The Age of Innocents – Abridged English version

Prologue

(Or why are we writing this book?)

Why is it easy nowadays to commit crimes in Hungary, and why is it so difficult to punish those responsible? – this was the journalistic question that we asked in the Summer of 2007 when our career ended at the economic monthly called Manager Magazine.[1] By that time we had both spent more than 15 years in economic journalism. This period overlapped with the radical changes in Hungary after the change of regime when most of the public property was taken over by private owners and national wealth moved into private pockets – often in afterwards indecipherable ways, through transactions so complicated that they could not be tracked later, illegally, by bypassing, circumventing and breaking the rules, but at least in an unethical way. Those who participated in this process as its leaders, decision-makers or executers are mostly respected, well-known and acknowledged people who – with a few exceptions – never got caught. Those who did get caught disappeared in the maze of justice with their cases, and after many years surfaced free and in most cases with their head held high – even though the long years of legal proceedings somewhat battered them mentally – to take their place again in everyday or even public life. Ordinary people cannot believe their eyes: how is it possible that those found shoplifting are punished, whereas those who commit sophisticated economic crimes have a great chance to get away with it, and not only do they evade prison but the authorities almost apologise to them at the end of the procedure? Why is it so difficult to prove in these cases that a crime has been committed? Is there something wrong with the system, are the members of justice unprepared or corrupt, or does the logic of the machinery of power prevent the revealing of the truth in important cases accompanying economic change? Does justice aim at discovering thruth or reality at all? Where do these cases fail and why does one have a feeling of lack when they are closed?

We could go on asking questions from morning till night; we would love to know and understand what happened to the cases we selected in the midth of justice. Initially, we only wanted to investigate cases that we had thoroughly studied before and that we felt we knew well: these were the cases of Postabank,

[1] Between 2005 and 2007, the authors were the editors of the monthy Manager Magazine, owned by the German Spiegel group. When the new controlling owner, Axel-Springer wanted a reorganization in 2007, the board of editors decided to quit. The short history of Manager Magazine: Szakma és "felületképzés", Magyar Narancs July 5 2007.

Globex and Kulcsár. We wanted to have a closer look at what happened and what did not happen in the so-called oil cases with the authorities. We realised during our studies, however, that these cases cannot be separated from those cases of the years after the change of regime that had received great publicity: from the downfall of the Ybl Bank through the bankruptcy of the Agrobank to the Tocsik scandal. Thus, we decided to leave our original idea behind and to examine the whole system through the individual cases and the lessons that may be learned from them. We tried to answer some simple questions: what do the police do with these cases, how do they investigate and how do they put the pieces of the puzzle together; how is the indictment made and how does the court deal with such cases, how do they come to judgements – that often seem ambiguous to the public – respecting legislation. To this end, we needed to understand the limitations and obstacles of the legal system that make the reader and the journalist ask: why is it – at least seemingly – easy to commit economic crimes and why is it easy to get away with them? Or is this true at all?

We tried to answer these questions by journalistic means: by background discussions and interviews and by the thorough reading of documents and articles published on the cases. Journalism is the first rough draft of history – said Phil Graham, the owner of the *Washington Post* at the beginning of the seventies when the journalists of the newspaper started to investigate the Watergate scandal which shaped American political life for many years and led to the fall of president Nixon. In other words, investigative journalism is the first rough draft of legislation by *„drawing attention to the failures within society's system of regulation and to the ways in which those systems can be circumvented by the rich, the powerful and the corrupt"* – writes British professor Hugo de Burgh in his book tha has been translated into Hungarian.[2] Our book intends to be the first rough draft of what happened in the two decades since the change of regime in the economy, in the legal system – and in our minds.

Foreign readers, who are reading the shortened version of the book in English, may find it interesting and instructive to first read how the system of justice works in a transition country and what are the cultural and political obstacles to its efficient operation. Finally, they will find a short summary of the great crimes since the change of regime (these cases are discussed in more details in Hungarian).

[2] Investigative Journalism – edited by Hugo de Burgh, p. 3, Routledge, 2008

1.

Variations on capitalism

"If we want everything to remain as it is, everything must change" [3]

„A nurse, who had taken 20 thousand forints from her elderly father, spent two and a half years in prison" – this happened at a country court as a criminal jurist with 20 years of experience recalls. The nurse's deed was considered a robbery, and even though the defence argued that her old father had not been completely of sound mind, the punishment was legally binding and executed.

„Don't you think this is a bit too much?" – an old colleague asked Júlia Király, the well-known financial expert on the morning of 11 January 2008[4] when she heard the news that Gábor Princz, the one-time president and CEO of Postabank, accused of misappropration of 36 billion forints, had been validly declared guilty – although only of negligence – and had to pay a fine. It soon turned out that Király's friend had misinterpreted the zeros: she thought the fine was 3.6 billion forints. The court, however fined Princz a fraction of this sum, only 3.6 million forints.

The two cases have nothing in common at first glance. The first happened in a small country town, the second happened in the capital, the main character of the first one is an average person, while that of the second one used to be the most powerful banker in the country. And yet the two seemingly very distant cases both raise the fundamental question that we asked an innumerable number of times in the 20 years since the change of regime, in relation to similar stories. How is it possible that a person sitting in a high position, making several times 20 thousand forints disappear through complicated series of transactions, is more likely to evade prison than a country nurse? Or as one of our sources, a lawyer put it: *„Nowadays, it is almost impossible to get caught with a fraud of over 100 million forints, except if your name is Zalatnay*[5]*."* How does justice work in Hungary if those with power keep leaving the court with a broad smile on their face, while ordinary criminals often end up with handcuffs?

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[3] Giuseppe Tomasi Lampedusa: The Leopard

[4] Júlia Király is currently the vice-president of the Hungarian National Bank for a term of six years (starting on 1 March 2007). When Gábor Princz was dismissed in 1998, she was the head of the board of directors of Postabank (2002.07.19 – 2003.12.16)

[5] Singer Sarolta Zalatnay was validly sentenced to three years of prison to be served in September 2004. The court found her guilty of causing a damage of 123 million forints, about a quarter of which was repayed. She was liberated after two years, in October 2006, because of her good conduct.

„This is an optical illusion. Spectacular trials might not lead to results but this is still a working rule of law" – thus a friend of ours, a criminal judge in his mid-thirties, who has been a judge for about ten years, defends the legal system. In his opinion, we are asking for a brave application of law with our slightly demagogic questions. The principle of a quick and efficient justice is again and again in conflict with the expectations of a thorough, comprehensive, efficient and lawful procedure. When we asked him why the average person is caught sooner, he replied: *„Because they are easier, simpler and cheaper to catch. Whose papers is the policeman more likely to ask for on the street, those of the man in suit or those of the homeless guy? The latter, of course, because he knows who the man in the suit is. Even though a warrant may have been issued against him."*

Nevertheless, we expect administration of justice to do justice to the innocent and to punish the guilty according to the severity of the crime. In everyday life, however, we often get the impression that this ancient, important and seemingly simple norm that organises society is too often breached.

„It is a misunderstanding that the system does justice. This is a service of law. The court rules in a legal debate, not on the truth." „The administration of justice has little to do with truth or reality. The administration of justice is about what may be proved" – said several practising attorneys. *„Truth may only play a part insofar as it is identical to rights and law, don't you agree?"* – thus hints the answer to a rhetorical question the mayor to the newly appointed chief prosecutor, Ferenc Kopjáss, in Zsigmond Móricz's novel, „Rokonok" („Relatives").[6] The sentences of the novel describing Hungary before the second world war and the very similar opinions expressed by professionals working in different segments of justice of the beginning of the 21st century reveal this dilemma to be eternal just like crimes. Prosecutors of Hungarian country towns and investigators of the most important cases in Budapest ask themselves the same fundamental questions on revealing the truth, on finding the guilty, on collecting the proofs and on the appropriate punishment of those responsible as the chief prosecutors investigating billion dollar corporate frauds in New York.

The answers, however – especially in significant spectacular trials[7] that we studied – greatly depend on the economic and social environment of the given system of justice, on the dominant moral norms, on their respect or on the contrary, on the breaking and circumventing of rules. The environment also plays a role in determining which economic crimes become frequent and which crimes lead to great scandals.

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[6] Móricz Zsigmod: Rokonok (Relatives) (p. 55) Szépirodalmi Könyvkiadó, 1985

[7] It is important to remark that by the term „spectacular trial" we do not refer to the show trials of the 1950s but to procedures surrounded by great public and media interest.

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„The change of regime created the democratic rule of law and market economy but the price had to be paid" – this is how Mariann Kránitz criminologist formulated one of the most important lessons of the last two decades.[8] In her opinion, this price includes the increase of the number of crimes and the change of their quality. The experts studying this subject (we were, by the way, surprised by the low number of professionals systematically studying these issues[9]) all agree that the form and quality of crimes changed, adapting to the new circumstances. The object of negotiations, the stake became much higher.

The unprecedented ecomnomic restructurization of the beginning of the 90s did not create brand new types of crime. Earlier, during the system of planned economy of the pre-change years, as well as during the creation process of modern Hungarian market economy the most prosperous form was and has ever since been the circumvention by different methods of the state and of the support system provided by the state.

The first great possibility came about with privatization. The method was already developed on a smaller scale in the Kádár-regime, during the 70s and 80s. According to Mihály Tóth, the brilliant criminal attorney[10], what had then been called the breach of investment discipline was transformed into the uncontrolled and unregulated privatization of the beginning of the nineties. The change of regime and the creation of a democratic market economy require swift privatization, but this process turned out to be ambiguous in Hungary. As the late prime minister, József Antall said in the beginning of the 90s, at the start of the privatization process, *„privatization is the fundamental issue of economy, and the basis of privatization is legal security"*[11]. The first decade after the change of regime, however, showed that swift privatization had been carried out without the provision of legal security. The quick creation of democratic market economy thus meant that the privatization process was surrounded by suspicions

[8] Kránitz Mariann: A korrupció utolsó 25 éve Magyarországon – tanulmány (The last 25 years of corruption in Hungary – a study). (25-40.o) Ügyészek Lapja 2006/5

[9] When we started writing this book, we were surprised to see that few people studied the great economic crimes from a scientific point of view, and even fewer of them systematically. We based most of the facts of this chapter on the works of Professor Mihály Tóth criminal attorney and Mariann Kránitz (1946–2006) criminologist. These works are the following: Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), Kránitz Mariann: A korrupció utolsó 25 éve Magyarországon – tanulmány (The last 25 years of corruption in Hungary – a study). (p. 36) Ügyészek Lapja 2006/5, Kránitz Mariann: A fehérgalléros bűnözés Magyarországon az ezredfordulón (White Collar Crime in Hungary at the Turn of the Millennium), Kriminológiai és kriminalisztikai tanulmányok 36.köt. (1999). pp. 35-54.

[10] This paragraph is based on the first chapter of Mihály Tóth: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben – nagydoktori értekezés (2007) (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007).

[11] Quoted by Mariann Kránitz: A korrupció utolsó 25 éve Magyarországon – tanulmány (The last 25 years of corruption in Hungary – a study). (p. 36) Ügyészek Lapja 2006/5

of abuse and irregularities, with obscure and to this day unclear transactions going on regularly. The „something is rotten" feeling was reinforced by the two-facedness of the Hungarian State Holding share company (ÁPV) and its predecessors. In some ways, the organization is absurdity itself – a central state organ functioning as a business association. When it was reminded of a stronger enforcement of market aspects, it said it was a state organ that has to take into account other interests than the current market aspects. On the other hand, when it was asked why it did not take the country's long term interests into account – by considering economic-strategic goals that might not yield profit on a short term –, the answer was that a profit-oriented share company cannot be expected to do this. And many things could be concealed behind this ambiguity.

The other important group of economic crimes was also formed by the creative tapping of public money and of business partnerships with the state. The system of state allowances, dotations and grants that was intended to reinforce social justice, thus increased the feeling of injustice. The circumvention and spiteful and malevolent use of the system caused hundreds of billion forints damage to the state, thus to tax-paying citizens.

„We must realize that Hungary is still not a modern market economy, so these allowances will not surely – I almost have to write surely not – be used according to their legal aim, according to their normal market functions"[12] – as Mihály Tóth so effectively put it, along with a few examples. In Hungary, leasing is still not a means of the modern development of fixed assets, but a concealed purchase agreement if it is even slightly advantageous for the seller, the buyer or both. The reason behind this is that an investment declared to be an object of leasing – for instance, the purchase of a car – is usually not considered an investment, whereas the price, in this case called a leasing fee, can always be written off. Similarly, it is not the cause of business development and of the adoption of modern technology that is served by the contribution in kind provided by equipment from abroad, subsidized fuel was not intended to help the reduction of heating costs, just like the cars bought on behalf of the handicapped did not help their moving around, just as it is not the handicapped who park for free with the accompanying licence.

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[12] Tóth thinks that new forms of business are good examples of the almost unavoidable disfunctional operation. According to Tóth, many people form business associations not to create an optimal, ideal organizational framework for a functioning that is useful individually, corporately and socially but to be able to put their hands on the income resulting from the activities and to only carry responsibility for the debts with the corporate property that is anyway gone. *„This is how limited corporate liability often becomes unlimited individual possibility. (...) We must realize that the only right and fair – and simply reasonably just – solution is to ensure the privilege of limited liability exclusively to those who do not limit their liability in order to „privatize" corporate property and then regrettingly say: according to the law, he is only responsible for a fragment of the money in the corporate cashbox, but this does not matter anyway, since there is virtually not a penny in it."* Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis)(2007) p. 115.

We could go on enumerating the smaller and bigger tricks well-known in our everyday life, not to mention the scandals that illustrate the creative Hungarian usage of modern market economy structures. In contrast to the practice in the developed Western countries, the advice provided by Hungarian consulting companies often do not carry real economic content, but simply say where the money called honorarium and intended to conceal corruption should be transferred.[13]

Let it suffice to say that although Tóth, who had worked as a prosecutor for almost twenty years, between 1975 and 1998, primarily referred to the legal lessons of the Tocsik trial[14] and the Agrobank case[15], we see as average readers interested in the news that there are plenty of stories where consultancy fees serve as a part of the salary in the „best case", whereas in the worst case they end up in the cashbox of a political party to serve campaign financing aims and the prosperity of individual party members, even though the person who payed obviously expects something for his money.

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In the past 20 years we did not only have to realize that the above-mentioned price of the quick creation of market economy must be paid but we also had to forget about the hope that the transition towards Western market economy and democracy can be fast and that fair and free competition will destroy the corruption that has historically tied Hungarian society. *"If we want everything to remain as it is, everything must change"*[16] – this is how Lampedusa described in a now classic sentence the enormous change that the inhabitants of Sicily experienced in the 19th century with the civil changes and Italy's unification. The protagonist of the Leopard is a cultured aristocrat who does not believe in

[13] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) p. 159.

[14] Márta Tocsik lawyer signed an agreement with ÁPV in 1995: she would get a contingency fee if she can reduce the amount of the municipalities' claim for land legally owned by them; the astronomical figure was supposed to be paid by the privatization organ. Tocsik made 804 million forints in total, a part of which later ended up around the ruling parties of the time, MSZP (socialists) and SZDSZ (liberal democrats). The scandal erupted in 1996 and was followed by several procedures: the long criminal procedure had to be repeated at first instance and the accused received light punishment, Márta Tocsik was fined 400 thousand forints in 2003 for three-fold counterfeiting of private documents, whereas the similarly long civil procedure ruled that the original agreement for the contingency fee was against good morals and thus canceled. In October 2008, the Supreme Court decided that Tocsik must pay most of the sum – with interest – to ÁPV. For a detailed description of the case, see chapter 3.

[15] In November 1994, the police put handcuffs on the president and the CEO of the Agrobank, Mihály Kovács and Péter Kunos respectively. In April 1997, Kunos was accused as perpetrator, Kovács as accomplice of breach of duty by an employee entitled to independent action and of bribery committed in conspiracy and on a professional basis. According to the bill of indictment, Kunos created financial solutions against the law then in force on financial institutions in order to grant E-loans helping privatization. For a detailed description of the case, see chapter 3.

[16] Giuseppe Tomasi Lampedusa: A párduc (40.o) Füsi József fordítása, Budapest, 1975, Európa

the new times but is at the same time aware of the unavoidable end of old institutions; so he and his family support Garibaldi's Redshirts because he was convinced that if the old representatives of power take part in the revolution and direct it towards the appropriate trends, they can remain in power. The events of the last 20 years in Hungary may leave the same impression in many people: lots of things changed their form but the essence, the content remained almost the same.

„He gradually understood how the whole country has been bought. In one way or another, everybody depends on the government"[17] – this is what Zsigmond Móricz's town prosecutor thinks to himself in 1932 in the novel Rokonok (Relatives). Almost 80 years later we still have the feeling that everything is connected to politics, that „politics take it all", that „everybody has been bought"; hopes that this will change with the change of regime have proved to be futile. *„When will the fate of this nation take a turn?"*[18] – again we may quote the desperate question of Móricz's hero.

