

Administrative Behaviour. It is from these documents Union citizens can derive knowledge about their right to good administration.

Literature

1. J. Lukaszewicz, Nature quality of public administration, [in:] J. Lukaszewicz (ed.), The quality of public administration. International scientific conference - Cedzyna k. Kielce, 24-26 September 2004., Mitel, Rzeszow, p. 245.
2. M. Zdyb, the Constitutional Court. Book XV - anniversary, Warsaw 2001. p. 193.
3. A. Piekara, quality of public administration in Poland. Outline of contemporary issues, Warsaw 2010. P. 52.
4. <http://www.eioba.pl/a/1nnp/karta-praw-podstawowych-unii-europejskiej>, date of access 23.12.2013r.

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**UNLAWFULLY OBTAINED EVIDENCES IN THE HUNGARIAN
CRIMINAL PROCEDURE**

The issue of unlawfully obtained evidence is of great significance in the field of evidence procedures. The baseline for this presentation is one of the most sensitive matters of evidence procedures in criminal law, i.e. the rightful utilization of unlawfully obtained means of evidence and of any derivative evidence [1, p. 151]. This statement applies to both anglo-saxon criminal proceedings, which follows the principle of procedural justice, and to continental criminal proceedings, which follows the principle of substantive justice [2, p. 163]. Unlawfully obtained evidence makes two interests conflicts with each other: the requirement of holding the defendant liable under criminal law on the one side and the legal conformity of the proceedings and the rights of defendant on the other. This previous interest requires that no evidence suitable for establishing liability under criminal law (including conclusive proof where applicable) shall be excluded on the sole ground of having been obtained in breach of a legal regulation [3, p. 57]. According to the latter interest, we must not forget about the importance of ensuring compliance with the legality of criminal procedures and with the rights of participants in the criminal proceeding including in particular the defendant.

The Hungarian Code on Criminal Procedure (Act XIX of 1998, Büntetőeljárásról szóló törvény, hereinafter: Be.) has a general clause [Article 78 (4)] and several special clauses (mainly applicable to the subjects of broadly construed criminal proceedings) regarding the evaluation of unlawfully obtained evidence [1, p. 155].

Under Article 78 (4) Be.: Facts derived from means of evidence that were obtained by the court, the prosecutor or the investigating authority (1) by way of committing a criminal offence; (2) by other illicit methods; or (3) by the substantial restriction of the procedural rights of the participants may not be admitted as evidence.

The first one of these three cases (i.e. evidence obtained by way of committing a criminal offence) is not difficult to interpret under current legal practices since a criminal offence shall be construed as a fact or circumstance specifically defined in the special part of the Criminal Code (Act C of 2012, Büntető Törvénykönyv, hereinafter: Btk.). The scope of relevant criminal offences mentioned here is certainly restricted as the criminal offence and must have been committed by an official such as a member of the court, the prosecution service or the investigating authority. It includes, in particular, enforcing of statement (Article 303 Btk.), which is directly aimed at the unlawful obtaining of statements (in particular the defendant's statement) as means of evidence. Other types of criminal offence committed by officials, including abuse of office (Article 305 Btk.), mistreatment in official proceedings (Article 301 Btk.), covert investigation and covert information gathering without authorization (Article 307 Btk.), and unlawful detention (Article 304 Btk.), may be included in this scope only if it is ascertainable that the authority has directly obtained any means of evidence relevant to the particular proceeding by way of committing this criminal offence. Furthermore, abetting after the fact [Article 282 (3) (d) Btk.], falsifications of different documents by a public official (Article 343 Btk.) and passive corruption of public officials (Article 294 Btk.), may also be relevant to Aspect 1 in Article 78 (4) Be.

However, the second case (i.e. evidence obtained by other illicit methods) and the third case (i.e. evidence obtained by the substantial restriction of the procedural rights of the participants) are in fact difficult to interpret under current legal practices. The problem here is the missing definition for “other illicit method” and «substantial restriction of the procedural rights». (The science of criminal proceedings and legal practices have joined their forces to fix this issue. In doing so, the scientific approach suggests that «other illicit method» shall be construed as such a procedural offence or breach of an instruction or regulation which makes the evidence's legality ambiguous but cannot, by itself, give rise to the conclusion of a criminal offence.) It leads to another problem: legal practices tend to mix or blend the second and third cases. Let me set this clear in advance: the delimitation of these cases is important not only in terms of procedural law principles but also in terms of the evaluation of evidence. The occurrence of the second case results in absolutely excluded evidence whereas the occurrence of the third case results in relatively excluded evidence (where the authority evaluating the evidence shall have the exclusive competence to decide whether or not the

restriction of the procedural rights of the participants is substantial). Consequently, the most important questions are:

(1) how can the second and third cases described in Article 78 (4) Be. be defined and interpreted, and

(2) how can these two cases be delimited from each other?

I believe that it is important to discuss the matter of unlawfully obtained evidence and shed light on potential legislation errors and deficiencies since the principle of fair procedures requires evidence to be obtained lawfully. This requirement can be fulfilled in two stages. First, it an accurate and exact legal provision is necessary, second, good and uniform judicial practices shall be built on such a provision. However, these two items lack clarity in Hungarian criminal proceedings: the legal provision [Article 78 (4)] requires clarification and judicial practices need to be standardized.

Literature

1. Tremmel F. Bizonyítékok a büntetőeljárásban (Evidences in the Criminal Proceedings) / Dialóg-Campus, Budapest-Pécs – 2006. P. 247.

2. Karsai K. – Szomora Zs. Criminal Law in Hungary / Kluwer Law International, Alphen aan den Rijn – 2010. P. 230.

3. Kis L. A jogellenesen beszerezett bizonyítási eszközök sorsa néhány külföldi állam és hazánk büntetőeljárásában (The Unlawfully Obtained Evidences in Some Foregin Country and Hungarian Criminal Proceedings) / Szabó K. (ed.): Az új büntetőeljárási törvény első éve (First Year of the New Criminal Procedure Law) / Debreceni Konferenciák IV., Debrecen – 2005. P. 57-65.

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THE REGULATION OF PREPARATION OF CRIME IN HUNGARY

The questions of preparation of crime belongs to the substantive criminal law, specifically to the topic of the stages of crime-realization. Hungarian criminal law distinguishes completed and incompletd criminal offences and my study concentrates only on the incompletd criminal offences.

Obviously, to achieve a deterring effect criminal law needs to punish phases of criminal offences prior to completion. These phases are called preliminary stages of criminal offences. It has to be stressed, that in the hungarian criminal law only intentional offences have preliminary stages, offences committed by negligence can be punishable only if completed [1, p. 23-24]. Hungarian Criminal Code (here and after called: CC.) distinguishes two preliminary stages: preparation and attempt. Between these two categories the main differences are as follows.