

**Law School**  
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**Endre Nyitrai**  
**Instruments of Criminal Law and Forensics in**  
**Combating Organized Crime**

**Main points of the doctoral thesis**

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## **I. A SUMMARY OF THE OBJECTIVES OF THE PRESENT RESEARCH**

Professional points of view related to organized crime varied before the changing of the regime. The subsequent period, however, dispelled all doubts, since it created the criminogenic conditions of crime becoming more organized, along with its qualitative changes. Criminal experiences made it obvious that organized crime had started to become more concentrated in Hungary. A social sub-culture has emerged whose annihilation and control are imposing severe problems.<sup>1</sup> The problem of organized crime appeared in European countries in the 1970s and 1980s due to the spreading of drug trafficking. Before that period organized crime had been regarded as a foreign phenomenon, and the first researches date back to those years.<sup>2</sup>

### **1.1. The necessity of counteracting organized crime**

Organized crime creates growing challenges for the society, as well as for the law enforcement and justice system. It aims at enhancing its legal economic activities, achieving more influence, and pursuing its interests beyond economic affairs, furthermore it facilitates the maintenance of black and grey market detrimental to the overall national economy, and imposes limitations on fair competition in the market.<sup>3</sup> The situation is further aggravated by the fact that in most cases the crimes committed by criminal organizations remain latent. Usually traditional investigative methods can only call people to account who are positioned at the lowest level of the hierarchy of the criminal organization. However, these people can be replaced any time, so the criminal organization can keep up its continuous operation. It is able to substitute the missing links since organized crime is characterized by constant change and renewability. Forensic recommendations which has been developed to establish the statement of facts are essential for conducting the investigation and prosecution. Forensic methods and principles, which are closely related to the statutory definition, play an important role in revealing the crimes committed by criminal organizations (ie. reconstructing past events). Growing crime rates and the enhancement of its inner structures brought about the social

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<sup>1</sup> Argument for Act LXXV of 1999 on regulations of counteracting organized crime and some of its related phenomena, and on related amendments.

<sup>2</sup> KLEEMANS, Edward R.: Organized Crime, Transit Crime, and Racketeering, Crime and Justice, Vol. 35, No. 1., Chicago, 2007, p163–164

<sup>3</sup> Government decision 1035/2012. (II.21.) on Hungary's National Security Strategy

demand for counteracting organized crime more efficiently. In Hungary after the changing of the regime, the explosive growth of criminal activities and the enhancement of its structural integrity at the end of the 1990s led to the societal need for counteracting organized crime more efficiently. This objective was supported by the implementation of the new legal instrument in 1997: „establishing a criminal organization” as an independent delict, and also by the legal definition of the term „criminal organization”. Organized crime has no generally accepted definition.<sup>4</sup> The reason for the great number of different definitions is on one hand the fact that organized crime takes different shapes in each and every country. On the other hand the operation of the organizations centre around different kinds of crimes.<sup>5</sup> The fight against organized crime can be approached from the perspectives of criminology, forensics and also criminal law. In everyday language organized crime is understood as the mafia, whereas from the perspective of criminal law (substantive law) the definition of a criminal organization is *a group consisting of three or more individuals operating for a longer period in a synchronized manner, whose goal is to commit crimes intentionally and can be punished by a term of imprisonment of five or more years*. The difference between the definition and aspects of organized crime outlined by criminology and the legal term defined by the criminal substantive law has been presenting problems for a long time in forensic sciences, due to the differing points of view. It is absolutely necessary that an unambiguous legal definition should clarify what qualifies as an organized criminal group.<sup>6</sup> To support the accurate and unified understanding of the term „organized criminal group” the legislature authentically makes it applicable to all, and the application of the whole of the Hungarian Criminal Code (hereinafter CrC) is generally governed by it.<sup>7</sup> In my view it would be essential that the mandatory and optional criteria listed by the Group of Specialists on Criminal Law and Criminological aspects of Organized Crime, Council of Europe (PC-S-CO) should be taken into account in combating organized crime. For the sake of detection and obtaining evidence it is crucial to work out scientifically proven forensic instruments and

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<sup>4</sup> BROADHURST, Roderic\_GRABOSKY, Peter, ALAZAB, Mamoun\_BOUHOURS, Brigitte and CHON, Steve: An Analysis of the Nature of Groups engaged in Cyber Crime, International Journal of Cyber Criminology January-June 2014, Volume 8 (1): 1–20.

