# THE LEVEL OF CERTAINTY: EVIDENCE AND REASONS FOR DECISIONS IN HUMAN TRAFFICKING CRIMES

**Elek BALÁZS**[*]

**ABSTRACT**: *In the course of criminal proceedings, all means of evidence specified by law and all evidentiary procedures may be used without restriction in Hungary. However there are two general features in the area of evidence in Human Trafficing crimes. There is a shortage of evidence, and there is no perfect evidence that is to be accepted unconditionally.*

*Trafficing means much more than the organised movement of persons for profit, and we must distinguish trafficing from migrant smuggling. In the criminal procedure this cause difficulties in the demonstration.*

*The criminal procedure can be interpreted as a procedure from evidence minimum to evidence maximum. Means of evidence are the testimony of the witness –who may be the victim of the crime-, the expert opinion, physical evidence, documents and pleadings of the defendant. Evidence provided through international or Europen Union legal aid also can be used as evidence. The evidence obtained in legal cooperation with the Europen Union is often only indirect pieces of evidence. Alone these evidence are not necessarily conclusive, but can be a cruical link between other evidence to create a whole. We also must deal with the question of secret evidence, and the opportunity of video and telephone conference in the criminal cases of human trafficing. Finally in a human trafficing case, several problems of international legal aid and assistance emerged, so it is worthy to conclude the moral of this criminal investigation and procedure.*

**KEYWORDS:** *evidence, criminal procedure, secret evidence, Human Trafficing, means of evidence*

**JEL CLASSIFICATION:** *K 14, K 40*

## 1. INTRODUCTION

When having a penal case, which can be theft, burglary, robbery, or trafficking in human being, a judge already has a more or less detailed idea about what could happen even before looking into it more thoroughly. Based on experience, the judge knows how

[*] Judge – Debrecen High Court of Appeal. Assistant professor, Debrecen University, Faculty of Law, HUNGARY.

does the crime take place. Judges anticipate and have preliminary knowledge, which is widened by knowing the facts of investigation, the charge, the police report. He or she is familiar with these categories, and his or her task is to verify whether what happened is really what he or she thinks. All the facts and findings of the case must be or should be proved, or be found out by correct logical inference. Imagination, or in other words, the judicial experience is a great help in this. For the sake of discovery and later evidence legislation appliers should have some knowledge of the essence and background of these crimes.

But it is required from the court to give a reasoned decesion. A useful safeguard against negligence and arbitrariness in the assessment of evidence is to require on the court to specify in its decision what evidence it found convincing and what evidence it did not, and to explain in each case why.[1]

If the accused is convicted, the decision must list the facts found proved in which the legal characteristics of the punishable fact exist. Where proof of these facts is deduced from other facts, these other facts must themselves be listed.

## 2. THE LEVEL OF CERTAINTY: BEYOND REASONABLE DOUBT AND 'INTIME CONVICTION'

In the common law, the the guilt of the accused must be established beyond reasonable doubt. The level of certainty in French law is the 'intime conviction'. In French law the court must not convict accept where it has 'une intime conviction' that the accused is guilty. The expression of this phrase is found in the instruction to French Juries contained in Article 353 of the Code of Criminal Procedure: „…the law puts to them just this single question, in which the whole of their duty is contained „are personally convinced?" (*avez-vous une intime conviction?*) The concept of *intime conviction* is equally found in German and in Hungarian law – as it is indeed in most of the systems which were influenced by French law in the 19th century.

The expressions 'intime conviction' and 'beyond reasonable doubt' have different origins. But if asked to explain what intime conviction means, a judge from France, Romania, Hungary or any other country in continental Europe would reply „It means you must feel sure". And that is the same how English judges actually direct juries as to the meaning of standard of proof. How does the prosecution succeed in proving the defendant's guilt? The answer to that is even simple – by making you sure of it.[2]

## 3. THE ROLE OF THE JUDGE IN THE VERIFICATION

Crime, which in the past decades has changed in quantity, quality, its means and methods provides a new challenge for the criminal procedure. It is especially true for the

[1] Matzak, Bencze and Kühn states that „both constitutional and EU law principles open the way to use of non-formal elements in judicial reasoning, including, e.g., references to values, lawmakers' intent or public interest. Marcin Matczak – Matyas Bencze – Zdenek Kühn: Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland. Jnl Publ. Pol., Cambridge University Press, 2010, 30, I, pp. 81-99.

