gazette", no. 99/2017.

11 D. Čvorović, V. Vince /2021/: Police as a subject of the prosecutorial investigation and criminal procedure code of the Republic of Serbia – in: *International scientific conference on tourism and security*, Hungary, (paper in press).

12 Zs. Fantoly, Á. Budaházi /2019/: *Knowledge of criminal procedure law I. Static part*, Budapest, p. 30.

13 M. Foucoult /1998/: *Forms of Truth and Justice*, Debrecen, p. 62.

14 G. Finszter /2005–2007/: *The theory and practice of forensic science in the light of criminal procedure reform. Research summary*, Budapest, p. 21, http://users.atw.hu/letoltes/krimjegyzet.doc, 2 November 2020.

15 J. Lakatos (ed.) /2005/: *Kriminalisztikai jegyzetek és tanulmányok*, Budapest, p. 7.

criminal offenses. In addition to designating acts that it considers to be prosecuted by criminal law, the state also designates law enforcement agencies through legislation. It generally also provides constitutional authority to perform these tasks. The Basic Law entrusts the police with law enforcement activities. As enshrined in the Basic Law, the police's basic task is to prevent and detect criminal offenses, protect public security, public order, and the state border order. Appears among the tasks of the police, from which the powers of the police criminal investigation authority arise (Act XXXIV of 1994 within Chapter I on the task, organization, legal status, and management of the police, Section 1 (2) 1 point).

About the tasks, the Police Act contains a list of all branches of the police service, where it is not specified which tasks, we consider to be independent law enforcement, crime prevention, public administration, or law enforcement tasks. This is because each of the traditional branches of service, as the law enforcement agency most closely linked to the concept of law enforcement, also performs public administration tasks, subject to procedures such as the investigation of extraordinary deaths or missing persons, just as the transport service has investigative powers. In the case of traffic offenses, its investigative bodies carry out detection and investigative tasks, that is to say, classic law enforcement tasks. 25/2013 on the powers and competencies of police investigative authorities (VI. 24.) of the Ministry of the Interior (hereinafter: Decree 25/2013. (VI.24.)[16] Of the Ministry of the Interior) lists in which criminal offenses the police authorities are entitled and obliged to act. However, investigative bodies also act and participate in other proceedings (administrative main proceedings, infringement proceedings), such as under the Police Act. In contrast, police bodies that do not have investigative powers are not open to criminal proceedings. In this sense, only the law enforcement functional organization attached to the criminal procedure has a subsidiary relationship with the other police functions. Public order and border police services detect violations and crimes in their law enforcement functions, but they cannot prosecute them. Primary police can be considered those bodies that exercise public power to maintain security outwardly, which includes the listed branches of service and does not include functional bodies.[17]

About the police's organization and task system, it is uniformly in the service of law enforcement. Within its organization, the law enforcement task's exclusive performance may appear due to the division of labor and the organizational structure. The concept of law enforcement shows some overlap with the concept of justice. Law enforcement is part and parcel of justice, providing a framework for judicial accountability where the proceedings are lawful and meet the rule of law's requirements.

It also needs to be clarified, which the state authorizes bodies to conduct criminal proceedings and carry out the detection and investigation of criminal offenses outside the police. Law enforcement can be identified in terms of criminal proceed-

16 Decree of 25/2013 on the powers and competencies of police investigative authorities. (VI. 24.) Ministry of Interior.

17 Z. Balla /2014/: A rendészet kérdései, *Belügyi Szemle*, n^{o} 10, p. 17.

ings by the pre-trial investigation. Although, as I explained earlier, law enforcement is a more diverse activity than law enforcement, it can be captured in criminal work, that is, in investigations.

