



# Recovery in Criminal Proceedings<sup>1</sup>

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‘... if the final decision includes substantive justice, there is no doubt that *res judicata* should not be questioned; however, if those two are in conflict, the rule should be broken, and retrial should be allowed in order to demonstrate the emergence of substantial justice.’<sup>2</sup>

**Abstract.** Retrial is an extraordinary legal remedy which allows for the review of a final decision when pursuing the truth – under strict legal conditions – and may precede the requirements of legal certainty appearing as legal force. After a final court decision, retrial is a frequently used method in criminal proceedings; so, in my research, the objective is to examine retrial cases. This required the complete review of all 147 cases related to retrials and completed in 2005 at the Court of Appeal of Debrecen as well as the review of 174 retrial cases in 2014 from various aspects. According to the summary, a final decision is rarely changed in a retrial process; however, the fact is that if error is eliminated just in one single case, it is an indication that retrial is a necessary legal institution.

**Keywords:** legally binding, extraordinary remedy, retrial, criminal proceedings

## I. Introduction

Retrial is an extraordinary remedy, which may result in the retrial of final decisions in case of the presence of certain exhaustive reasons listed by the Act on Criminal Procedures.

In my study, I have examined the retrial cases conducted at the Court of Appeal of Debrecen in the first and last year of the period of 10 years of its operation

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1 Based on the comparison of retrial cases in 2005 and 2014 at the Court of Appeal of Debrecen. The research was authorized by Lajos Balla, President of the Court of Appeal of Debrecen.  
2 Balogh–Edvi–Vargha 1898. 179.

(2005–2014); I have revised and compared the data of the cases in question according to different criteria. I reviewed a total of 321 files on the retrials. Legal background was essentially the same for the cases in 2005 and in 2014.<sup>3</sup>

For the research, I set up the following hypotheses:

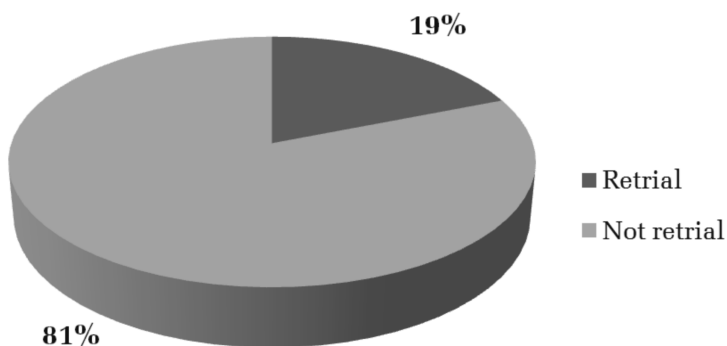
Retrial is a necessary legal institution, a method of legal remedy often used by convicts. In order to eliminate factual errors, the remedy of overruling the final decisions is necessary; however, the requirements of legal certainty require it to be subject to strict conditions. Due to the fact that the entire criminal proceeding is based on the principle of striving to achieve substantive justice, after a final decision, the enforcement of substantive justice may, where appropriate, precede the interests embodied by the legally binding decision related to legal certainty. However, as a result of predictability requirements and the aspiration to keep final legal relationships intact, only a small portion of the submitted motions for retrial is successful.

The structure of my study follows various review aspects; data are displayed in diagrams and tables.

## II. Presentation of the Research Results

### 1. Total Number of Received Cases

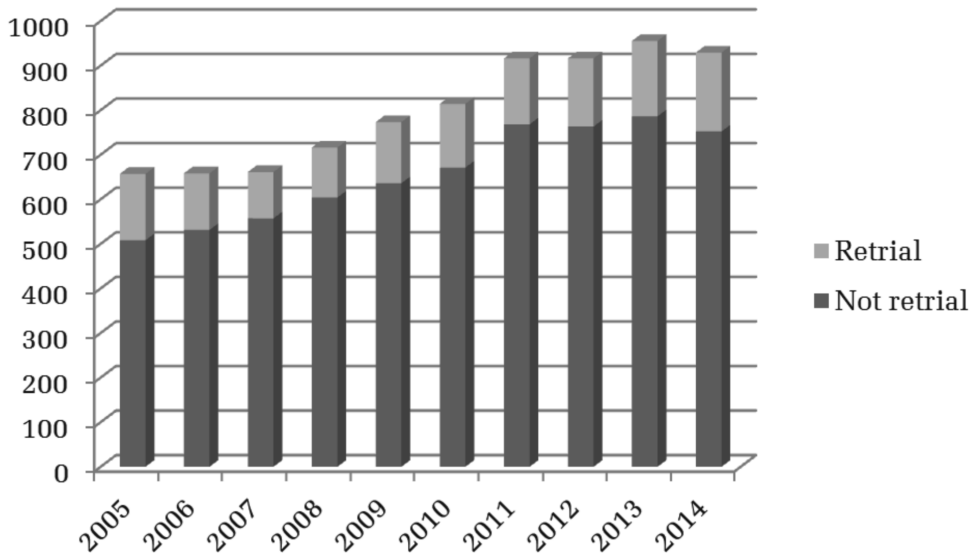
Since the Court of Appeal of Debrecen was established in 2005, 1,419 motions for retrial were submitted until November 2014; the total number of cases received was 7,395. Cases submitted in connection with retrial accounted for 19% of all the cases received.