Another illusion was that corruption would be gone with the end of the Kádár era. This phenomenon has much deeper economic, social and especially cultural and historical roots. Corruption was not created by the economy of lack, since it is now clear that the need for bribery reproduces itself even in the absence of a specific economic pressure. Corruption and economic crimes both proved to be independent of the system. What is more, the situation has turned radically for the worse since the change of regime with new and stronger forms of corruption and now it is crystal clear: the phenomenon will not be overcome in the foreseeable future.

Processes thus changed oppositely to our hopes.[19] *„It is difficult to get rid of the idea that many millionaires or even billionaires were not backed by talent, by capital gained with hard work or even by luck but much more by personal connections, insider information or by a promise to have a share of the privatized property"*[20]– writes Tóth. According to the 2008 report of Transparency International[21], the majority of the business leaders interviewed

[17] Móricz Zsigmod: Rokonok (p. 147) Szépirodalmi Könyvkiadó, 1985
[18] Móricz Zsigmod: Rokonok (p. 150) Szépirodalmi Könyvkiadó, 1985
[19] *„Those who shared the unfounded optimism did not consider the new sources of corruption, the replacement of the old clientele with a new one, the abuses related to privatization, the stronger interconnection of politics and individual economic interests. It is not surprising, however, that the privatization of public property fundamentally restructures the property relations of society and must come hand in hand with the immoral and more frequent provision and acceptation of certain advantages."* Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 124.
[20] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 124.
[21] Transparency International: Korrupciós kockázatok az üzleti szektorban, Nemzeti integritás tanulmány Második rész (Corruption Risks in the Business Sector, Natinal Integrity Study, Part 2), 2008

talked about the obvious strengthening of corruption in the last 10–15 years; they mentioned both a practice without money flow, functioning on the basis of reciprocal favors and corruption with money flow. In the latter case, there is an increasing frequency of transactions involving several players and chains of transactions, calling our attention to the tendency of institutionalization. The bad news is that anti-corruption business leadership leads to explicit competitive disadvantage.[22]

The irregularities and abuses of the privatization process and the strengthening of corruption brought about significant changes in attitude. The society's respect of norms has not improved, it has in fact worsened and this has an effect on the functioning of the administration of justice. While the general fundamental rule of coexistence in a dictatorship is that the majority respects the law and deviancy is the exception, today it seems that going against the norms is the general attitude and only an exception follows the rules. 80–85 percent of Hungarians break some rules and believe that you can only achieve something if you break the rules from time to time.[23] This is not a novelty either: many people laughed in the novel *Rokonok* (Relatives) when the newly appointed town prosecutor encouraged townspeople to pay tax in his first newspaper interview. *„Can we imagine a more unexpected and bizarre idea in a country where everybody lives on tax fraud? The state is obliged to increase the tax two-folds, three-folds, ten-folds just to receive some of it"*[24]– wrote Zsigmond Móricz at the beginning of the last century.

Those who managed to play a part in privatization and in the different games with the state are the evident winners of the last twenty years, of the great economic change brought about with the change of system. By now, society has split in two, there are winners and losers and the strengthening of social inequalities further reinforced the identity of winners and losers. Those who pay tax, have a sense of being losers: as opposed to some developed market

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[22] *„In Hungary, the judgement on business corruption is more lenient than that of public figures or parasolvency"* – writes Kránitz in her study „The last 25 years of corruption in Hungary". Some researchers, however, first of all the Bulgarian Ivan Krastev – who is considered to be the greatest expert of countries having undergone a change of regime – observed several times that the perception of corruption is often stronger and more expanded than the phenomenon itself. Bookshelves could be filled with studies on the destructive effect this has on the psyche and on economic performance. Let it suffice to say that according to Transparency International's 2008 report on the corruption risks in business life, Hungary's international image improved in 2007 according to international rating institutes, whereas according to the subjective views of the interviewees – mostly business leaders – it has progressively worsened since 2001. Businesspeople working in Hungary say that it is impossible or extremely difficult to operate a prospering business without corruption. Kránitz's observations, however, are supported by the fact that the interviwees find this problem more important at the junction of the business and public sphere than within the business sector. According to Transparency's report, besides the unfavorable economic tendencies, the worsening situation encourages many businesspeople to help overcome corruption and create transparent situations. After a while they will cry for policemen, prosecutors and judges. But this time has not yet come and we do not know when it will come.

[23] Magyar Lelkiállapot 2008 (Hungarian Frame of Mind 2008), edited by Mária Kopp

[24] Móricz Zsigmod: Rokonok (p. 49) Szépirodalmi Könyvkiadó, 1985

economies, taxpaying and the amount payed do not make people proud and envied in Hungary.

Those who respect the law do not easily become winners, everyone experiences that those who follow the norms cannot really take a part in the competition. Most of us also find that the breaking of norms is not automatically followed by exposure and punishment. What is more, those who break the norms make material and time profits and thus become winners. *„Their advantage grows by the fact that their behavior is not followed by punishment but by moral award, since opposition to power has positive historical traditions in Hungary"*[25]– observes Mariann Kránitz. On top of all this, norm-breaking winners are usually identical with those in power and it seems that the higher the rank and the stake, the smaller the chance of getting caught.

It follows logically from the above that if the protagonists of important cases do get caught, they come up with two excuses publicly. On one hand, they say that they were in the way of somebody else – unnameable enemies with great power, influential circles –, that is why they are defamed and legally, politically and economically destroyed; on the other hand, they say that they have not breached the law, they only exploited the possibilites provided by the legislation in force and simply made good use of ambiguous law.

It is difficult to answer the first argument: we have to agree with Mihály Tóth who says in his already cited doctoral thesis that recent Hungarian history is full of show trials, so it is easy to refer to this experience publicly, even when indictment would be rightful, legal and just.[26] One of the most serious consequences of everything being connected to politics and of the division of society is that what seems to be rightful indictment on one side, is interpreted as tendentious witch-hunt on the other side. However, this ground is so muddy that it is impossible to stand firmly, the only possibility is sinking, since there is no stable point to put our feet on and say with certainty that some deeds are illegal or at least unethical.

It is, however, worthwhile to cast a closer look on the reference to loopholes. Not everything is ethical that is not against the law – we heard this countless times in the last two decades from competent authorities when legislation was slower than events and when people got away with small and not so small abuses accompanying the economic change by referring to the lack of rules. Loophole – so exclaimed those committing economic crimes when, very rarely, they had to account for what they had done, if only by answering a simple

[25] Kránitz Mariann: A korrupció utolsó 25 éve Magyarországon – tanulmány (The last 25 years of corruption in Hungary – a study). (p. 30) Ügyészek Lapja 2006/5

[26] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 116

journalistic question inquiring on whether a certain transaction had taken place according to the intentions of the legislator or rather it had been a clever move on or over the verge of legality.

„It is time to reduce references to fake or imagined loopholes"[27] – this is the answer of the former prosecutor. In Mihály Tóth's opinion, what is considered a loophole is not a loophole generally, and it surely is not a hiatus excluding criminal responsibility. He thinks that moral content has disappeared from behind the legal norms of economy – if it was ever there at all –, and this led to the misinterpretation and distortion of the principle of „we are free to do anything that is not forbidden by law". Those who commit crimes often think that in the absence of an explicit, concrete prohibition they are allowed to do something that certainly is not illegal in itself, considered independently from a series of actions, but becomes severely illegal when integrated into the series of actions, when looking at the entire process.[28] However, the study of the entire process and the recognition of relevance were neglected countless times during the last two decades in and outside justice in the cases that will be considered in detail in the following chapters of this book.

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But who are the protagonists of these cases and what factors helped them to be able to continuously do what they had done? The main characters of this book are those who are described shortly as white-collar criminals in criminology; all the people and goups breaching the law; these crimes are *„committed by a person of respectability and high social status in the course of his occupation"*[29]. Besides the most accepted American definition, there is a short Hungarian definition given by István Schäfer who moved into the United States but had taught at Pázmány Péter University before the war: those *„who commit their crime with the means or behind the bastions of their economic or social power (...)The name white-collar criminal is a symbolic description for the so-called economic or social authorities who mostly conceal the constitution meriting disapproval of their ethical personality by emphasizing their position, by an aristocratic appearance, that is, by externals, in other words those who always appear in public wearing a clean, white collar"*[30] For Schäfer, a white-

[27] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 118.
[28] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 118.
[29] The phenomenon was first described in 1940 by American criminologist Edwin H. Sutherland (for more details see Freda Adler, Gerhard O.W. Mueller, William S. Laufer: Criminology, New York, McGraw-Hill Book Company, 1991, p. 284)
[30] Schäfer István: A fehérgalléros bűntettes. Büntetőjogi dolgozatok. (The White-Collar Criminal. Essays on Criminal Law.) Published by Pázmány Péter Tudományegyetem, Büntetőjogi Szeminárium. Új folyam 7. szám, Fővárosi Nyomda Rt. Budapest 1948, p. 3.

collar criminal is not necessarily well-dressed, cultured or rich but *„socially respected, accepted and recognized, someone who is looked up to”*.[31] Or the way one of our interviewees, a district police officer who retired after 26 years of service in his early forties put it: *„These are clever guys, you shouldn't underestimate them. When something seems easy to do, there is only a small chance of getting caught and the transaction yields great profits, they easily agree to do it.”* According to experts, the diiferences between „ordinary” and white-collar criminals sould be sought in the type, category and quality of the crime, in the aims and in the amount of damage done.

According to estimations – as currently there are only estimations –, 40 percent of domestic crimes against property may be categorized as white-collar crimes; we do not know the actual values because the ratio of black economy is very big, about 30 percent and white-collar crimes and black economy go hand in hand.[32] *„This form of crime is an extremely profitable economic enterprise that necessitates a certain amount of investment but always guarantees extra profit. Operation is intellectually designed, there is a management that works out, develops and minutely plans execution, including the economic and legal form. It plans and organizes investment, infrastructure, the decision-making process, execution and the recycling of profits. It works with the precision of a clock, just like organized crime with which it has a more and more extended, although rather latent relationship.”*[33]

It is difficult to give a clear-cut definition of the relationship of white-collar and organized crime: according to some people, white-collar crime is a part of organized crime. This corporate-like, organized white-collar crime was assisted by several factors in the years following the change of regime: apart from the radical economic change, other factors played a part, namely the clumsiness and lack of confidence of authorities, the lack of expertise, politicizedness as an aggravating circumstance, the implicit social solidarity and resignation accompanying all these phenomena, as well as inappropriate, always belated regulations that only corrected problems subsequently. Mihály Tóth thinks that this is exactly what the peculiar self-justification and absolution system – referring to loopholes – of the criminals is based on: the legislative uncertainties of the transitional years led to the creation of certain criminal behaviors.[34]

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[31] Schäfer István: A fehérgalléros bűntettes. Büntetőjogi dolgozatok. (The White-Collar Criminal. Essays on Criminal Law.) Published by Pázmány Péter Tudományegyetem, Büntetőjogi Szeminárium. Új folyam 7. szám, Fővárosi Nyomda Rt. Budapest 1948, p. 3.

[32] Kránitz Mariann: A fehérgalléros bűnözés Magyarországon az ezredfordulón (White-Collar Crime in Hungary at the Turn of the Millennium), Kriminológiai és kriminalisztikai tanulmányok 36.köt. (1999). P. 35-54.

[33] Kránitz Mariann: A fehérgalléros bűnözés Magyarországon az ezredfordulón (White-Collar Crime in Hungary at the Turn of the Millennium), Kriminológiai és kriminalisztikai tanulmányok 36.köt. (1999). P. 35-54.

[34] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) p. 24.

The abuse of state subsidies and the circumvention of rules became such a profitable industry partially because *„a peculiar game was and sometimes still is going on in economic affairs. A (back) door had been opened or (maybe out of neglect) had been left open, some people had got in, then the door was immediately closed and reinforced, whereas other doors were opened at other places and so the slamming of doors went on ceaselessly."*[35] It is a pity – says Tóth – that the police and the prosecutor's office took a part in this process because they were often uncertain, unprepared and put the blame on each other: the courts expected the experts to take care of everything and at the same time studied dozens of successive background legislation to see which is more advantageous for the accused and should thus be applied.[36] The reason for this was that the rights of the accused had often been breached in the previous system, so the legislators of the new system put great emphasis on the respect of these rights, whereas the potential accused were light years ahead of everybody as far as criminal tricks are concerned. They saw such a small chance of getting caught that little did they care for the disrespect of their future rights as accused. These people are very well-prepared, they have a much more profound economic knowledge than the criminal investigators, they know and exploit each and every loophole and they skilfully make use of the above-mentioned social solidarity against those in power.

All this resulted in the fact that *„in the last ten years, latency has greatly increased within white-collar crime. The ratio of accusation is rather small compared to the number of crimes: most cases are forgotten in the investigative phase."*[37] This necessarily leads to reduced efficiency of clearing up.

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Despite the difficulties of clearing up and criminal investigation, enough experience has been gathered in the last almost two decades to sort the afore-mentioned, characteristic crimes and cases into groups. Mihály Tóth distinguishes several large groups and further divides these into subgroups.[38] We shall only mention those that concern our subject:

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[35]Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 147.

[36] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 147.

[37] Kránitz Mariann: A fehérgalléros bűnözés Magyarországon az ezredfordulón (White-Collar Crime in Hungary at the Turn of the Millennium), Kriminológiai és kriminalisztikai tanulmányok 36.köt. (1999). Pp. 35-54.

[38] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) p. 120. Tóth puts illegal concentrations and price-increasing trusts into a separate group; in recent years, the Hungarian Competition Authority has increasingly fought against such crimes.

- Crimes arising from rudimentary and inconsistent nature of regulation and from the contradictions of the „first wave" of privatization.[39]
- The so-called oil cases form a separate group because of the magnitude of the damage done and the organized nature of abuse. The basis for these crimes was the fact that the state – for reasons connected to social policy – had subsidized for a long time gas oil used as fuel oil by selling it at a lower price, and treated oil declared as instrument oil differently from other oil derivatives; such subsidies provided a „great" chance for abuse.
- Abuse of other dotations, state advantages and subsidies of which there are several characteristic types apart from „oiling".[40] We have already mentioned a few: the writing off of the whole leasing fee as cost[41] or the many examples of the almost unlimited and uncontrolled reclaim of VAT.[42]

We could carry on infinitely with examples of circumvention of state subsidies.[43] The common trait of these cases is that the legislator acted only

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[39] One element of this group is bankruptcy fraud whose main characteristic according to Mariann Kránitz is that everything seems to be legal, but in reality these cases have become the bedmate of corruption and misappropriation. (Kránitz Mariann: A fehérgalléros bűnözés Magyarországon az ezredfordulón (White-Collar Crime in Hungary at the Turn of the Millennium), Kriminológiai és kriminalisztikai tanulmányok 36.köt. (1999). Pp. 35-54)

[40] According to Mihály Tóth, these are the following:
1. support for the exportation of agricultural products;
2. the possibility of concentrating duty exemptions by family members;
3. duty concession for cars imported by the physically handicapped;
4. duty and tax concession of corporations (joint ventures) founded abroad and carrying out specific activities;
5. dotation for the employment of disabled workers;
6. tha almost unlimited and uncontrolled VAT reclaim;
7. writing off the whole leasing fee as cost;
8. exemption from the immediate paying of duty (postponed paying of duty);
9. concessions for turnover connected to the processing of raw material (precious metals, oil) abroad, in commission work

[41] Let us describe a case that went to court: a limited liability company (kft) bought pavilions, then sold them to its favorite business partner and re-leased them, wrote off the whole leasing fee from its tax base and bought them at residual value immediately after the tax return. In the procedure launched for tax fraud the court found everything in order and qualified the construction as appropriate for the actual contract intention of the parties; the legislator then realized the problem and modified the regulation: tax exemption may only be used after a longer period and only for a part of the sum. Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 141.

[42] The examples are presented in more detail in Mihály Tóth's doctoral thesis that we cited several times. With regard to VAT fraud, Tóth cites a famous case where the court managed to realize the situation and declare that the series of actions had not been legal. The companies were not founded for marketing and the creation of logos as the field of activities suggested but specifically for ensuring the keeping of VAT, and although the press qualified this as a case of invented loophole, the court filled the hole and sentenced the accused to prison to be served. Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007) page 141.

[43] The support for the exportation of agricultural products, for instance, was almost based on „word of honor": one had to fill in a form, write down the sum and automatically received the subsidy, causing tens of billions forints of damage to the budget. Clever entrepreneurs exploited the duty and tax concessions of joint ventures by

years later; the decision-makers usually woke up after an ineffective or partially effective criminal procedure and tried to limit or cancel the possibilities of abuse. Thus, they did learn from the cases but they only learned from the cases – observes Tóth who thinks that the solution would be to introduce a system of dotations and concessions only when and where the conditions of revealing the expected abuse had already been laid and will not be formed subsequently, learning from the events – usually at a time when the concession itself does not even exist anymore. The creation of a control system must precede the introduction of dotations, and dotations may only be applied if a system of guarantees excludes the possibility of abuse or reduces it to the minimum. *„If the decision-makers do otherwise, their generous and careless measures may even give rise to the accusation of corruption. For it is difficult to explain reasonably why the decision-makers again and again adopt regulations that almost call for abuse and allow the hoarding up of private wealth of hundred million or billion forints. It is thus not surprising that some people say that the institution of postponed paying of duty or the decision on the tax exemption of oil derivatives was adopted in the interest of certain groups, by providing economic or political advantages for the decision-makers."*[44] A simpler way to ask the same question is can one be stupid but benevolent time and time again?