<sup>5</sup> GELLÉR Balázs József: A szervezett bűnözés arcai (Fiatal büntetőjogászok tanulmányai a szervezett bűnözésről) Gondolatok a büntetőjog jelentőségéről a szervezett bűnözés elleni fellépéssel kapcsolatban. Szerk.: Gellér Balázs – Hollán Miklós. Rejtjel Kiadó, Budapest, 2004, 13. o.

<sup>6</sup> JÁMBOR Gellért (2016): A szervezett bűnözés és a kábítószer-kereskedelem kapcsolata, Jogi tanulmányok, 2016/1. sz., 142. o.

<sup>7</sup> SZOMORA Zsolt et al. (2013): Kommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez, In: Karsai Krisztina, Complex Kiadó, Budapest, 960-961. o.

methodology. However, the strategic views of the past have mainly focused on material evidence, and only a few studies have been written which could contribute to the development of the tactics of interrogation. We can state without doubt that the problems of organized crime and the ways of fighting it are high on the agenda.

## **II. REASONS FOR THE CHOICE OF THE THEME, OBJECTIVES AND METHODOLOGY OF THE RESEARCH, AND THE EXAMINATION AND ANALYSIS CONDUCTED**

My research was inspired by my decade long experience gained at the Organized Crime Unit of the police. I set the objective of depicting the fight against organized crime from the perspective of criminal law and other forensic aspects based on my gained knowledge and years of training and educating. In the Hungarian academic literature there have been many pieces of writing about organized crime, but only few of them focus on the aspects of criminal law, and most importantly its forensic aspects.

Based on the data acquired during the investigative proceeding, the ways of how a crime was actually committed can usually be clarified, however, in many of the cases it is insufficient when endeavouring to establish the statement of facts.

The objectives of this dissertation are as follows:

1. The examination of the legal history and the justification of the definition of „organized criminal group” in Hungary. Based on my hypothesis the current definition is used in such a broad sense that amendments (although not a complete redefinition) are necessary.
2. The backbone of my thesis details certain forensic and Criminal Code Procedures (instruments), presents the problems which emerge during the process, and also provides possible solutions to these problems.

The strategic views of the past decades have mainly focused on material evidence, therefore there have been only few works which could contribute to the development of tactics of interrogation. During the exploration of the forensic instruments, my main objective is to establish grounds for tactical bluff, and in an experiment I am going to highlight the negative impacts of influential questions that can affect the reliability of testimonies. According to my hypothesis the appropriate utilization of tactical instruments (bluff), coupled with pinpointing the influential factors can contribute to the successful detection of organized criminal groups.

3. By examining the existing data base, my objective is to explore the essential role and justification of „raster investigation”, because based on my hypothesis its enhancement can lead to successful prosecution and can contribute to overcoming the obstacles

emerging throughout the fight against organized crime. Based on the conclusions I am going to propose solutions how to make both detection and prosecution more effective through the creation of a unified investigative database.

4. A further purpose of this thesis is to propose the establishment of the Bureau of Combating Organized Crime which would employ professionally trained, experienced experts with forensic background, with the entitlement of independent investigative powers.

While creating this thesis both national and international literature, the guidelines of the Constitutional Court regarding the field, case-by-case court decisions, decisions in principle in criminal matters, and various perspectives of professional associations were all taken into account and analyzed, and the conclusions of other empirical case study researches were also utilized. Organized crime related statements taken from Hungarian and foreign academic literature were compared and analyzed from the perspective of both criminal law and forensic aspects. The information in the relevant, electronically recorded database (used in the fight against organized crime) was examined, and the significance of its utilization got defined. The mistakes made by the legislature, and the problems appearing in the practice of the courts were revealed, possible solutions for certain problems, and the establishment of the Unified Investigative Database was outlined (*de lege ferenda*).

During my research some empirical examinations were also conducted. The methodology applied was having in-depth interviews with police officers working in the field (intelligence officers, investigators, analyzers), prosecutors, judges and lawyers in order to reveal the most appropriate forensic instruments in the fight against organised crime (for instance, what they mean by tactical bluff, and what advantages and disadvantages its utilization might have), and also what factors endanger the detection of organized criminal groups. Regarding the fact that the interviewees underlined the influential factor as the gravest mistake which can jeopardize a successful prosecution, I found it essential to reveal the possible downsides of it, as it can affect the detection of organized criminal groups. The purpose of the experiment was to emphasize the negative effects of influential questions during a testimony, and to demonstrate its consequences. To make sure that the data shared by the interviewees and my statement are not sheer subjective opinions, I intended to demonstrate in a experiment how influencing actually works. While examining the influential questions, I conducted an empirical research taking the sample of 100 people, and later analyzed the correlations.

