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THEFT IN OUR DAYS

Introduction

Even today, the state of facts of theft still has a leading role amongst criminal offenses against property. We know, theft has several forms, means, and ways of conduct. The objective of the perpetrator(s) is not only to acquire fast financial gain, they also intend to sell the stolen goods quickly.

The study shall introduce the criminal offense of theft from the aspects of both criminal law and criminalistics; thus it shall give deeper insight to the methodical processes of the investigation. It is also indispensable to explore the interests of the injured party, how he can be compensated as soon as possible, which could be promoted by the active repentance of the perpetrator or by the institution of intermediary procedure.

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Besides the analysis of the criminal offense, the article intends to attach particular importance to the presentation of criminalistics' achievements, emphasising the objectives to prevent, detect and interrupt criminal offenses.

State of facts of theft

The state of fact of theft is ranked first in the Criminal Code, in the Chapter on Criminal Offenses Against Property. The priority position may refer to the widespread nature of the state of facts as well. Statutory provisions on theft differentiate between the forms of misdemeanour and felony. In case the value of the thing does not exceed over fifty thousand forints, we speak about misdemeanour and not a felony, while in case the value of the stolen goods exceeds over fifty thousand forints, we refer to the felony of theft.

In case of criminal offenses against property, therefore in case of theft as well value limits shall apply, defining the classification of the offense of theft:

- up to HUF 50 000 – misdemeanour;
- minor between HUF 50 001 and HUF 500 000;
- considerable between HUF 500 001 and HUF 5 000 000;
- substantial HUF 5 000 001 and HUF 50 000 000;
- particularly considerable between HUF 50 000 001 and 500 000 000;
- particularly substantial over HUF 500 000 000.²

Act C of 2012 on the Criminal Code stipulates the state of facts of theft:

Btk. Section 370-(1) Theft shall mean when a person takes away a thing to which he is not entitled from somebody else in order to appropriate it unlawfully.

²Act C of 2012 on the Criminal Code (hereinafter referred to as Btk.) Section 459 (1) 33 (6)

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(2) *The penalty for misdemeanour shall be imprisonment not exceeding over two years if the theft*

a) involves minor value or

b) involves a petty offense value, and it is committed

ba) in criminal association with accomplices,

bb) on a commercial scale,

bc) by using actual force against a thing, including if the installed means of the theft protection are removed causing any damage without compromising such means of theft protection and rendering it dysfunctional,

bd) by pickpocketing,

be) by simultaneous commandeering of one or more authentic instruments, private documents or cash-substitute payment instruments,

bf) upon entering a property, or the confines attached to such by deception or without the knowledge and consent of the entitled party or user,

bg) by the use of a false or stolen key,

bh) to the detriment of a party who is sharing a home or similar premises with the perpetrator, or

bi) by way of illegally felling trees in a forest.

(3) *The penalty for a felony shall be imprisonment not exceeding three years if*

a) the theft is committed in respect of a substantial value,

b) the theft involves a minor value and

ba) it is committed by either of the means referred to in Subparagraphs (2) ba)-be),

bb) it involves objects classified as protected cultural goods or archeological findings,

bc) it involves religious objects,

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bd) it involves objects placed in memory of or with the dead, in cemeteries or other burial sites,

be) it involves precious metal or

c) it involves petty offence value or less and it is committed on a place of emergency.

(4) The penalty shall be imprisonment between one to five years if

a) the theft is committed in respect of a substantial value or

b) the theft involves a considerable value and it is committed by either of the means referred to in Subparagraph (2) ba)-be) or at a place of emergency.

(5) The penalty shall be imprisonment between two to eight years if

a) the theft is committed in respect of a particularly considerable value or

b) the theft involves a substantial value and it is committed by either of the means referred to in Subparagraph (2) ba)-be) or at a place of emergency.