**Figure 1.** *The percentage of cases affected by retrial in relation to the total number of cases received in 2005–2014, Court of Appeal of Debrecen*

<sup>3</sup> In 2005, it was regulated by Section 393, subsection (403), while in 2014 it was regulated by Section 408, subsection (415) of the Act on Criminal Procedures.

This is considered a very high number, indicating that this kind of legal remedy is frequently resorted to, in a relatively high number of cases; the same can be observed in the following figure.



**Figure 2.** *The number of cases affected by retrial in relation to the total number of cases received in 2005–2014, Court of Appeal of Debrecen*

## 2. Dividing Cases Affected by Retrial

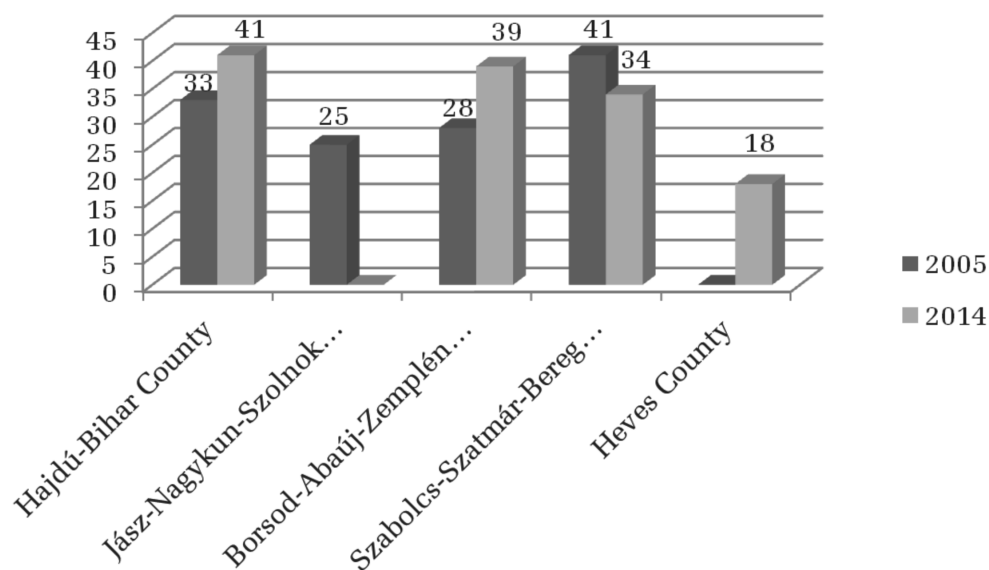
In the question of admissibility, the decision is made by the Tribunal (formerly county court) if it was the District Court involved in the main proceedings at first instance and by the Court of Appeal if it was the tribunal making the decision at first instance. Consequently, the Court of Appeal will examine the appeals for retrials and will act at first instance in the revision of the retrial motions.

The area of responsibility of the Court of Appeal of Debrecen in 2005 included Hajdú-Bihar County, Jász-Nagykun-Szolnok County, Borsod-Abaúj-Zemplén County, and Szabolcs-Szatmár-Bereg County; in 2014, Jász-Nagykun-Szolnok County was replaced by Heves County.