During the research I had further in-depth interviews with investigators and police chiefs working on organized criminal group related cases, in order to reveal

- the problems appearing in the process of intelligence collection and the difficulties of collecting evidence;
- what they actually mean by organized crime, and what professional aspects are taken into consideration when the investigative authorities decide that it is in their powers to conduct confidential data collection, and to execute or even take over criminal procedure (investigation).

The interviews were qualitative, semi-structured, face-to-face in-depth interviews.

When working on any research, resources from the internet cannot be neglected, nevertheless I made sure that my research be built on documents found on controlled websites.

While analyzing the theme from a practical point of view, I utilized the empirical results of my work gained while combating organized crime for nearly a decade.

### **III. A SUMMARY OF THE RESULTS OF THE RESEARCH, AND WAYS OF THEIR ACTUAL AND POSSIBLE APPLICATION**

As part of the research I examined the current criminal law in force related to organized crime, looked into the most common issues concerning its enforcement, and also the accumulated knowledge of forensic instruments that are used in combating organized crime. Below I am going to summarize the conclusions I have drawn, and my proposals de lege ferenda.

In the *Introduction* I stated that it is crucial to examine the fight against organized crime from the perspective of criminal law and other forensic aspects, because a specific social subculture has emerged, whose annihilation and control presents severe problems, challenges society as well as the law enforcement and justice sectors by striving to enhance its legal economic activities and influence. Moreover, the crimes committed by organized crime groups remain latent in most of the cases.

1. The first objective of the research is the examination of the development of the legal history and current justification of the definition of „organized criminal group” in Hungary. Since my presumption is that this definition is extended to a concept too broad, less structured crime-relations (criminal groups) can also be regarded as organized criminal groups, so this concept should be amended accordingly (although not completely redefined).

In order to do so, I analyzed the historical development of crime policy of combating organized crime, the related proposals (while taking national objectives, agreements, contracts, decisions, other documents about security strategy and EU manuals into consideration), furthermore I had a closer look at the national and international legal historical development of the terms „organized criminal group” and „criminal association”.

On examining the conceptual elements of „organized criminal group” in the CrC I gave a detailed description of the detectable conditions that help us identify an organized criminal group. I compared the term of organized criminal group to crime association, as well as the term of terrorist group.

In order to test my first hypothesis, I had interviews (with police officers, prosecutors, judges and lawyers), and also compared the current definition in force to the previous ones, plus analyzed court decisions and other studies. As a conclusion we can state that



the current concept in force needs amendment, because the concept of „organized criminal group” covers an unreasonably broad circle, thus opening the way to a broad application of the law. To enforce section 91 (1)-(2) of the Hungarian CrC., I consider it essential that we should include one of the supplementary aspects outlined by the PC-S-CO, so it would make it possible for the „mafia-type and white collar” organized criminal groups to be adjudged more severely under the criminal law. (Possible criteria: all the participants have specific jobs or roles; a form of inner discipline or control has evolved; applying force or other methods in order to threaten someone; they influence politics, media, public administration, law enforcement authorities, administration of justice and economic life; application of trade or other business forms; money laundering; international cooperation.) The elements listed in the concept of „organized criminal group” should be supplemented by some of the possible criteria described by the PC-S-CO, on condition that one criterion should be detected in the operation, so the criminal group could pass as an „organized criminal group”.

2. The second objective of the research was to examine how the appropriate tactical instruments (bluff) can contribute to the successful detection and prosecution of organized criminal groups, and to reveal whether influential questions have any impact on the efficacy of the investigative proceeding.

*A gained testimony can outline the organizational structure of an organized criminal group, and can be the beginning of an information flow which has the potential to lead to the prosecution of other members and leaders of the criminal group, like some domino effect. The domino effect is usually ignited by the weakest link in the chain by his or her testimony, which can contribute to taking measures to investigate. Tactical bluff can normally be utilized in the case of each and every crime, however, based on my conclusion, it has great significance when it comes to investigating organized criminal groups, since we can acquire information during an interrogation that were unknown to the authorities before.*

I had various consultations about tactical bluff, and conducted interviews with police officers investigating in crime cases (intelligence officers, investigators and analyzers), prosecutors, judges and lawyers (hereinafter: criminalists) about what they mean by tactical bluff. I came to the conclusion that some criminalists do not differentiate between bluff used in everyday language and tactical bluff, which can be a source of numerous mistakes.