If we examine the problems of the police and the police, from the point of view of the administrative or law enforcement nature of the police, the work of Móric Tomcsányi, who further modernized the thoughts of Győző Concha on the concept of the order, should be mentioned in the 1930s. In his theory, policing is a purely administrative function. Order is a dynamic and static state, a process in which nature, society, and the state are intertwined, characterized by internal necessity, justification, and legitimacy. "There is no other state and social phenomenon whose nature is as different in science and life as policing".[18]

As can be seen, they focus primarily on the administrative role of the police. According to the statement of Károly Kmetty a hundred years ago, law enforcement is distinguished from other branches of administrative authority by the monopoly of physical violence.[19] Lajos Szamel is already more dominated by law enforcement. The police is a state activity aimed at preventing disturbance of public order, prevention of directly disturbing behavior, and restoration of disturbed order.[20] Comprehensive research on the entire system of public administration also found that in Hungary, in the period between 1867 and 1945, the police were part of the civil administration. Military dependencies did not prevail, and the state did not vindicate a power to control it. It could have involved law enforcement operating within a social and private organizational framework.[21]

Therefore, law enforcement agencies are all investigative authorities that can conduct investigations on their own or at the prosecutor's request in criminal proceedings. The investigation authorities' task is defined as the detection of criminal offenses, the search for and provision of evidence, and the detection of the facts to such an extent that the accuser can decide whether to prosecute.[22] Investigation and prosecution presuppose other knowledge, which prosecutors agree with: "Investigation is a complex profession (profession) requiring extremely complex knowledge and activity, which cannot be performed only incidentally in addition to other prosecution duties."[23]

The judiciary includes prosecutorial and judicial activities in criminal matters, prosecution, and adjudication, while for the prosecuting organization authorized to represent the prosecution, Act CLXIII of 2011 applies, under the (Prosecutor's Office) Act,[24] the Public Prosecutor's Office also acts as a law enforcement organization, with a certain degree of exclusive jurisdiction, to detect specific criminal offenses and create the conditions for prosecution.

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18 Gy. Concha /1901/: *The nature and position of the police in a free state,* Chair reservation dissertation, p. 17.

19 K. Kmetty /1907/: *Handbook of Hungarian administrative law,* Budapest, p. 323.

20 L. Szamel /1990/: *Theoretical bases of the police and the police's legal regulation,* Budapest.

21 L. Korinek /2006/: A rendőrség pártirányítása 1956–1989, *Rendészeti Szemle*, nº 10, p. 24.

22 Gy. Bögöly, Á. Budaházi, Cs. Csányi, J. Sléder /2010/: *Büntetőeljárási jegyzet,* Budapest, p. 277.

23 L. Láng /2003/: Investigative Supervision, Investigative Management and Forensics, *Belügyi Szemle*, nº 7–8, pp. 19–30.

24 "Hungarian Gazette", no. 143/2011.

Investigating authority in addition to the prosecutor's office, including law enforcement

- National Tax and Customs;
- Hungarian citizen on a Hungarian merchant ship and civil aircraft abroad – Btk.[25] In the case specified in Section 3 (2) and Section 4 – the ship's commander or the aircraft due to a criminal offense committed by anyone – the captain;
- EUROPOL may set up a joint investigation team with the participation of the Member States of the European Union, provided that certain legal conditions are met;
- In military criminal proceedings, the military prosecutor and the competent commander may also investigate.

Public law crimes against the population, given that they are not special subjects, are prosecuted by the police, so the majority of the lay public, when talking about law enforcement, usually means the police's work.

2. THE POLICE AS AN INVESTIGATIVE AUTHORITY

Act Be. significantly changed the criminal procedure both in terms of structure and content. While the 1998 XIX Act (hereinafter: former Be.)[26] followed the system of previous (socialist) criminal procedure laws, so the traditional investigation – (intermediate procedure) – court procedure system regulated criminal procedure, while the current law allows much wider scope for criminal proceedings under the agreement, and the admission of the accused (acceptance of the facts) allows for several simplifications. Thus, the process (possible result) of the criminal procedure is much more complicated and diverse than previously described by a linear diagram. The investigating authority and the police have been given a prominent role in the new regulation.[27] "As a general investigative authority, the bodies of the police body set up to carry out general police tasks shall act as investigative authorities".[28] The former Be. designated the police as a general investigative authority. The change was necessary because the police have bodies that do not conduct investigations, as is typically the public service case. The designation of a general investigative authority means that, as a general rule, the investigation is carried out by the police's investigative bodies. Another investigating authority is the National Tax and Customs Administration only if an offense has been committed which the Be. is specifically named by law as falling within its competence. The police are divided into central, regional, and local investigative authorities. The police, therefore, have jurisdiction over all crimes that do not name Be. Act assigned to the aforementioned body. This means that more than 95% of the clever are under police authority, so investigative tasks have to be done for them. However, responsibilities are also divided within the

