THE STRUCTURE OF CRIMINAL PROCEDURE AND
THE EVIDENTIARY PROCESS

ÁRPÁD ERDEI

The rationality of proof

Although it is a relatively short history that the doctrinal discipline of criminal procedural law has as its own (having earlier been merely a not very important segment of criminal sciences) and, as a consequence, its students quite often find unexplored areas, one could easily assume there are no unmapped spots left in the realm of the theory of evidence in criminal procedure. For, it is considered to be basic truth, almost an axiom, that finding out the truth through evidence constitutes the most important part of criminal procedure, so it is taken as self-evident that the earlier explorers of the doctrines of criminal procedure have not left too much for their successors to discover in this field. Opinions like this are even reinforced by the fact that surveying the Hungarian literature on criminal procedure one can find no other topic occupying the mind of scholars so much as evidence – at least the number (and quite often also the quality) of the works seems to indicate that.

Nevertheless, under close scrutiny, beliefs built on generally accepted theses, never challenged just like axioms are not, often prove to be of doubtful value, or at least questionable. When a scholar under the impression that the evidentiary theory of criminal procedure has no unsolved problems left, tries to examine the details, he soon is forced to realize that the literature, while seemingly abundant, does not have an answer to every question. It is so mainly because it is not the basic questions anymore that scholars of our times are so much interested in. Scholarly interest is focused now more on the relationships between various institutions of criminal procedure and on the interconnections of their operation than on anything else. And the discussion of such relations in the literature may not be exhaustive (thus their study may result even in new discoveries) if for nothing else but the fact that the change of perspective offers a different picture even if the examined thing is the same and scholars like to find their own perspective.
Naturally, all this is not to mean that the earlier students of the discipline of criminal procedural law saw their subject only in isolation and like an unmoving picture. It would be sheer conceit on our part to claim that the significance of the study of the interrelations of phenomena and the dynamics of such interrelations is a new idea discovered only by the scholars of our age. In fact, it is quite natural that this type of study has been left to us: until such basic concepts, as proof, means of evidence, etc. are not clear, scholars dedicate their attention to them and only the interrelations that are to be recognized or studied almost inevitably come under their scrutiny. However, when the work of laying the foundations is done, we are almost forced to look for everything the exploration of which might contribute to the solution of some problem. The progress and development of the discipline of criminal procedural law is owed precisely to the fact that scholars, legislators and practitioners, led, in general, by the intent of improving criminal procedure, have always been looking for theoretically purer, more practical and fair procedural solutions to certain problems.

All this is well demonstrated also by the development of the theory of proof and the law of evidence and also by the fact that progress in certain cases is identical with returning to old, discarded or even condemned ideas. However, such returns represent also the possibility of continuity: whenever so-called progress takes a wrong turn or leads to a dead end, returning to something abandoned may be the start of renewal. In this presentation, I am going to discuss the interrelationship between a possible theoretical reversion and the change of the concept of proof.

As mentioned in the introductory sentences, proof may be considered the central element of criminal proceedings: it is an activity engaged in for the establishment of the facts that constitute the basis of criminal liability (or its lack). In criminal proceedings facts may be established without evidence proving them only exceptionally, i.e. when they are a matter of general public knowledge, are officially known to the proceeding authority or may be established through a presumption. As Tibor Kiraly has put it, in such instances proof is unnecessary.

The establishment of facts in criminal proceedings may only be based on a rational and systematic activity, proof, therefore, must deal with legally relevant facts – proving irrelevant facts (or facts that do not have to be proven) may hardly be considered rational. For this reason, relevant facts are discussed at great length in the literature and they are mostly understood to be facts to be proven and facts that prove another. Relevancy is considered to be a specific property of facts of different kinds but belonging to the same circle, namely that some legal effects are attached to their presence or absence.