Neither the current criminal procedure in force, nor the Act of Criminal Proceedings passed on 13th June 2017 define the concept of tactical bluff. My definition of a tactical bluff based on my findings is as follows: *it is either posing a question that contains elements of truth in it, or creating a situation during the investigative process, whose purpose and significance is not recognized by the declarant (during the interrogation, data gathering or other investigative proceedings), and as a result the declarant provides the investigative authorities with other relevant data, thus facilitating the investigative proceeding and the prosecution.* While exploring the forensic instruments, it was my priority to establish the grounds for tactical bluff. My presumptions, namely that the proper application of tactical instruments (bluff) can significantly contribute to the efficacy of detecting organized criminal groups, gained justifications during the research process.

When applying the tactical bluff I pointed out that with the help of its utilization, one can divert the accused from his or her self-constructed and pre-learnt testimony, and can be made to react to it. I circumscribed tactical bluff from bluff used in an everyday sense, because it is essential that we should consider the purpose of its application, the user, how its application is documented, its conditions, its content of truth and its consequences. On one hand bluff used appropriately can have numerous advantages in detecting the crimes committed by the organized criminal group or its members. On the other hand tactical bluff used inappropriately and detected by the suspect, or bluff used in an everyday sense, can have several detrimental effects. During my research I concluded that the well-chosen application of bluff plays a vital role in the domino effect, and thus in the fight against organized crime, because

- *we can gain access to information that were previously unknown to the authorities, and it plays a significant role in a thorough investigation of organized criminal groups,*
- *it can outline the structural characteristics of the organized criminal group,*
- *can lead to the prosecution of the members and leaders of the organized criminal group*
- *the member of the organized criminal group (the suspect) can be diverted from the “artificially” created, pre-learnt testimony, and can be made to react to it,*
- *the purpose of the bluff remains unknown to the interrogated person, who will come to inappropriate conclusions, and will act accordingly,*

- *the suspect can realize that due to his/her contradictions, he or she has revealed him- or herself, and can confess to his or her involvement,*
- *information can emerge that may reveal that it was not the suspect who committed the crime and he or she is not guilty,*
- *it may be revealed that the suspect made a confession under duress, with the intention of saving a member of the organized criminal group from prosecution.*

The consequences and disadvantages of the tactical bluff that is used in an inappropriate manner and may be detected, or bluff used in an everyday sense are:

- *information may be imparted to the suspect through which he or she can be influenced, and consequently it affects the whole investigative proceedings,*
- *ungrounded promises or bluff may undermine the credit of the investigator, and the interrogated person's willingness to cooperate might diminish,*
- *the recorded statements (the wiretapped material) can be misleading,*
- *the statements can be easily misunderstood and can lead to false conclusions,*
- *the suspect can draw conclusions regarding the methods of collecting information,*
- *the suspect (a member of the organized criminal group) may recognize the tactical bluff, and may be likely to react to it with another bluff, which if goes undetected by the investigator, will divert the future investigative proceeding,*
- *the suspect who has been misled by ungrounded promises by the interrogator, may not be willing to cooperate in new cases,*
- *the member of the organized criminal group may begin suspecting, and may start monitoring whether they are kept under close watch,*
- *the suspect (a member of the criminal organized group) on recognizing that special instruments are being used against him or her (for instance during telephone calls), may give false information about opposing organized criminal groups, and furthermore about honest and trustworthy officials, and can thus mislead the investigation, so the perpetrators (members of the organized criminal group) cannot be prosecuted,*
- *testimonies acquired through utilizing bluff may qualify as illegally obtained evidence, in more serious cases the manner of obtaining evidence may qualify as crime (ie. information obtained under torture),*
- *it can cause damage to the budget.*

Monitoring must be done even when the application of the tactical bluff proved to be successful, just like in the case of casual enquiry. One must doubt whether the confession

actually covers the truth or not, and make sure that the obtained information is suitable for establishing further sources of evidence. I proposed that *interrogations done by the organized crime units should be recorded with a camera*, so they can be replayed and the possible *mistakes revealed*. The interrogating person is also *protected by the recording*, in case the interrogated person states that he confessed under duress, since it becomes deniable through objective facts. Moreover, the video recording of a given testimony may help to demonstrate the applied tactics, and would support later analysis of the testimony. This interrogative tactics – the tactical bluff – has the potential to unleash an avalanche, and can contribute to the investigation of an organized criminal group.

The effects of the influential factor were regarded as the most serious mistake by the interviewees, which can jeopardize the fight against organized crime and a successful prosecution, therefore I considered it incredibly important to reveal the possible downsides that can hamper any investigation. In the fight against organized crime, the testimonies given by cooperating individuals are often questioned by the accused and their defence lawyers, and they argue that the very fact of the cooperation, as well as the investigative authorities influenced their confessions. It is also crucial for the cooperating suspect that his or her confession be free from any influence, impact from the outside which could affect the contents of his or her testimony. This way the testimony can later be used as evidence.