25 Btk is Hungarian Criminal code, "Hungarian Gazette", no. 92/2012.

26 "Hungarian Gazette", no. 37/2002.

27 Cs. Herke /2018/: *Criminal Procedure Law*, Pécs.

28 Be. Section 34 (1). §.

police. On the one hand, we can talk about the traditional triple structure, according to which the police divide cases into central, regional (county), and local (typically city) investigative authorities.

2.1. Powers and competence of the police as an investigative authority

The current 2017 CX. and the preceding XIX. the laws on the criminal procedure are in continuity with the provisions of the previous procedural laws, ie, the powers and competences of the investigating authority are not regulated by the procedural law itself, but its regulation is placed in the minister's competence supervising the police. Doing so gives the executive the right to adapt the forces available to carry out investigative tasks, and thus law enforcement, much more flexibly and effectively to changing criminal circumstances. "The specialty of the regulators of the powers of the investigating authority is that the tasks related to criminal matters are shared partly within the police bodies, but also partly between the police bodies and other bodies that also act as investigative authorities".[29] This power has been exercised regularly by the authorities over the years, in many cases by modifying its own rules of competence and jurisdiction.

Competence of the crime committed have a completely different regulatory effect concerning the distribution of workload. As long as the competence adapts and divides the cases to each level, so to speak, according to their "importance" – thus deciding what we consider to be important and less important – the competence divides the affairs between the bodies at the same level according to the administrative, territorial logic of the state administration – matters between individual bodies. In an effective distribution investigation of cases, jurisdiction is primarily related to the "classification" of cases as important. On the other hand, jurisdiction may draw attention to the differences between the territorial characteristics of each local body.

The current Decree of 25/2013. (VI.24.) Of the Ministry of the Interior, the structure of the investigative authorities is as follows:

Local investigative authorities have become:

- criminal, traffic, and public order bodies of police stations;
- police stations and police stations in police stations;
- Danube, Tisza – Balaton Water Police Police Headquarters.

Territorial investigative authorities:

- County RFK, criminal police departments of the Budapest Police Headquarters;
- National Investigation Bureau of the Standby Police (regional multi-county jurisdiction);
- Airport Police Directorate.
- Central Investigative Authority: the National Police Headquarters (ORFK).[30]

29 T. Szabóné, Nagy /1970/: *Simplification of criminal procedure,* Budapest, p. 119.

30 Decree of 25/2013. (VI.24.) Of the Ministry of the Interior, Section (3) – (7). §§.

The regulation of the powers and competences of the investigating authority so shows the following characteristic features:

It is characterized by a three-level division of labor where the vast majority of investigations fall within the local investigating authority's remit. This ratio depends on the content of the annexes to the legislation and the Be. varied depending on the type of case referred by law to other investigating authorities, this was approx. Accounts for 90–95% of investigations based on the 2019 Crime Statistics.

- the additional annexes specify the types of offenses for which the territorial investigative authorities are responsible, which are not always determined based on the social danger posed by the categories of criminal offenses;
- deprivation of jurisdiction is general upwards in the hierarchy, with only one obstacle to the regulation: once a higher body has taken over a case, it can no longer be returned, which covers the thresholds for property crimes. Otherwise, it places qualified cases in the Penal Code in each annex, the police forces at each territorial level;
- Paragraph (4), which may allow the Chief of Police to designate the police headquarters in his territory for proceedings for other reasons, even in the case of a matter falling within the competence of the capital (capital);
- after the 1990s, legislative powers are transferred to higher-level investigative authorities, not in terms of the regulators of the courts but terms of "law enforcement",
- concerning the delegation of specific investigative tasks, higher investigative authorities in the hierarchy are not obliged to take over investigations from lower investigative authorities;
- as a general rule, the investigation of crimes committed in places with a low risk to society is not dealt with separately by law.