[2] Delmas-Marty and Spencer, eds, European Criminal Procedures, Cambridge University Press, October 2002, ISBN 0-521-59110-4 Chapter eleven- Evidence 1..3 The bad character of the defendant, pp. 7-9

judicial trials, which have stuck in their traditional role and consequently cannot cope with the increased burden.

If an investigation does take place, the prosecutor brings charges and the case goes to court. Even then, there is a lot of work to do in the judicial phase, which is further complicated by international legal aid, including the citation of foreign witnesses, or summoning foreig banks and authorities.

In organised crime cases it is typical that the court faces with well prepared defenses of the accused, whose financial situation alows him to utilize the best prepared experts, and advocates. This increases the significance of evidence in the judicial phase, and after he or she refused to answer the questions of the police, knowing the results of the investigation and other evidences obtained, he can prepare his – hardly refutable – court testimony. In these cases, checking the defense of the accused is the responsibility of the court, and the work of the judges may turn in the direction of active investigation, but with limited time and resources.

At trial the parties have the primary responsibility for summoning witnesses and producing evidence. At this stage, however, the judges in all the systems in Europe have at least in theory, a certain responsibility. In France and in Germany it is very clearly defined. „A series of sections of the French Code of Criminal Procedure impose duties of the judges in the matter of evidence, in particular Article 310, which provides that at the *cour d'assises* 'the President has a discretionary power by virtue of which he may, in honour and good conscience, take any measures which he belives useful to enable the truth to be discovered'. This is even more clearly the case in German law, where one of the cardinal principles is *das Instruktionsprinzip* (the principle of seeking information) Section 244 II StPO provides that: 'in its search for the truth the court shall extend the taking of evidence to all facts and means of proof which in the case in hand are relevant to the decision'. Unlike the German judge, the italian judge does not have laid upon him as his primary duty the active search for the truth. (…) In English law it is generally said that the trial judge has no responsibility for the production of evidence. This is not strictly true, however. In the first place the English judge theoretically has the power to call a witness whom the parties have not summoned to give evidence, and although years ago English judges used to exercise this power freely, modern case law largely discourages them to use it. But a decision confirms that this power still exists."[3] The court should use it when this seems necessary to ensure the defence to get a fair trial.

The Hungarian Criminal Procedure Act says that the charge shall be proven by the accuser. Facts not proven beyond a reasonable doubt may not be contemplated to the detriment of the defendant. The objective of gathering evidence shall be the thorough and complete elucidation of the true facts, but the court does not has the responsibility to extend the taking of evidence to facts and means of evidence which prove/confirm the indictment if the prosecutor do not propose or suggest this.

So in most of the criminal cases, the hungarian judge do not have the responsibility to collect new evidences and to deal with international legal aid, as a requesting party.

[3] Delmas-Marty and Spencer ref. 2.1.2. pp. 36-37.

## 4. TRAFFICING IN HUMAN BEINGS IN A CRIMINAL CASE

From a judge viewpoint it is worth to present a concrete criminal case to make clear what kind of difficulties have the court in the verification process.

The court found the prime accused guilty in the crime of trafficking in persons as commissioned by crime organizations in seventy counts and in the offence of preparing the trafficking of persons in eighteen counts as an accessory. The prime accused has been cumulatively sentenced to four years in prison and forbidden from the practicing of public affairs for four years.[4]

The state of facts established in the judgment is the following:

The prime accused and his associates have agreed with traffickers of unknown identity that they shall participate in transporting foreign citizens through Hungary towards other countries for financial reward. The traffickers transported foreigners to European or other secure countries for a sum of app. 4-5000 dollars. The foreign individuals paid in total to the traffickers transporting them before starting the journey. This journey went on through many months, through many countries, in an illegal and organized way.

As agreed, the transitional conditioning and boarding of the trafficked foreign citizens took place on the homestead property of the prime accused. The prime accused and some of his associates took part in the conditioning of the foreigners, others took part in guarding them. The prime accused and his associates used many mobile phone numbers and mobile phones – switching SIM cards and phones – to keep in touch with each other. They let the foreigners use some of these phones to get money for travelling further, and they charged them for this.

As agreed, eighteen foreign citizens (14 Bangladeshis and 4 Palestinians) have been conditioned in the homestead property of the prime accused. The prime accused and his associates – in fear from the authorities – hid the foreigners at a place outside of the homestead. Between 6 and 6:30 PM, the prime accused appeared at the hiding place with a Citroen Berlingo automobile, and was waiting there with two other automobiles with Ukrainian plates, which had been spotted by a witness. After this, the prime accused left the location with his car along with the two other cars with Ukrainian plates, leaving the 18 foreigners behind.