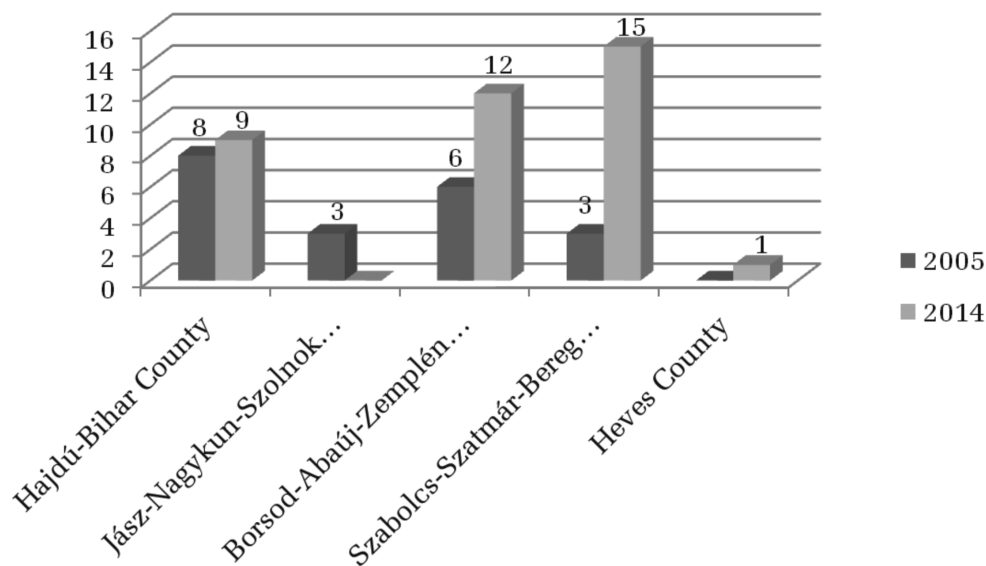
### *Data*

In 2005, the Court of Appeal of Debrecen received 41 motions for retrial from Szabolcs-Szatmár-Bereg County, 33 from Hajdú-Bihar County, 28 from Borsod-Abaúj-Zemplén County, and 25 from Jász-Nagykun-Szolnok County for *second-instance* judgement.

In 2014, the Court of Appeal of Debrecen received 41 motions for retrial from the Tribunal Court of Nyíregyháza, 34 from the Tribunal Court of Debrecen, 39 from the Tribunal Court of Miskolc, and 18 from the Tribunal Court of Eger for *second-instance* judgment.



**Figure 3.** *Appealed retrial, Debrecen Court of Appeal*



**Figure 4.** *Retrials at first instance, Court of Appeal of Debrecen*

In 2014, the Court of Appeal of Debrecen received a total of 40 motions for retrial: 15 from the Tribunal Court of Nyíregyháza, 12 from the Tribunal Court of Miskolc, 9 from the Tribunal Court of Debrecen, and 1 from the Tribunal Court of Eger for *first-instance* judgment.

In 2005, the 21 cases received for first-instance judgment were divided as follows: 8 cases were received from Hajdú-Bihar County, 3 from Jász-Nagykun-Szolnok County, 6 from Borsod-Abaúj-Zemplén County, and 3 from Szabolcs-Szatmár-Bereg County.

## Conclusions

The number of offenders was the highest in 1998 (140 thousand), showing a decline since then; however, 100,000 offenders were registered in 2012.<sup>4</sup> An area's situation in terms of crimes is very well indicated by the registered number of crimes committed in the area; and where there are more crimes committed and more criminal cases closed, there is a greater probability to receive more motions for retrial.<sup>5</sup> The figures show that in both years a higher number of appeals were received from the jurisdiction of the Tribunal Court of Nyíregyháza and Miskolc.

When examining the period between 1990 and 2007, the rate of offenders was the highest in the two northern regions, in the Northern Great Plain and the Northern Hungary region; such numbers are the highest in the case of violent and disorderly offences per 100 thousand inhabitants.<sup>6</sup> Due to the unfavourable socio-economic conditions in the eastern and north-eastern regions (Northern Hungary, Northern Great Plain), committing crimes is characteristic of these regions where the number of adult offenders is higher than the national average. If the number of adult offenders sentenced by final decision is examined, the number of crimes in relation to the population is the highest in the Northern Great Plain, while the number of crimes against property is the highest in Northern Hungary.

Regarding the number of crimes nationwide, Nyíregyháza ranks fifth among cities with county rights.<sup>7</sup> The number of crimes registered in police procedures was reduced by 1.3% (to 19,564) in Borsod-Abaúj-Zemplén County in 2015, which is 7.3% of the nationwide number (267,628).<sup>8</sup>

4 Hungary in numbers: Crime statistics. <http://szamvarazs.blogspot.hu/2013/02/bunugyi-statisztikak.html>.

5 Pursuant to Section 17, subsection (1) of the Act on Criminal Procedures, unless otherwise provided by this Act, the court competent to perform the proceedings is the court of jurisdiction where the crime was committed.