The jurisdiction regulation in the light of the distribution system shows that local investigative authorities often provide many cases with less human resources than territorial or priority bodies.

Unfortunately, the situation is no better in terms of jurisdiction. Each local investigating authority performs different law enforcement tasks in its territory, with different population numbers per case and different crime conditions. If these data were reflected in a given investigating authority's performance indicators, the indicators they "produced" could indeed be compared. In the decentralized law enforcement model, adapting to the needs of local public security, the development of more interoperable force distribution and redeployment system independent of the area of competence is also hindered by a hierarchical organizational structure that centrally takes the decision away from local public security needs. Under the regulation, higher-level bodies generally have a lower workload and a wider or more room for maneuver and powers to deal with desirable and undesirable matters more easily. All of this has had a conservative effect on the trend that has led to the migration of valuable criminal labor to higher organizational levels and the declining professional motivation of high-performing, routine, and experienced investigators "trapped" at local bodies.

2.2. Duties of the police in criminal proceedings

The investigating authority carries out a preparatory procedure and an investigation, divided into reconnaissance and examination, in order to detect criminal offenses.[31] Its activity is characterized by its independence in the preparatory proceedings and the reconnaissance; in these stages of the proceedings, the prosecutor's office exercises only legal supervision over it. According to the generally accepted view in continental criminal justice systems, including in Hungary, the prosecutor is *dominus litis*, the lord of the investigation in criminal proceedings.[32] The preparatory procedure in the course of criminal proceedings is an optional procedure, which covers the fact that it is ordered if it is not possible to take a reasonable position on whether there is a suspicion of a criminal offense. Nevertheless, the prosecutor also has a major role to play here, with mandatory reporting every 2 months. Most activities are subject to their license, such as the use of a covert detective or a sham purchase. The "preparatory procedure" is regulated by law also classifies it within the framework of the criminal proceedings,[33] but if it does not result in suspicion of a criminal offense, the preparatory proceedings are set out in Be. it shall be terminated.[34] The preparatory procedure is also special because it involves or may involve police bodies that do not otherwise have investigative powers, ie. They can no longer carry out the investigation. The Police Act ensures their legitimacy by deploying powers to the police's internal crime prevention and detection body (National Defense Service) and the counter-terrorism body (Counter-Terrorism Center). Otherwise, the provisions on the investigating authority shall apply accordingly.[35] Thus, if they conclude the preparatory process, typically using covert means such as wiretapping or covert research, that no crime has taken place, they do not initiate an investigation with the competent authorities. It is linked to the purpose of the preparatory proceedings, that is to say, to proceed only if the information available is not sufficient to establish suspicion of a criminal offense and it is reasonable to assume that the suspicion of a criminal offense can be determined based on the preparatory proceedings.[36]

So, the police's investigation department should be thought of as police within or next to the police. At local level bodies (police headquarters), they work as an independent but special status department (criminal, investigative); the National Bureau of Investigation is responsible for investigating and investigating priority cases. Besides, an internal anti-corruption body, the National Defense Service, which specializes in the use of covert devices, is also a police force, which will no longer be the investigating authority, although also a police force prosecutor's office.

The preparatory procedure is, therefore, not a necessary part of the criminal proceedings. Still, the investigation is in most cases indispensable, except for private

31 Be. Section 31. §. (1).

32 Á. Farkas, E. Róth /2007/: *The Criminal Procedure*, Budapest.

