Pázmány Péter Catholic University

Doctoral School of

Law and Political Studies

Criminal procedural guarantees that facilitate or hinder the establishment of material truth

Thesis of the Ph.D dissertation

dr. Imola Szigeti

Supervisor: Prof. Dr. Ervin Belovics, Head of Department, University Professor

Budapest

2023

Contents

I. Summary of tasks the research seeks to achieve 3
II. Research methods, thesis structure 5
III. Summary of jurisprudential results and possibilities for their utilisation 7
IV. List of publications 10

I. Summary of tasks the research seeks to achieve

In my doctoral dissertation, I aimed to analyse criminal procedure guarantees and legal institutions that facilitate or hinder the establishment of the material truth.

At the centre of the task of the judicature is the establishment of the truth, so its purpose cannot be other than the investigation of the truth – whatever we think of either its material or procedural conception. The first thing that needs explanation is what we mean by the concept of truth, although in my thesis I also discuss how the concepts of truth and justice are related to each other.

Determining the truth in practice runs into a lot of difficulties, which, in my opinion, can be traced back to the complexity of the concept of truth. The individual concepts of truth significantly differ from each other and are sometimes even contradictory. It is not a unique case that a criminal proceedings are suitable for establishing the procedural truth but, at the same time, contradict the material truth.

An obstacle to establishing the truth can be the expansion of human rights, since the search for the truth usually implies an intervention, for example, into the private sphere. Both in the continental and Anglo–Saxon legal systems, respecting human rights is a key obligation of the state; therefore, the enforcement of criminal claims can only materialise within the framework of the rule of law.

Since the establishment of the Anglo–Saxon legal system, it has aspired to establish formal justice in criminal prosecutions; in other words, the main task of the procedure is to settle the conflict that arose due to the commission of the offence to the satisfaction of the members of society. Of course, in the vast majority of cases, formal truth corresponds to substantive truth, but when it does not, as in the case of criminal proceedings involving plea bargaining, it does not cause any form of problem. .

The continental legal system has utilised the concept of material justice from the beginning; which means that, in this structure, the purpose of the criminal procedure is to establish clearly from the point of view of criminal material law, what processes took place in the past. Hungarian criminal procedural law, which has strong German traditions, was and still is intended to facilitate the realistic exploration of the events that took place in the past.

Fair trial regulations are found in both legal systems, while their task is to ensure that the basic rights of a person suspected of committing a crime are guaranteed against any overreach by the authorities; hence, in particular, regarding defence and protection, personal freedom, legal remedy and rights related to the timeliness of the procedure. These rights therefore exist regardless of the current purpose of the criminal procedure, but their proliferation and incoherent regulation can create an opportunity to hinder the purpose of the criminal procedure itself.

What has been explained so far is illustrated by an example; all modern criminal procedural law systems provide the accused with the right to refuse to testify, and the necessity of this right obviously cannot be questioned. However, the unacceptable, 'unsystematic' features of the rules can form a barrier to ascertaining the substantive truth. Thus, if the accused can refuse to testify during the investigation, at the trial – as stated in Act XC of 2017 on the Code of Criminal Procedure (hereinafter: Be.) he can however do so in possession of the investigative documents that have been made available to him.

In other words, he can construct his defence with the knowledge of the evidence that is unfavourable to him, and if the right to refuse to testify is valid without limitation(i.e., if the defendant is not under any obligation to tell the truth or to answer questions regarding what he has said during the testimony), the prosecution must overturn the defendant's defence in such a way that they must rebut the defence of self–incrimination and not oblige him to answer the prosecutor's questions.. Due to the deficiencies in regulation, this type of guarantee, as the right of the defendant, can become a barrier to the obligation to establish the material truth.

Justice can thus rightly be expected from criminal proceedings, since establishing the main pillar of the truth is the *conditio sine qua non* of the procedure, and achieves the enforcement of the state's criminal claim and the goals of prevention and retribution. In reviewing the specific legal institutions, I have also focused on identifying rules that facilitate or hinder ascertaining the substantive truth.

During my research, based on analyses involving the Be., the Hungarian courts and the law enforcement practice of the European Court of Human Rights, I explore and present such guarantees in detail. As a result of my research, I also set out my proposals for codification.

II. Research methods, thesis structure

During the preparation of my dissertation, I used the traditional methods of jurisprudential research, namely history of law and comparative law analysis and, on the other hand, the examination of the regulatory system and connections of articled law. I have of course also reviewed what is considered to be the prevailing jurisprudence.