6 Papp 2009. 37–46.

7 Report on the public security situation of Nyíregyháza city with county rights, and on the measures taken to ensure public safety in the year 2014. [http://adat.nyiregyhaza.hu/eloterjeszes/2015/0326/150319\\_kozgyi\\_eloterj\\_06.pdf](http://adat.nyiregyhaza.hu/eloterjeszes/2015/0326/150319_kozgyi_eloterj_06.pdf).

8 Report on the public security situation of Borsod-Abaúj-Zemplén County and the measures taken to ensure public safety as well as on the related tasks, on the situation of border security

When examining these areas in terms of crimes, it can be concluded that factors influencing environmental motivation and poor economic conditions may be a reason for the high number of crimes. Unemployment, poverty, and adverse social conditions, low level of education, living in depressed villages, hopeless life situation, and alcoholism are all factors affecting criminal activities.

People in the periphery of society are greatly affected by the pressure for deviance.<sup>9</sup>

All the above may explain the high number of motions for retrial received from these two counties.

### **3. Based on the Subject Matter, the Motions for Retrial Were Submitted in Connection with the Following Criminal Offences**

The examined appeal for retrial cases were mostly submitted for sentences imposed for crime against property.

#### *Data*

*Appealed cases* in 2005 included: 22 cases of robbery, 20 cases of theft, 14 cases of theft as misdemeanour, 12 cases of fraud, followed by 14 cases of assault causing grievous bodily injury. In 2014: 20 cases of robbery, 22 cases of theft, 19 cases of theft as misdemeanour, 14 cases of fraud, and 16 cases of assault.

In essence, the two years provided similar figures.

In 2005, retrials *in the first instance* included: 11 cases of assault causing bodily injury and 9 cases of murder, while these numbers in 2014 were as follows:

7 cases of assault causing danger of death, 22 cases of murder.

It can be concluded that there were remarkably more motions for retrial submitted for cases of murder in 2014.

#### *Conclusions*

Substantive weight has a significant role since the higher the penalty for criminal offences, the more offenders take advantage of the possibility of retrial. On the other hand, the number of violent crimes against property has increased, which was 55% of all crimes committed in 2012. The number of violent crimes against persons was 27,000 in 2012, which, although only 6%, means that their number

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and border crossings in Borsod-Abaúj-Zemplén County in 2015. [www.baz.hu/content/2016\\_aprilis/1604\\_02\\_rendorseg\\_besz.pdf](http://www.baz.hu/content/2016_aprilis/1604_02_rendorseg_besz.pdf).

9 Gönczöl: [www.fszek.hu/szociologia/szszda/gonczol\\_hatranyos.pdf](http://www.fszek.hu/szociologia/szszda/gonczol_hatranyos.pdf).

has doubled since 1990.<sup>10</sup> In 2014, 329,303 crimes were registered. This data was 447,186 in 2010 and 472,236 in 2012. In 2014, the number of registered offenders was 108,389 – slightly less than the number of 109,876 in 2013. Within crimes against property, which make up the majority of crimes, the most common ones are thefts: in 2014, 141,469 cases were registered, while 167,657 cases in 2013. The number of traffic offences significantly increased in 2013, from 14,804 to 17,639.<sup>11</sup>

It can be concluded that if first-instance final decisions are primarily made in cases related to the crimes above – as these are the most frequently committed ones –, the frequency of motions for retrial related to these crimes is explained.

In the case of defendants sentenced to life imprisonment, there was an outstanding number of submitting motions for retrial in 2014.

In 2005, life imprisonment, as a legal instrument, was not applied at the Court of Appeal of Debrecen, and there was no case referred to the Court of Appeal of Debrecen where such sentence was applied at first instance. However, from 2009 on, the number of defendants sentenced to life in prison started to increase. According to Dr Lajos Balla, this is due to the restrictive legal institutions, as in 2009–2014 a total of 26 defendants were sentenced to life in prison.<sup>12</sup> This is the reason why defendants who were imposed such sentence take advantage of the possibility of this legal remedy in such a high number.

## 4. Data Related to the Defendants

Personal data of defendants submitting motions for retrial may be examined according to their place of residence, age, and gender distribution.

### *a) According to Their Place of Residence*

Most of the defendants were permanent residents of Borsod-Abaúj-Zemplén County, Hajdú-Bihar County, and Szabolcs-Szatmár-Bereg County.