After being notified by a witness, border patrol caught the 18 foreigners in the late hours and transported them to a communal quarters at a neighbouring city. Police arrested the prime accused at 11 PM. Prior to his arrest, the phone card of the prime accused had been used to call two numbers from Bangladesh, two numbers from Ukraine and one from Angola, on the same day. Besides that, on 22 and 23 June 2001, phone connection had been established 40 times between the prime accused and another participant of the action, who deceased during the process (1. statement of facts).

As agreed, the prime accused and his associates transported 70 foreign citizens (25 Afghans, 23 Bangladeshis, 8 Iraqis, 4 Angolans, 4 Indians, 3 Sierra-Leoneans and 3 Congolese) from the end of July until 12 August 2001 to his homestead, who arrived previously to Hungary without permission, or in an illegal way, with the help of human

[4] Judgement Nr. B.177/2002/70 of the City Court of Nyírbátor and judgement Nr. 3.Bf.979/2003/8 of the County Court of Szabolcs-Szatmár-Bereg Megye. After this case the Hungarian Supreme Court came to its deceision 4/2005 about the unity of law on criminal organisations.

traffickers for a financial reward. The foreigners had been conditioned and boarded on the homestead to be transported later to another country.

On 13 August 2001 the border patrol checked on the homestead, from where they transported 70 foreign citizens – who did not have any passports, could not certify their right of abode in Hungary, and waiting to be transported to other countries – to the communal quarters. From 23 June to 12 August 2001, 898 phone numbers – among them, 14 Ukrainian, 14 Bangladeshi, 12 Italian, 10 Russian, 3 Swiss, 2 German, one Romanian, one Iranian and one Syrian – had been called from the homestead with the phone card of the prime accused (2. statement of facts).

So a great multitude of citizens from different and distant countries had been illegally brought into Hungary in exchange for a large amount of financial reward to be illegally transported to further countries. The organization provided different allowances (free or discount catering, a hire of many hundred thousand forints, boarding, vehicle) for several members. For those members of the organization who had been taken into custody, it provided lawyers as protection, paid for them and instructed them, so it could further keep its members under control.

## 5. THE VERIFICATION OF THE CRIME, THE CRIMINAL ORGANISATION, AND THE FACTS FOR CONFISCATION

The Penal Code currently contains several crimes which touch human trafficking. The prosecutor has to prove that one of the articles of the Penal Code is happened, the accused contacted to a criminal organisation, and has to prove facts for the best punishment and confiscation. Evidence shall cover the facts which are relevant to the application of criminal statues and legal regulations on criminal proceedings. The objective of gathering evidence shall be the thorough and complete elucidation of facts.

For example trafficking means much more than the organised movement of persons for profit. The critical additional factor that distuinguishes trafficking from smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process. Such deception, force or coercion being used for the purpose of exploitation.

While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation.

The illegal crossing of many country borders – in different times and with the assistance of different people –, and the conditioning, boarding and further transporting of these migrants leads by definition to assuming an organized process. This undoubtedly proves that the trafficking criminal group – which consists of many participants (managers, leaders, escorts etc.) and arcs over many countries, and the members of which are in this case yet unknown – worked obviously to make profit, in a well-organized, regular way, dividing tasks, and with personal relations based on hierarchy. Thus it is obvious, that the human trafficking in question had been run by a criminal organization. To establish this fact, it is not necessary by all means to chart all the members of the organization, their task system and their hierarchy. It would surely be impossible, given that these kind of crime organizations work along rules of conspiracy.

It is not undoubtedly proven, that the accused had been a member of this criminal organization, but it is obvious, that he contacted and had regular dealings with this criminal group (phone calls, buying homestead for the conditioning and guarding of the foreigners). He undertook – for a financial reward – to help foreign individuals, who had been brought in illegally to Hungary, with conditioning and boarding, until they are transported further to other countries. For this reason, he invested in another homestead, which shows that he was prepared to help not just once, but many times more. He had been aware that with this behavior, he was supporting the systematical human trafficking of a criminal organization. Thus, it is right to conclude legally, that the prime accused undertook human trafficking on the commission of a criminal organization.

According to the penal decision 4/2005 about the unity of the law: "The basis of this further deduction – which is related to the awareness of the accused about acting under the commission of a criminal organization – is that the operative law (as opposed to previous laws) does not define the inside, but the objective outside characteristics of the criminal organization, that are recognizable for any outsider." The new legislation is not familiar with the different connections in the hierarchy of a criminal organization (member, leader etc.). When applying the first part of paragraph 98 of the Penal Law on the definition of the criminal organisation, the hierarchical place and role of the action committed as a member of a criminal organization have no significance. As far as the definition of the penalty goes in case of committing an action as a member of a criminal organization, it is enough to contribute to the workings of a criminal organization in any way to be convicted."