Tóth says that according to his experience, the legislators never made systematic mistakes in favor of the same people. Nobody said such a thing during our interviews, either, or even if the suspicion was raised, nobody could prove the assumption. It is not a good idea anyway to replace the fact of benevolent naivity or dilettantism with the presumption of corruption; one does not need a very vivid imagination to suppose that even though the preparation of a regulation was mistaken or vague, it was based on good intentions – and later exploited in bad faith. Nevertheless – writes Tóth –, if we want to avoid further hundred billions of damage arising from economic crimes, we cannot simply say that such concessions, dotations and subsidies are characteristic of every modern market economy.[45] *„Thus, we can go on declaring that we are free to do*

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immediately selling the car imported on the basis of the concessions: when the legislators realized this, they modified the regulation by adding that the car may not be sold for three years, otherwise duty must be paid. Our clever compatriots used the concessions for turnover connected to the processing of raw material by taking blocks of precious metal over the border and later declared that the jewels smuggled into the country are the results of processing. Discount for house-building was more complicated, one had to find people in need but when the authorities saw that many people apply for support as a trick and do not use the money themselves but give it to those who want to gain by this construction, the regulation was modified: in case of fraudulent intentions, the state reclaimed the money. Money also had to be repaid if those who legally received support wanted to sell the real estate so purchased within five years. Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), pages 141–153.

[44] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 160.

[45] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 158.

anything not prohibited by law and that the market is free. But we should also take a moment to think about why scandals always break out when an agreement – „expert's fee", „screening", „case study", „consultancy" – opens the purse of the budget, in other words when state money is being distributed. Why is it that we never see generosity against our morals in the contract relationships of those associations that make their living on their own work and really play with their own, slowly increasing wealth? The answer may be suspected."[46]

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„The prosecutor's office must leave the flowery meadow of the free contract intentions"[47]- so explains the former prosecutor what the actors of economic life wanted to achieve around the change of regime. They needed more fresh air and scope for action, with less limitations and restrictions. Some of these aims were undoubtedly reached, while some were much less approached: as old types of crime were replaced by new ones, several old limitations and regulations deemed stupid disappeared but new ones took their place. And some people made use of liberty by not only using but also abusing rights and possibilities. As a leading judge of the capital put it: *„Nowadays, rights may be used with bad intentions. This leads to all those contradictory judgements when the country nurse spends two and a half years in prison for having taken 20 thousand forints, while bankers walk away smiling."*

It takes a long time for us to learn that there is no place for a paternalist state, trying to limit the contract liberty of parties, in a market economy. It is also doubtful whether criminal law is capable of restricting economic crime. And if it is, to what extent? Most working lawyers agree that the continuous modification, aggravation and strict application of the Penal Code is not the most appropriate way of reducing the number of economic crimes, on the other hand, criminal law must keep up with the changes of life and economy. The threatening of public supply and the breach of investment discipline are not in the Penal Code anymore, but as a result of changes, the number of legal provisions regulated as economic crimes almost tripled in a few years. Although in theory, most people do not agree with the creation of all the new amounts and passages of punishment[48], this turned out to be a necessity: during the processes

[46] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 136.
[47] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 136.

[48] As far as trusts are concerned, Mihály Tóth says in his doctoral thesis that he has never believed in too many criminal law prohibitions, indeed he finds some prohibitions harmful. He thinks that the existing instruments should be put to better use. *„Sometimes we seem to be compensating for our helplessness by inserting more and more statements of facts into our Penal Code."* Tóth Mihály: Gazdasági bűncselekmények és bűnözés a

described above, life has moved away from the image of crime and criminals of the previous Penal Code.[49]

The Penal Code in force (just like the previous ones) distinguishes economic crimes and crimes against property.[50] In order to understand what happened to the spectacular trials discussed in the second part of the book in the maze of law, we must have a closer look at the legal formulation of those crimes against property that are of greater interest to us: these are primarily the statement of facts of fraud, embezzlement, misappropriation and careless management.[51] In the case of statements of facts, intentionality is the most difficult element to prove, however, this is the key question in relation to great economic crimes. In case of fraud, for instance, damage only becomes fraud if it can be proven that the debtor had no intention to implement the contract or if he knew that he would not be able to implement it. If somebody is hopelessly in debts but pretends to be otherwise and takes more and more loans; or advertizes or performs a service while hiding or distorting a circumstance that is important for the service or for the compensation given for it, this may qualify as fraud.[52] Intentionality appears with embezzlement and misappropriation as well: neither may be committed out of neglect, although the commission to handle property (this is the statement of facts for misappropriation) is always more than entrusting the property to somebody (statement of facts for embezzlement); for commission also means the responsibility to manage and increase the property.

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rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 153.

[49] *„A new economic and social structure came into being, and the new structures enable and suggest new – unwanted – forms of behavior, while delinquency itself develops new structural forms. Along with quantitative measures, the changes of the character and quality of delinquency are more and more terrifying"* – says Mihály Tóth. Tóth Mihály: A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), pp. 194-213. Mobil Kiadó Kft., 2006

[50] Economic crimes: (for a precise definition, see the „Appendix" of this book")

- Bankruptcy fraud (Penal Code 290)
- Money laundering (Penal Code 303)
- Computer delinquency (Penal Code 313/B-C.0)
- Tax and contribution crimes (Penal Code 310)

Crimes against property:

- Stealing Penal Code 316 (1)
- Embezzlement Penal Code 317 (1)
- Fraud Penal Code 318 (1)
- Misappropriation Penal Code 319 (1)
- Careless management Penal Code 320 (1)
- Profiteering from influence Penal Code 256
- Credit and capital investment fraud
- Counterfeiting
- Counterfeiting of public or private documents Penal Code 274, 276

The list follows the Penal Code in force. In her study on the subject, Mariann Kránitz lists bribery among economic crimes out of sociological reasons.

[51] This chapter is based on Mihály Tóth's course book, A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), pp. 194-213. Mobil Kiadó Kft., 2006

[52] Tóth Mihály: A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), p. 204, Mobil Kiadó Kft., 2006

On the other hand, careless management is „only" an offence and always committed out of neglect, unintentionally: it may be punished by prison of not more than two years, public work or a fine, as opposed to misappropriation where the amounts of punishment are much more severe.[53] According to lawyers, careless management is not simply the „out of neglect" version of misappropriation, because legal explanations emphasize that careless management may only be committed in a situation where responsibility is is based on legally determined duties; misappropriation, however, may also be committed in connection with the supervision of property. In spite of this, laypeople unavoidably formulate a question: when misappropriation was committed, what else could the duties breached by the offender be based on other then the law? The reader may consider this a contradiction in terms, the leaders of the Postabank, however, received the punishment that the public found rather mild because of the existence of the statement of facts of careless management.

We should all decide for ourselves whether the fine that Princz had to pay is proportional to the damage he had caused as the president of Postabank. In a criminal law sense, damage is loss of the value of property and law makes a difference between actual damage and the loss of pecuniary gain. The latter is the amount by which the property of the damaged would have increased if the behavior causing damage had not occurred. *„The criminal attorney – both the judge and the defence attorney – is relieved to refer the issue of repaying the damage to a civil procedure"*[54] – writes Mihály Tóth. He thinks the reason for this is not laziness or the natural human preference of comfort but simply that the rules on compensation have still not been adapted to the new economic forms and frameworks.[55] According to Tóth's great book, in recent years, the damage arising from crimes against property approaches or even exceeds 100 billion forints, and less than 10% of the damage is payed back.[56]

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[53] Greater pecuniary loss may be punished by 3 years, significant pecuniary loss by 1–5 years, especially great pecuniary loss by 2–8 years and especially significant pecuniary loss by 5–10 years of prison.

[54] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 114.

[55] *„Economic crimes are committed in most cases on behalf of legal entities, it is the legal entity that takes pecuniary responsibility for illegal activities – usually through a contract –, so the creditor may file a claim against the legal entity for breaching of contract, not against the natural entity for damage outside the contract. Thus, the basis for compensation is not the private property, often reaching hundreds of millions of forints, of the perpetrator but the fixed or equity capital or liabilities of the association, representing only a fraction of the private property. To put it more simply, the perpetrator unscrupulously increases his private property by hiding behind the „limited liability" of the association, and if he is caught, he is only responsible to the extent of the property determined by the form of the association*" – writes Mihály Tóth in his doctoral thesis. Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 114.

[56] 2004 data. Cited by Mihály Tóth, A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), p. 201 (Mobil Kiadó Kft., 2006.) According to the criminal register, 41 250 frauds, 3629 embezzlements, 64 misappropriations and 3 careless managemenets were committed in 2007.

And to show the doubtful results of procedures for compensation, let us cite the trial that the Hungarian state filed against the auditors of Postabank in December 2000. Although more than eight years have passed, there was still no legally binding judgement when this manuscript went to print in Spring 2009. It is likely, however, that if the second instance approves the judgement of the first instance, the Ministry of Finance (PM) representing the claimant Hungarian state spent taxpayers' money on lawyers without receiving a penny of the sum they sued the auditors for. The damage was more than 100 billion forints on paper, but the signs suggest that the sum is going to remain on paper forever. At the beginning of November 2008, the Court of the Capital (FB) rejected on first instance the state claim for compensation against the two auditors of the former Postabank, Deloitte and Prudentia lomited liabilitiy companies, saying that the claimant could not support the claim with proofs. PM filed a claim against the auditors certifying the yearly accounts of Postabank because they felt that the balances of the bank had not reflected the real situation, and by certifying the accounts, the auditors had contributed to the fact that the investors and the owners had received false information about the financial institute led by Gábor Princz; the bank went bankrupt and had to be consolidated from the budget. In Summer 2005, the FB ruled at first instance that Deloitte and the Hungarian state share a fitfty-fifty percentage of the damage, the amount of which it wanted to determine in a new procedure. However, the Court of Appeal of the Capital repealed this partial judgement and called for a new procedure whose legally binding result was the complete rejection of the claim. According to the legal arguments of the defendant auditors, the sum of consolidation cannot be considered damage in the sense of civil law, since the state took an economic policy decision to save the financial institution. And to make things even more juicy and abstract in the eyes of the outside observer, the attorneys of the auditors continued their argument: even if the court considers the 152 billion forints of consolidation or a part of it – payed from the budget – damage, this is not a result of the auditos' behavior, since they had always followed the law. Great explanation, isn't it?

On top of all this, the Court of Appeal of the Capital completely rejected the claim of the Hungarian state filed for compensation of the damage incurred by the state as a shareholder. This was explained by the argument that from the point of view of civil law, the damage caused to the corporation by a loss of value is not necessarily damage incurred by the owner. To cite a simple example: according to this logic, if you break the car belonging to your own kft,

the damage is not incurred by the individual owning the kft but by the association.[57] According to one of our sources, close to the lawyers representing the Hungarian state, *„this decision implies that the Enron case does not exist”*. The Enron case broke out in 2001: the American prosecutor's office led an investigation against the company's auditor, Arthur Andersen who, according to the accusation, had concealed the gathering deficit by different tricks and the deficit to led to Enron's bankruptcy. In that legal procedure, however, the auditor was held responsible for the fall of the company and the damage incurred by the shareholders.

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Still, how could we reduce the number of economic crimes? Would the appropriate punishment of the perpetrators carry enough retaining force? Most of the interviewed experts agreed that criminal prosecution is a necessary but not sufficient pre-condition of the struggle against crime and corruption. Criminal law as *ultima ratio* can only be efficient if it is accompanied by a great array of instruments and methods serving reduction and prevention[58] – writes Mihály Tóth. He concludes that the sanctions – for instance the levying or seizing of property – so far applied for the weakening of the financial bases of crime against property and economic crime, as well as for the reduction of sinful income have not been efficient and consistent enough.[59] What is more, due to the complicated and complex nature of cases, we do not necessarily have to think in terms of specific categories of crime, since it is clear now that along with the traditional forms of corruption, we must also expect new forms that better conceal the unchanged essence and are more complex, ending up in court as mega-cases involving several actors. And since criminologists say that only a fraction of corruption-like crimes are cleared up, we should first of all get acquainted with these cases, in order to handle them according to their real importance and to develop efficient countermoves for their prevention. *„And our determination in this struggle must be obvious despite the temporary failures”* – this is the conclusion that Mihály Tóth draws[60], reflecting on the fact that legislators and applicators of law usually reacted belatedly, and the result of their actions only reinforced the public feeling that while it is not lucrative to steal wood, it is very much so to steal a whole forest.

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[57] The summary of the trial against the auditors of Postabank was esentially written on the basis of articles that had appeared in Manager Magazine (mm, 2005/August, Az énekes halott, and mm, 2007/June, Mi kár, mi nem kár?)

[58] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 77.

[59] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 23.

[60] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 124.

In order to understand the reasons of this phenomenon and to comprehend why so many criminals escape real responsibility and consequences, we must study in the next chapter what basic principles and procedures of criminal law and what cultural peculiarities determine the scope of action of policemen, prosecutors and judges.

2.
Some are more equal than others

„I would rather let a hundred criminals escape than have one single innocent person punished" – thus explained one of our sources, an attorney experienced in drug cases, the issues mentioned in the previous chapter, namely why the administration of justice is about demonstrability. In other words, no one may be considered guilty until the court issues a legally binding judgement on his responsibility, and this also refers to the important legal principle of the presumption of innocence. And the aim of demonstration is none other than the revelation of the truth. But since truth is an absolute concept in the philosophical sense, whose subjective equivalent related to man is certainty, the only possible aim of demonstration is to turn suspicions forming the basis of the criminal procedure into rock-solid certainty. To this end, you need facts, and all facts must be proven, with the exception of those that are common knowledge. For instance, the fact that on December days, it is already dark around 6 P.M. in Hungary is common knowledge. It is not common knowledge but must be proven, however, that the leader of a bank is responsible for everything and must be aware of everything that happens in his financial institution and its surroundings – in this case in his brokerage firm. *„Demonstrability sometimes coincides with the truth but this is not always the case"* – this is how a lawyer summed up his experience.

„Intentionality is the most difficult element to prove" – so we cited working attorneys in the previous chapter when we listed the types of crime on the basis of the Penal Code in force. In criminal law, it is very important to decide for the sake of legal judgement and the consequences whether the action was committed intentionally or out of neglect, since in the latter case, it might not even be a crime.[61] Crime may be felony or offence. Felony is an intentionally

[61]Guiltiness – or in other words, attributability – means that the accountable person, who must be over 14 years of age, acts *intentionally* or *out of neglect*. *Intentionality* may be *direct* or *eventual*. In case of *direct intention*, the perpetrator foresees the consequences of his actions and desires them. In case of *eventual intention*, he foresees the consequences and resigns to them, feeling unconcerned. *Neglect* is divided into two groups as well: *conscious* or *careless*. In case of *conscious neglect*, the perpetrator foresees the consequences of his actions but he hopes that they will not occur. In case of *careless neglect*, the perpetrator does not foresee the results of his actions, although he would be expected to see them, and thus does not count with them, even though he should. Neglect is punishable only if the law explicitly provides so, whereas intentionality is punishable in each and every case. Mihály Tóth thinks that the real line should not be drawn between *intentionality* and *neglect* but between the two types of *neglect*. For intentionality and conscious neglect both imply that the perpetrator is aware of what he is doing. During the modifications of the Penal Code, it was discussed several times that Hungary should adapt the European norm and distinguish only three categories of guiltiness, that is one type of intentional behavior – aware of the prohibition and the harmful consequences – and the two types of neglect. (Tóth Mihály: A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), pp. 45-46, Mobil Kiadó Kft., 2006)

committed crime that should be punished by more than 2 years of prison, whereas for offence, that is actions done out of neglect, no more than 2 years may be given.

In the previous chapter we saw that while the modifications of legislation had still been trying to correct the mistakes of the previous system, life had left all this behind by light years and presented challenges that nobody was prepared for in the administration of justice.

The legislative boom of the change of regime owes us several answers, and the spiteful users of rights have exploited this situation. *„Roles are being confused each and every day. We want the system to account for everything the decision-makers should have done. There are no morals"* – a professor told us. In his often-cited doctoral thesis, Mihály Tóth refers to a professor of criminology, Dénes Szabó who thinks that the most effective method for the prevention of crime is human integrity. Similarly, a judge with several decades of experience complains that we do not know the concept of integrity. *„Where is the expected income of national economy?"* – he asks, and makes a theatrical gesture towards the enormous desk behind his back, covered with documents. *„Here it is. The money taken away in the first six years has never come back. The legal environment did not allow its recovery."* What is more, the presumption of innocence and the fact that intentionality is the most difficult element to prove make it extremely difficult to hold the perpetrators of such crimes responsible.