In the introductory part of my thesis, I present the expectations of the criminal procedure and the purpose of the criminal procedure. This issue has been addressed by many authors in the past one and a half centuries, such as Ferenc Finkey, Szabóné dr. Terézia Nagy, Tibor Király and Mihály Tóth. Reviewing these scientific definitions, it can be said that the essence of the criminal procedure is the proposition according to which a guilty person cannot avoid criminal liability, However, conviction of an innocent suspect should never take place. Obviously, the basis of all this must be the account of what happened in the past, which in turn must reflect objective facts.

As I explain in my doctoral thesis, the problem area of truth is the content specifics of the concept of truth, and it has occupied those working in this field of science since the beginning of human thinking. After presenting the ideas of some outstanding philosophers, I deal with the difference in meaning between truth (igazság) and justice (igazságosság), explaining that the concept of truth is used in all legal systems.

The basis of all this shall obviously be based on what has occurred in the past, however past events should reflect objective facts. The definition of the concept of truth can obviously be found in the work of its most outstanding representatives of criminal procedural science. Thus, according to Tibor Király, the supreme component of truth is that it is objective, because without it there is no truth, because the truth without this feature, objectivity, it is not truth but falsehood.

In the third chapter, I present the characteristics of Anglo–Saxon and continental procedural law and how the Anglo–Saxon procedural law was satisfied with the concept of formal justice and whereas continental procedural law demands material justice and developed the legal institutions that fits its own character and which are the most important special features of these legal institutions

The next part of my dissertation presents the provisions of the effective law related to evidence. In this round, I shall analyse those basic provisions, such as the principle of a fair trial, the right to an independent and impartial court and the right to an effective defence, which must, in all circumstances, permeate the entire criminal procedure, even if the application of these basic principles might constitute a barrier to establishing the material truth.

In the fifth chapter, when presenting the fundamentals of proof, I analyse the principle of free evaluation of evidence, focusing in detail on the one hand on general proof prohibitions and on the other hand, on prohibitions linked to individual legal institutions.

Regarding the means of proof, as well as referring to the acts of proof, I shall present the legal rules in force in the light of judicial practice.

In view of the crucial role of court procedure in the mixed system, I discuss the relevant rules of first, second and third instance court proceedings in my dissertation. Focusing on that, there are two extremely significant and at the same time controversial issues in the theory of proof. On the one hand, the specifics of proving with the use of circumstantial evidence and, on the other hand, excessive evidence. I therefore deal with both evidential anomalies in detail.

In my article related to proof using circumstantial evidence, I present all three theories on it, and I review in detail the Kúria's decision BH 2021.35, which deals with this principle of proof. Regarding excessive evidence, I wish to draw attention to those negative phenomena which, – despite good intentions – in fact inhibit rather than help to establish the realistic historical facts.

My doctoral dissertation concludes with suggestions for the legislator and those applying the law, believing that my thoughts can facilitate establishing the material truth, which I consider to be the central issue.

III. Summary of jurisprudential results and possibilities for their utilisation

In this context, I consider the most significant problem already mentioned, the provisions in the rules regarding the defendant's testimony.

According to the rules of the Be., the defendant has the right to remain silent throughout the entire procedure, but at any time – in other words, also during the entire procedure – he can decide to testify. There is no obstacle to the fact that the accused, the defendant in the investigation phase, may change his decision and testify before the court. However, in the meantime, once the investigation is complete, the defendant has the opportunity to review the entire investigative file and present his testimony in a way that matches the available evidence. In other words, a decision could be made in the case, for example, without taking the defendant's defence into account, but who later changes his mind and tells the truth. I do not seek to doubt that the defendant must be guaranteed the right to remain silent but, according to the currently valid rules, his decision is completely immaterial, since it can be changed at any time. The seriousness of the decision would be ensured by a system of rules, according to the meaning of which the defendant must be warned of the right to remain silent during the investigation, that he can testify but can refuse to testify. The weight of this decision would be that he would be no longer be able to testify after refusing to testify; for example, the decision in the case could be made by ignoring the defence. Although I am aware of this solution also carries many dangers in terms of establishing the material truth, because it is possible that the defendant wishes to exempt someone, for example a relative, from criminal proceedings by remaining silent, but he would later change his mind and tell the truth. Based on the rules which I outlined before, the defendant would no longer be able to do this but, at the same time, I also think that awareness of everything would encourage the defendant to reveal the reality. I note that such an amendment to the Be. would also require the amendment of the related rules; for example, the norms on suspicion or the right of access to documents of the accused would have to be reconsidered. It is obvious that the accused can only make a responsible decision if, for example, the suspicion is of a nature that covers all relevant issues.