The accused as the court of first instance pointed it out in the given statement of facts to justify its decision – must have been aware that he was trafficking foreigners by the commission of an organization. Namely, he received orders on the phone from one person, another person paid for the travelling expenses in advance, and a third person was waiting for him at the arrival. It had been said even before the first transport, that there would be more transports similar to the first one. The scope of activities of the fourth accused went beyond task-fulfillment anyway, because it had been his task as well to obtain another car and driver ready to transport eight people.

The Supreme Court also pointed it out in a decision, that helping a great multitude of citizens from different and distant countries to illegally cross many country borders in different times, their conditioning and further transport presupposes already an organized activity by definition. This obviously means that a criminal group doing such activities works well-organized and on a regular basis.[5] Taking all this into consideration, the accused must have been aware of all the conceptual traits of a criminal organization, thus in his case, it was legally justified to declare him guilty of participating in a criminal organization. Namely, he undertook and fulfilled the transport of the migrants among circumstances of conspiracy. Considering the circumstances of the commission and the transportation, the accused had been aware that by transporting further these foreign citizens, he was helping them to cross borders illegally. He must have been aware of the fact as well, that the further transporting of the migrants had been conducted by the members and associates of a specialized group. The proper statement of facts clearly recorded that the accused had been aware of the fact that he is acting as a member of a well-organized, long-running

[5] Hungarian Supreme Court decision Jre. III. 188/2005/5.

group consisting obviously of more than three people and using conspiracy methods, which group assisted different migrants to cross borders illegally for financial reward. Taking this statement into consideration, there can be no doubt about the perpetration of acting under the commission of a criminal organization. The judicial practice is consequent in that the transporting, conditioning and boarding of many people, which includes the crossing of many borders and involves many participants, always establishes the statement of acting under the commission of a criminal organization according to the penal code. Under these circumstances it has no significance if a perpetrator being aware of the activities of a criminal organization is not familiar with the headquarters, leaders, etc. of that very organization.[6]

And resulting from the decision 4/2005 BJE about the unity of the law – when the perpetrator is aware of the characteristics of a criminal organization defined by the law – , the statement of acting under the commission of a criminal organization can even be established in case of someone who might have executed only one action, by an ad hoc nature, as accused or participant. Namely, one must judge the awareness of the accused about acting under the commission of a criminal organization based not on the inside, but on the objective outside characteristics of the criminal organization, that are recognizable for any outsider. In accordance, the accused must not be aware that what had been created is a criminal organization by legal definition, but that the participates in, acts in the framework of a criminal organization, while being familiar with its objective characteristics.

Compared to this – as it is included in the IV/4. point 4/2005 BJE of the justification of the decision about the unity of the law – the scope of awareness of the accused should be examined from two directions, regarding the realization of the "principle action" and the objective characteristics of a criminal organization in parallel. And the circumstances that lead to a conclusion regarding this awareness must be recorded in the statement of facts as the results of the examination (the process of verification).

The accused acted as commissioned on the phone by an unknown foreign individual, or as commissioned by a foreign citizen in person in Hungary, in exchange of a financial reward. He collected, transported, fed, boarded, and instructed the people to be transferred how to cross borders. He constantly monitored the border-crossings, and dealt with the escort of the people crossing borders and sometimes also with the individuals waiting for and transferring these people further on the other side.

The accused acted after specifically undertaking commissions; and the diversity of the employers does not mean the lack of being well-organized and working systematically. Its significance lies in the headcount required to legally pronounce something as a criminal organization. And based on the proper statement of facts, it can be no doubt assessed that cooperation between 3 or more people – with the accused – has taken place.

The third important question in the verification is to retrace the profits of the criminals. The spred of organised crime in Hungary /in Eastern Europa grows increasingly worrying. The huge profits it generates are well known. The only effective way of tackling organised crime is to take away its sources of income. If the profits of criminal activity can be prevented from being washed clean, the exhaustion of funds will lead to criminal organisations drying up, like trees cut off at root. If organised crime is deprived of its

[6] Case decisions BH 2003/6. and BH 2005/311.

income (as well as of the free and risk-free use of this income) then a process of self-cleaning can be started in society.[7]

It is a general goal that proceeds resulting from criminal activities shall be confiscated. In the criminal investigations, besides bringing the perpetrator before criminal justice, detecting, securing and recovering the proceeds of crimes is a major priority. One of the most important pillars of the criminal policy is the deprivation of the illegal assets from the perpetrators and the compensation itself. It is the general obligation of investigating authorities to trace crime proceeds because proceeds resulting from criminal activities shall always be confiscated.