33 Be. Section 339. §. (1).

34 Be. Section 346. §. (1) (a).

35 Be. Section 94 §.

36 Be. Section 340 (1) – (2) §.

prosecution cases, where the complaint must be made immediately in court.[37] The condition for ordering an investigation is therefore that there is a suspicion that a criminal offense has been committed, the investigating authority of the given police has the competence and jurisdiction for the given case; there is no procedural obstacle such as childhood, or statute of limitations, or other grounds for refusal, e.g., lack of suspicion. In the latter case, it is possible to conduct a preparatory procedure instead of initiating an investigation.[38]

Basically, the independence of the police in investigations prevails. The Act innovation to differentiate between reconnaissance and examination within the main investigative phase. The reconnaissance lasts from the ordering of the investigation to the suspect's interrogation, which is replaced by the examination. The investigating authority acts independently during the reconnaissance,[39] which – among other things, it also means that in the course of the proceedings, it is the responsibility of the member or head of the investigating authority to exercise each right of the investigating authority and to fulfill each of the obligations incumbent on the investigating authority.[40] The police's role is aligned with the investigative tasks, so during the examination, it must detect the crime and the perpetrator's person to the extent necessary to establish reasonable suspicion and search for and provide the means of proof. Besides, during the investigation, he must obtain, independently or based on the prosecutor's instructions, the necessary means of proof, which, of course, he proposes and then implements.[41]

Although there is already prosecutorial control in the detection phase, the police also carried out the investigation tasks. The only difference is that, as a general rule, procedural acts can only take place based on measures taken within the management powers of the public prosecutor's office. In the investigative phase, the substantive acts of proof are carried out by the police; they are most demanding, so it is also a police task to provide the participants in the proceedings. This is often difficult, especially during the coronavirus epidemic period.[42]

2.3. The role of the police in the examination

The classic investigative activity that has so far followed the suspect's interrogation is already as much an alternative to pursuing criminal proceedings as it is to use any of the diversion methods. These alternatives, especially mediation, are suitable for reducing the judiciary's bureaucratic nature and are also important from a crime prevention perspective.[43] As already mentioned, the act of suspicion

37 Be. Section 348 (1) §.

38 Zs. Fantoly, Á. Budaházi, *ibid*., p. 24.

39 Be. Section 31 (2). §.

40 Attorney General's Office: REMINDER on certain aspects of the application of the Criminal Procedure Code. (AGO LFNIGA//142/2019.). AGO LFNIGA//142/2019. 33.§.

41 Be. Section 348 §.

42 Cs. Herke, B. Sándor /2020/: Some problems of the investigation during the emergency due to the new coronavirus, *Rendőrségi Tanulmányok*, 3(1), p. 5.

43 A. Kiss /2016/: On the efficiency of domestic criminal proceedings, *Criminological Studies,* nº 53, p. 89.

alone, as a part. The prosecution phase's independence, the separate document separation separating the investigation from the prosecution phase, and the separate institution for ordering further investigation have been abolished. The examination is closed by deciding to close the investigation. When the reconnaissance becomes an examination, the range of decisions related to collecting, recording, and evaluating evidence is transferred from the police to the prosecutor's office. Consequently, during the examination, the prosecutor's office must determine the scope and manner of obtaining evidence, taking into account the evidentiary procedure requirements to be conducted in the court proceedings already following the indictment.[44]

Consequently, during the reconnaissance, the prosecutor's office must determine the scope and manner of obtaining evidence, taking into account the evidentiary procedure requirements to be conducted in the court proceedings already following the indictment. With this solution, the legislator has fulfilled two objectives at the same time: on the one hand, the prosecutor can no longer rely on errors of investigation in cases brought before the court, and on the other hand, he will only prosecute cases for which no substantive objection can be raised. According to the wording of the ministerial justification, Be. to speed up and simplify criminal proceedings, it places special emphasis on the institutional system of diversion.[45] At the same time the defense may initiate the prosecution of a prosecutor's measure or decision without any formal coercion. The rejection of the initiative received from the defense side is not tied to the form either; there is no right of appeal against the rejection decision. However, the adoption of the envisaged measure or decision shall be subject to a written form, which may be recorded in the minutes of the suspect's questioning.[46]