It is customary to examine relevancy from the aspect of the application of the provisions of substantive criminal law or that of procedural law. For
example, a fact constituting an element of the statutory definition of an
offence (like the age of the victim of statutory rape) has substantive law
relevancy, while a fact involving procedural consequences (like the place of
perpetration as basis of determining the court's jurisdiction) are said to have
procedural law relevancy. It is easy to see that the relevancy of a fact is not
determined by an inherent trait of it but by a relationship between the
contents of the law and certain elements of reality (facts).

In criminal procedure, proof involves a special variety of relevancy: it
is the relationship between the elements (facts) necessary to decide an issue
of law (criminal liability) one deals with. One may say in a somewhat simpler
way that in proof (the process of proving) the fact that may be considered
as evidence is a fact which reasonably may be seen as suitable to prove the
fact to be proven. Thus, if we deal with irrelevant facts when making an
attempt at proving some others, that exercise is not merely unnecessary but
it is senseless.

The only trouble with this rather simple formula is that relevancy is not
always possible and quite often not easy to recognize. In criminal procedure,
particularly in the early phase, there are many unknown factors, so one simply
cannot see, what (established) fact is relevant from the point of view of what
fact (to be established). An investigation may waste a lot of energy with
irrelevant evidence without any blame on the part of anybody: it is in the
nature of the investigation.

However, while we consider all this to be acceptable in the course of the
investigation, even if we define proof as an expedient and rational activity
and the examination of irrelevancies can hardly be called expedient or
rational, the aspects of assessment are much more strict at the end of the
investigation. The prosecutor may not include irrelevant things in the
accusation and if he still does so, his activities may be subjected to justified
criticism. And, at the trial, at least in theory, as a consequence of the process
of proving being concentrated on the facts included in the accusation,
irrelevancies, either irrelevant facts to be proven or irrelevant evidence, are
not supposed to appear at all.

It is, of course, a completely different question that one or the other case
is quite far removed from this ideal, and it is not necessarily the lack of
professional expertise but more often the extremely professional tactics of
one of the parties that is responsible for that. Still, one can see, the
requirement that only relevant issues and relevant evidence should be dealt
with by the court could be satisfied owing to the very fact that the accusation
makes it quite clear, what legal issues on what factual basis will have to be
decided by the trial court. At least, this is the situation in the continental
systems, where the court receives a more or less detailed description of the
facts, a clear indication of what offence those facts constitute in the opinion
of the prosecutor, and a file of the investigation to support all that. In this
respect the Hungarian system is, of course, very much continental.
Thus, it is justified to ask whether it is possible to call the unity of proof into doubt, or, to put it in a different way: must we say that proof by evidence during the investigation and during the trial are completely different things?

The unity of proof: some doubts and uncertainties

In my opinion, the answer to this question may not be a simple yes or no. The activity of collecting and assessing evidence during the investigation is not different from the same type of activity conducted during the trial, at least not in terms of its fundamental tasks and its methods. The task is in both cases to find the truth, and the method is the same as well: proving with facts.

To discuss the characteristics of proof in criminal procedure, i.e. the process of proving by facts would, perhaps, be superfluous this time, it suffices to mention that in such a process the establishment of legally relevant facts (facts to be proven) is based on facts that can prove them, i.e. on evidence. It is, however, important to stress, that the evidentiary activity of the investigation is aimed primarily at determining the sphere of facts worth of examination during the trial.

Another point of identity is to be found in that the activities related to proof are legally regulated for both phases. However, in the way of regulation there might be differences, since the fact finding activity in the investigation enjoys, or is considered to be tolerating, more freedom, than that of the trial. Independent of the fact, that the Hungarian Code of Criminal Procedure (CCP) determines the means of evidence in the same way for investigation and trial, there are certain differences in the formalities attached to them and there are differences also in the documentation of the process of proof. But while at the trial no other evidentiary means than enumerated in the code may be used for fact-finding, the investigation may rely on other means as well in its own determination of facts. Perhaps an absurd example can illustrate the point.