The tracing, seizing and confiscation of assets is not a separate goal of criminal investigations. Any financial gain or advantage resulting from criminal activities, obtained by the offender in the course of or in connection with, a criminal act, and any financial gain or advantage obtained by an offender in connection with crimes committed in affiliation with organized crime shall be subject to forfeiture of property.[8]

## 6. THE FEATURES OF VERIFICTION IN HUMAN TRAFFICKING CASES

Two general features deserve emphasis in the area of evidence. The first: there is a shortage of evidence in all criminal cases. The second feature: there is no (so-named perfect) evidence that is to be accepted unconditionally.[9] These two general features strongly complicate the presumption of innocence, the burden of proof, in dubio pro reo, ne bis in idem principle etc.[10]

In the course of criminal proceedings, all means of evidence specified by law and all evidentiary procedures may be used without restriction. However, the use of certain evidence may also be statutory. Neither the means of evidence nor proofs have a legally prescribed probative force. The court and the prosecutor shall freely weigh each piece of evidence separately and collectively and establish the conclusion of evidence based on their belief thus formed.

Means of evidence in the criminal procedure are the testimony of the witness, the expert opinion, physical evidence, documents and pleadings of the defendant. Evidence provided through *international or European Union legal aid* can be used as evidence.

Evidence shall be traced, gathered, secured and used in compliance with the provisions of the Criminal Procedure Act. In all european criminal procedural systems there is a freedom of proof in the sense that any matter which is relevant may in principle be used as evidence. It is nevertheless still true that each system has certain exceptional categories of evidence which, although relevant, may not be used. The number and type of these categories differ from one system to another.

The admissibility of evidence or the evidence has been obtained illegally or improperly raises conflicting and dificult points of principle. On the one hand there is the fairly simple idea that certain rules about obtaining evidence exist to ensure the evidence

[7] Mihaly Tóth – Istvan Laszló Gál: The fight against Money Laundering in Hungary. Journal of Money Lundering Control Vol. 8 No 2, page 186-192.
[8] According to Section 77/B (1) of Act IV of 1978 on the Hungarian Criminal Code.
[9] Flórián Tremmel: Evidence in the criminal procedure. Dialog Campus, Bp-Pécs, 2006, pp. 191.
[10] Csongor Herke: Súlyosítási tilalom a büntetőeljárásban. PTE ÁJK Pécs, 2010, pp. 173.

is of good quality: the rules on recording statements made to the police for example. This implies that evidence should be rejected for breach of such a rule in so far as the breach has made the evidence less reliable.[11]

The part of the law which deals with illegally obtained evidence is, in all the systems in european countries, particularly difficult. For example in Germany as in France evidence is not automatically excluded because it has been illegally or improperly obtained, although the reasoning by which the courts arrive at exclusion is radically different. If German law on the exclusion of illegally improperly obtained evidence is less formalistic than the law in France, but no less complicated.[12]

In Hungary it is also true, that facts derived from means of evidence obtained by the court, the prosecutor or the investigating authority on the method of committing a criminal action, by other illicit methods or by the restriction of the procedural rights of the participants may not be admitted as evidence.

It is a general characteristic of human trafficing crimes that the evidence phase of the justice proceedings is longer than the avarege. It is an important element of this type of crimes that they are uncovered by a series of complicated, seemingly legal business transactions that are concluded between busines entities, a part of them being registered abroad, and the articipants of each part of the process do not know the entire process, and they are financially or existentially exposed to their employers.

Of course, they finance the expenses of experts, and the expert opinions normally strengthen their argument. It can be confidently claimed that there are financially strong groups in the background who can afford to provide for an expert opinion in their favor in whatever issue.

A typical feature of these cases is that, unlike in a case of street truculence, the winesses usually live far away from each other. This means that the witnesses have to brought to the court from large distancees, sometimes from other countries, which has a negative effect on turnout, resulting in significant delays in the proceedings.

Secret evidence has a major role in human trafficking crimes because neither the accused, nor the victim wants to tell the whole story.