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We cannot understand the basic concepts and procedures of criminal law without getting to know the inner interest systems and interactions of the parties. For one of the crucial and often-debated issues is the fact that the administration of justice depends to a great extent on people, so many decisions may only be understood if we take into account the people who took them and the people who have the possibility at all to sit in different positions and take decisions. The trials we are interested in took part mostly in the capital, so we are going to present the narrow circle of policemen, prosecutors, judges, lawyers and experts participating in these cases. We may go as far as saying that the same dozen people acted in the most important cases of justice in the last 15-20 years. And if these people become tired and exhausted in the battles they must fight each day, this will surely leave its trace on the result.

Let us look at the limitations arising from institutional and procedural law first. When we tried to look into the mysteries of the administration of justice, the stories we were told reminded us of Kafka's short stories. *„In the administration of justice, just like in all state bodies, almost everybody has an interest in things*

remaining unchanged" – an ex-prosecutor defence attorney summed up his experience. *„This an absurd drama"* – said one our sources, a famous lawyer from Budapest – *„and the point is that it must be taken extremely seriously and can only be played extremely seriously. Otherwise it would be called simple nonsense"*.

Our interviews and background discussions made us realize that all the actors of the system – policemen, prosecutors, judges – feel that their situation is the worst, they handle the biggest pressure and they have to carry all the responsibility in the end. They work so hard they can hardly breathe – but the rules are wrong. They all have a bad opinion on the experts of the other branches of law and they tend to put the blame on each other. Most of them agree, however, that the legal system itself and those who work in it are not any better or worse than society as a whole. *„A fucked-up society"* – as it was put rather crudely by a judge who regularly works in economic criminal cases. Another opinion that everybody seems to share is that the actors of the administration of justice and the functioning of the different subsystems are characterized by the lack of recognition of essence and relevance, but since people tend to support their own interests, each actor blames the other one for the problematic functioning of the system.

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On one hand, the police receive the most criticism because they represent one end of cases, the spectacular input side. *„They confuse their roles. Their role is to collect data but they often work tendentiously, against all logic. But this is not surprising at all, the whole country is like this. The corpse is there but they fall over it without noticing it"* – this is how a well-known criminal attorney described the current situation. Many interviewees complained of unpreparedness and irrationality. *„Investigations have a touch of the compulsory Saturday gatherings of the communist era. Everybody is enthusiastic, they go and seize things but they have no idea why they are doing it. And then they keep scratching their head on top of the heap. They should think first before acting"* – said a celebrity lawyer who thinks that the investigators' approach is often one-sided, they do not understand and do not even want to understand complicated economic affairs.

One of the frequent criticisms[62] on the police is that leaders are chosen on political grounds, it is not expertise and talent that count, the principal value is reliability and loyalty – this is then felt all over the system and the only possible result is the selection of the unfittest within the police, functioning among

[62] Structural problems are suggestively described in Tibor Jármy's article: Nem akarok tengerészgyalogos lenni (I don't want to be an able seaman) (Népszabadság, 15 May 2008)

enormous outside (that is, political) and inside obligations for meeting expectations.

One of the most important and at the same time shocking bits of experience we encountered during the writing of our book was when we met a district chief police officer jut over 42 in the capital. The handsome, tall, confident chief officer looked like an American movie star. He was packing when we met him, he retired in the midth of his youth, with a wide range of professional experience, to take a well-paying job as security manager in the private sector. *„Above a certain level, police leaders want to comply with the expectations of politics, they hang on to their chairs and do not dare to protect the professional interests of the police. They do not dare to say that this is an expensive job that needs more money"* – explained the chief officer who left the ranks because he knew: if he accepts invitations and moves further up, he will be expected to show loyalty and to make compromises that he is uncapable of. His case is not unique: in recent years, many young and well-experienced policiemen retired, either because of the reasons mentioned above or on financial grounds. Strangely enough, tax and retirement regulations encouraged policemen to retire after a certain age because they were better off choosing retirement (and working simultaneously in the private sector) than remaining in service. Even our right-wing sources agree that the police were better organized around the change of regime but the structure has since been demolished. *„It is a banderium army. Petty monarchs sit in all the positions. This is a vassal system at work"* – said a leader of the National Investigation Office (NNYI) sent to early retirement.

Nevertheless, there is also great consensus in the fact that policemen are able to clear up what happened – provided they want to. According to the dismissed leader, *„it is a joke that policemen work official hours, between 8 in the morning and 4 in the afternoon. They hardly ever go out into real life. They start working when they are told to do so from above, thanks to the prosecutor's supervision. This makes things difficult."*

The question inevitably arises: what would the ideal police investigator be like, one who is capable of clearing up the great and complicated economic crimes? Well-prepared, talented, not overloaded with work, able to pay attention to what he is doing and ready to find his way in the maze of files. He is able to apply the law on criminal procedures by himself, he does not have to call a lawyer every second, and does not let himself be humiliated by the defender of the accused who often tries to take over the investigator's role during questionings.

A policeman who is fair and respects law, however, is not necessarily one who is efficient and effective at the same time. *„We should always consider what is*

more advantageous for society. Retaining force is currently virtually non-existent, but if you put someone in prison today, at least he won't commit crimes tomorrow" – says one our police sources who works in the inner control department. *„Even the police do not receive feedback on whether their investigation has been successful or not. There is no formal feedback"* – adds a defence attorney of drug cases a new problem to the existing list. *„Everything is about statistics"* – says the above-cited retiring district police chief who recalls a Dutch study trip where he saw that his Dutch colleague took aspects of content into consideration when taking decisions on the resources available for investigation. *„They did not simply say that if they caught the serial bicycle thief, they would have 40 cleared-up cases in one go; they took other things into account. In Hungary, we just keep staring at numbers"* – he explains.

József Kó criminologist, member of the National Criminology Institute (OKRI) believes, however, that policemen tend to pick the easiest cases in every country, that is why they catch those who commit smaller crimes instead of those who commit graver ones. *„It would be nice to see some kind of pre-concept in this respect but nothing can bee seen, apart from a few exceptions. Policemen choose not to investigate because of a lack of capacity and expertise. They do not understand what the experts tell them about economic cases but they do not dare to ask."* Another problem he mentions is that there is no law for detection by the authorities, so even when they do detect a problem, they do not do anything. This is why the National Investigation Office (NNYI) was created: not to let sleeping dogs lie but they are still lying everywhere – this is how he sums up the results of his observations.

„A good investigator cannot be influenced, is persistent and patient, able to put the pieces of the puzzle together, able to think and solve a problem without constantly keeping an eye on the place where decisions are taken" – so refers one of our sources, an active policeman, to the problem of politics taking a bigger and bigger role everywhere. One of our police sources of high rank, working close to all the great economic cases, thinks that the situation has explicitly worsened in the last five years: *„At the time of the Tocsik affair, we were less afraid of the political consequences of the investigation."* Policemen, who complain of a constant lack of resources and a constant time pressure, have an objective deadline according to the law on criminal procedures currently in force: they have two years to investigate from the date of accusation, so, in order to gain time, they usually start investigating well before the accusation in megacases. It is partially this, partially the above-mentioned statistics that explain their preference of denunciation of unkwkown perpetrator: if they accuse somebody, the statistics improve. On the other hand, no denunciator is ready to make a false accusation, especially if the accused would be an

influential, white-collar perpetrator who, as it may turn out, cannot be accused. Why can't he be accused?

One of the reasons is the debilitating increased attention: if the investigator is not busy collecting evidence but keeps glancing up to see what he is expected to do, the process is inevitably distorted. As one of our sources, a former minister of justice put it: *„When the policeman leading the investigation is invited to a discussion with the interior minister, the minister of justice and the chief prosecutor and they ask why the perpatrator has not been caught, well, there will surely be a perpetrator by the next day."* The problem is that it might not be the real perpetrator. It usually isn't. *„There have always been favorite themes in this country. During the communist regime, there were the illegal private businesses, illegal actions in the co-operative farm, then bank consolidation, and some guilty people had to be presented from time to time, while hundreds of others, doing the same, got away with it"* – said a celebrity lawyer who thinks that in these important cases, *„the disgusting presence of politics was always visible"* one way or another.

One of the eminence grise main characters of this book is the police officer who was responsible for the result of almost all the great and important cases. Who and what kind of a person is he?

Csaba Papp lieutenant colonel[63], head of the Economic Protection Department of the National Investigation Office (NNYI), who once had a reputation of being a very good investigator – he is still proud of the confession Márta Tocsik gave him personally, wearing pyjamas, in his office in 1998[64] – seems to have faded away and slowed down. Otherwise, as many people say, he would not be sitting in the position he is sitting on. Or as one of our sources put it: *„Csaba Papp tends to take things slowly by nature. But even if he didn't, he has learnt by now that things that don't happen never cause problems. Problems are only caused by things that happen."* According to a source close to Csaba Papp, police leaders all agree that although the change of regime brought about some years when it was easier to breathe, *„nowadays, the police and the court solve situations instead of cases"*. This is best seen in the spectacular cases that we studied, as everybody wants to finish these cases as quickly as possible, due to the enormous public pressure and political influence.

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[63] Csaba Papp received his degree at the criminal department of the Police College, and – at the age of twenty-five – started his carreer as an investigator of the 2nd district police. He took up a position at the central investigation department of the ORFK in 1992. Four years later, he was appointed vice head of department at the Central Criminal Investigation Directorate, and in 1998, he became the head of the department against economic crime of the Directorate Against Organized Crime of ORFK. He is currently the head of a department with similar functions of the National Investigation Office.

[64] „Nem hülyültünk meg az elmúlt hónapokban" („We have not gone crazy in recent months") (Ferenczy Krisztina interviews Csaba Papp), Magyar Hírlap, 2003.11.20

According to one of our sources, who knows Csaba Papp quite well, Papp once told his colleagues that he likes working with white-collar criminals because everyone plays his part so well: the policemen represent the law, whereas those on the other side usually insist that their economic decisions were sound, well-founded and legal. The effectiveness of clearing-up, however, may be decreased if the investigator believes every word he is told and if he feels that he cannot start his investigation on the assumption that a business leader deliberately wanted to harm his corporation.

Csapa Papp first encountered white-collar crime around the change of regime: in 1988, an under-secretary of state was accused of maladministration and Papp had to carry out the investigation. This was the first time that he saw someone from higher ranks accused in such an „ordinary" investigation. He once described themselves to his colleagues as bare-feet policemen with stinking feet. One of our sources close to him told us that he and his colleagues had often felt that they were unjustly attacked but policemen can never explain openly why such attacks are unfounded. To the suggestion that policemen are simply afraid, a defence attorney working on the Postabank case delicately replied: the prosecutor's office sometimes sent them instructions on which specific investigation should be stopped in the K&H affair. In 2003, when the Postabank case was closed but investigation was still going on around the brokerage firm of K&H, Csaba Papp told the press [65] – and he rarely gave interviews – that *„We have not gone crazy in recent months"*[66]. Reading between the lines, this means: the police are aware of their tasks and they would perform them if they were allowed and, just as importantly, if they were better paid to do so. For the wealthy accused on the other side present real „heavy weapons" against them, so the police must fight against extremely well-paid defence attorneys in white-collar cases.

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Besides informal meetings and the already existing self-limitations, legal supervision by the prosecutor may also put pressure on the police. The new law on criminal procedures (BE) that entered into force at the beginning of July 2003, restructured the relationship of the police and the prosecution and put

[65] „Nem hülyültünk meg az elmúlt hónapokban" („We have not gone crazy in recent months") (Ferenczy Krisztina interviews Csaba Papp), Magyar Hírlap, 2003.11.20

[66] „Nem hülyültünk meg az elmúlt hónapokban" („We have not gone crazy in recent months") (Ferenczy Krisztina interviews Csaba Papp), Magyar Hírlap, 2003.11.20

prosecution on top. The prosecutor is not obliged to justify his instructions to the policemen, and the same is the case within the prosecution that many describe as a paramilitary organization: the supervising prosecutor may open a new phase or close an old one in a case without any explanations. Although we have not met anyone during the collection of the material who experienced direct political intervention in the prosecutor's office, it is difficult to decide what one deems as such. Informal discussions, playing games with assignment – who gets the case within the prosecutor's office supervising investigation –, implicit expectations and self-control might all play a part when a case gets stuck. *„The prosecution's independence, the fact that it is an independent constitutional organization which is not even subordinated to the Parliament is a nice idea but who guards the guards?"* – this rhetorical question was asked by Péter Hack[67], the well-known criminal lawyer, a former MP of SZDSZ (Union of Liberal Democrats) who participated in the preparation of the 1998 justice reform.

The prosecutor's office receives much less spectacular criticism, they are significantly greyer and more invisible than the police on the input side or – as we will soon see – the court which is on the output side and thus attracts much more attention. *„Everyone sees the prosecution as a gathering of dyspeptic guys dressed in black, issuing instructions to each other"* – as a former prosecutor put it. And who can become a good prosecutor? Someone who takes clever and swift decisions and quickly prepares a statement of facts. There are differing views on the organization: many people think that it used to have great authority, with professional members and great expertise. *„It is a profession-oriented, hierarchic organization whose members are much better prepared than the judges"* – one of our sources claimed. Several defence attorneys agree that most judges have a great respect for prosecutors and want to please them with their judgements – it is difficult to decide, however, to what extent this stems from the principle of being tied to accusation. One of our sources, a celebrity lawyer, thinks that the prosectuion has been corrupted, it is not the same as before, politics play a very important part, just like in the case of the police. As an example, he mentioned the Chief Prosecution of Budapest where one of the leaders used to start morning meetings by making the prosecutors sing. *„I think they had to sing songs by the band Illés but the prosecutors rebelled after a while."* We do not know whether the assignment of cases depended on the prosecutor's quality of singing or professional aspects were taken into account. *„It is true that many things depend on assignment"* – thus reinforces the importance of the role of the leader one of our sources, a leading

[67]Lawyer, university professor, politician. Senior lecturer at the criminal procedures department of ELTE University – his field of research is the structure of criminal administration of justice, the respect of human rights in criminal procedures and the right to administration of justice of the transition period. A founding member of SZDSZ, its MP and – with some intermissions – leading member until 2002 when he left the party. Founder and – until 2007 – active member of the Hungarian Helsinki Committee.

county prosecutor, who thinks that the problem is the exaggerated respect of the rights of the suspects, sometimes even to the disadvantage of investigation. A change of prosecutor in complicated cases may cause a problem, and this often happens in cases that take a long time to close. One of our sources, a defence attorney who used to be a prosecutor, thinks that another problem is caused by the fact that prosecutors want to clear everything up in the investigative phase and do not leave much scope of action for the court.

The work of policemen and prosecutors is further complicated by the principle of legality-officiality, universally applicable in continental law, which means that if the conditions established in law are met (legality), all the circumstances of a case must be cleared up ex officio (officiality). On the other hand, legal systems try to respect a third principle: that of prosecution where it is opportune. This principle allows the applicator of law to take aspects of appropriateness into account under established conditions, to consider the relative importance of connected crimes and to decide which procedure to continue or to close. Even though this principle would simplify and shorten procedures[68], it is applied with extreme limitations because those taking part in the administration of justice choose to concentrate on the principle of officiality and try to clear everything up. And although great cases quickly reveal the essence, they get out of hand and become confusing because of the need to „clear everything up".

„Legal formalism dominates instead of recognizing the essence and relevance. This is how we grew up, this is how we socialized" – said a Budapest celebrity lawyer laconically; he thinks that the application of the principle of officiality immediately destroys many things. *„Despite this nice principle, sooner or later we must learn to decide"* – he says. Another source, a celebrity lawyer who used to be a prosecutor, also complains that the prosecution does not fulfill its supervisory function with relation to the police, and when it comes to assuming its own responsibility, nothing happens. *„If there is a mistaken action, the blame is usually put on the police, even though the prosecution knows everything but I've never seen a prosecutor account for a false accusation, they just stick to their own stupid mistake until the last moment. They know that the accusation is weak but they deliver responsibility to the court"* – said the lawyer who thinks that on top of everything, this delivery of responsibility is wrapped in a professional coat, saying that they do not want to steal the right to decisions of the court.

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[68] The BE says: The court, the prosecutor and the investigation authority are obliged to launch and carry out the criminal procedure if the conditions established in this regulation are met. Investigation may partially be neglected if the crime in question is of no importance for establishing responsibility in another crime of greater gravity. There are only limited possibilities for ending investigation, partially neglecting accusation and ending the procedure in court.

If somebody in this system assumed the responsibility of decision, concentrated on the important aspects of a megacase and chose two or three transactions to build the accusation on in the long history of a financial institution, this person would probably be in trouble. In delicate affairs, the most comfortable and profitable behavior is to follow the law, interpret it literally and hide behind it. When something cannot be proven with utmost certainty and an accusation cannot be built on the evidence, the court has not much left to do: it shrugs and in the lack of evidence, acquits the perpetrators, saying that it cannot pass a judgement for something there is no accusation for – we heard this in the justification of the first instance jugdement both of the Postabank and Energol cases.