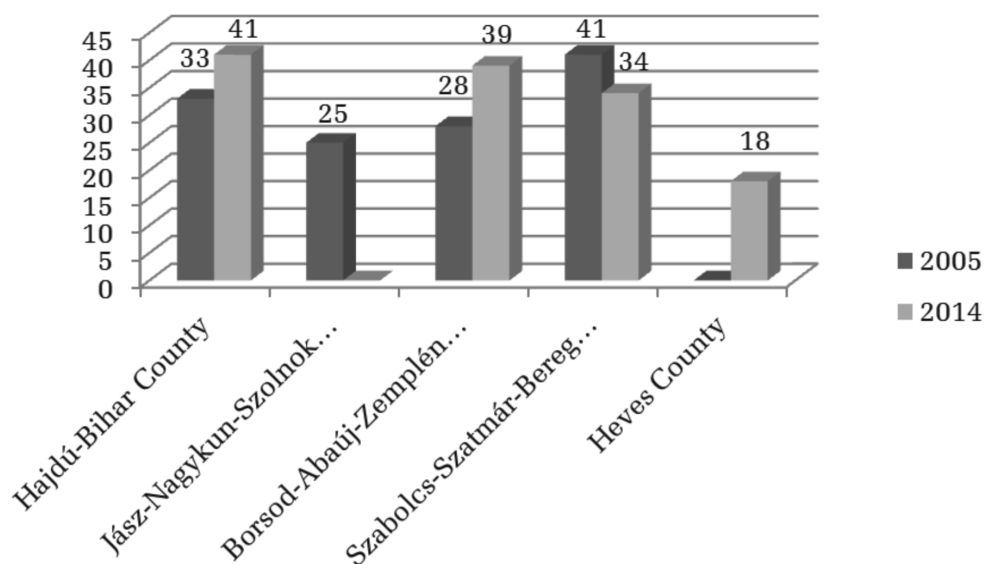
The examination of the place of residence of convicts indicates a strong correlation of the frequency of imprisonment with the place of residence. There is a high proportion of convicts compared to the low number of population in certain outskirts of the city and in rural or industrial areas. In these cases, however, the situation is not that these areas are inhabited by a high percentage of criminals but that it shows the typical metropolitan residential concentration of poverty. This concentration of poverty is characterized by low-status families living in

10 Hungary in numbers: Crime statistics. <http://szamvarazs.blogspot.hu/2013/02/bunugyi-statisztikak.html>.

11 <http://mno.hu/belfold/ogy-ugyeszsegi-beszamolo-jelentosen-csokkent-a-bunozes-1287118>.

12 Balla 2014. 53.

clusters in the outer regions of the town, usually under very bad circumstances, and the rate of crimes committed by them is proportionately high.<sup>13</sup>



**Figure 5.** *Distribution of defendants on the basis of place of residence (country), Court of Appeal of Debrecen*

#### *b) According to Their Age*

Criminal statistics data also indicate that the frequency of committing crimes – and their rate among the convicts, accordingly – is not only determined by gender but by age as well.<sup>14</sup>

### *Conclusions*

The number of adult offenders has been between 100,000 and 110,000 since 2006, while the number of young offenders has been around 10,000–11,000.<sup>15</sup> In Hungary, in the period following the year 2000, over four-tenth of adults convicted in public prosecution proceedings had a criminal record; the rate of convicts sentenced for crimes against property was the highest (53%), including robbery (72%) and theft (595).<sup>16</sup>

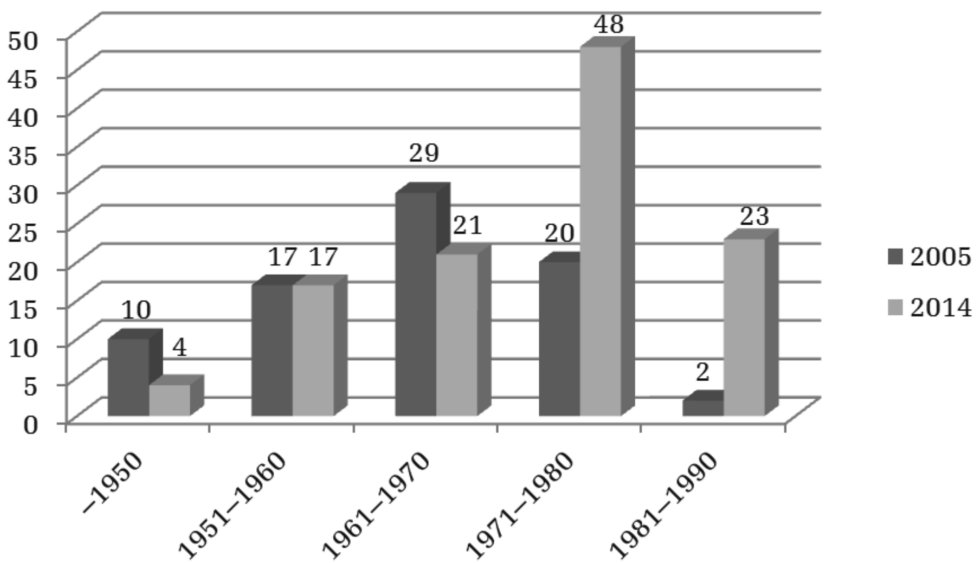
<sup>13</sup> Ladányi. <http://beszelo.c3.hu/cikkek/hol-laknak-a-bunozok>.