The admisibility of evidence –especially which one was obtained through international legal aid- is very complicated e.g. in connection with secret evidence.[13] Secret evidence of tactical nature also poses significant problems: with respect not only to the especially protected witness but the „plea-bargain" cooperating person or the undercover detective, as well. In this circle, too, only incomplete process control is possible. In European countries very different the rules of covert data gathering which subject to judicial permit. There are differencies in the legal basis, the types of crime for which the measure can be obtained, the maximum duration of the measure or, where applicable (notably for the monitoring of a bank account), the conditions for a prolongation of the measure, how the

[11] Tremmel ref. pp. 191.

[12] Delmas-Marty and Spencer ref. 1.4. pp. 9-19.

[13] According to Section 201 (1)-(2) of CP Covert data gathering may be applied to a criminal offence that has been committed intentionally and is punishable by up to five years' or more severe imprisonment, or trafficking in human beings, misuse of prohibited pornographic records,concubinage, solicitation of prostitution, smuggling of illegal aliens, when punishable by up to three years' imprisonment, and also an attempt of the criminal offences and if the law orders any preparations punishable – the preparation of the above.

persons affected by the measure are informed, what secrecy obligations or privileges (e.g. banking secrecy or client-attorney privilege) may impede/affect the execution of these measures. So unfortunatelly it is quite often happens that an evidence obtained throuh international or europen legal aid is not allowed to used in the verification because of formal errors.

In criminal cases of human trafficking, international humanitarian principles and standards are quite specific that the trafficked victims should not be re-victimised and criminalised by the law enforcement process and this must be avoided wherever possible. Trafficked victims often have committed one or more offences relating to irregular border crossing, engagement in prostitution, possession of forged or stolen documents. However individuals who are not trafficked victims will also have committed such offenses and are likely to claim to be victims of trafficking in order to avoid prosecution and or to gain access to humanitarian assistance. Trafficked victims and their loved ones are always likely to be at risk from reprisals from traffickers. The extent to which they may or may not be prepared to co-operate with law enforcement agencies only affects the extent and range of risk. So in the context of trafficking in human beings, it is to be recognised that witnesses will always be at risk. Whilst the criminal phenomenon is complex, the judicial issue here is quite simple. If the criminal justice system wants to secure the evidence of victims who cannot be compelled to testify as witnesses, it will have to establishe their trust and address their needs and fears.[14]

Therefore a clear and urgent duty exist to ensure that victim-witnesses are protected as far as it possible to do so. One of the solution for this is the video and telephone conference, or the misuse of confrontation.

Today the use of telecommunication techniques are becoming more and more important in criminal case cooperation. Modern telecommunication possibilities like video- and telephone conference calls are already in use in the questioning of the witness and the hearing of the expert. About 20 years ago most states were concerned about their sovereignty, about another country's authority acting on their territory. Nowadays the advantages of telecommunication became primary in fighting crime. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union regulates hearing by videoconference and telephone conference. It is important to point out that the convention helps the hearing of witnesses and experts, but for the accused person this instrument can only be used with limitations.

The rules of videoconference and telephone conference in the Convention basically connects the direct practice of the traditional request and jurisdiction. The requested party is responsible to summon the expert or the witness for the hearing, to establish technical connection with the requesting party, to ensure the basic guarantees of criminal procedure law and to perform the identification of the person. For the video or telephone conference the requesting country's procedural regulations apply. This is to express that the procedure is actually carried out by the requsting party. The main difference compared to a traditional hearing is that the requesting foreign authority is directly involved and this way its

[14] International Organization for Migration: The provision of counter-trafficking training for law enforcement officers 3.3.1-6.6 www.iom.int

procedural regulations apply, which gives a significantly wider participation during the hearing for the requesting party.

Questioning of a witness, expert or - on the basis of express written consent - the accused through closed circuit telecommunications network by the request of the member state judicial authority can only be performed by the court.

The possibility of the confrontation increase the risk of the victims. It turns out from the regulation of confrontation of certain countries that this institution doesn't exist at all in the Anglo-Saxon-Type of legal systems. In continental type of legal system countries the legal rules of confrontation –emphasizing its importance – can be found in the basic laws of national criminal procedure law. The effectiveness of confrontation in Europe is varied, so to say, it is generally rather moderate. Based on traditions in eastern and Central Europe greater importance is attached to it by the law enforcement agencies than in Western Europe.

The confrontation is not specified in the Convention (European Convention on Human Rights) or in other international agreements and recommendations. In spite of all it appears in the practice of the European Court of Human Rights as a great number of member states apply it and in an indirect way there is a juridical recommendation related to it.