In the Anglo–Saxon system, if the defendant gives a statement, he is under an obligation to tell the truth; however, in the criminal proceedings, it provides the defendant with

complete freedom of defence, meaning the defendant can present anything in order to defend himself; the only barrier to this is a false accusation. For my part – precisely to ascertain the material truth – I consider the Anglo–Saxon system to be correct, because if the defendant decides to testify, due to the obligation to tell the truth, his testimony cannot be characterised by complete irresponsibility. In connection with this line of thought, the problem of self–incrimination may arise, the point of which is that no-one can be forced to make a self–incriminating statement.

However, in my opinion, the imposition of the obligation to tell the truth and the prohibition of self–incrimination are in no way mutually exclusive, considering that guaranteeing the right to remain silent gives the defendant the opportunity to decide. The defendant can decide not to testify, thereby ensuring the enforcement of the prohibition against self–incrimination, but the defendant can also decide – of his own – to testify, but in that case must tell the truth and that, if the reality is that he is criminally liable, he must present the relevant facts. These are related to the provisions of the Criminal Code (Btk.), according to which the witness cannot be punished if he does not refuse to testify based on these reasons, but does not reveal the truth in his testimony; in other words he lies.[1] Any witnesses are also given the opportunity to refuse to answer those questions, the answer to which would accuse them or their associate of committing a crime. This provision is also based on the prohibition of self–incrimination. Of course, I am aware that – in an absurd way – the person who committed the crime and is put in the position of a witness draws the attention of the authorities to himself if he refuses to testify for the reason cited, so I consider the currently valid rules to be correct in this regard.

For me, I find it unacceptable that the defendant reads out his testimony during the court hearing, which has become commonplace in criminal proceedings in the recent past for serious crimes. To be able to tell the truth, there is obviously no need for a pre-written confession; the confession only has to be recorded as written in advance if it is untrue itself. Therefore, establishing the material truth would be helped by a rule that would preclude the defendant, who was summoned and appeared at the hearing, to read his earlier testimony – obviously written with the help of the defence lawyer. Clearly, this provision is unnecessary if the defendant decides whether to testify or not to testify at the

[1] Btk. 275. § (1) bek.

time when he is a suspect and this cannot change; in other words, in the case of an affirmative answer, the defendant must testify immediately. The prohibition of reading out confessions should fit in with this, namely the interrogation of the suspect.

IV. List of publications

- SZIGETI Imola: *A vádemelés problematikája.* (*The problems of accusation.)* Büntetőjogi Szemle. 2016/1–2. 82–91.
- SZIGETI Imola: *A tárgyalás előkészítésének szerepe az új Be-ben, az előkészítő ülés.* (*The preparatory session.)* Büntetőjogi Szemle. 2018/2. 94–100.
- SZIGETI Imola: *A materiális igazság megállapíthatósága az új Be-ben. (The determinability of the material truth in the new criminal procedure).* In: Miskolczi Bodnár Péter (ed.): XIV. Jogász Doktoranduszok Országos Szakmai Találkozója. Jog és állam 24. szám. 2018. 403–407.
- SZIGETI Imola: Az egyezségre vonatkozó eljárásjogi normarendszer. (The rule system of settlement in criminal proceedings.) *Magyar Jog.* 2018/12. 690–697.
- SZIGETI Imola: *A másodfokú bírósági eljárás sajátosságai az új büntetőeljárási törvényben.* (*The procedure of second instance courts.)* Ügyészek Lapja. 2019/4–5. 79–87.
- SZIGETI Imola: *A terhelti beismerés, mint a "bizonyítékok királynője". A közvetett bizonyítás sajátosságai. (The incriminated confession as the "queen of evidence". Peculiarities of indirect proof.)* Jámborné Róth Erika (edit.) Doktoranduszok Fóruma. Miskolc. 2019. 127–130.
- SZIGETI Imola: A beismerés jelentősége az eljárás gyorsításának körében, különös tekintettel az egyezségre és az előkészítő ülésre. (The importance of confession in terms of speeding up the procedure, especially with regard to the settlement and the preparatory meeting.) In: Bándi, Gyula (edit.) *A SOKOLDALÚSÁG OKÁN. Doktorandusz tanulmányok a Pázmány jogászképzésének 25. tanévében.* Pázmány Press. Budapest, 2020. 135–145.
- SZIGETI Imola: Evidential anomalies in criminal proceedings – proof by circumstantial evidence. *Journal of Eastern European Criminal Law.* 02/2023.