It would be inconceivable to try to prove the guilt of the accused at the trial by producing the “testimony” of a clairvoyant. Such an attempt would be stopped immediately, since a natural limit of the freedom of evidence would come into play: the evidence must satisfy the criterion of being suitable to prove. But if an investigator could find the perpetrator on the basis of the suggestion of the same clairvoyant, we could be surprised at most, without having, however, too much to object to as long as the investigation could produce “genuine” evidence on the basis of all this.

I can give a much less absurd example as well. One of the corner stones of expert evidence is the reliability of the scientific method used by the expert. The capability of the polygraph to detect
lies (if this technically completely incorrect formulation may be forgiven) is doubted in scientific circles, to say the least, and the admissibility of polygraph evidence is prohibited by legal arguments as well. (In Hungarian law, the assessment of evidence includes the element of the assessment of the reliability of the witness. This is one of the responsibilities of the court, which may not be delegated. To determine a person lies is part of the assessment of the evidence. If the polygraph evidence indicates that someone lied - was evasive, to use the lingo of polygraph examiners - and the court accepts this evaluation, it actually means the court itself failed to perform one of its duties. Other, more technical points of law also lead us to the same conclusion.) Still, one does not have to deny the possibility of using that wonderful machine during the investigation, if its application is surrounded with the proper safeguards protecting the interest of the involved parties. It even may, perhaps, be a bit more sound scientifically than the use of extrasensory perception.

But what comes out of this is the following: either the activities of proof of the two phases are different in their nature or what happens in the investigation is not proof. This is a point deserving some consideration.

We may not have any doubt concerning one point, namely there is a significant, actually fundamental difference between the legal effects of determining facts during the investigation and during the trial. What is determined during the investigation to be a fact, may be adequate to convince the prosecutor there is a case to go to trial with, but this is all of it. The findings of the investigation may not be considered as truth in a legal sense. On the other hand, the facts the court determines to be true, with the finality of the judgement (i.e. when there is no possibility for further appeal), gains the power of truths – res judicata pro veritate habetur. True, the court, in general, determines the truth by checking the facts explored by the investigation and it is much less frequent that new facts, not dealt with by the investigation at all, are used by the court as a basis of the judgement.

That makes it understandable that the designers of the investigation try introduce means to this phase of the procedure which render the evidence produced during the investigation suitable to stand the test of the trial. To make it simple: the aim is to produce evidence of trial standard. It is precisely the process of collecting and documenting of evidence (in a manner satisfying the requirements of the law) that is called proof in the investigation. But the investigator may be led to discover such evidence, to be more precise, evidentiary means carrying such evidence, by any information, or may obtain in any, even absurd, way the information: the only limit is, that obtaining it must not violate any law and the rights of the citizens.

Thus, on the basis of the above, it could be true that during the investigation it is not actual proving but the preparation for proving something at the trial is taking place, which is necessary if one wishes to keep
the trial within reasonable limits. It would follow from this train of thought I deny the evidentiary character of the exploration of the facts during the investigation. In fact, I would tend to do so, but there are two factors making me somewhat uncertain.

_Tribute to positive law and to history_

First of all I may not deny that the part of the products of the investigation that is intended to be presented to the court is produced in accordance with the evidentiary rules followed also by the court, and the trial usually confirms its genuine evidentiary character: the same evidentiary means are used and the same rules regulating (limiting) the ways of proof by evidence dominate the whole procedure.

Secondly, there is another fact which indicates the need for further consideration of the matter: the present Hungarian law of criminal procedure considers the investigation as a single process and does not make a distinction between inquiry (by the police, for example) and investigation (by the investigating magistrate or a similar official). As a scholar engaged in studying the problems of criminal procedure I can have only a rather pedestrian way of thinking when it comes to the examination of realities. Feeling as respectful to positive law as any proceduralist should, I simply cannot disregard the lack of the mentioned distinction.