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Courts and judges are criticized most often and in the most spectacular way. Many people think that the problems are rooted in the failure of the 1998 criminal procedure reform and in the fact that the original draft was only realized years later and partially. The new BE written by professors was originally designed to reduce the judge's active role in court and to reinforce the currently rather passive presence of the prosecutor and the defence attorney. Many people think that this initiative failed because of the collective resistance of all the actors, since the new system would have meant significantly more work for prosecutors and attorneys and less work for judges. The latter, on the other hand, were worried for their power and authority.

The new situation would have implied new challenges, adaptation and learning for those participating in it, and it seems that nobody was particularly keen on this. *„There was a similar situation in Italy, the new system was nevertheless introduced, although nobody beleived that it would really happen. In the beginning, the courtrooms were silent but they soon got the hang of it"* – explained a former minister of justice. We escaped this phase but the actors still blame each other: the judges think that attorneys simply play for time and are extremely unprepared, while attorneys think that judgements are arbitrary and greatly depend on the judge's personality.

„There are many unprepared attorneys and judges as well" – admitted a celebrity lawyer who thinks that judges working in the capital are more or less competent, *„although just because they received economic legal training, they might not understand a word of the more complicated cases"*. He thinks, however, that the real problems appear in the country. *„A few years ago, a county court in the Western part of Hungary almost convicted a bank manager of misappropriation because he had used the customers' money for lending. The accusation went to court without any obstacles, the judge even convicted the business leader but the judgement was corrected at second instance"* – this is

just one of the many hair-raising stories he told us to demonstrate the unpreparedness of prosecutors and judges. *„If somebody has spent enough time in the profession and knows the judges in his area, this person may forecast the result of the case on the basis of the judge"* – said a lawyer who has been a criminal attorney for twenty years, then added: *„I predict my client a judgement that is a little worse than the one I expect, so that he may be happy when he escapes with a less severe sentence. I need to make my living somehow."* He says he had different ambitions when he received his degree.

It is partially this tendency of personality-dependent judgement that confuses the public: how can the judgement of the first and second instance contradict each other in this way? Those working in the profession say, however, that the real problem is the different practice of passing judgements: even in the case of similar crimes, judgements greatly differ on the basis of which town or country court handles the case. A celebrity lawyer from Budapest voiced his criticism thus: *„The Supreme Court takes few legal unity decisions, and even if it does, the decisions do not always concern the most important cases." „Judgements are extremely particular. I sometimes jokingly beg my clients not to commit misappropriation in Hajdú county or hit a pedestrian in Jász county because they will get into deep trouble"* – joked another attorney.

The first instance verdict is usually approved at the second instance (although sometimes they might prescribe sentences of increased gravity) but most actors think that if the judgements of the two instances differ, this simply proves that the judges think. Such differences occur in other countries, too, but if politics play a smaller part, the verdicts do not provoke such upheaval. In his doctoral thesis, Mihály Tóth says that within certain limits, this phenomenon is not disfunctional but an immanent trait of multi-layer justice systems. He cites Endre Bócz, retired chief prosecutor of the capital who some years ago told the Hungarian Radio[69]: *„In a country with a healthy psyche it is the natural state of things to have a court of second instance above the court of first instance, and the former corrects the eventual mistakes of the latter, and nobody would dream of saying that the differing verdicts of the different-level courts demonstrate a crisis in the administration of justice. This is a natural thing. The Constitutional Court and the Supreme Court have different fields of competence, so the fact that the decision of the Supreme Court differs from that of the Constitutional Court is not a sign of the crisis of the administration of justice, it is a sign of different legal interpretations instead. And if the Supreme Court sees a narrower scope of action than what the Constitutional Court would like to have,*

[69] Hungarian Radio, the programme called 16 óra (16 hours), cited by Mihály Tóth: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), page 147.

legislation is there to help. This means that there are no unsolvable problems; the only problem is that every single thing is decided on a political sphere..."

The most important procedural principle in Hungarian – and more generally in continental – law is the principle of being tied to accusation, which means that the court cannot move away from the statement of facts. More precisely, the court is tied to the essence of the facts of the accusation, cannot change or extend it. However, the court has free hands in the legal qualification of facts. *„It is prohibited to draw exaggerated conclusions but in some cases, the judge feels that the clearing-up of the statement of facts in the courtroom reveals more than the indictment"* – explained a judge working in great economic affairs who feels that in such cases, the court faces a great dilemma. *„I would prefer to have an indictment containing much more facts and then to leave it to the judge to select some facts and find proofs"* – he said.

One still feels – and statistics support this feeling – that the verdicts follow the accusations, or as one of our sources vividly put it *„The judges turn the indictment into judgement"*. This is a consequence of the above-mentioned starting situation that the BE, coming into force in Summer 2003, did not manage to change: *„The file, that is, the investigation material moves with the indictment. The judge sees everything and must learn everything before appointing the first day of trial. This means that he already has a preconception and he must have one"* – says Péter Hack. From here, we are only a step away from the „comfortable" practice – severely criticized by the accused and their attorneys – of judges, namely that they often come to a judgement which is literally identical with the indictment. Several defence attorneys told us about cases when the justification of the judgement even contained the spelling mistakes of the indictment. *„What do you think a perpetrator, sentenced to prison to be served, feels in such a situation?"* – a defence attorney asks the rhetorical question.

In theory and according to the law, investigation and trial are based upon each other. In reality, however, almost everything is decided during the trial because – as a lawyer put it – *„the system doesn't contain controls. The prosecutor should control the police, the judge should control the prosecutor and the attorney should control the judge but this doesn't work well"*. This also stems from the logic of the system, and the logic is still based on the old, so-called socialist BE, that is – as its opponents say –, on a very Soviet-like way of thinking. On the basis of court statistics, Péter Hack says that *„60 percent of all launched procedures are canceled, in 40 percent of the cases, the accusation is made and in 98 percent of the cases, the accusation is identical to the judgement. During the investigative phase, the accused has a 60 percent chance of things taking an advantageous turn, whereas only a 2 percent chance remains*

during the trial. In theory, new elements may come to surface but dramatic turns very rarely occur. It is easier to cite and use the aspects already written down than to find new elements during the trial." A lawyer explicitly said that legal arguments very rarely move trials forward.

This means that the trial repeats everything – concentrated in space and time – that happened during the investigation. In great economic cases, tons of investigation material are read at the court, but since the minutes of the trial are not written word by word, the parties have no idea of what is written in the minutes. And it is impossible to reconstruct later what a witness or the accused said during the investigation 2 or 3 years ago. *„My favorite question that judges like to ask is: your memory worked better 3 years ago, didn't it?"* – says a criminal attorney who thinks that judges ask this question when they want to get rid of the case. *„At the same time, it is not surprising that the situation, the surroundings and the parties' memory at the trial are different from the investigation circumstances years before"* – says János Bánáti, president of the Hungarian Bar Association, who also urged a change in the relationship of trial and investigation. In the so-called contradictory system of Anglo-Saxon and Benelux countries, the prosecutors and the defence demonstrate facts, the judge listens to the arguments and counter-arguments and then takes a decision (if there is a common jury, the judge only decides on the severeness of punishment if the accused is found guilty). In this system, the judge assumes the role of the referee, whereas in our system, due to the failure of the reform, the match is not left to defenders and prosecutors, instead the judges *„moved to the arena and got dusty" – as Bánáti vividly puts it.* One of our sources who used to be a judge but is now an attorney, moved the problem to a more practical sphere: *„When I walked into the courtroom in the morning, I had no idea what judgement I would take, I obviously wanted to hear the last words of the prosecutor and the defence. Those who say that they rehearsed the trial in their head the previous evening and sentenced the accused to 40 years over the dinner table, have serious personality problems. And there are judges like that."*

In Hungary, the judge asks questions and the logic of the system creates prejudices in him, since all the facts of the case are in his head. *„They formulate expectations, ask questions that already contain the answer. There is no role play"* – laments one ouf our sources with twenty years experience as a criminal attorney and recalls a courtroom scene that eerily resembles the times when judges – before the change of regime – never dared to question the infallibility of the *„comrade policeman"*: *„The attorney asks the policeman who is there as a witness: was everything appropriate and legal during the questioning? And the judge interrupts: How can you suggest that the policemen breached any rules? The whole thing is a joke"* – he says. Another source recalls another case with a desperate face: when the accused declared that he was not guilty, the

judge asked him: *„So you think that the prosecutor is lying?”* Our sources also agree that the passing of time makes judges hide behind the above-mentioned, „your memory worked better two, three, five years ago” type of questions. An accountant heard as a witness in the Postabank case found the judge's questions too formal. *„They could have asked questions that would have prompted the answer: the money of the account-holders should not have been invested in Spanish real estate.”* Péter Hack also agrees that *„the judge is careful not to take any risks.”* Others think that the judges often do not see the people behind the cases, they feel unquestionable, yet they are only able to think in panels. *„Students at the university of law are not taught to think and solve problems and to be creative but only to execute”* – says one of our sources whose field is mediation.

It follows from all this that – as we have already mentioned – most things are decided when they are assigned to certain people. The leader who assigns at the prosecution and at the court has great power and influence over the course of things. A judge working in a country town told us that she feels the workload to be more proportioned and the system to be more just for herself and the clients since automatic assigning was launched two years ago: cases are assigned almost mechanically, on the basis of the future number of cases, not knowing the specific cases. She only refuses cases that imply bias for one of the parties, for instance due to personal acquaintances. Others think that automatic assigning is not a good idea. One of our sources, one of the leaders of a court in the capital, says that a good leader knows the judges and takes decisions accordingly. Cases must be assigned according to their nature and degree of complexity. So far, so good but this assumes very good leaders with clear head and hands, since such a right may be abused as well as used. How can it be abused? Here is an example: a young judge told us that a judge assigning cases had walked to him on the corridor and had asked him a model-like question on the solving of a more delicate case. The young judge answered as if it was an example from a coursebook, and three days later he found the files on his table. What is more, personal assigning – according to its opponents – also reinforces counter-selection, *„keeping those pilots in place who can only take off”* – says one of the opponents. He thinks that in this system, good and efficient judges are over-loaded, *„they always receive cases with 80 accused, whereas the weak can keep their place working on simpler cases, and tragicomically they produce better statistics than good judges”*.

And how do judges see the other side that criticizes them? *„Attorneys are often unprepared and superficial, they do not use their right to look into the files, they*

are simply playing for time and their only aim is to charge as huge an amount as possible" – this is the summary of the judges' devastating opinion of defence attorneys. *„I know that attorneys complain of judges but in most cases, I do not see the active defence attorneys bombarding the court with proposals"* – says a judge. There is a wide range of techniques for playing for time: the parties do not show up at the trial, they declare that the judge is biased, ask for a new expert or the accused changes his defence attorney at the last moment, since the new defence attorney has a legal right to get acquainted with the events so far and this takes time. And the ultimate argument of defence attorneys – if they have managed to play for time as long as possible – is that the accused has not committed a crime for a very long time – this is how judges summed up their experience of defence attorneys. Judges themselves admit, however, that *„the principle of being tied to accusation is often misinterpreted, even though several Supreme Court decisions provide detailed interpretation of principles. The main problem lies in attitude, as most of the judges are conservative. They are arrogant and like to play God. It is difficult to get rid of this spectacular, yet difficult role."* Erzsébet Diós, who was a judge in most of the great cases mentioned in this book, wrote in one of her studies: *„the peculiar element of our criminal procedure, namely that once the indictment is handed in, demonstration and clearing-up of the statement of facts is the sole obligation and responsibility of the court, might greatly contribute to the prolongation of the procedure. Often – especially in criminal cases that are difficult to judge due to the new forms of crime – it is only the trial that reveals that the case was only cleared up partially – according to the opinion of the investigation authority or the prosecution on the given case – or ended early because of the pressure of the public."*[70]

Another judge who has almost two decades of experience and knows almost all the great economic cases from up close, summed up his experience thus: *„Is this inherent in the system or does it come from human factors? Twenty years sound a lot but in reality, they are nothing, since all cases only happened once. By the time we had learned from one case, a new one awaited us. People expect the court to do everything, but we can only work on the basis of what we are given and we are also humans."* As several Supreme Court resolutions warn us, life-likeness cannot replace evidence, even though economic cases would be much simpler if we could build on factors that seem realistic. But all our interviewees agree that we cannot build on such factors because we must take into account the presumption of innocence and coincidence, that is, when everything seems

[70] Diós Erzsébet: A gazdasági bűncselekmények bírói tapasztalatairól (On the court experience of economic crimes), Belügyi Szemle, 2000/6, page 40-49 (http://www.police.hu/print/elemzesek/bunuldozes/biroi_tapaszt.html http://w3.oszk.hu/repscr/wwwi32.exe/%5Bin=rpsr2.in%5D/?STS=1988-.)

to fit but the person we think guilty is not guilty after all. That is why evidence is so important. And what is the role of the court after all this? A judge who has played a determining part in almost all the great economic cases thinks that the role of the court is not what so many people expect nowadays: *„Today, since nobody does anything – where were the different state organs and supervisory bodies for instance? – everybody expects the court to be strict and sentence people to a thousand years. This doesn't work. The authorities – the police, the prosecution – should reveal and prove facts, and then the only task is to pass a judgement and not to repeat – or often carry out for the first time, at least as far as content is concerned – the process of demonstration. Many things are immoral but not against the law. And what is the reaction? If such great damage was done, someone must have committed a crime. The general opinion is that something must have happened but could not be proved, so the court will be able to prove it. It is not the criminal procedure itself – often taking several years – that constitutes the punishment. But we should stop experimenting."*

Several criminal attorneys agree with her, saying that the procedure itself is not a punishment. They think that in professions implying great social prestige, it is a serious disadvantage – even if the accused proves to be innocent in the end –, causing mental and financial damage, that procedures may take long years. And there is even a risk that the whole thing may start all over again. A solution would be to put a smaller load on judges dealing with megacases or ones involving great attention – says a criminal judge, adding that this is the situation in theory but not in practice. Special attention and quickness would be justified in such cases, since the judgements – whether we like it or not – send a message to society. It is thus not the importance of the identity of the perpetrators but the special importance attached to the cases that would justify a fast procedure, so that *„society may see as soon as possible the norms to be respected"*. A specially prompt procedure would thus be based on public interest, on the interest of society. In Hungary, however, the latest surveys show that most people feel a neglect of public interest, as there is no common agreement on the nature of public interest in the first place.[71] Almost half of those interviewed in a 2007 survey thought that written rules did not fulfill the function of creating norms and they were not sure that laws and judgements expressed values that are important for the community.[72]

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[71] Fleck Zoltán: Társadalmi zavarok – jegyzetek egy kutatási jelentéshez (Social disorders – notes on a research report) (manuscript under editing, Országos Kriminológiai Évkönyv, 2008)
[72] Fleck Zoltán: Társadalmi zavarok – jegyzetek egy kutatási jelentéshez (Social disorders – notes on a research report) (manuscript under editing, Országos Kriminológiai Évkönyv, 2008)

What we have said so far supports what Mihály Tóth explains in his doctoral thesis, namely that the basic principles of criminal procedure law must be reviewed.[73]. *„The key to the efficient and fast solving of complicated crimes is criminal procedure law"* – János Bánáti emphasized. Whereas material law might change, since every era sets different rules as to what counts and what does not count as crime, the current system has difficulties in adopting new elements precisely because of the rigidness and restrictions of the basic principles of procedural law. We have already mentioned the principle of officiality which hinders the solving of cases and shackles everyone's way of thinking, but this principle mostly delays the work of investigation authorities.

But what about courts? Public and verbal trials guarantee the respect of the principle of immediacy (guiltiness may only be declared during the trial and the trial itself guarantees the immediacy of the procedure). Some of our sources think that this principle should be neglected in the simpler cases: in order to speed up the procedure, a judge in duty, temporarily working at the police, would pass a judgement without trial.

The main principle is that of free demonstration: the means of demonstration, supporting the statement of facts, may be freely chosen, and the judge may freely consider the evidence before taking a decision – says Péter Hack. Tóth thinks that it would be useful to guarantee wider rights for the investigation authority and the courts during the procedure, and – without prejudice to the presumption of innocence – the requirements concerning the obligation of demonstration should be loosened.[74] For instance, if there is a suspicion that the increase of wealth took place illegally, it would be up to the owner of the property in question to prove the honest origin of his wealth. The principle of verbalness and immediacy should also be less strict: it is impossible to read out tons of files word by word, the judge necessarily sums them up. Tóth cites a well-known Budapest lawyer, the late Balázs Orosz who thinks that in economic criminal procedures, the principle that the judge must examine and study the documents compiled during the procedure by reading them out *„is gradually canceled by practice (...) judges again and again solve the problem by reading only extracts and summaries of long files. For if all the files – constituting thousands of pages in each case – were really read out word by word, it would be impossible to plan trials and to forecast the end of the procedure (...) If the*

[73] This paragraph is based on chapter I/1.3., page 115–117 of Mihály Tóth's doctoral thesis: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben (Economic Crimes and Crime in the Years of the Change of Regime) (2007)

[74] This paragraph is based on chapter I/1.3., page 115–117 of Mihály Tóth's doctoral thesis: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben (Economic Crimes and Crime in the Years of the Change of Regime) (2007)

principles of verbalness and immediacy were loosened, criminal procedure launched in economic crimes would be considerably shortened."[75]

Most people prefer the Anglo-Saxon system where the position of the judge is a reward of the successful legal carreer and nobody makes decisions on other people's lives as a beginner. In Hungary, 28–30 year-olds may be appointed judges. In the Anglo-Saxon practice, they first try all other fields and rise slowly in the hierarchy. Opinions differ on the system of common juries: some prefer it to our system because twelve people are more than one or three and because *„some of the problems are logical riddles, not legal ones"*. Others do not agree and refer to cases similar to O.J. Simpson's where the common jury eventually acquitted the actor accused of having murdered his wife.[76] The main point according to Péter Hack is that the issue of bias is viewed differently: in the Anglo-Saxon system, the jugde leads the trial without having seen the file beforehand. If he has seen the file, he is biased. In Hungary – and on the whole continent –, however, the judge knows the case and all the parties by heart because he decides on the appointment of the first day on the basis of his knowledge.