(6) The penalty shall be imprisonment between five to ten years if

a) the theft is committed in respect of a particularly substantial value or

b) the theft involves a particularly considerable value and it is committed by either of the means referred to in Subparagraph (2) ba)-be) or at a place of emergency.³

The classification of theft is more serious, or it must be deemed as an aggravating circumstance if the offense is committed in criminal association with accomplices⁴; on a commercial scale; by pickpocketing; by using actual force against a thing; by simultaneous commandeering of one or more authentic

³ Section 370 (1)-(6) of the Btk.

⁴ Ürmösné Simon Gabriella: Crime against property. In: Ürmösné, Simon Gabriella Angol szakmai témakörök a közép-és felsőfokú nyelvvizsgára. Budapest, Magyarország : Rendőrtisztviselői Főiskola (2002) 129 p. pp. 77-89. , 13 p.

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instruments, private documents or cash-substitute payment instruments; upon entering a property, or the confines attached to such by deception or without the knowledge and consent of the entitled party or user; by the use of a false or stolen key; to the detriment of a party who is sharing a home or similar premises with the perpetrator or by way of illegally felling trees in a forest; against objects classified as protected cultural goods or archeological findings; against religious objects; to objects placed in memory of or with the dead, in cemeteries or other burial sites; or to precious metal.

According to the prevailing judiciary practice, the perpetrator committing an illegal action against goods by using a vehicle may be followed by a vehicle, he can be caught upon in order to enforce the return of the illegally taken goods, since such conduct is an action of protection and also a preventive emergency response to the illegal assault against the goods. The risks of more serious consequences of a non-deliberate response shall also be born by the illegal aggressor.⁵

Active repentance and intermediary procedure in respect of theft

Also, in cases of theft there is the legal possibility to pursue an intermediary procedure or to apply the rules of active repentance, in essence to pay the compensation demanded by the injured party. In case of active repentance, the perpetrator shall not be prosecuted for the pecuniary misdemeanour or for the criminal offence punishable by imprisonment not exceeding three years, if he has admitted his guilt before being indicted, and has provided restitution by the way and means and to the extent accepted by the

⁵ EBH 2018. B.11.

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injured party within the framework on intermediary procedure, or previously, if approved by the agreement concluded in the intermediary procedure.⁶

From the aspects of criminal politics, the legal institution of active repentance originates in the recognition that active repentance should serve the interests of the injured party. Therefore, legislators' objective was to promote the broadest possible systematic availability of the intermediary procedure.⁷

Reimbursement of the injured party's damages is not sufficient enough for the perpetrator's active repentance. There are further statutory conditions, thus only a formal procedure (intermediary procedure) meeting such conditions can result in exemption from criminal liability.⁸

The intermediary procedure means a proceeding that aims to advance the agreement of the suspect and the victim, assisting the reparation of the consequences of the criminal offense and facilitating future law-abiding conduct of the suspect, instituted to the motion of either suspect or the victim on the one hand, or pursued upon their voluntary consent.⁹

The prosecutor's office may suspend the procedure provided to pursue an intermediary procedure in case the suspect or the injured party files a motion the conduct of the intermediary procedure, or gives his consent to do so. Furthermore, the procedure may also be suspended, if the suspect has admitted his guilt before being indicted, remedy of the consequences of the criminal offense can be expected regarding the nature of the criminal act, the manner of conduct, and to the character of the perpetrator, and if the omission of the criminal procedure is possible, or if pursuing the intermediary procedure does not conflict the principals of sentencing.¹⁰

⁶ Section 29 (1) of the Btk.

⁷ Preamble to Act C of 2012

⁸ BH2018.323.

⁹ Section 412 (1) Be.

¹⁰ Section 412 (1) (2) Be.