The elimination of investigation by a magistrate from Hungarian criminal procedure has automatically created the assumption (without which the whole structure would be senseless) that the activity of the investigating authority covers also what used to be the responsibility of the investigating magistrate. And one of the most important characteristic features of the activity of that investigative official was that proof before, evidence taken by, him was just like proof before and evidence taken by the trial court. As a consequence, the investigating authority of the present times, having inherited the functions of the investigating magistrate, must also be able to produce the same evidentiary effects.

There are inconsistencies, even contradictions involved here, but it is a forced path staked out by historical development that lead to this situation. Departure from the old inquisitorial system was not a clear break and in many respects the present is simply determined by this fact.

As is well known, the _inquirer_ (the investigator, often called incorrectly the inquisitor) in the inquisitorial process was in fact a judge. The material produced by him during the _general and special inquisition_ represented the material of the trial having almost only a symbolic importance from the point of view of determining facts. And, at the time when the inquisitorial system was replaced in Europe by the mixed one, the creators of the new mode of
criminal procedure simply did not know what to do with an investigation without a judge or how to do away with the inquirer, i.e. the judge who investigated. The solution was a rather simple one: the invention of the investigating magistrate and keeping the distinction between general and special inquisition under the name of inquiry (preliminary investigation) and investigation (by the investigating magistrate – *juge d'instruction*, as the French inventors call this rather impressive official). One almost could say, with some malice, no doubt, this is the most typical example of how the conservative mind of the lawyers work: keep what you can, do not change more than you must.

The investigating magistrate of the continental mixed systems was really a judge, even if not a trial judge, and as long as the institution existed in our criminal procedure, that was the situation in Hungary as well. Anything happening in the official presence of investigating magistrate was happening before a judge, thus proof before, evidence taken by, him was as if before, and taken by, the court.

This, of course, had advantages worth saving even when the official who could produce such effects did not seem to be desirable to have around anymore. The attempts at saving the advantages, however, produced a conceptual nonsense, although not many take notice of it and even less the time to consider it.

The investigating authority, freed from the guardianship of the discarded investigating magistrate, is now accepted as capable of producing evidence of trial standards by the observance of some very strict formalities in documenting its procedures. The formalities are considered to make the used evidentiary means and produced evidence reliable, creditable and of full probative value. It does not seem bother anyone that one missing element may not be made up for even by the most elaborate formalities: the investigating magistrate was a judge, with all of the judicial characteristics (for example being independent, just to mention one), and it was not the formalities he followed but the position he had that rendered the evidence taken by him satisfying court standards.

The recognition of the possibility of generating evidence up to court standards prior the trial decreases, in effect, the significance of the contradicitorial trial. For, if the product of the evidentiary process of the investigation is of the same quality as that of the trial, the court may rely on it with no further ado. And the next step from this thought is to draw the conclusion that the tiral is a mere formality, since the outcome of the whole case is decided by the investigation. The idea shows a ghost-like similarity to the description of the so-called tiral of the inquisitorial system, having the reading out of the protocols of the investigation as the main feature.
However, in addition to the historically determined development, the formation of the picture we have today has been influenced by some other factors as well, most of them originating from the ideas of socialist theoreticians viewing criminal procedure as a homogeneous whole.

According to those ideas, criminal procedure is a homogeneous process, in which, although certain phases may be distinguished on the basis of certain characteristics, justice is administered by the authorities from its beginning to the end. It holds true even if a distinction must be made between administration of justice in the broader sense and the narrower sense, with the latter being the court’s task. For this reason, the distinction between the so-called preparatory phase (the investigation, preferring the accusation), on the one hand, and the trial, on the other, is superfluous and senseless: the essence of the matter is the administration of justice all along the process.