According to a well-known criminal lawyer, *„good judges consciously try to get rid of their preconceptions, but who knows to what extent they manage to do this"*. His colleague adds: *„it is not a good thing if the judge is spiteful at the start, but I don't know whether it is a good thing if he is benevolent"*. We met a judge who recalled the time when the accused in a well-known economic case had a very common family name, and up to a certain point of the trial he had not even remembered having read about the accused in the newspapers.

An attorney currently dealing with human rights cases thinks that it may explicitly distort the personality if somebody is used to being always right because of his profession during decades. And the word of the judge is indeed unquestionable. Let us illustrate the unquestionable nature of the system by a quotation from a source who used to be a prosecutor but now works as an attorney. He thinks that the saddest part of all is that prosecutors are proud of the

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[75] Balázs Orosz: Piacgazdaság és gazdasági bűncselekmények (Market Economy and Economic Crimes) Kriminológiai Közlemények volume 52, cited by Mihály Tóth: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben (Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), p. 117

[76] Orenthal James "O.J." Simpson, former actor and star of American football stood before a Los Angeles court in January 1995, accused of having murdered his ex-wife and her lover. Black men accused of murdering white women usually used to be sentenced to death in the United States but most of the members of the common jury were black this time. When Simpson was finally acquitted, the American black community celebrated the decision, while most of the white Americans – who considered him guilty – were shocked by the news (HVG 1995/4). Due to the peculiarities of the American legal system, the judgements of common juries cannot be reviewed, but in 1997, at the end of a civil procedure, Simpson had to pay 33.5 million dollars as compensation to the family of the victims.

98 percent ratio of judgements copying the indictment. *„Even doctors have an error ratio of 10 percent, why would prosecutors be better and more infallible?"*

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The inefficient functioning of courts often goes back to organizational reasons – claims Zoltán Fleck, sociologist of law. There is no real democracy within courts, everybody is connected to everybody, almost everyone belongs to the same elite on county level, the principle of „each protects each" is at work, while most of the members of the National Justice Council (OIT) that supervises courts are selected among county presidents. *„It is cadre politics that counts, it is not the important man who gives instructions, everyone has their own reliable men"* – says Fleck crudely. His research indicates[77] that compared to the European average, there are enough judges in Hungary, still there are many cases that take longer than a year. This is especially true of the megacases we studied: procedures take much more than one year, they take several years, as we have mentioned before. The ratio of ongoing cases was not significantly reduced despite the fact that the number of judges and the budget of the administration of justice increased during the last decade. This not only prevents efficiency but is also unduly expensive and unjust – writes Fleck who thinks that two basic groups of reasons contribute to the unchangeability of the situation. On one hand, the measures of the OIT are limited to a narrow circle and are only enough to solve immediate problems: they try to overcome the cases accumulated in one phase or one county extensively, by placing out judges, target-awarding and extending posts. The OIT, however, does not call to account the management activities of county presidents – partially because the OIT is made up of county presidents – and inefficiency does not have any consequences.

Fleck's research experience shows that according to the deep-rooted Hungarian way of thinking, administration of justice of the country is the totality of the administration of justice of the counties, there is no other important interest, which implies that almost all management failures or irregularities escape consequences. Although Fleck does not explicitly say so, he suggests that county leaders are also „petty monarchs", supervising and managing themselves. It is thus not surprising that the conditions of being an apt leader are not laid down, there is no separate methodology – different from that of judges – for supervising leaders and leaders cannot be unfit by definition. This can only lead to an inefficient and irresponsible management system which has severe consequences on the everyday operation of courts – writes Fleck.

[77] Fleck Zoltán: Bíróságok mérlegen (Courts in the balance). (Pallas Kiadó, 2008)

On the other hand, proportional load can only be created if the judges' performance is measured and their capacity is determined. Hardly any progress is seen in this field. Fleck thinks that the selection, promotion and training of judges are of key importance to the efficiency and quality of the administration of justice. The latter is especially important because the functioning of the court is directly linked to the respect of the rights of the citizens. In the vast majority of cases, judges take final and irrevocable decisions on our rights. The administration of justice may have an effect on politics and economy as well, since one decision may influence the fate of billions of forints in the budget. Judgements are able to reinforce or weaken certain elements of the political system without the political independece of judges being questioned.

The appointment and selection of judges must be fundamentally changed: the compulsory central entrance exam of drafters is a first step that could not bring about the desired radical change in itself, since the result of the exam does not really bind the decision-maker. County presidents are not obliged to recruit the person who came in first in the anonymous exam, they can recruit somebody who is further down in the list and they do not even have to justify their choice – but when they make a decision, they see the names of the applicants. So at the moment, argues Fleck, invisible, uncontrollable relationships still play a crucial part in the process of becoming a judge, there is great scope for nepotism and counter-selection. An extreme illustration of untransparent relations is the case of a judge in the town of Mátészalka who assigned several civil trials to her daughter, a drafter, who even made judgements in certain cases.[78]

Even the fundamentals are missing: the conditions for aptness and the measuring of performance are not defined, so there is no place for objectivity. Fleck thinks that one unavoidably has doubts on the inner independence of the ruling judge if the power of his management superiors is uncontrolled. For all our experience suggest that the lack of responsibility and accountability, as well as the untransparent management relations threaten independence the most – this is the consequence the sociologist of law draws.

The independence of courts and judges is not a self-contained requirement implying absolute respect. On a theoretical plane, it principally refers to the distance from executive power but Fleck thinks this is not enough in itself. The independence of the judge is a complex, multi-lateral principle: an applicator of law is independent if he can make decisions based on his personal convictions, uninfluenced by anything other than the law, even if the decision is against the

[78] The judge was sentenced to one year, the daughter was sentenced to 8 months of suspended prison by the Supreme Court for the crime of 17-fold counterfeiting of public documents committed by an official. (www.origo.hu, September 16 1999)

interest of some power.[79] The intellectual independence of the judge does not simply assume moral strength but also an ability that helps identify hidden factors that may influence the decision. This requires the applicator of law to be aware of the recent results of the science of law and to know the social environment in which he takes the decision.

If the supervisory body is without outer influence, correction from a superior court certainly does not breach the personal independence of the ruling judge. Similarly, the dismissal of a judge deemed unfit does not constitute a breach of independence if the criteria for unfitness are clear and if decision-making takes place in a procedure containing appropriate guarantees. If the activity of courts and judges is attacked by the media, the attacks are only dangerous if they sucessfully seek to influence the sanctioning of the judge. Otherwise, the most efficient control of power is public operation, which is also a protection against eventual political influence – declares the researcher.

Organizational and legal guarantees do not in themselves ensure the behavior and thinking necessary for the effectiveness of independence. Nowadays, the integrity of judges is threatened by more complicated and hidden factors, so increased preparation is required for protection. The institutional guarantees, for example those of the independence of judges, are able to ensure an environment which is more advantageous for a sovereign, independent mentality of judges – but they cannot create such an environment in themselves. Due to unpleasant experience and the lack of self-limiting reflexes of political culture, more institutional guarantees are needed in transitional societies but this does not mean that we can escape this mental change – stresses Fleck. The states leaving behind dictatorships all had to face the dilemma of how an application of law in complete accordance with the rule of law may be ensured without radically cleansing the corpus of judges.[80] Today, the most important condition of the independence of judges is their professional and intellectual preparation.

The evaluation of judges has recently worsened but this is not surprising in the light of the things described above. This is all the more a problem as the evaluation of the administration of justice directly affects the economic performance of the country. Fleck's study quotes data from surveys of the European Bank for Reconstruction and Development (EBRD) and the World

[79] On Theodore Becker's definition see: Fleck Zoltán, A bírói függetlenség jogszociológiai vizsgálatának előfeltevései (The Assumptions on the Sociology of Law Study of the Independence of Judges), Társadalomkutatás, 1993/1-2.

[80] On the dilemmas of transition see: Fleck Zoltán, Judicial Independence and Its Environment in Hungary, in: Priban, Roberts, Young (eds.) Systems of Justice in Transition, Ashgate, 2003

Bank; these organizations regularly assess the economic and entrepreneurial environment, on the basis of the opinion of business managers among others.[81]

The latest surveys in Hungary, carried out in 2002 and 2005, were based on more than 300 interviews, and the answers given for the question concerning the enforcement of rights demonstrate that the evaluation of Hungarian courts significantly worsened between the two surveys. The ratio of unfavorable opinions on the forcing of judges' decisions, on the costs and slowness of procedures evidently increased, especially among corporations that had some encounters with courts. As far as integrity/lack of corruption and fair and unbiased procedures are concerned, the evaluation of Hungarian courts has worsened both in the entire sample and among those having something to do with courts.[82] And yet, the independence of judges, the lack of corruption and efficiency play a strong legitimation role and have a symbolic significance in the assessment of modern constitutional democracies. The appropriate functioning of the administration of justice is one of the crucial factors in testing the rule of law quality of a state. In a later part of his study, Fleck cites a research that has never been made public, according to which the population and many lawyers consider the courts to be politically influenced.[83] 41 percent of attorneys considering corruption possible have personally experienced cases of corruption or have someone in their immediate surroundings who has such an experience. One in six or seven attorneys and investigators perceive corruption in the work of courts. Almost half of attorneys with such an opinion have first-hand experience with corruption cases and 36% of investigators mentioned similar cases.[84]

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[81] EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) Quoted by Zoltán Fleck: Bíróságok mérlegen (Courts in the balance) (Pallas Kiadó, 2008)

[82] According to those concerned, among the environmental factors of enterprises, the functioning of courts is a greater obstacle to enterprises in 2005 than it used to be in 2002. (www.ebrd.com/country/sector/econo/surveys/beeps.htm) Cited by Zoltán Fleck: Az igazságszolgáltatás újabb 10 éve – Mit akart és mit ért el az igazságszolgáltatási reform (Another 10 Years of the Administration of Justice – Aims and Results of the Justice Reform) (Manuscript)

[83] The part in question starts on page 161 and ends on page 167 (with data and tables). Quoted by Zoltán Fleck, *idem*.

[84] While a lack of information may provide an explanation in the case of the sample of population, **the existence of everyday experience among those woking in the profession may suggest a grave situation** – writes Zoltán Fleck in the volume cited. The official documents dealing with these data do not demonstrate a wish to reveal the reasons behind this phenomenon. The only thing that is mentioned is the changing of unfavorable opinions by PR means. This research put courts in the middle range of the institutional trust index. In spite of this, since nobody had the means to control the data, the following news went to press: *„Several surveys show that less than a third of those asked question the independence of courts, which means that their vast majority trusts them – said the president of the Supreme Court and of the National Justice Council at the press conference preceding the 23rd meeting of the Hungarian Society of Lawyers. Zoltán Lomnici said: this success is greatly due to the fact that judges have all tried to make quality judgements and stick to a moral behavior. (…) the other element of trust is the openness of judges and their good relationship with the press." (*Zoltán Lomnici: Most People Trust Courts, MTI 27 October 2005)

In her study, Mariann Kránitz raises the issue of the possibility of bribery in the case of policemen, judges, prosecutors and attorneys. Although she has not found any specific cases, she mentions that even those working in the administration of justice have such beliefs of themselves. She also raised the issue of the possibility of bribery in the case of experts taking part in different phases of the procedure but she has not found an answer.

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And yet, experts play a crucial role in criminal procedures. As Péter Hack simply puts it, an expert is a person with expertise. He must have a university degree. Under the current regulations, nothing can be done without experts: even if the policeman knows that the knife was pushed into the victim's heart, the expert must declare this fact to make it official and proven. This is especially true for economic criminal cases. Thus, if the expert thinks that a transaction was well-meant, the authority will be of the same opinion.

In the great economic crimes and spectacular trials of the last two decades, the same people appeared as accounting or tax experts both in the investigative and trial phases. They are selected from the 800-member list of the Ministry of Justice and Law Enforcement and their fees in the criminal procedure are governed by regulations. The fees are well below market prices. Most of the forensic accounting and tax experts designated for economic cases make their living from the higher and freer fees of civil procedures, as well as from market commissions, whereas the fee payed by the state is not proportional to the performance expected of them in criminal procedures. Until the beginning of 2008, they used to work for 1400 forints (about 6 USD) an hour, but their increased wage – 4000 forints (about 19 USD) – is still not proportional to the weight and complexity of the criminal procedures they work on, nor to the cunningness of the criminals intended to be revealed. The total wage they receive for their work done in a great economic crime amounts to no more than a few hundred thousand forints (100,000 forints = 470 USD). *„Because of the shamefully low fee, courts used to accept more receipts for costs incurred, but now that the fee has been increased, they are stricter, so the total fee remains unchanged"* – explained one of our sources who works in the ministry of justice and profoundly knows the system of experts. A smaller part of experts in economic cases are underpayed state employees, working in the national network of the Forensic Expert and Research Institute (ISZKI). The difference between perpetrators and the experts sent on their traces is similar *„to a competition between home-made helicopters and state-of-the-art spaceships"* – explained one of our sources.

According to the BE, the expert only answers questions that are asked. He is not obliged to draw attention to anything but he might suggest things if he wants to, this is up to him. *„Stop teaching us, simply answer our questions"* – recalled an accountant who had been heard as a witness in the Postabank case and had been told by an attorney to stop giving a university lecture. *„A still tongue makes a wise head, I guess this is a typical Hungarian saying"* – says one of our sources, a theoretical criminal lawyer who thinks that most experts stick to the rule and only answer the questions, even if they discover something worth mentioning in the files presented to them.

Policemen and later judges do not always know what they should ask, furthermore, in such a flexible economic and legal environment, expert opinions avoid formulating strong statements. According to legal provisions, concrete questions must be asked in each phase of the procedure, and the expert may only refuse to answer on the basis of a lack of expertise. In the majority of cases the most time is spent on the expert „meditating" on files. Despite the deadline prescribed by law, most experts cannot be obliged to respect it. Some expert opinions are ambiguous, complicated and full of contradictions and are thus sent back or assigned to a new expert, and we do not exaggerate too much if we say that by the time a useful expert opinion is written, the case becomes obsolete. *„I've never seen an expert kicked in the ass"* – a criminal attorney summed up his experience thus. The court or the investigation authority that appoints the expert is fully aware of the fact that experts are underpayed and overloaded with work and that most make their living on the market. *„In theory, complaints may be filed against them and in theory, the system contains sanctions, their name may even be deleted from the list of experts if there are too many complaints but there are hardly any"* – described the system of Hungarian intertwining an employee of the ministry supervising the experts. *„The courts and the police are not really competent to argue with the expert and everyone tends to believe their own people. That is why the experts we suggest are usually rejected, as people are afraid that our expert will be biased in favor of the accused"* – agree all criminal attorneys. A lawyer laconically said on the omnipotence of experts: *„If an expert declares that the accused cannot come to the trial because he is fatally ill, the accused is fatally ill even he is spending his vacations in Hawaii, safe, sound and tanned"*.

There is an accounting expert who took part in all the great cases we studied; he says that the prosecutors never liked him because he was nicnkamed the great acquitter. István Marton's eyes are happy, this job is the meaning of his life, he takes professional pleasure in understanding things in thirty minutes. Just like others, he has a devastating opinion of the Institute: *„Jóska Kovács is the only worthy expert there"*. (Most of the files we read mention the same two or three names, among them that of József Kovács and István Marton.) Marton is proud

to be the one who is always invited. *„They all trust me"* – he says. He is an old sweat, he has been doing this work since 1978, he talks of people by their first name, he knows everyone and says that material knowledge is not enough for this job, one also has to know the people. *„Nobody ever tried to influence me."* He was only afraid once when he was an expert at the beginning of the nineties in the Reálbank case[85] and his car suddenly disappeared from the street. *„I asked them to guard me. They did but some days later I asked them not to because I became even more afraid."* I stick to minimum requirements, he says, *„I only use things that are proven"*. According to the law, first comes the expert's opinion, then follows the accusation and not the other way round, he adds. The expert is not there to support the accusation, he thinks that is why prosecution accuses him of being biased. *„It is up to the prosecution to present proofs"* – he repeats, adding that the subjects of several spectacular cases thanked him for his *„extremely fair"* expert's opinion. His critics say that he states things in a very concealed way, from a distance, and although he remains within the limits, it is true that – precisely because of the cited approach – his opinion is often advantageous for the accused.