The basis of the introduced institutional system is that the possibilities of termination under the substantive provision of the prosecutor's office (mediation procedure, conditional suspension of the prosecutor's office, the decision on a specific method of prosecution) are basically tied to the confession, prior or subsequent consent of the accused. The Be. by merging the prosecution into the examination phase, it has taken a significant step towards speeding up the proceedings by bringing forward decisions at the prosecutor's disposal. With the prospect of prosecutorial action, Be. going beyond this directly creates the possibility for the prosecution and the defense to act as initiators to decide to close the proceedings predictable.[47]

The Public Prosecutor's Office may make the following decisions after questioning the suspect:

- the prospect of a prosecution measure or decision;
- initiating an agreement;

44 V. Vári /2019/: Diversion and the relationship between the prosecutor and the investigating authority in the investigation – in*: III. International Scientific Conference on Tourism and Security* (Zs. Márton, K. Németh, E. Péter, eds.), Nagykanizsa, pp. 52–62.

45 Zs. Fantoly, Á. Budaházi, *op. cit.,* p. 47.

46 AGO LFNIGA//142/2019. 402.§.

47 Ministerial justification for § 404 of the Be.

- suspension of the proceedings to conduct mediation proceedings;
- conditional suspension by the prosecutor;
- termination of the proceedings for other reasons;
- indictment;
- performing a procedural act within the framework of the investigation;
- separation, amalgamation, transfer of cases.[48]

Compared to the previous regulation, there are several new elements in the current regulation. The prospect of a prosecutor's measure and decision in point (a) is a mix of individual forms of prosecutor's decision, a kind of combined blend that the law offers in exchange for admitting the suspect and optionally fulfilling additional conditions. Just as in the course of the classical investigative activity, the emphasis is on the police in connection with substantive acts of evidence, so the legislator intended a serious role for him in the implementation of the alternative terminating the listed procedure. 100/2018 on the detailed rules of the investigation and preparatory procedure. (VI. 8.) Government Decree (herinafter: NYER),[49] an initiative to use opportunistic solutions may come from the suspect and his counsel, but also the investigating authority. A short obligation to provide information must be complied with by the police, and the prosecutor's office must also be notified. If this happens during the interrogation, it will be interrupted and resumed later (on the same day or another deadline) depending on how the prosecutor decided. The latter is not even documentable, so it does not result in an additional administrative burden. Furthermore, if the investigating authority considers that applying the said solutions is justified or expedient, it only needs to inform the prosecutor's office.[50] The two-way information will therefore mean, on the one hand, the handing over of a printed text and a short oral interpretation towards the debited side. In the meantime, this will be done in writing or orally to the prosecutor and will include the planned date of the suspect's interrogation, the action considered reasonable or appropriate, and the reasons for it. If this occurs on its own, there is no obligation to inform the suspect and the defense counsel. If the prosecution supports the initiation of the investigating authority or the charged party, it prepares a written initiative or communicates its decision orally to the investigating authority even immediately. Thus, in its conclusion, the investigating authority participates in such a form as to hand over to the accused side the initiative prepared by the prosecutor's office. If it was received orally or briefly, it must be recorded in the minutes of the procedural act and sent to the prosecutor.[51]

48 Be. Section 391 (1). §.

49 Government Decree of 100/2018 on the detailed rules of the investigation and the preparatory procedure. (VI. 8.) (NYER).

50 V. Vári /2017/: The change in the role of investigation in the new Be. Code – in: *II. International Scientific Conference on Tourism and Security* (N. Kiglics, ed.), Nagykanizsa, pp. 128–138.