<sup>14</sup> Vavró. [www.tarki.hu/adatbank-h/kutjel/pdf/a577.pdf](http://www.tarki.hu/adatbank-h/kutjel/pdf/a577.pdf).

<sup>15</sup> Hungary in numbers: Crime statistics. <http://szamvarazs.blogspot.hu/2013/02/bunugyi-statisztikak.html>.

<sup>16</sup> [www.ksh.hu/docs/hun/xftp/idoszaki/regio/orsz/ismert.hu](http://www.ksh.hu/docs/hun/xftp/idoszaki/regio/orsz/ismert.hu).





**Figure 6.** *Distribution of defendants on the basis of age (date of birth), Court of Appeal of Debrecen*

In 2005, the vast majority of defendants submitting retrial motions were born between 1951 and 1970, including a significant number of those born between 1961 and 1970. However, in 2014, there was a sudden increase in the age-group born after 1971, submitting retrial motions.

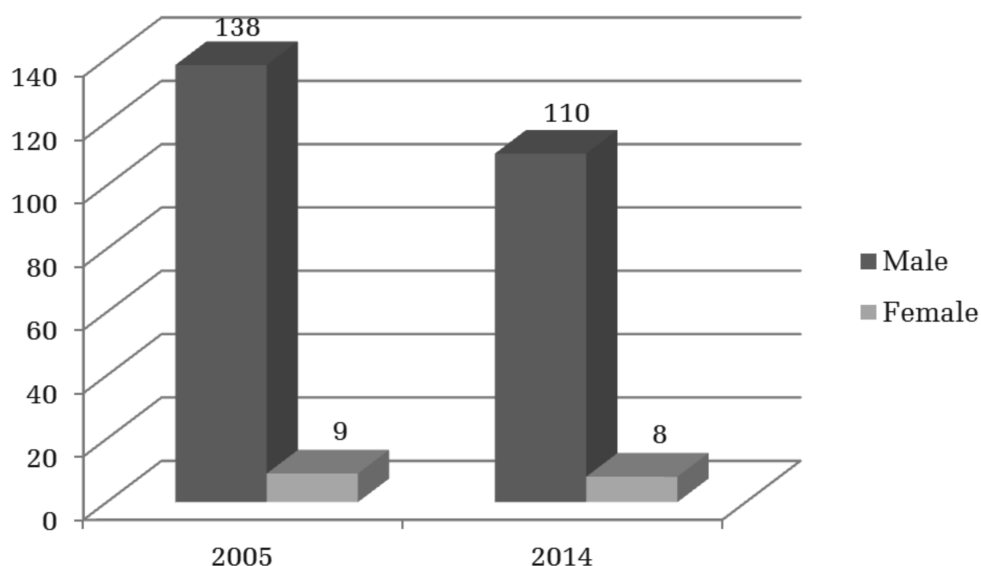
It can be concluded that the structure of traditional criminal behaviour is formed at a young age. Although with age there can be some changes detected, it is particularly apparent in the various frequency of certain categories of violent crimes.<sup>17</sup>

### *c) According to Their Gender*

#### *Data*

In the case of appealed cases and cases at first instance, the proportion of crimes committed by men is much higher, which shows that offenders are typically males.

<sup>17</sup> Vavró. [www.tarki.hu/adatbank-h/kutjel/pdf/a577.pdf](http://www.tarki.hu/adatbank-h/kutjel/pdf/a577.pdf).