And this might come in handy for defence attorneys as well. In our interviews, we aimed at discovering where attorneys draw the line in accepting clients, and whether they expect clients to tell them the truth. One of our interviewees thinks that there is indeed a moral judgement in who one takes a client. *„I never take murder cases"* – he says. A criminal attorney of economic cases replied to the same question that some cases simply do not interest him as a lawyer, but there are also cases when *„I simply don't like somebody's face"*.

The attitude to telling the truth is also interesting. Although according to the law, witnesses must always tell the truth, one of our sources says that *„this is not respected in Hungary, witnesses don't necessarily tell the truth, although bearing false witness is punished by the law."* The accused is not obliged to tell the truth, and the work of authorities is further complicated by the fact that a

[85] In January 1999, the State Money and Capital Market Supervisory Agency (ÁPTF) decided to liquidate Reálbank because the bank had lost its guarantee capital and had gone bankrupt. The National Deposit Insurance Fund (OBA) payed 5 billion forints of the 7 billion forint remaining deposit of the bank, but the owners of bonds claimed about 10 billion forints with interest and at the time of liquidation it seemed that they would not receive more than 60 percent of the claimed amount. However, the small shareholders of the financial institution, running after more than 1 billion forints, had no hope of receiveing a penny after liquidation, since the value of the shares of the bank had been decreased to 1 percent of the nominal value at the extraordinary assembly of September 1998. An investigation was launched against ex-executive director András Czakó and his five partners for misappropriation and bankruptcy fraud but in the Summer of 2000, the prosecution of the capital canceled the criminal procedure due to the lack of crime. The decision of the Court of the Capital, closing the financial institution and deleting it from the registry of firms, became legally binding in June 2007, putting an end to the liquidation process that had started on 19 January 1999. In April 2008, the Hungarian Financial Supervisory Authority and the National Deposit Insurance Fund announced that the former deposit and bond owners of Reálbank would receive complete compensation, whereas shareholders would receive a partial one. (HVG, 13 January 1999, www.origo.hu, 2008.04.04)

confession is not enough, as it might be „withdrawn".[86] (This is what happened in the Tocsik case, among others.) Most of the time, the attorneys encourage their clients to do so. Some of our interviewees explicitly prefer to know the whole truth because it helps plan further action, but most clients do not *„come and confess everything"*. Most attorneys said that they were not especially interested in the truth; the most important thing is that they should be able to cooperate and to solve the situation in a way advantageous for the client. An attorney with more than 30 years of experience, who had played a key part in several great cases, told us: *„If the client has an attack of honesty, I immediately tell him that he should stop making a confession, I don't care for the truth. Let's see the proofs and find a way out of this mess."*

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If there is no way out of the mess, the accused is punished. *„The worst part is when an innocent person is condemned. It is more painful than a criminal being acquitted. In that case, guiltiness could not be demonstrated beyond doubt. But if it can be demonstrated, punishment should be appropriate"* – a criminal attorney summed his experience thus. His colleague, a celebrity lawyer from Budapest, thinks that *„truth and punishment cannot be bargained."* One of our sources, a police investigator of high rank formulated doubts as to whether those damaged are satisfied by the perpetrators spending some years in prison. *„This does not compensate their damage"* – he argued, illustrating the problem already mentioned, namely that damage suits take place independently from the criminal procedure and often finish without the victim getting compensation for his damage.

The traditional, repressive nature of punishment has recently been completed by the idea of compensating the victim. Theoreticians say that while punishment wounds, compensation cures. The subject of a claim for compensation is the victim, the subject of a claim for punishment is the state, and this might cause problems, although the two may be identical. Compensation – just like punishment – represents the value judgement embodied in the norm that has been breached.[87]

What is the aim and function of punishment? The aim is to make amends for the gap in justice. Lawyers say that criminal sanctions cannot significantly influence crime rates, as these are basically determined by the current state of society. Punishment is based on the principle that no crime may go without punishment

[86] The law does not allow the withdrawal of a confession, it is up to the court to decide how it takes the proofs into account.

[87] Tóth Mihály: A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), pp. 71–116, Mobil Kiadó Kft., 2006

and that crimes must be punished.[88] Punishment is the criminal sanction whose main point is to cause disadvantage and satisfy the sense of justice of the members of society. Punishment must not be exclusive or exaggerated, it must be proportional to the crime, repressive and deterrent. Its role and mission is to save those legal and moral norms that cannot be saved by the sanctions of other branches of law. As far as determination of punishment is concerned, the starting point of absolute theory is the deed itself; punishment is a reaction to the past, the ultimate aim is justice and the aim of punishment is repression. Relative theory, on the other hand, focuses on the perpetrator, it concentrates on the future, its ultimate aim is usefulness and the aim of punishment is prevention and the protection of society. The theory merging these two – sometimes called unification theory – is the most realistic and is thus the most widely used nowadays. Criminologists agree that the most efficient sanction against maffia-type crime is not the threat of prison but the taking away of financial bases, of profits and putting an end to the lucrative nature of the crimes.

„If damage cannot be repaired, those guilty should at least be punished" – said Katalin Gönczöl, former ombudsman,[89] at the National Criminology Meeting in 2005.[90] In her lecture, Gönczöl said that she had not beleived in repression-based criminal policy until the crisis of welfare criminal policy broke out. The strengthening of repression-based criminal policy was influenced by the low rate of clearing-up, the modified circumstances and the negative structural changes of deliquency – for instance, the significant expansion of organized crime – and as a consequence, society's fear of increased crime. Gönczöl thinks that *„the essential task of criminal policy is the maintenance of emotions, the release of dramatic tension, the reinforcement of moral values to be followed and the conciliation of the victim and of the hurt community. Punishment that is devoid of emotional effects and based on solely practical aspects will hardly be followed by regret, by the forming of remorse. Such a sanction cannot evoke the perpetrator's guilty conscience and cannot form solidarity with the victim, either. Unresolved conflicts damage the connective tissue of social communities and damage the community itself."*[91]

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[88] Tóth Mihály: A magyar büntetőjog és büntetőeljárás (Hungarian criminal law and criminal procedure), p. 71, Mobil Kiadó Kft., 2006

[89] Lawyer, professor of the criminology department of ELTE university, parlamentiary commissioner of citizen rights between 1995 and 2001. Between 2002 and 2008, commissioner of the ministry of justice (and law enforcement), currently an expert under-secretary of state, responsible for the codification of the new Penal Code. President of the National Crime Prevention Board since 2003. Used to be the president of the expert committee (the so-called Gönczöl committee) analyzing the events that took place in Budapest in September and October 2006.

[90] Dr. Gönczöl Katalin: A szolgáltatott igazság (Justice administered) (Publication of the 5th National Criminology Meeting, Bíbor Kiadó, Miskolc, 2006., pp. 34-35)

[91] Dr. Gönczöl Katalin: A szolgáltatott igazság (Justice administered) (Publication of the 5th National Criminology Meeting, Bíbor Kiadó, Miskolc, 2006., pp. 34-35)

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On the basis of the above, how should the system be changed? There are several lessons to be learned and Mihály Tóth and other critics of the system have tried to summarize them. Some of their ideas are described in the following paragraphs:

Mihály Tóth thinks that the system of dotations should be modified, as they provide fertile breeding ground for corruption.[92]The difficulty of economic criminal law lies in the studying and adapting of the significant number of background norms, requiring special preparation and continuously changing (economic law, bakruptcy law, accounting law, duty regulations, regulations on foreign currency, securities, consumer protection etc.). The simplification of such legislation would not only make things easier for authorities but would also make abuse more difficult. For white-collar criminals are well-prepared professionals who know the functioning of economy and are well aware of legislation and loopholes and are thus always one or two steps ahead of criminal investigation.

Increased transparency would greatly contribute to the overcoming of this disadvantage: the transparency of official and – at least partially – economic operation is the only tool to create a social environment that filters and rejects corruption. Criminal law can only be efficient in its *ultima ratio* role if criminalization is one of the last means of the struggle against corruption and is thus preceded by all other logical and justified measures – for instance, the reinforcement of regulators of other branches of law and of inner organisational norms, education, teaching and training aimed at shaping attitude. Another important task is the better exploitation of the framework provided by international cooperation, as well as the recruiting of qualified professionals to the appropriate institutional framework. Apart from expertise, great importance should be attached to language efficiency and the improvement of communication skills. For the lack of qualified and well-prepared experts leads to serious problems; we are not only thinking about the lack of material knowledge but also mental aspects.

One of the more general criticisms of the system is that its participants tire of their work after a while, they cannot keep the appropriate distance, cannot play their role as well as they should and in some situations, the roles are not even

[92]*„I may be exaggerating a bit but I have good reasons to say that if somebody wanted to find crime, he simply has to have a look at those using allowances to find suspected perpetrators. It is thus clear that decision-making organs must think twice before establishing who, when and under what conditions may be granted similar subsidies, allowances and exemptions"* – writes Mihály Tóth in his doctoral thesis. Tóth Mihály: Economic Crimes and Crime in the Years of the Change of Regime – doctoral thesis) (2007), p. 158

formed anymore. None of the subsystems ensure healthy possibilities of career or promotion, there is no appropriate ending of life careers. Recreation is not sufficient either: even though the courts have a summer break, other means of relaxation should be available for employees. *„The Canadian university of law prescribes two years of self-knowledge courses, so that students may be able to decide what they are apt for in the first place"* – says one of our sources whose field is mediation. He thinks that the great economic cases may only be solved with a holistic approach but this is hindered by the lack of real cooperation, empathy and mutual understanding of the applicators of law. *„In Hungary, almost all professional criticism is taken personally, so it is very difficult to change any part of the system"* – he adds. Applicators of law should be taught problem-solving instead of the application of law. According to experience, nepotism is an inherent part of all subsystems, resulting in formalist thinking, since we have learnt to follow the patterns instead of thinking and seeing the essence of things. And of course, we should not forget appropriate wages either.

No matter how complex and complicated the problem is, it is not impossible to achieve significant progress in one or two decades. Éva Inzelt's study[93] reveals that even in the United States, corporate executives and presidents used to say that they had not been aware of anything, the blame should be put on some of their employees. The main leaders – who usually had a good relationship with the political elite and the government – were hardly ever condemned for decades. At one point, however, the American government decided to significantly decrease white-collar crime. They reinforced authorities, more than doubled the budget of the influential Securities and Exchange Commission – the 2004 budget of 400 million dollars was increased to 900 million dollars in 2005 – and recruited thousands of investigators, accounting experts, attorneys and lawyers in recent years. The courts also contribute to the persecution of white-collar crime and issue extremely severe judgements. Of course, nobody believes that white-collar crime will disappear forever but one thing is sure: the determined attitude and the severe judgements make executive directors think twice before making a decision in delicate situations. „But CEOs may no longer claim, like the old joke about the drunk driver who gets in a car crash, that they were sitting in the backseat"[94] – wrote Time Magazine after the severe judgement of the CEO of WorldCom in a case with much publicity.

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[93] Inzelt Éva: A fehérgalléros bűn és bűnhődés – az amerikai példa (White-Collar Crime and Punishment – the American Example). Rendészeti Szemle 2007/6

[94] The bankruptcy of WorldCom in 2002 caused a loss of 180 billion dollars for its shareholders, and the CEO, Berhard Ebberst was sentenced to 25 years of prison in July 2005 for misappropriation, accounting fraud and the embezzlement of 11 billion dollars committed in conspiracy. Although Ebbers defended himself by saying that he had known nothing, the common jury did not believe him. You may find more details of the story in chapter 7 of this book. „After Bernie Who Is Next" – Time Magazine, 28 March 2005

3. The pieces of truth

Ybl Bank was the first Hungarian private bank after the change of regime, and the different members of its management often literally used it as their own

private bank, taking some money from the cashbox from time to time. They did this with such zeal that Ybl became insolvent in June 1992. On 9 June 1992, the National Bank Supervision decided to assign supervising commissioners to three financial institutions[95], among them Ybl. Some days later, the activity of the financial institutions was suspended; Ybl even closed down. A criminal procedure was launched against the three leaders of the financial institution, Imre O. Nagy, Mrs. Zoltán Jamniczky and Éva Körmendi on the basis of well-grounded suspicion of misappropriation and counterfeiting of private documents.

Imre O. Nagy and Mrs. Zoltán Jaminiczky were sentenced to four years of prison to be served each, as well as to a confiscation of property of 15 million forints in total for the two of them. This sum was insignificant compared to the estimated 1.4 billion forints that the two bank managers[96] could not account for. The court validly concluded that they had regularly transferred loans from the cashbox of the financial institute to their own firms, and as an analysis of the creation of the two-level bank system put it: the *„management of the bank provided loans for the owners and their enterprises without any constraints”*.[97]

The bank scandal of 1992, however, was just a beginning. By the time the bank supervision part of this case was closed – and as a consequence, the National Deposit Insurance Fund was created –, the Agrobank case had already started.

Financial circles were especially shocked when in November 1994, the television news showed the president and CEO of Agrobank arrested in their home and taken away in handcuffs by policemen. Mihály Kovács and Péter Kunos were suspected of professional influence, speculation and misappropriation. The bank had closely felt for some time the lack of trust of their clients: in the preceding period, a total of 3.8 billion forints deposit, about 8 percent of the bank's sources had been taken out of the financial institution. In April 1997, the prosecution accused Kunos as perpetrator and Kovács as accomplice of the crimes of breach of duty committed by employees of an economic organization entitled to independent decisions and of bribery committed professionally, in conspiracy.

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[95] The two other financial institutions were the Általános Vállalkozási Bank (General Enterprise Bank) and the Gyomaendrődi Vállalkozói Takarékszövetkezet (Enterprise Savings Bank of the town of Gyomaendrőd).

[96] O. Nagy was the first of the main characters of bank scandals to escape to and hide in Vienna. Since his release from prison, he has continued to live a reckless life: the last time the newspapers wrote about him was when in Fall 2007, he escaped from policemen and crashed two patrol cars. According to the information of the daily Népszabadság at the time, the former bank manager was suspected of more than 500 million forints of fraud in a debt management case. Népszabadság, 26 October 2007

[97] http://index.hu/politika/belfold/tegnapiujsag/2008/07/09/1992_kirobban_az_elso_bankbotrany

According to the indictment, Kunos created financial constructions against the law on financial institutions then in force, for the provision of the so-called E-loans, intended to facilitate privatization. On the basis of general banking practice, he signed a loan contract containing the usual guarantees with the clients but the provision was tied to a complementary contract. In this background contract, those seeking a loan promised to sell a part of the ownership bought (usually 25 percent + 1 vote) at a discounted price to a firm designated by Agrobank or to hand over a determined part of their yearly profits and to pay a yearly „consultancy" fee. This is how Mihály Tóth commented on this in his thesis already cited: *„It is now proven that the managers of the bank founded one- or several-person firms belonging to their own circle of interest so that the indebted willing to do so had a firm they could hand over a determined part of the shares bought with the loan to (and those who were not willing to do so, did not become indebted in the first place…). This was presented as an institution »explicitly accepted and recommended in Western banking practice, operating on the basis of a more modern way of thinking«. And – argued several people, among them well-known financial experts – nobody can complain if the bank tries to ensure the return of its loans by setting the signing of a contract with a consultancy firm chosen by the bank as a condition for providing the loan. Hardly anyone tried to explain, however, what economic advice one could expect from the driver of the CEO of the bank who had been registered as a one-person firm a few weeks before. (Maybe the driver could have advised the seeker of the loan to keep enough cash on him at all times)."*[98]

The first instance judgement acquitted both accused in June 1997 but in April 1998, the Supreme Court sentenced Kunos to 2 years of prison to be served and 1.6 million forints to be payed and banned him from public affairs for 4 years for the crime of eleven-fold bribery committed professionally, in conspiracy by an employee of an economic organization entitled to independent decisions. Kovács was sentenced to 1 year and 6 months of prison to be served – suspended for 3 years of probation –, as well as to a complementary fine of 2 million forints. According to the judgement, the president and the CEO asked advantage linked to their sphere of activity, on the basis of a preliminary agreement, in conspiracy and aiming at regular profits, that is, professionally. The Supreme Court concluded that the actions of the accused had been typical acts of corruption, threatening the purity of public life and the operation of economy according to legal rules. Although the minister of justice, Ibolya Dávid did not sign the execution amnesty granted to Kunos by the president of the

[98] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime) (2007), page 142.

republic in Autumn 1998, the banker[99] was rehabilitated after his release by the financial world[100].