Although this theory cannot answer a number of questions, like why certain procedural principles are valid only for the trial and not for the investigation, it certainly is suitable to provide a foundation for treating proof the same way in both the investigation and the trial. For, if it is administration of justice (in the broader sense at least) that happens in the investigation, the basis must be the truth. Truth, in turn, may not be determined without proving it by evidence. It logically follows, that the quality of proving in the investigation must not be inferior to the same in the trial. But since the investigation and the trial are not conducted in the same way, the equivalence of proof is ensured by the requiring formalities that are supposed to enable proof in the investigation to be of trial standard. And, as pointed out above, if the investigation can bring such results about, it diminishes the importance of the trial.

Rethinking the procedural phases

For a time now, it has been a prominent idea in Hungarian legal thinking that in the interest of the very much needed modernization of Hungarian criminal procedure the contradictorial elements should first of all be strengthened. Evidently, it is only the trial phase where this may be implemented, since it is precisely the most important features of the contradictorial procedure that are alien to the investigation by their very nature. And, as far as the trial is concerned, it is in proof that the contradictorial features are the most prominent. Thus, one may draw only one single conclusion: if the intention really is to put more emphasis on the contradictorial nature of the procedure, rethinking the evidentiary aspects of the investigation, or even the role of the investigation in the procedure, if you like, is simply unavoidable.
The first question to ponder on is whether it is not needless, not to say harmful, that the investigating authority spends so much time and energy with creating pseudo trial-standard evidence. Consider: the generation of enormous dossiers filled with extensive and very formalistic protocols might even be needless if the determination of the case is based on evidence taken actually at the trial directly. In that case the investigation would still have to explore what evidence is available. The basis for a sound decision on the prosecutor’s part whether to prosecute and how to prove the accusation if he chooses to do so would still have to be created. But the file would not start an independent life by making the false (and no doubt, harmful) impression everything is clear and what the trial is doing is putting a rubber stamp on the product of the earlier proceedings.

The complicated protocols can be replaced by much simpler documents, reports, and as the experience of the procedure followed in misdemeanor cases has proven, proving the accusation would not be rendered impossible by that. All this would, of course, exert a considerable impact on the structure of the procedure as well, although it would not cause a brand new element to appear at the present phase of the history of Hungarian criminal procedural law. What would happen would be no more, in my opinion, than returning to an earlier solution, or, not more, if you wish, than the reinvention of the distinction between the preparatory and trial phase of the procedure. There is, however, one point to be noted: it is not copying a solution known earlier but its implementation of a modern form that one should think of.

Speaking of the modernization of criminal procedure, one cannot disregard the modernization of the evidentiary rules either, for the present rules of proof in the Hungarian code would need a great amount of tolerance on the part of the person calling them modern. It is particularly the rules concerning the lawfulness of collecting and using evidence and the ones related to prohibitions of proof that need revision, or at least systematization, the most. Since this is a topic the detailed analysis of which could hardly be squeezed in the present framework of discussion, I limit myself to some short comments.

As I have already mentioned, it would be senseless to deny the possibility of using certain means of obtaining information during the investigation which are not listed in the code but the application of which would not violate any law and any right of the citizens. Besides, any theoretical objection would in all probability be overruled by practice. Investigators know the value of information even if it is not possible to use all of it as evidence. Gossip, the rather uncertain data coming from informants (or from people with extra sensory perception) are often the pointers showing the way to evidence. And while one may be outraged morally by the fact that the preservers of law and order use such shady methods as bribing someone into informing on his fellow being, the usefulness of such practices means more to the investigator than moral impeccability.
Nevertheless, resigning ourselves to admitting the facts of life does not equal to believing that the rules of using (obtaining, recording, admitting) evidence can be dispensed with. I certainly would not like to create an impression I profess anything like that, on the contrary. In the lack of such rules the evidentiary means recognized by, and listed at present in Section 61. of, the Hungarian CCP could not be used for too much. From the point of view of evidence (I risk to say, of criminal procedure as a whole) the materially correct principle according to which what is not prohibited is allowed, does not make too much sense.