**Figure 7.** *Distribution of defendants on the basis of gender, Court of Appeal of Debrecen*

## *Conclusions*

In Hungary, the rate of women participating in the total number of crimes is permanently under 15%. Among offenders committing violent crimes against persons, the proportion of women is negligible. Homicides, attempts of homicides, or life-threatening bodily insults by women are committed either as a result of emotional and passionate conflicts in matrimonial partnerships or in the form of homicides committed against new-borns. In the background of criminal acts committed against a relative, there are offences and conflicts suffered during marital or non-marital cohabitation. Very often, the tension of years of heated debates, the alcohol problems, or the violent, quarrelsome, and rude behaviour of the partner accumulate, and the silently tolerant victim suddenly and unexpectedly becomes aggressive. The victim responds to the regular, provocative behaviour by an impulsive act. Therefore, in these cases, the victim of the prolonged abuse becomes the offender. When temper faces temper and violence faces violence, the roles are easily reversed.<sup>18</sup>

When compared to the crime statistics related to female offenders, it can be concluded that the vast majority of female convicts are more inclined to 'accept their crimes' and take the penalty imposed rather than take undue advantage from submitting a motion for retrial.

<sup>18</sup> Fehér. [www.tarki.hu/adatbank-h/nok/szerepvalt/Feherlenke-97.html](http://www.tarki.hu/adatbank-h/nok/szerepvalt/Feherlenke-97.html).

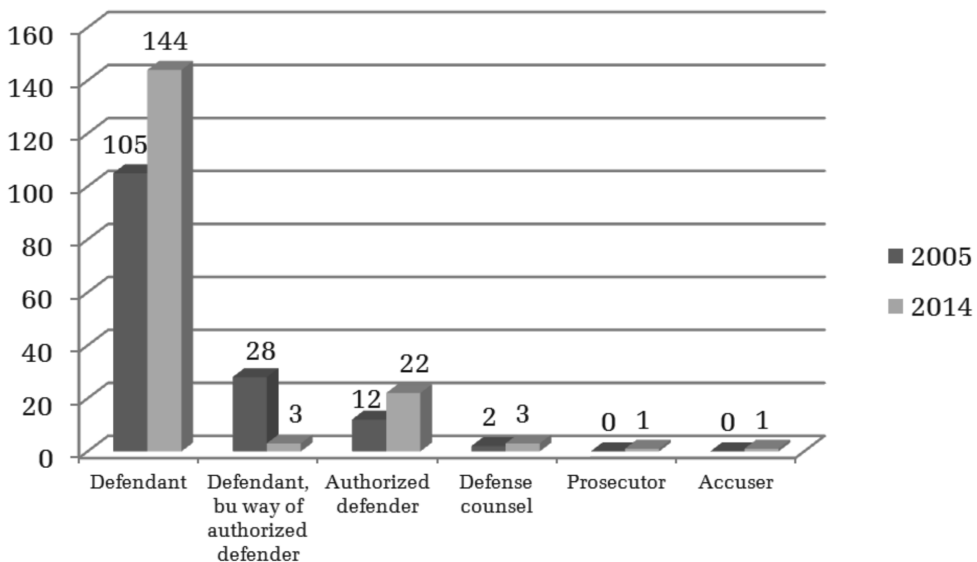
## 5. Persons Submitting a Motion for Retrial

The Act contains an itemized list of persons entitled to submit a motion for retrial to the benefit or to the detriment of the defendant. To the benefit of the defendant: the prosecutor, the defendant, the defence counsel in their own right unless this was prohibited by the defendant; the legal representative of a juvenile offender – against an order for involuntary treatment in a mental institution; spouse and relative of the defendant; after the death of the defendant – if more than 50 years have passed –, a relative of the defendant in direct line. To the detriment of the defendant: the prosecutor and the substitute private accuser.

### Data

In 2005, defendants submitted an independent motion for retrial without legal representation in 105 cases, in 28 cases, by way of a defence counsel, in 12 cases, by way of a defence counsel in their own right, and in 2 cases by way of a substitute private accuser.

In 2014, defendants submitted an independent motion for retrial without legal representation in 144 cases, in 3 cases, by way of a defence counsel, in 22 cases, by way of a defence counsel in their own right, and in 3 cases by way of a substitute private accuser. In 2014, the prosecutor also submitted a motion for retrial to the detriment of the defendant.



**Figure 8.** Submitting motions for retrials, Court of Appeal of Debrecen

### *Conclusions*

If the figures are examined, it can be concluded that in both years, most commonly, motions are submitted by the defendants without legal representatives. The reason for this must be the fact that revision is not negatively affected by the inaccurate indication of the reason for retrial, and the motion for retrial can be submitted by the defendant at any time and without limits provided that in case the motion for retrial is submitted with the same content as before the Court shall be entitled to neglect making the refusing decision. This is followed by a smaller number of motions submitted by way of a defence counsel in their own right (it occurred several times in 2014) or by representing the defendant. During the overview of the cases, I have observed that lawyers – considering that they are aware of the exhaustive reasons and the procedure of the retrial – mainly submitted a motion for retrial if an expert opinion was available to be attached. A new fact contained in the expert opinion – for example, if the defendant was unfit to stand trial at the time of committing the crime – or new facts related to drug abuse would result in ordering a retrial investigation.