The interviewees emphasized that *the influential effect of a question can prevail not only during an interrogation, but also during the process of data collection, or confidential intelligence collection, when the investigator conducts casual enquiry, while trying to cover the official investigative characteristics of his actions; or when turns to an informant, a right-hand man, or a person cooperating with the police confidentially*. Further obstacles in the fight against organized crime named by the interviewees were the lack of powers, instruments and database, and also structural problems at the police. Influential questions can also have negative impacts, just like a bluff or a tactical bluff used inappropriately. Furthermore, influential questions and bluff can appear at the same time and converge (reinforcing each other). In academic studies the topic in question is touched upon superficially, so I find it essential that would-be criminalists should be provided with in-depth education in the matter. Regarding the importance of the topic and calling attention to it, I cooperated with future police officers (criminalists) during the research, most of whom will work as chiefs, or will work on high-priority cases (grave offences, crimes committed by criminal organized groups). A further objective of the research besides letting the students know of the concept of

influential questions, was to make them see their impacts; how memory itself can be changed through a well-structured question, and to make them avoid such practice in the future.

In certain groups the act of influencing was detectable not only in the questions themselves, but also in the tone of the question, the body language of the asker, which all increased the number of false answers. Examination of the influential questions is vital, as investigating organized criminal groups or other cases can get stuck due to these influential questions, since they can make the interrogated person give a false statement, and also make the possibility of double-checking the testimony more difficult.

I conducted interrogations for nearly ten years in the field of organized crime, and I have first hand experience of the power of methods, techniques and tactics of asking questions. The way a question is posed, in many cases, has influential effects – may it be conscious or unconscious on the part of the interrogator. During the examination of influential questions, I did an empirical research working with a sample of one hundred people, and analyzed the correlations. In the experiment, 26% of the participants were women, 74% were man, with an average age of 20. The experiment targeted at their observation capacity and impressionability. Participants were involved randomly, and observed a picture on a screen together.

My hypothesis was that well-worded influential questions will result in answers of unreal contents. A testimony containing unreal information can lead to unreal conclusions, whereas a testimony containing real information will lead to the detection of crimes, and can facilitate the reconstruction of the relevant past event. The memory of the respondents were still fresh, since they had to give their replies not long after observing the photo (after about two minutes). However, real interrogations are never done after such a short time. In most cases days, weeks and months pass after the event, which has the potential to distort both memory capacities and impressionability. The opinions of the students in this matter changed after the experiment, and they realized the importance of how a question is actually worded. Another objective of the experiment was to call attention to the significance of the passing of the time, as the results had shown that they had difficulty recalling what they had seen even after a few minutes, although the photo was observed in a stress free, calm environment. The principle of the speed of the investigation also makes it important that the testimonies should be acquired in a short time, because images of memory can fade in time. The primary objective of the experiment – as I have pointed out above – was to see: how fresh memory can be disturbed by the influential questions. In certain cases the influential questions were likely to have an impact because the respondent already had some memories from the past (his or her

childhood), and his or her subconscious memories got linked to the images shown as a result of the influential questions. The experiment demonstrated how influential questions can even change what one has seen, and how that change can get fixed in a person's memory as an image.

In the empirical research *I concluded that the detrimental consequences of influential questions in the fight against organised crime can be the following:*

- *the detection of organized criminal groups can get stuck,*
- *it can make an interrogated person give a false statement, and the possibility of double-checking the reality of the testimony becomes more difficult,*
- *the leader of the hierarchically structured organization cannot be reached, and the organization can continue its operations,*
- *members of the organization cannot be held accountable,*
- *the statement made, and its contents will affect the procedure of the taking of evidence, and can bear false data, leading up to a false chain of evidences that may apparently match reality,*
- *they can influence the seen and heard details,*
- *it may hide the fact that the perpetrator and the suspect are one and the same person, or the witnesses can intentionally mislead the investigative authorities,*
- *a statement might be recorded whose contents do not match reality, which may as well lead to miscarriage of justice.*

Another question is how reliable the results of polygraphy testing will be, if the interrogated person was influenced beforehand, and the false data suggestive of a particular detail had been integrated into his or her memory.

I would like to *emphasize this phenomenon, and urge that the impacts of influential questions be taught to the future police officers and lawyers.* Further training of the interrogating officers, and expanding their knowledge of criminal psychology is also crucial. It is worth *involving people attending practical classes in similar experiments, for them to see and get first hand experience about the effects of influential questions,* so the *power of asking a question and its subsequent proceedings and results* in the process of investigation and prosecution can be imprinted in their minds.