If the principle were valid in criminal procedure, should not that mean that whenever the law fails to regulate the use of an evidentiary means the authority may use it whatever way it likes? But it is evidently not so, if for nothing but the fact that in such a case the most general procedural sanction in Hungarian criminal procedure for the violations of the evidentiary rules, namely the one excluding the evidence obtained in violation of the provisions of the code, would be absolutely senseless to have.

The most important element of the criticism on positive law basis over the "youngest" of the evidentiary means listed in the code, called rather mysteriously "scening", a name indicating that someone (a witness, the suspect) shows the scene of a relevant event, is precisely pointing out that the legislator failed to define the rules of its use. The consequence of the omission is nobody could say in any particular case whether it was used in harmony with, or in violation of, the provisions of the code.

The procedural sanction, or if you prefer, the exclusionary rule included in par. (3) of Section 60. of the Code of Criminal Procedure, deserves, of course, some attention as a remarkable piece of the products of bumbling good intentions. The way the provision is formulated is imprecise enough to allow it to be interpreted so that even a mere technical violation should cause the exclusion of the evidence. And since there are more than a few formalities to be observed in the process of proof, a court should feel very fortunate not to be forced by such an interpretation in a particular case to exclude all the evidence produced by the investigation. Luckily, Hungarian courts so far have chosen to construe the language of the provision as ordering the exclusion of evidence obtained in violation of provisions of not a mere technical nature.

There is another point to be mentioned in connection with the imprecise formulation: it does not settle the issue whether it is only the evidence obtained in violation of the code that must be excluded or also the evidence found on the basis of that one. It would be too much to expect that the conflicts created by adopting any of the two solutions could be resolved by any legislative act: legislators cannot eliminate the conflicts related to the "poisoned tree - poisoned fruit" dilemma. But they may be expected to state their own position by making the law clear.

Despite all the critical attitudes I have shown to this institution, I still believe that the legislative intent was correct at the time of its introduction.
It is a different story, that good intentions are not always able to manifest themselves because of the absence of the technical skills necessary to find the adequate ways the achieve what is intended. The National Assembly creating this provision certainly lacked those skills. Assuming, however, that the recodification of criminal procedure will give a technically more correct formula to the otherwise very much needed provision, there still will be a need for other rules laying the foundations of its application. The creation of positive rules of proof and the prohibitions of proof equally belong here.

_Demonstrative horse-riding_

I cannot resist the temptation to ride one of my favorite hobby horses now, although it might be a bit unfair to use this opportunity to do so. However, I try to make it as relevant as it can be, perhaps it will serve as an illustration to a point. Earlier I made reference to the wonderful new invention, the "new" evidentiary means called scening. The description of some aspects of its birth may show what I meant in my theoretical explanations on the need for evidentiary rules.

The introduction of scening to the Code as a new evidentiary means caused some surprise if not consternation among scholars – practitioners, in general, were much less shocked and shrugged their shoulders at most. The causes of this strange phenomenon were manyfold.

First of all, by the time of the introduction of the "new evidentiary means", in fact a long time before that, it had become well established in legal thinking that the enumeration of the evidentiary means in the CCP clearly reflects that legislators might, if wished, to show a fine disregard toward those impractical theories of scholars. The Code, listing the evidentiary means, enumerates witness testimony, expert testimony, documentary and material evidence and the statement of the person proceeded against (which doctrinally arc really such means), together with some procedures, such as inspection (of the scene of the offence, for example), presentation (of things or persons) for identification, investigative experiment. Scholars pointed out the confusion of the two different categories very soon after the Code had been enacted, admitting, however, that the consequences of the confusion are that of legal "esthetics" at most. Similarly, while it has been shown by scholars that the formulation of the enumeration is examplificative, but in fact it is exhaustive, since – given the generally accepted concept of evidentiary means – it is theoretically impossible to think of any evidence not fitting in one or the other categories of the enumeration, the attitude has been tolerant. The little lapse of the legislator has been accepted as a somewhat superfluous but understandable prudence allowing for the (theoretically, of course, impossible) case something absolutely new is invented.
The appearance of the scene on the scene (if the bad pun may be forgiven) just has widened the gap between theory and legislative considerations. By legislative intent, a new evidentiary means has been created, which is a conceptual impossibility. In addition, the new thing is clearly a procedure of combining the features of several of the listed evidentiary items. (Without going into details, it could be taken as special form of witness testimony, or deposit of the suspect, inspection, even identification or experimenting - then what is the whole effort for.)