The same happened to József Lupis who declared bankruptcy in February 1994, after which Postabank bought his debt of 1.4 billion forints. *„This was probably the first highly irrational step towards the future failure of the bank"* – observes Mihály Tóth ironically.[101] The same peculiar business model hides behind the bankruptcy of the Lupis brokerage firm (Lupis Brókerház) than – as we will soon see – behind that of the Globex brokerage firm (Globex Brókerház): the investors did not know, what is more, they were specifically misled, that the real estate investments were based on money made on the stock market; the stocks, however, did not yield the expected results. While the main characters of the Globex story seem to have eradicated themselves from Hungarian business life, József Lupis was long considered by the market a kind of diverged man.[102]

The scandal of the Lupis brokerage firm surfaced when it asked for a bankruptcy procedure on 9 February 1994. Hardly three months later, it initiated suspension of its membership at the stock exchange, since it could not pay its obligations of 2.65 billion forints in total to such big investors as the Ministry of Defence, the Interior Ministry and the National Social Insurance Directorate. The Chief Prosecution of Budapest accused Lupis in January 1995 of embezzlement, counterfeiting of private documents and bankruptcy fraud of especially great value. According to the indictment, Lupis had used 831 million forints of the Ministry of Defence, 111 million forints of the Interior Ministry and 896 million forints of the Hungarian State Railway as its own and had conducted business activities against the requirements of sound management. He managed to do this by counterfeiting the deposit certificates of Keler, the accounting firm of the stock exchange, and presented the forged documents as a bail to his clients.

On 18 October 1997, the Court of the Capital announced him guilty of embezzlement but acquitted him of the accusation of bankruptcy fraud at first instance: *„In the opinion of the court, »the highly risky manoeuvres of the broker remained within the limits of rationality«."*[103] He was sentenced to two

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[99] Péter Kunos currently works as a consultant and in 2005, was elected president of the Hungarian Chess Association, a position he had also held between 1990 and 1998

[100] http://www.fn.hu/hetilap/20070903/szuleto_piacgazdasag_botranyai/

[101] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime) (2007), page 139

[102] He was warmly welcomed after his release and his former employees – whose name had not become dirty in the affair – founded one of the most successful Hungarian financial firms, ConCorde Investment share company (ConCorde Befektetési Rt.). Between 2005 and 2007, Lupis and businessman Kristóf Nobilis co-owned CE Rent Ltd. which, thanks to the much more advantageous German tax rules, offered rental cars registered in Germany for a much lower price than usual. At the time of writing, Lupis and Nobilis co-owned ex-L Commercial, Service and Economic Analysis Ltd. The authors could not contact Lupis during the writing of this book.

[103] Tóth Mihály: Gazdasági bűncselekmények és bűnözés a rendszerváltozás éveiben - Nagydoktori értekezés (Economic Crimes and Crime in the Years of the Change of Regime) (2007), 139. oldal

years of prison to be served, suspended for 3 years of probation, as well as to a complemetary fine of 250 thousand forints. According to the court, the value of the crime exceeding 400 million forints is an aggravating circumstance, but the passing of time, the personality of the accused, his efficient contribution to the criminal procedure – Lupis made a confession at the police – and the fact that he voluntarily presented himself at the authorities as a perpetrator were all considered mitigating circumstances. The confiscation of property proposed by the prosecution was refused by the court, since Lupis's acts were motivated by the payment of his debts and not by the increasing of his personal wealth. At second instance, however, things became graver: in 1998, the judgement was modified to 6 years of prison to be served, a total confiscation of property and 8 years of ban from public affairs. Lupis was also found guilty of fraud but the Supreme Court also acquitted him of bankruptcy fraud.[104]

By the time Lupis was validly condemned at second instance in 1998, the court procedure of the Tocsik case had long since started. The most ill-famous scandal of the post-change era was facilitated by the so-called transition law of the Németh government in 1989. This handed over the 57-billion forint land of state corporations in transition to local municipalities, but it was up to the new (elected) Antall governement to carry out the transaction. The amount was so great that a financial debate broke out on execution between the government and the municipalities, and the debate continued under the next government, that of Horn's. That is when the political decision on payments was probably taken in the background, in a way that it yielded profit for the parties in power. The public was only told that Márta Tocsik lawyer had signed an agreement with the Hungarian State Holding share company (ÁPV) – under socialist leadership – on a contingency fee that she would receive if she decreased the otherwise rightful municipality claims. In the next ten months, the lawyer made 804 million forints, a part of which was soon claimed by the governing parties, the socialists and the liberal democrats. László Boldvai socialist MP and György Budai, a businessman linked to the liberal democrats (SZDSZ), asked Tocsik to give them half of the „commission" she had received. Tocsik gave them the money.

The 1996 scandal was launched by a member of the parliamentary opposition, Tamás Deutsch who presented an extraordinary press review: he read an article from the magazine Figyelő on how Tocsik took 804 million forints from the sources of the municipalities. Soon it was also revealed how most of the money ended up in circles linked to the socialists and the liberal democrats. The board of directors of ÁPV had to resign due to the scandal, and the minister responsible for privatization, Tamás Suchmann also had to leave; when the scandal had broken out, the latter had said that the sum in question was „unusual

[104] http://www.fn.hu/hetilap/20070903/szuleto_piacgazdasag_botranyai/

but legal". In June 1997, the Chief Prosecution of Budapest accused Márta Tocsik, principal defendant, of fraud and of counterfeiting private documents, several top managers of ÁPV were accused of careless management, while Boldvai and Budai were accused of trafficking with influence. The court of first instance sentenced the latter to prison but the second instance decision of the Supreme Court ordered a new first instance procedure. As a final result of the criminal procedure, the Supreme Court only condemned Tocsik for counterfeiting private documents and sentenced her to a fine of 400 thousand forints. A civil procedure was also launched against the lawyer: according to the prosecution's proposal, the contract leading to the contingency fee is against good morals because it breaches the moral judgement of society and should therefore be declared void. In October 2008, the civil procedure launched by the Chief Prosecution ended with the valid decision that Tocsik must pay back 801 million forints out of the 804-million contingency fee.

These cases, however, were only a prelude to the really great scandals of the era, described in detail in Hungarian: the cases of Globex Holding, Postabank and the K&H brokerage firm. The common characteristic of these cases was that they all caused significantly greater financial and moral damage than those mentioned above. Two of the three megacases still await a legally binding judgement which was taken in the third case in February 2009: the Supreme Court approved the judgement of the court of second instance, namely that Gábor Princz, CEO of Postabank – a state-owned retail bank – between 1988 and 1998, had been found guilty of careless management and had been fined 3.6 million forints. The interesting part of the affair is that after five years of investigation, the prosecution had accused the banker of misappropriation in the magnitude of 36 billion forints, but the court found this accusation insufficiently founded: he was acquitted at first instance in Summer 2006, while the court of second instance only condemned him for careless management in January 2008. To put it simply, the way journalists like to do, careless management is the neglectful version of misappropriation: the criminal procedure could not prove convincingly that the man leading the financial insitution for ten years had been responsible for a series of complicated and illegal transactions and that he had been well aware of their consequences which ultimately led to bankruptcy and the state had to consolidate the bank – in 1999, the leaks were filled with 152 billion forints of the taxpayers' money, of the budget. The public thinks that the light punishment of Princz could also be due to the fact that he had supported all political forces from the very beginning and once said that Postabank had been the bank of the change of regime.[105]

[105] Cited by Ószabó Attila – Vajda Éva: Bank Bán IV (Élet és Irodalom, 19 June 1999)

In comparison, the cases of Globex and K&H were much simpler. The story of the Globex empire – dealing in almost everything, from real estate development to stock transactions – also illustrates the peculiar economic and social environment where misleading and lies were considered values, just like the circumventing of legislation. But this means that besides the two main owners – László Vajdai, an executive producer turned into adventurer and Györgyike Vellai, an economic mathematician turned into businesswoman –, the adopters of incomplete legislation and the state authorities supervising law enforcement are also responsible, just like in the case of Postabank.

Gábor Princz and Vellai and her partner stem from the same roots, they are the products of the same system. They both led enterprises lacking capital in a highly unstable and transitional economic environment where one needed to circumvent legislation and use tricks in order to show better and better results on paper. And instead of stopping blowing the balloon until it gets bigger and bigger, they chose to run ahead, into bankruptcy. The story of Globex is a typical Hungarian „success story" where money and power, politics and business went hand in hand. The rise and fall of the group of firms is at the same time a fine example of the way legislative loopholes led to billion-forint properties and thus public influence in the last decade; and their failure – besides a series of professional errors – was due to the fact that they had made billion-forint investments virtually without any capital, while unscrupulously breaching written and unwritten rules. The magnitude of the money lost is significantly smaller than in the case of Postabank: the police launched the investigation for the disappearance of almost ten billion forints in 1999, out of which almost 2.5 billion forints could be proven; most of the damage affected small investors and municipalities.

The bill of indictment contained misappropriation as well as embezzlement. The court of second instance significantly modified the relatively light judgement of first instance – the latter sentenced the pair to prison that they would not have had to serve because of the days already spent in arrest. While at first instance, the owner of Globex, László Vajda was sentenced to eight months and the CEO, Györgyi Vellai was sentenced to two and a half years – on the grounds that the Globex network (a central holding, a brokerage frim, an investment management firm and project firms) had not been created with sinful intentions –, the judge ruling at second instance was not so leniant: he sentenced the pair to seven and eight years of prison to be served, respectively. After the judgement, on 6 February 2008 they were taken from the courtroom in handcuffs. But the case has not been closed: things took a bizarre turn when in the framework of the proceeding in error, on 28 January 2009, the Supreme Court made a decision rarely applied in such cases, namely repealed the legally binding judgement and ordered a new second instance procedure, at the same time releasing Vellai and

Vajda, prohibiting them to leave their residence. On what grounds? To put it shortly, they considered the second instance judgement unfounded. According to the Supreme Court, the so-called quality of perpetrator must be reviewed at second instance, which means that the court must decide which acts may be qualified as committed as perpetrators and which as accomplices; furthermore, they found that the declaration of guiltiness had in some cases been against the law, so a new procedure must establish the real damage caused by the leaders of Globex. Since the repeated procedure might provide a lighter qualification of the crimes, the sentences might have to be decreased.

The main accusation was simple embezzlement in the case of K&H as well, since according to the estimations of the experts working in the criminal procedure, altogether 23 billion forints were embezzled over the years from the brokerage firm of one the biggest Hungarian banks. The court sentenced seven out of the 24 accused to prison to be served and a dozen perpetrators were sentenced to suspended prison and to fines; but strangely enough, the leader of the bank, Tibor Rejtő E. was acquitted at first instance due to lack of evidence. The 150 thousand-page file did not contain one single well-grounded proof that Rejtő, the head of the group of banks, could in any way be held responsible for the fact that the financial institution under his supervision had for long years payed an interest well above the market rate to special and priority clients. The procedure put the main blame on the accused who had become a director in one of the Hungarian banks in a few years, after having worked as a grocer in the town of Nagykanizsa, then as a moneychanger in the holiday town of Siófok. This person, Attila Kulcsár was the only one to be taken away in handcuffs after the procedure: he had to start serving his eight years of prison, while the others are waiting for the decision of the Court of Appeal of the Capital in their residence or completely free. The CEO of the bank walked away from the courtroom with his head held high. The scandal evoking one of the greatest public upheavals after the change of system has been referred to as the Kulcsár case or the broker scandal from the very beginning, and this approach was further reinforced by the judgement of the court of first instance.

Investigative articles written on the scandal which had erupted in Summer 2003 suggested in vain that the crime could not have been committed by one single perpetrator, as it would be difficult to believe that Kulcsár had led a double life for years, misleading everybody inside and outside the bank – CEOs, inner controllers and supervisors –, creating a real „shadow bank" outside the official accounting system as if it was his own brokerage firm. The prosecutor's speech of indictment emphasized in vain that apparently several people linked to this case *„exploited their political and media relationships to prevent the clearing-*

up of the crimes and to put obstacles to the work of the authorities"[106] – the first instance judgement put almost all the blame on the lonely broker.

The CEO was accused of being an accomplice in an embezzlement of especially great value, but all the evidence brought up against him was indirect. He had not signed one single document that could have directly linked him to the money embezzled personally, and Kulcsár had principally been employed by the brokerage firm, his position in the bank had not been immediately subordinated to Rejtő, furthermore, he had not used the different accounts of the bank for his transactions, everything had been done through the brokerage firm. The prosecution called countless employees of the bank and the brokerage firm as witnesses, and they all reaffirmed that there had been a very strong friendship and work relationship between the two leaders, Kulcsár had probably informed the CEO of the bank of all his decisions. According to the prosecution, the close relationship was also supported by the frequent phonecalls but the court considered this insufficient for demonstrating guiltiness.

The criminal procedure was no less unable to demonstrate the responsibility of some of the clients, even though – and there are valuable clues supporting this – Kulcsár's VIP clients were not mislead, innocent „small investors". Some of the clients could have known that the interest, spectacularly, by magnitudes higher than the market rate, had stemmed from sinful sources, especially since they had often received the money through ambiguous series of transactions involving off-shore firms – or even through even more suspicious circumstances, handed over in a plastic bag by a taxi driver. For a fundamental question of the procedure was whether it is possible that businessmen belonging to the political, economic and cultural elite of the country, profoundly aware of the laws, of the basic rules of the functioning of the financial system indeed acted in good faith, not suspecting anything, since – as they say – they had been working with an affiliate of one of the biggest Hungarian banks.

Essentially, the procedure proved to be a failure in revealing the political and public aspects of the affair as well. *„The money laundering revealed is not typical in the sense that the accused did not use the sums derived from the crimes directly for their own purposes, but used them during their business activities, buying corporations or building hotels"*[107] – said the prosecutor in the speech of indictment but neither the investigation, nor the prosecution managed to convincingly prove the assumed link between the money embezzled and the domestic financing of politics and political parties.

4. Epilogue

[106] The authors' recording of the speech of indictment, 7-8 July 2008
[107] The authors' recording of the speech of indictment, 7-8 July 2008

Or why did we write this book?

„Our laws will be enforced just as vigorously against corporate executives as against street criminals. No one is above the law" [108] – declared Paul McNulty, deputy of the American minister of justice, at the end of the Enron trial. *„No matter how rich you are, you have to play by the rules"* [109] – said Sean Berkowitz government prosecutor who – together with his team – managed to prove to the common jury and against the most well-paid attorneys of the world that the management of Enron had been continuously and consciously breaching the law for several years. *„He was the man who was in charge. It's just kind of hard to sit there and think he didn't know what was going on"*[110] – so spoke one of the members of the common jury that had condemned Bernie Ebberst, president of WorldCom, for an accounting fraud of 11 million dollars. The once influential corporate executive was sentenced to 25 years of prison and was not granted presidential amnesty.

The big fish were punished in America. America is far away, the Hungarian reader could say dismissingly. But we know that the big fish had not only been punished on the other side of the Atlantic but in neighboring Austria as well. The retired CEO of Austria's biggest bank, Bawag, was brought and kept home from the French Riviera. Austrian authorities managed to prove what Hungarian authorities could not prove in similar cases – similar because of the nature or transactions and the result: on one hand, that the CEO had known everything and on the other hand, that it had not been his broker who decided when, to whom and where the money should be transferred with hair-raising manoeuvres.

Similarities are not accidental. Even if we respect the presumption of innocence, it is difficult to believe that members of the Hungarian financial and economic elite again and again and in good faith participate in transactions that are doubtful – to say the least –, are on the verge of legality or even against the law, and the gaps thus created are always filled by the taxpayers, whereas fallen and accused corporate executives, the big fish get away with it. The small fish, however – those who do not play an important part in politics or are hierarchically under the leaders – are punished, since somebody must take the blame. The recognition of the essence, relevance and the stating of relevance are missing in these cases. And this makes it difficult to draw the lessons. Unless we accept as a lesson the century-old popular wisdom that while it is not lucrative to steal wood, it is indeed so to steal a whole forest.

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[108] Lay and Skilling's day of reckoning - CNNMoney.com, 25 May 2006, http://money.cnn.com/2006/05/25/news/newsmakers/enron_verdict/index.htm

[109] Lay and Skilling's day of reckoning - CNNMoney.com 25 May 2006 http://money.cnn.com/2006/05/25/news/newsmakers/enron_verdict/index.htm

[110] WorldCom's cowboy bites the dust – Economist, 17 March 2005

If we cast a look at the jugdements discussed in this book, we may sadly say: the popular wisdom has once again proved to be true, even if some white-collar criminals were found guilty in the last two decades. However, the real question is whether Hungary will ever experience a political and democratic culture and public atmosphere where authorities may perform their work without constant pressure and the need to keep looking up, and where the identity of the perpetrator and the favors he has done to others do not count, the only decisive factor being the acts he has committed.

It is up to us to ensure an environment in Hungary where all the actors can and do perform their tasks responsibly, without any background thoughts, from the duties officer to the prosecutor. Legend has it that during the second World War, Winston Churchill, then prime minister of Great Britain went to the United States to negotiate with president Eisenhower, and was stopped at the airport by an officer who told him that according to the legislation in force, his favorite dog cannot enter the country, instead it must spend some time in quarantine at the airport. *„Do you know who I am?"* – asked Churchill. *„I know. You are Winston Churchill, prime minister of our greatest ally, Great Britain"* – the officer replied calmly. *„Nevertheless, the dog can still not enter the territory of the United States."* So the dog stayed at the airport and the officer spent 22 more years at the same airport before his retirement.

We consider our task performed, we have carried out the duty of journalists: we collected all information, opinions and extracts of documents that may help the reader decide what happened in economic cases in the two decades since the change of system and where Hungary is standing nowadays.