3. The third objective of the research is the establishment of a unified investigative database, since I presume that it can create the opportunity for more efficient investigations, and can aid in overcoming obstacles during the fight against organized crime.

I concluded that databases play an outstanding role in mapping the relations between individuals, in certain cases the individuals can be linked to the crime. The database of educational, healthcare and administrative authorities, and also insurance companies are equally important. Thanks to the explosive growth of the digital world, a tremendous amount of information emerged electronically. Although organized crime rings are most often untouchable due to their conspiratorial activities, they do leave electronic footprints behind. In combating organized crime and other crimes the factors of time and speed as a principle of investigation, play an important role. As time passes the loss of information is becoming greater and greater, so the sooner we acquire information, the more likely it is that we are able to identify the perpetrator, discontinue the crime in progress, and further crimes can be prevented.

With the improvement of raster-investigation, establishing cooperation between the different databases, we could talk about interoperability. However, the creation of interoperability between the different databases faces numerous challenges that most often originate from *the background environment of the data*, and *the formats of the data whose interpretation is lacking in a unified understanding*. *Police (criminal) registries, IT systems must be compatible and interoperable with state administrative and healthcare IT systems*, furthermore must meet the requirements of interoperability. There is *a need for connecting communication systems (“a central database”)*, whose establishment is currently not feasible, and *is hindered by the lack of interoperability*.

Therefore a new concept is needed, whereby the investigative authority could take advantage of the opportunities of the registry. *For the sake of aiding the investigation and prosecution – taking the principle of the speed of the investigation into consideration –, a “Unified Investigative Database” should be established that would make it unnecessary to seek out the entities of state or local government authorities, public bodies, either in person or written form*. To operate the database, it would not be necessary to ensure interoperability, since it would work in a similar fashion to a „portal”. By establishing electronic investigation (hereinafter e-investigation) the investigative authorities would have direct access to the database of different institutions as if the data had been recorded in their own database. E-investigation means that the investigative authority asks for information from the available databases directly or indirectly for the sake of investigation and prosecution, and can make tactical recommendations for the sake of efficiency.

*Mapping the existing digital databases and integrating them in a unified screen would change the ways of intelligence collection.* E-investigation must facilitate the fight against organized crime, whereby the investigator would acquire relevant information from the Unified Investigative Database (hereinafter ENAF) during his or her analysis-related work at his desk. The advantages of establishing a Unified Investigative Database are as follows: time spent on administration would be reduced; the time gained this way could be spent doing other investigative proceedings; intelligence collection would not be tied to time and space; it would reduce the environmental impact caused by paper-based administration; cases stored electronically could be easily searched; its implementation would bring about significant cost savings; it could provide information about the person of interest (ie. during confidential intelligence collection) about the suspect or a person to be suspected, or about a person whose criminal link to the above mentioned people is supported by data, or such a link can be reasonably presumed; it would facilitate the establishment of the statements of facts; the chain approach of the database could help the authorities stop perpetrators (ie. members of an organized criminal group) from committing new crimes against the victim (ie. sexual assault in the case of kidnapping); it would provide the opportunity to prevent pre-planned crimes (explosions, underworld showdowns, terrorist acts); the database has numerous fields that can also be applied by national security services. Furthermore, it would open the way to applying further methods of intelligence collection – under the relevant statutory conditions, for instance observing an object or a person based on the acquired address or other personal information, observing and recording the happenings inside an object (ie. in a private home) with technical instruments; revealing contents passed on via electronic telecommunication devices, and recording the detected contents via technical devices.

The information gained in a short time could launch a chain procedure, a flow of information. The objective of the information network is to facilitate the application of new ways of non-traditional intelligence collection in the field of organized crime – organized criminal groups, terrorist groups, to hinder and prevent crimes. However, it is not enough to be aware of the existence of the databases. It is necessary to know the recorded data as well.

In combating organized crime and terrorism new ways of investigation are needed, and solution must be found to answer the challenges. These answers can be found *in mapping new conduits of information and in efficient e-investigation*. Currently, there is no authority which could ensure the interoperability between the different databases when grave offences are being investigated, so even the “optimal” data service of the existing databases can only be called partial. The main objective could be the establishment of a unified investigative



database, which would ensure parallel filtering and search proceedings in more than one (registry) databases at the same time, consequently, establishing the interconnectivity between the databases has become vital.

