

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*

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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 incompleting criminal offences and my study concentrates only on the incompleting 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.

The preparation is punishable only if the CC. specifically prescribes. That's why the punishability of preparatory acts is exceptional. The regulation of this explicit legal prescription is not homogeneous and it's not unified, because CC. uses several legal forms to punish preparatory acts. Further key information about preparation is that the CC. always provides a lower range of penalty than that provided for completed offences.

The attempt of the intentional offences is generally punishable. CC. provides the same range of penalty for attempt as that for completed offences. The scope of attempt is rather narrow in hungarian criminal law as the definition of attempt is based on the so-called formal-objective doctrine. Any action of the participant that is different from the perpetrator's conduct laid down in the statutory definition of a certain criminal offence does not constitute an attempt and can only be punishable as preparation at most, if the Btk. specifically prescribes. Attempt always presupposes a conduct laid down in the statutory definition. Therefore, none of the preparative actions may embody a perpetrator's conduct laid down in the statutory definition of criminal offences in the Special Part of CC., otherwise the criminal offence is not more prepared but at least attempted [2, p. 90-91]. These ascertainments examine this issue abstractly, although it has to be emphasized, that the line between attempt and preparation can not be drawn effectively in an abstract level, because of the potential diversity of legal cases in the view of preliminary stages.

The definition of preparation in Article 11, paragraph 1, CC. is as follows:

«A person who, for the purpose to commit a criminal offence, provides the conditions that are necessary for the perpetration or facilitate the perpetration, who undertakes or offers the perpetration, invites for it, or agrees on joint perpetration, shall be punishable for preparation if this Act specifically prescribes».

The jurisprudence analyzes this definition from two sides: objectively and subjectively. The objective side of the preparation is corresponding to the certain types of preparatory actions. The first action («providing the conditions that are necessary for the perpetration») can be regarded as a catch-all clause that applies (except the other preparatory acts: the listed verbal forms) to each and every action that needs to be made to be able to commit a certain criminal offence or that facilitates the perpetration. The possible meaning of this statutory element is so wide, therefore it is not conform with the principle of legality. In accordance with the *nullum crimen sine lege certa* the imprecise statutory element in criminal law is prohibited. In my opinion, the hungarian legislator (parliament) has to consider the revision of this legal definition in the future.

The last four preparatory actions are verbal forms. Examples are given: (1) Person A invites Person B to kill his enemy, he is liable for the preparation of

homicide irrespective of whether Person B actually undertakes to kill the victim. (inviting) (2) If Person B accepts A's invitation and undertakes to kill A's enemy B is liable for the preparation of homicide, too. (undertaking) (3) If Person A invites B to kill A's enemy together and B accepts this offer both of them are liable for the preparation of homicide (agreeing on joint perpetration). (4) Person B offers himself to A to kill A's enemy, but A is not interested in. B is liable for the preparation of homicide irrespective of any other's conduct (offering).

Subjectively, the purpose of a concrete criminal offence is the key aspect for distinguishing punishable preparatory actions from impunitive conducts. It follows that preparation must be committed by direct intent.

Hungarian criminal law distinguishes between two categories of parties to criminal offences: the participants are the perpetrators and accessories. This distinction is unnecessary in case of preparation of an offence because each participant of a punishable preparation shall be liable for his/her own conduct, irrespective of any other's conduct. Thus, there is no accessoryship in the field of preparation.

There is an abandonment opportunity for the participant(s) of the preparation. Shall not be punishable for preparation: (1) The person, due to the voluntary desisting of whom the perpetration of the criminal offence has not been commenced, (the participant makes it alone, and that action is irrespective any other conduct); (2) The person, who withdraws his or her invitation, offer or undertaking with the aim of the prevention of preparation, or makes efforts so that the other participants desists from preparation, provided that the commencement of perpetration does not take place for any reason whatsoever; (3) The person, who reports the preparation to authorities.

If the preparation in itself constitutes another criminal offence, the participant shall be punishable for that criminal offence. This is the so-called residual offence. The residual offence can be only a completed one. For example, the participant desisted from the perpetration of homicide, however, he bought two weeks before a gun without a permission. He is not liable for preparation of homicide, but for unlawful use of fire arms, of course.

#### *Literature*

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