It is clear that according to the Strassbourg interpretation confrontation can be connected to interrrogations after all it is a special form of interrogation in case of either the witness(es) or the accused. The Court considers confrontation to be a form of interrogation and a procedural act that is suitable to foster and meet the requirements of the law ordained by the Convention. Namely, the right of the accused to check the authenticity of the (behaviour) and the testimony of the witness incriminating him or that of other accused. It can be carried out in a personal way either by putting questions or making remarks or by simple observation. The Strasbourg Court considers confrontation to be suitable –either at the investigatory or at the trial stage – to meet the requirements of giving opportunity to the accused to control – or we can say: to confront – the person giving incriminating testimony against him at least in one of the stages of the procedure.

Merely the absence of confrontation in a case the incriminating people had the opportunity to put questions to the accused (or to his barrister) doesn't serve as a basis for infringement of the Convention including the fair trial.

It can be stated that the lack of confrontation can't be infringing in itself however for certain legal or rational reasons including witness protection (to preserve anonymity) two people can't be faced to each other according to the law, and this may be used in human trafficing crimes.[15]

## 7. INTERNATIONAL JUDICIAL PROCESSES AND VERIFICATION IN HUMAN TRAFFICKING CRIMES

Criminal proceedings in connection with human trafficking may go on in different countries, which may make the evidence significantly longer and more difficult. The national law of every member state of the European Union strives to regulate the questions related to verification unambiguously and in great detail.

[15] Csaba Fenyvesi: The confrontation. Face to face in Criminal Cases. Dialóg Campus Kiadó, Bp-Pécs, 2008, pp.251.

In cases of cross-border human trafficking crimes, further difficulties were posed by the fact that different countries have different regulations governing these crimes.

When the process of verification concerns the jurisdiction of more than one country, means of verification acquired in one country do not automatically become equivalent to means acquired in the other state by local judicial law, as all states define the rules concerning means and processes of verification, and the consequences of offending the law by their own penal procedures. And these rules may differ from state to state to a great extent. Rights of verification though, even if they are parts of the same verification system, are not permeable. And this is in the way of effective penal cooperation.

Besides collaborating through Legal Aid, in order to make means of verification acquired in another country useable, we have many solutions to turn to.

One of these is the harmonization, the reconciliation of the rules of verification, during which the member states equalise their different provisions. Today it is already known that this is the most difficult solution, and it is supported by few member states.

The other is when the means of verification are correlated to certain minimal requirements that are acceptable for all states. But this test can only be performed with a profound knowledge about the operative rights of verification in the foreign country, and all the legal practice and terminology related to it. This can of course cause the protraction of the procedure. I would like to emphasize that currently there are no accepted and applied minimal requirements on a European level. Thus, people working in legislation can use no crutches like this yet.[16]

The traditional mutual legal assistance does not work easily. The main reason of this, that the legal approach is very different in the European Union countries, especially in the verification or demonstration rules. In traditional international legal aid the evidence obtained through mutual legal assistance behave as a quasi black box. In the case of some serious formal errors, the evidence may be, what is more, has to be, refused (it has to be excluded from among the evidence).[17]

The third and simpler principle is when the evidence acquired in a foreign state is accepted by the country proceeding in the penal case without particular examinations. This requires a highly trustful relationship between the member states. This is the mutual recognition principle, which may be the prevailing principle in the European Union. This means that inside the EU the Member States acknowledge each other's defined legal actions as valid and executable without any particular procedures.

Verification is conducted by the authorities, in accordance with the rules of law, considering all the guarantees and norms of human rights, with the purpose of revealing the facts with relevance to the decision about criminal responsibility. The efficiency of impeachment depends on the complete and thorough conduction of this process.

The systems of investigation and verification – which more or less stem from common roots of European history and culture are endowed with strong national traits and traditions, different notional and linguistic characteristics. It is not easy to bring it to a common ground.

---

[16] Ákos Farkas: Új alkotmányos elv a bizonyításban? A kölcsönös elismerés elve. A büntető ítélet igazságtartalma (szerk.: Erdei Árpád), Magyar Közlöny Lap- és Könyvkiadó, Bp, 2010, pp. 9-22.

[17] The 'black bokx' expression is from Flórián Tremmel, who used it in 'Evidence in the criminal procedure', Dialog Campus, Bp-Pécs, 2006, pp. 191.

The adjustment of cultural, linguistic and institutional differences between two or more countries is not an easy task in itself, but the reconciliation of problems stemming from looking at different crimes from different linguistic, taxonomic, dogmatic, and penologic viewpoints is almost impossible. Although the basis of cooperation between Member States of the EU is the mutual faith, trust in the constitutionality of another country is far from being absolute. And because efforts are made to preserve penal law as the last stronghold of sovereignty, this lack of faith does not seem to be diminishing, but in turn reduces the chance of the Member States having a common ground for themselves.