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However, it shall not prevent the suspension of the procedure provided to pursue the intermediary procedure, if the suspect voluntarily, partially or entirely compensated the damages, financial loss or value caused by the offense, or if he provided remedy for the harm caused by the criminal offense in a manner and to the measure determined by the injured party.¹¹

We may summarise the conditions of exemption from criminal culpability are: confession of committing the crime before the indictment; regarding certain criminal offenses; conduct of an intermediary procedure; remedy; acceptance by the injured party.¹²

Investigation of theft

When investigating theft, it must be examined, whether serial commission of crime can be detected. Serial commission of crime means if the same perpetrator of the same group of perpetrator has committed several criminal acts of the same or similar sort. Furthermore, the same means or manner of committing the act is also a must. As far as the serial manner of perpetration is concerned regarding crime against people, we can state that a serial killer is a person who murders three or more people over a period of more than 30 days, with a “cooling off” period between each murder, and whose motivation for killing is largely based on psychological gratification.¹³

Most often, financial gain motivates perpetrators of series of criminal offenses, whereas the most common serial criminal act is theft.¹⁴

¹¹ Section 412 (3) of Act XC of 2017. on Criminal Procedures (hereinafter referred to Be.)

¹² Nagykommentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez, szerk.: Karsai Krisztina, Btk. 29-ához

¹³ Ürmösné Simon Gabriella: The portrayal and the attributes of serial killers and some of the most notorious ones. INTERNAL SECURITY 12 : 2 pp. 261-273, 13 p. (2020)

¹⁴ Ipsits Csaba- Oszlászki Sándor: Bűnügyi Szolgálati ismeretek-Különös rész, Koordinált nyomozás- A (vagyon elleni) sorozat-bűncselekmények felderítése, (Szerk.:Ruzsonyi Péter, Szendrei Ferenc), Közbiztonság, Ludovika Egyetemi Kiadó, 2020., 713. o.

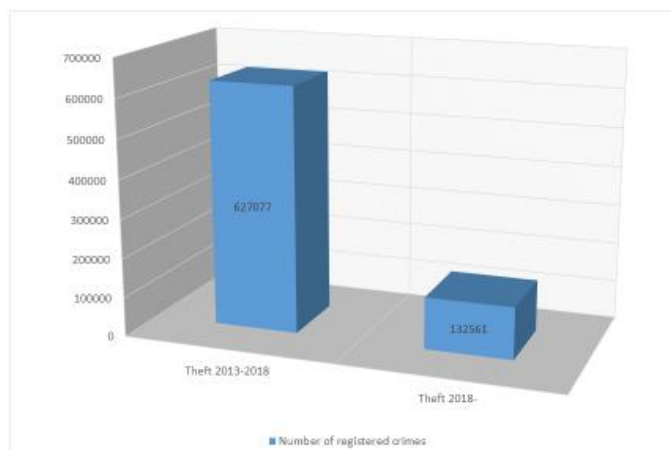
Members of Hungarian authorities have access to search for similarities both in the systems of 'Net-zsarú' and 'Robotzсарu NEO'. Netzsарu system is a national digital criminal and law enforcement electronic database, that includes relevant data registered during the cases and events recorded during the use of Robotzсарu NEO until the scrapping of the case in a structured form; also, surfaces serve as a database for statistical purposes. Furthermore, its surface is available for search, research and other administrative activities within the frames of the Robotzсарu system's authorisations rules.¹⁵ Robotzсарu NEO system is the updated and improved version of 'Robotzсарu-2000', an integrated administrative case-processing; an electronic administrative case- and document management IT application that meets the standards of record processing software—set forth in the provisions of separate legal regulations, it's acknowledged by certificates, also, it is accessible 24/7 to all police bodies, as it stores and records data and documents recorded by the police bodies in the form of a structured database.¹⁶

The number of registered thefts in Hungary was 627077 between 2013 and 2018, and it is 132561 from 2018 until these days. (See Chart 1.)