51 NYER. Section 156–158. §§.

CONCLUSION

The police play an extremely complex role in Hungarian criminal proceedings, and their importance and contribution to the judiciary's success are extremely high. On the one hand, the police and law enforcement agencies detect and register the largest proportion of crimes. The police's vast majority of investigations are also conducted, as are covert means used by the police to establish suspicion. In addition to fact-finding, obtaining and documenting all means of proof, relevant criminal data and information, and preparing paper and electronic versions of records are also police competence. Before or after the suspect is questioned, after the case enters the reconnaissance phase, the police are also tasked with preparing and conducting the investigative work necessary to carry out alternatives to prosecution in the event of a confession. So, with the investigation work, it is quasi to do the preparatory work for the prosecution. If this is not the case, compile a complete set of documents that would enable the prosecutor to make a substantive motion at the court's preparatory hearing solely based on what constitutes a kind of indictment, the defendant to decide to waive the trial rather than undertake lengthy and uncertain court proceedings. It can be considered a serious reform that the legislator has correctly recognized that diversion tools to speed up the procedure and improve efficiency is a necessary step.[52] He made the appropriate legal, institutional changes, including splitting the investigation into two parts, ensuring that examination were not unnecessarily protracted and ended on an optional basis without further court proceedings if the accused confessed, testified, and intended take the initiative. It also similarly widened the co-operation system to speed up proceedings and assess the role of the court preparatory hearing. Undoubtedly, the police perform their law enforcement duties as part of the executive branch, embedded in a strict hierarchy, all the way through the top-level management of the ministry to the police closest to the people. We cannot talk about independent organ operation and activity due to the lack of decentralization. As a result, the emergence of good practices that encourage simplification can be almost ruled out from lower levels. Rather, the unification and centrally managed and controlled work of the investigative authorities was a typical trend for the Hungarian investigative authorities. The administrative part of the work had to be performed in an IT system operating according to pinpoint regulations. As a result of centralized and standardized investigations, the order and practice of the procedure are largely influenced by the governing body's expectations, thus affecting the organization of the work organization and thus the speed and quality of law enforcement work.[53] Determining the quantitative and qualitative expectations to be met by the lower-level bodies investigating in the given period. Based on the principle of legality – officiality, which is the decisive factor in initiating an investigation, the police are forced to conduct investigative proce-

52 V. Vári /2014/: *Efficiency in the investigation – in:* III. Interdisciplinary doctoral student conference (A. Schaub, I. Szabó, eds.), University of Pécs, Doctoral Student Self-Government, pp. 177–195.

53 S. Nyíri /2003/: The relationship between the prosecutor's office and the investigating authorities after the entry into force of the Criminal Procedure Act, *Belügyi Szemle*, vol. 51, n° 7–8, p. 64.

dures in cases – except on rare occasions – regardless of their danger to society. The legitimate consequence of this is that minor cases commit, slow down, and limit the efficient use of human and material resources. This is significantly related to the legality and public prosecution role of the prosecutor in filtering.[54]

REFERENCES

Balla Z. /2014/: A rendészet kérdései, *Belügyi Szemle*, nº 10.

Bögöly Gy., Budaházi Á., Csányi Cs., Sléder J. /2010/: *Büntetőeljárási jegyzet*, Rejtjel Kiadó Ház, Budapest.

Concha Gy. /1901/: *The nature and position of the police in a free state,* Chair reservation dissertation.

Čvorović D., Vince V. /2020/: Police as an active subject of the reformed criminal legislation of Serbia – do we need more control, *Ugyeszek Lapja*.

Čvorović D., Vince V. /2021/: Police as a subject of the prosecutorial investigation and criminal procedure code of the Republic of Serbia – in: *International scientific conference on tourism and security*, Hungary, (paper in press).

Danielisz B., Jármy T. /2008/: *Rendészet Európában*, Duna Palota Kulturális Kht., Budapest.

Fantoly Zs., Budaházi Á /2019/: *Knowledge of criminal procedure law I. Static part*. Dialóg Campus Publishing House, Budapest.

Farkas Á., Róth E. /2007/: *The Criminal Procedure,* Complex Jogi Kiadó, Budapest.

Finszter G. /1996/: A bűnüldözés működési modelljei – in: *Kriminológiai ismeretek* (Gönczöl K., Korinek L., Lévai M., eds.), Budapest.

Finszter G. /2003/: *A rendészet elmélete*, KJK-Kerszöv Kiadó, Budapest.

Finszter G. /2005–2007/: *The theory and practice of forensic science in the light of criminal procedure reform,* Research summary, Budapest, http://users.atw.hu/letoltes/krimjegyzet.doc.

Finszter G. /2008/: Víziók a rendőrségről, *Belügyi Szemle*, nº 1.