The second cause (of the consternation) is perhaps even more important.

According to the arguments for its introduction to the Code, this method has always been used in practice, without, however, being legally recognized and regulated and the interests of legality could not be satisfied without having the appropriate provisions taken up in the CCP. This has proved to be strong enough argument to make the legislator forget anything else, even that the lawfulness of something is possible to judge only if there is something to check it against. Thus, scene is now part of the arsenal of evidentiary “means” but nothing beyond a definition of its general concept regulates it. And while earlier (when it was “unregulated”) the rules guiding the mentioned other institutions of the evidentiary process applied to it, for it appeared under the name of one or the other of those, now that it is a legally recognized “evidentiary means” on its own, without any reference of applying the provisions related to another one, to the greater glory of legislative wisdom, it is almost legal to use it unlawfully.

In my opinion, one thing may be safely assumed: the rules of proof must include rules for the use of the evidentiary means. From that point on, however, I have more questions to ask than answers to give. The formulation of the rules depends on a number of factors and, in addition to the requirements of fair and transparent procedure, the internal relations and logic of the code are not the least significant among them. So that the requirements should be met, the legislator will have to use circumspection.

A confession

In the introductory part I mentioned that contemporary students of the theory and practice of criminal procedural law must deal with the exploration of the interrelationships instead of the fundamental questions if they want to come to some reasonable results. I would not like to fall in the traps of conceit and having too much self-confidence and I certainly would like to avoid making an impression I believe the ideas discussed here are new and original. Still, by making a confession, I would like to show that at least one of the observations I made in the introduction is correct.
Although the problems of evidence have always been occupying my mind, any time I intended to say or write something on evidence, my ideas have always developed in a direction different from the one followed in this presentation. However, when about three or four years ago, around 1990, I started to think of the possibilities of modernizing criminal procedure, the problems of evidence kept jumping on me from every direction. This seems to indicate, that the study of inter-relations is simply unavoidable. But one may only hope the mythical legislator as well is going to see the same indications.

LA PROCÉDURE D’ASPECT PÉRIODIQUE ET LA PREUVE
ÁRPÁD ERDEI

La conférence examine la spécificité de la preuve, donc elle analyse la caractéristique des actions de l’établissement des faits, ceux qu’on a pursuivi dans la phase d’enquête et d’audience de la procédure pénale. À l’opposé des opinions dominantes dans la conception hongroise, elle aboutit à la conclusion que la périodicité de la procédure pénale signifie la diversité des phases en fonction de la preuve. La procédure de la preuve dans ces deux phases classiques ne distingue point que par l’effet de la preuve. Puisque seulement le tribunal et après la démonstration de la preuve judiciaire peut constater les faits étant qualifiées “de jure” la vérité, alors que cette présomption juridique n’existe pas en cas de l’enquête. Même la divergence demeure plutôt en ce que les normes d’application de la preuve sont moins rigoureuses pendant la période d’instruction. Ce sont les spécificités de la preuve qui sont importantes pour ayant pu délimiter plus évidemment les différences au point de vue de la détermination de la responsabilité pénale.

DIE PHASEN DES STRAFVERFAHRENS UND DIE BEWEISFÜHRUNG
ÁRPÁD ERDEI