¹⁵ 18/2011. (IX. 23.) ORFK utasítás a Robotzсарu integrált ügyviteli, ügyfeldolgozó és elektronikus iratkezelő rendszer egységes és kötelező használatáról, jogosultsági rendjéről, az adatvédelem, valamint a rendszerfejlesztés előírásairól

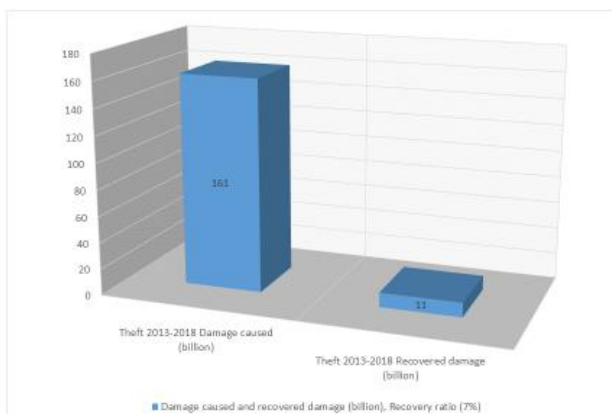
¹⁶ 18/2011. (IX. 23.) ORFK utasítás a Robotzсарu integrált ügyviteli, ügyfeldolgozó és elektronikus iratkezelő rendszer egységes és kötelező használatáról, jogosultsági rendjéről, az adatvédelem, valamint a rendszerfejlesztés előírásairól

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1. Chart
Number of registered theft offenses¹⁷
own illustration

Damages caused by the criminal offense of theft between 2013 and 2018 were approximately HUF 161 billion out of which not much, only HUF 11 billion has been reimbursed. In accordance with this data, the reimbursement rate is cca. 7 %.



2. Chart
Caused and reimbursed damages¹⁸
own illustration

¹⁷ <https://bsr.bm.hu/> 2021.02.23.

¹⁸ <https://bsr.bm.hu/> 2021.02.23.

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The reason behind the low measures of reimbursement probably originates in the fact that perpetrators likely use up and spend all illicit assets or at least part of it, so there is nothing left for the authorities to confiscate.

For the purposes of detecting serial criminal offences and to find the members of the groups committing such a series of criminal acts, police have developed 'Nova-Kajtár' series-searching application, and even though it has only passed its first development phase, it has already supported the detection of several series of crime.¹⁹

If the officer handling the case does not seek for the connection between the cases, the series of committing criminal acts may remain undetected, which may lead to parallel investigations. Parallel investigations do not promote effective law enforcement, neither in the level of domestic, nor in case of international investigations, whereas due to the lack of sufficient flow of information, unknown perpetrators remain undetected; proving criminal acts may fail; or objective exploration of state of facts may become impossible.²⁰ Possible reasons for the failure of uniting the serial or series of cases can be: proceeding investigating authorities and the prosecutor's offices supervising the investigations are concerned that some cases might become diffuse or lengthy, or by other means, without joint investigation evaluation of certain parts of the series of cases are simpler, therefore they can be concluded sooner.²¹

Using covert measures play a significant role in the identification and capturing of the perpetrators, as well as during the evidentiary procedure. The

¹⁹ Ipsits Csaba- Oszlánszki Sándor: Bűnügyi Szolgálati ismeretek-Különös rész, Koordinált nyomozás- A (vagyon elleni) sorozat-bűncselekmények felderítése, (Szerk.: Ruzsonyi Péter, Szendrei Ferenc), Közbiztonság, Ludovika Egyetemi Kiadó, 2020., 713. o.

²⁰ Zsigmond Csaba: A párhuzamos nyomozások gyakorlati problémái, In.: Frigyer László, Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból Tanulmánykötet I., Nemzeti Közzolgálati Egyetem, 2018, 31. o.

²¹ Zsigmond Csaba: A párhuzamos nyomozások gyakorlati problémái, In.: Frigyer László, Nemzetközi jellegű szervezett bűnözés nyomozásának kutatása információáramlási szempontból Tanulmánykötet I., Nemzeti Közzolgálati Egyetem, 2018, 31. o.

following covert measures subject to judicial permit must be enhanced: covert surveillance of an informatics system; secret search; secret surveillance of premises or sites; secret access of package; interception (wiretapping).