In order to carry all these things out, the legal grounding must be established as well. The sheer existence of database systems goes hand in hand with data protection risks, which must be foreseen. Collecting, storing and utilizing personal data in a systematic way must be synchronized with the right to privacy and personal security laid down in the Charter of Fundamental Rights of the European Union. *The system must be in sync with the principles of data protection, and also with the requirements of necessity, proportionality, purpose limitation and data quality. It must provide guarantees that the fundamental rights regarding the privacy and personal data of the individuals are protected.* A protection mechanism must be created in order to protect the data of the individuals efficiently.

Applying a forensic mindset and spotting the logical correlations are important to the investigative authority during the criminal proceeding. The investigative authority must aim at integrating the data stated during the investigation in the criminal procedure, and find ways to present the acquired information as means of evidence during prosecution.

Databases that can be accessed directly and indirectly must be made accessible in a unified screen, which would *make law enforcement more efficient*, and after the query we would be given a *“detailed” study of the controlled individual*, his or her lifestyle, moves, daily activities, his or her relationships (and also about his or her bank accounts, money transfers, health care services attended, utilities, etc.) Institutional databases that *for other reasons cannot be connected to the screen ought to be obligated to send a reply electronically within one hour after the query, and be available to the investigative authority 24 hours a day* (for instance in the cases of combating organized crime when the lives of citizens are or can be at stake). Providing electronic data this way *can reduce the risk of the loss of data to the greatest possible extent*. In case of a postal query, the deadline would be significantly longer.

Direct access would make it possible for a member of the investigative authority at his desk to reach registries, in certain cases through closed (protected) lines. The database system could be *expanded continually* with existing and newly created registries, so *in the fight against organized crime* (actions against criminal organized groups or in cases of terrorist offence) *access to information would be accelerated* (without further personal requests).

When listing the crimes serving as grounds for the authorization of the “Unified Investigative Database”, I took the conditions of ordering confidential intelligence collection into consideration, regarding the fact that its application violates the right to the free

circulation of information and the right to the protection of personal data, similarly to “confidential, covered” proceedings, furthermore the listing was supported by the relative gravity of the offences and the practical difficulties of their detection. Also, requesting data from the unified database would only be authorized if it were reasonably presumed that obtaining evidence in any other way is impossible, or if it were otherwise done with disproportionately great difficulty and the request increased the likelihood of obtaining evidence. The data gained this way could serve interests of law enforcement, and could contribute to the success of criminal proceedings. The request issued by the investigative authority would be authorized by the prosecutor, in urgent cases (where any delay in the given case would obviously hinder the efficacy of the investigation) it would be ordered by the investigative authority, and the order would be handed in to the prosecutor’s office simultaneously along with the request for authorization. In case the prosecutor rejects the request, the collected data must be annihilated.

4. The research pointed out the importance of confidential intelligence collection, its reason for being, and that it can be part of criminalistics. The research done from the end of the investigative authority partly looks into confidential intelligence collection, and partly into confidential data acquisition, which bears great significance in the fight against organized crime. The regulations on confidential intelligence collection often prove to be incomplete compared to those of confidential data acquisition. They are less regulated (in case of overstepping authority, the cessation powers of a judge who gives approval of special instruments, control of police and justice, prosecutors’ control, informing the individual about the usage of special instruments).

On defining the methods applied in the fight against organized crime, I listed the instruments of witness protection and the regulations in substantive and procedural law supporting them, and also some forensic recommendation. If the data provider does not wish to participate in the criminal proceeding, there can be different reasons:

- He or she does not want to spend time testifying, because he or she has had to appear in front of the investigative authority many times,
- The individual does not want the perpetrator to know his or her name and address in fear of the perpetrator’s revenge or anger,
- The offence has already taken place (the individual has been threatened).

If the investigator is convinced that the individual involved in the data collection has any worthwhile information, but he or she keeps answering no, he must examine why the

person is not willing to cooperate. If it is in fear of the perpetrator, then the data provider must be informed about the regulations on witness protection.

During a procedure it can happen that a witness withdraws or changes his or her testimony in fear of the perpetrator or his accomplices, and regards his or her life, physical safety or the protection of personal freedom as more important. In this case the possibilities of witness protection relevant in light of the situation must be shared with the data provider, which can lead to the individual's readiness to cooperate in a way that is appropriate in terms of the criminal proceedings, and to keep up his or her testimony.

In a subsection about asset recovery I listed all the databases which can help the authorities map the financial position of potential perpetrators. If the initial apprehension of the perpetrator has been ordered, it would be useful to employ a so-called detention agent, who could carry out operative work among the perpetrators. The detention agent ought to be selected from a circle of people who are also in detention themselves. Applying a detention agency would make it possible to investigate criminal assets; to detect the apprehended person's pre-planned tactics for the time of the interrogation; to investigate undetected crimes or crimes under preparation; to detect criminal relations; and it would also accelerate the procedures.