Finding more efficient methods of cooperation, however, is a great need, and not at all unimaginable.

We must point out though by all means, that the scope of this task can be, on the one hand, wider, and on the other, narrower than penal procedure on the whole.

It is narrower in that it refers only to investigation and verification related to crimes with transnational characteristics, where the different systems of penal procedure are connected through cooperation, which is an inter-sector cooperation, and so these remain exceptional, even when crimes like this get more and more common. But it is wider in that this cooperation concerns at least two sovereign states with different legal and linguistic culture and institutions, and this requires the cooperation of many institutes (legal or otherwise).

The first step is already made by the EU with the Lisbon Treaty, which will perhaps solve questions concerning the mutual acceptance of evidences more easily, and acquired evidence may become a safeguard for fair treatment when dealing with transnational crimes as well.

With the Lisbon Treaty signed on 13 December 2007 and entered into force on 1 December 2009, the mutual recognition principle has become a definitive and also codified principle of penal cooperation. This issue is handled in paragraph 1 of Article 82 in the fourth Chapter "Judicial Cooperation in Criminal Matters" of the TFEU.

The other significant area related to the mutual recognition principle is the substantive law of criminal matters. This issue is handled by the Article 83 of the TFEU. In this regard, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions of such areas of serious crimes that may be the subject of penal cooperation inside the EU. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. The Lisbon Treaty thus wishes to limit the mutual recognition principle and does not leave it exclusively at the discretion of the Member States.

Such establishment of minimum rules may follow other crimes as well, when these crimes meet the criteria specified above, particularly serious crimes with a cross-border dimension resulting from their nature or impact, or crimes that involve a special need to combat them on a common basis.[18]

[18] http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-v-area-of-freedom-security-and-justice/chapter-4-judicial-cooperation-in-criminal-matters/351-article-83.html

So the vision of free movement of evidence will replace most part of the cooperation in mutual assistance. Mutual recognition will make a remarkable difference in legal thinking, as it will be able to make the criminal cooperation system simpler both technically and legally. Thus we can exceed the limitations of sovereignty. In this context we have to point out that mutual recognition is founded on mutual trust. If mutual trust does exist between Member States international –European – criminal cooperation will be able to overcome the challenges of crimes having international relations like trafficking in human beings.[19]

## 8. CONCLUSIONS

The fight against human trafficking can only be carried with the cooperation of other countries and international organisations.

Neither can the country give up on the process of the further development and improvement of criminal procedures, not even in the knowledge that the problem of human trafficking cannot be solved with the instruments of criminal law alone, morever, experience suggests that in this area criminal law is capable of no more than 'treating the symptoms'.[20] The end to the war is nowhere in sight.

## REFERENCES

Ákos Farkas: Új alkotmányos elv a bizonyításban? A kölcsönös elismerés elve. A büntető ítélet igazságtartalma (szerk.: Erdei Árpád), Magyar Közlöny Lap- és Könyvkiadó, Bp, 2010, pp. 9-22

Csaba Fenyvesi: The confrontation. Face to face in Criminal Cases. Dialóg Campus Kiadó, Bp-Pécs, 2008, pp.251

Csongor Herke: Súlyosítási tilalom a büntetőeljárásban. PTE ÁJK Pécs, 2010, pp. 173

Delmas-Marty and Spencer, eds, European Criminal Procedures, Cambridge University Press, October 2002, ISBN 0-521-59110-4 Chapter eleven- Evidence 1.4.3 The bad character of the defendant, pp. 23-25

Flórián Tremmel: 'Evidence in the criminal procedure', Dialog Campus, Bp-Pécs, 2006, pp. 191

Marcin Matczak – Matyas Bencze – Zdenek Kühn: Constitutions, EU Law and Judicial Strategies in the Czech Republic, Hungary and Poland. Jnl Publ. Pol., Cambridge University Press, 2010, 30, I, pp. 81-99

Mihaly Tóth – Istvan Laszló Gál: The fight against Money Laundering in Hungary. Journal of Money Lundering Control Vol. 8 No 2, page 186-192

2002/584/IB Council Framework Decision, HL L 190 2002.7.18. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. OJ L 196 3.8.2003

http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-v-area-of-freedom-security-and-justice/chapter-4-judicial-cooperation-in-criminal-matters/350-article-82.html

[19] Farkas ref. pp. 9-22

[20] Mihaly Tóth – Istvan Laszló Gál ref. Pp. 186-192