Foucoult M. /1998/: *Forms of Truth and Justice*, Latin betűk, Debrecen.

Herke Cs. /2018/: *Criminal Procedure Law,* University note, Pécs.

Herke Cs., Sándor B. /2020/: Some problems of the investigation during the emergency due to the new coronavirus, *Rendőrségi Tanulmányok*, 3(1).

Kiss /2016/: On the efficiency of domestic criminal proceedings, *Criminological Studies*, nº 5.

Kmetty K. /1907/: *Handbook of Hungarian administrative law,* Published by Zsigmond Politzer, Budapest.

Korinek L. /2006/: A rendőrség pártirányítása 1956–1989, *Rendészeti Szemle*, nº 10.

Korinek L. /2006/: *Final study of the research,* Part of the research project FAPI_P: 1321/2005, supported by the National Crime Prevention Commission, entitled "Services provided by the law enforcement agencies of the Hungarian state to the private sector, opportunities for cooperation with civil security companies and NGOs, in the field of prevention", Budapest.

Láng L. /2003/: Investigative Supervision, Investigative Management and Forensics, *Belügyi Szemle*, nº 7–8.

54 L. Miskolci /2001/: Lessons from a conference, or is the prosecutor a key player in further developing Hungarian criminal proceedings, *Ügyészek Lapja*, nº 1, p. 20.

Miskolci L. /2001/: Lessons from a conference, or is the prosecutor a key player in further developing Hungarian criminal proceedings, *Ügyészek Lapja*, n° 1.

Nyíri S. /2003/: The relationship between the prosecutor's office and the investigating authorities after the entry into force of the Criminal Procedure Act, *Belügyi Szemle*, vol. 51, n° 7–8.

Papp J. /1998/: Rendvédelem vagy rendészet?, *Új Rendészeti Tanulmányok*, n° 1.

Szabóné T., Nagy /1970/: *Simplification of criminal procedure,* Economic and Legal Publishing House, Budapest.

Szamel L. /1990/: *Theoretical bases of the police and the police's legal regulation*, Hungarian Academy of Sciences Political Science Program Office, Budapest.

Vári V. /2014/*:* Efficiency in the investigation – in: III. *Interdisciplinary doctoral student conference* (Schaub A., Szabó I., eds.), University of Pécs, Doctoral Student Self – Government.

Vári V. /2017/: The change in the role of investigation in the new Be. Code – in: *II. International Scientific Conference on Tourism and Security* (Kiglics N., ed.), Nagykanizsa, University of Pannonia.

Vári V. /2019/: Diversion and the relationship between the prosecutor and the investigating authority in the investigation – in*: III. International Scientific Conference on Tourism and Security* (Márton Zs., Németh K., Péter E., eds), Nagykanizsa, University of Pannonia.

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POLICIJA U MAĐARSKOM KRIVIČNOM POSTUPKU

REZIME

Policija ima ključnu ulogu u mađarskom krivičnopravnom sistemu. Pored nadzora nad zakonitošću i efikasnog profesionalnog upravljanja gonjenjem, policija obavlja i istražne radnje i ima autonomiju postupka u pokretanju različitih proceduralnih metoda u fazi izviđanja i ispitivanja. Istraga se sastoji od izviđanja i istrage. Suprotno tome, u fazi ispitivanja, oni rade pod rukovodstvom tužilaštva. Pored opšte policije, u zemlji postoje posebna policijska tela koja nemaju istražna ovlašćenja, ali mogu da učestvuju u pripremnom procesu u početnoj fazi istrage, naročito prikupljanjem podataka za utvrđivanje sumnje za krivično delo. Takva tela su Nacionalna služba odbrane za unutrašnju korupciju i terorizam i Centar za borbu protiv terorizma. U našem radu, pružamo pregled uloge policije u državnoj organizaciji. U skladu sa tim, analiziramo ulogu policije u sprovođenju zakona, navodimo istražne aktivnosti mađarske policije i njihove zadatke u krivičnom postupku.

Ključne reči: policija, krivični postupak, istraga, gonjenje, izviđanje, ispitivanje.

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