In the chapter "Other instruments in the fight against organized crime" I briefly elaborated on the cooperation agreements (for instance bilateral agreements with other countries, and national security agencies), the more important international organizations (for instance Europol, OLAF, Eurojust, CEPOL), and the Joint Investigation Teams (JIT). On discussing the international methods of the fight against organized crime I touched upon the method of "forensic arborist", tracking the whole lifetime of an individual, inter-organizational cooperation, and the administrative approach, all of which provide insight into international methodology.

5. As a result of the research I proposed the establishment of a special organization called the Bureau of Combating Organized Crime (BELI), which could answer the challenges of the development of digital technology even more efficiently, and would be able to overcome differing points of view, debates over competencies and powers, and also parallel procedures. I uncovered the reasons why certain cases are investigated by other than the competent investigative authority, what reasons lead to parallel investigations, and I also presented the disadvantages of parallel investigations.

Organized crime units were abolished in Hungary in 2012 both at the Budapest Police Headquarters, and at the National Bureau of Investigation. The question may arise whether this organizational transformation - like many others – is just one of many, or it actually reached the desired objective? In order to find answers to this question, I thought it was worth interviewing experienced investigators and police chiefs who have been working on cases related to organized crime for years or even decades.

The chosen method of the research was conducting in-depth interviews which were based on partly structured, qualitative questions. During the empirical research I interviewed twenty people (all members of the investigative authority). My goal was to see what they mean by the term “organized criminal group” (organized crime), and what factors support the decision of an investigative authority that it is authorized to order or take over confidential intelligence collection and criminal proceedings (investigation) in a certain case.

After the interviews it could be stated that on launching the investigative proceeding, it is not only the term of organized criminal group laid down in CrC. section 459 in point 1 of paragraph (1) which is taken into account, but also different criminological factors of organized crime, such as *dominance-subordination relationship, distribution of work, the participation of more individuals who commit crimes by occupation, its members readiness to use force; they strive to gain positions in politics and in the media, the members build close relationships with law enforcement authorities, and the groups are mostly organized around family or prison relations*. According to the interviewees in most of the cases the concepts of an organized criminal group outlined in the CrC. are usually absent at the launch of an investigation, however the criminological factors are already detectable, which indicates that they are facing an organized criminal group, so the investigative strategy, tactics and plans are designed accordingly. In the case of certain organized criminal groups, the interviewees emphasized that the biggest problem was parallel investigations. The interviewees told me that it was the chief of their organizational unit who makes decisions about whether any collected information or a newly emerged case falls within their powers or not. I was told that it might happen that although they assume that a given case would fall within their powers, the chief of the organizational unit having considered other factors (for instance the complexity of a case, the possibilities of a quick procedure and the anticipated results) make the decision that the case does not fall within their powers, and the received information or case is forwarded to another relevant investigative authority. Such cases can generate debates (for

instance between the county police headquarters and the National Bureau of Investigation), and it is the managerial unit that makes decisions in questions about powers.

In order to annihilate organized criminal groups the authorities have numerous instruments, however, a well-organized law enforcement unit is needed to apply them. Organized criminal groups and the crimes committed by them must be recognized, which needs the establishment of a strategy against organized crime.

Having summarized my researches I have come to the conclusion that differing points of view, debates over powers, parallel investigations and the development of digital technology demands the creation of a special organization or centre which can fight against organized crime even more efficiently.

*Possible ways of application of the present thesis:*

1. It can provide aid to experts doing practical work at law enforcement agencies in the field of fight against organized crime, and can give applicable instruments (for instance applying tactical bluff). Furthermore, numerous propositions have been outlined in order to increase the efficacy of combating organized crime.
2. A Unified Investigative Database would facilitate investigation and prosecution for law enforcement agencies, which would make law enforcement more efficient, and on request a detailed study about the controlled individual would help the investigators' work.
3. It can provide the legislature with guidelines
  - in case of amendments of the legislative framework (ie. legal definition of organized crime),
  - for reforming the current system of establishments (ie. establishing a special unit against organized crime: Bureau of Combating Organized Crime (BELI), which could increase the efficiency of the fight against organized crime,
  - in case of establishing new measurements that have the potential to accelerate the proceedings (Unified Investigative Database).
4. Outstanding studies have been done in Hungary in this field, mostly from criminological perspectives. However, the issue of organized crime has not been the subject of in-depth forensic studies.
5. Certain forensic aspects of this thesis can be used in higher education.

#### IV. A LIST OF PUBLICATIONS IN THE FIELD OF ORGANIZED CRIME

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