Covert measures not subject to a judicial permit or the permission of the prosecutor's office play an indispensable role in a preliminary investigation, in order to interrupt the criminal offense, establish the identity of the offender, or to find means of evidence, the authority entitled to use cover measure may keep under surveillance, gather intelligence and record the events with a technical device on

- a person, private home, other premises or confines, public facilities or other premises open to the public, vehicles, or

- an article construed as physical evidence

that can be related to the criminal offense.²²

Inspection also has a definite significance amongst the evidentiary measures, if the elucidation or establishment of fact to be proven requires the examination of a person, an object or site, or the observation of an object or site.

Several covert and evidentiary measures may be pursued in order to investigate and interrupt theft and series of criminal acts. However, continuous screening and research activities are required during the investigation provided to obtain missing data, and accessing registry can surely promote the success of the investigation.

Burglary and the damages caused by this type of theft are both priority issues in the scope of asset protection, while the fact that the investigation is indicated against unknown perpetrators further enhances the problem.²³ In general, we may state the following questions should be clarified when questioning the party injured by the burglary:

²² Section 215 (5) of the Be.

²³Hegedűs Gábor: Nyomozástámogatás- bűnügyi profilalkotás, Magyar Rendészet, 2019/1. sz., 52. o.

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- when did he leave home (house, apartment, other real estate)
- when did he get home,
- did he lock the door, windows, terrace when he left the object,
- which door or window was damaged in by what means,
- is there an alarm, and was it on,
- does he have any knowledge if there is a surveillance camera at the site of the theft, in the given street or any other streets leading to the site,
- what movables are gone, what are their identifiers / batch numbers, 'IMEI' numbers; in case of jewelleries, photographs should be attached; the number of carats, the type the precious metal, the hallmark, and any special etchwork, etc. should also be asked and clarified if possible,
- was there any mechanic, travelling salesman who he would let in the house lately,
- does he have a home insurance,
- how many keys belong to the house and who dispose of them,
- did he go key cutting lately, if yes, where,
- when did he buy or since when he has been renting the real estate,
- value of stolen movables and the amount of damages.

Theft has numberless means and forms, but regardless, there are basic questions that can be asked during the interrogation.

All cases are unique, nevertheless, if we have a standard line of questions on criminal acts, it can be pulled out and questioned by the interrogator any time, but upon the unique characteristics of the given case, he may also decide whether to ask a particular question or not on the given case during the interrogation. Even model questions may facilitate the preparation to the interrogation.

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Summary

In the course of preliminary investigation of criminal offenses committed against property, the so-called 'plus one more question' of the principal questions of criminalistics must also be examined, namely, whether the act fits into a series of acts or not. Uniting cases may result that a segment of information attached to a case it can supplement fragmental data or information of another case.

It is predictable that digitalisation shall effect theft, one of the criminal actions against property as well, and that will also bring changes in the manner of conduct and behaviours. Consequently, the police shall have the face the challenges of rapid technological development, and it will have to keep up with the new technological innovations and possibilities, promoting the recognition of different way of conducts.

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6. Act C of 2012 on the Criminal Code

7. Act XC of 2017 on criminal procedures

8. Preamble of Act C of 2012

9. Nagykomentár a Büntető Törvénykönyvről szóló 2012. évi C. törvényhez, szerk.: Karsai Krisztina

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11. EBH2018. B.11.

12. <https://bsr.bm.hu/> 2021.02.23.

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The aim of this study is to introduce the statutory provisions of criminal law on theft. It shall also analyse the legal institutions of active repentance and intermediary procedure, accentuating their *raison d'être*, with regards to the protection of the injured party's interests.

The study shall also present the investigation of theft from the aspects of criminalistics, with special emphasis on the investigation of burglary. Furthermore, it shall summarise the relevant questions related to this special type of conduct in general.

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Keywords: theft, serial commission of crime, active repentance, intermediary procedure, covert criminal measures.

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