## **6. Submitting a Motion to the Benefit or to the Detriment of the Defendant**

### *Data*

In 2014, out of all cases, in 169 cases, the motion for retrial was submitted to the benefit of the defendant, in 4 cases, to the detriment of the defendant, while in 2005 – except for two cases – the motion was submitted in all cases to the benefit of the defendant.

### *Conclusions*

The reason for this is in connection with accusation and results, i.e. the accused persons are usually condemned later.

In 2014, the Court imposed punishments or fines on a total number of 83,861 defendants, 27 of them were sentenced to life imprisonment, 29,300 received a custodial sentence with 35 percent to be effectively executed and 65 percent suspended. 22.8 percent of the defendants were sentenced to community service, while 32.6 were imposed fines. Last year, accusation results were 96.6 percent compared to 96.4 one year earlier.<sup>19</sup> Obviously, it is also related to the fact that this

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19 Péter Polt Attorney General's report for the Parliament. <http://mno.hu/belfold/ogy-ugyeszsegi-beszamolok-jelentesen-csokkent-a-bunozes-1287118>.

remedy is applied by a higher number of defendants. In addition, prohibition of increasing a sentence also applies to retrials, i.e. as a result of a retrial submitted for the benefit of the defendant the Court in the main proceedings imposes a more severe penalty in addition to breaching the rules of the retrial; it also breaches the prohibition of increasing a sentence.<sup>20</sup>

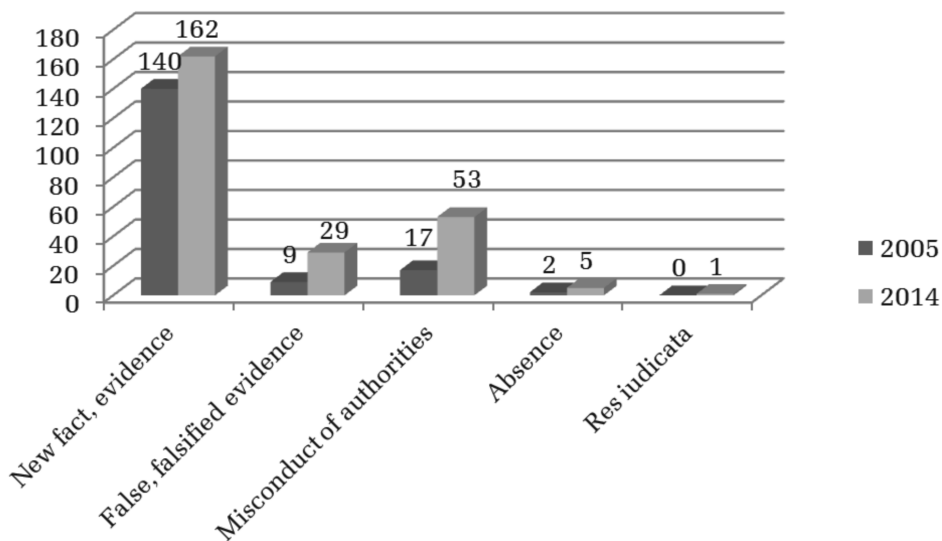
## 7. Reasons for Retrial

The reasons for retrial in the examined cases:

- new fact or evidence,
- res judicata,
- false or falsified evidence,
- misconduct of the authority,
- absence.

In accordance with the Act on Criminal Proceedings effective in 2014, a decision made by the President of the Republic on terminating the criminal proceedings against the defendant is a further reason for retrial.<sup>21</sup> However, there was absolutely no reference to this cause.

One motion for retrial may include several reasons for retrial; however, both in 2005 and in 2014, the reference to a new item was most often featured in the motions.



**Figure 9.** *Reasons contained in the motions for retrials, Court of Appeal of Debrecen*

<sup>20</sup> Criminal Decision in Principal No 11/2014.

<sup>21</sup> According to Section 408, subsection (1), point f) of the Act on Criminal Procedures.

## *Conclusions*

Despite reference to the new item, the defendants did not actually indicate new evidence, but in most cases they challenged court of evidence evaluation activities, as for example: why did the Court take into account a certain testimony instead of another one? However, according to judicial practice, retrial may not be directed against the evidence evaluation activities of a court at first instance.<sup>22</sup> If a witness is indicated who refused to testify citing the right of exemption in the main proceedings, then the testimony should be considered new evidence, but then retrial may only be ordered if the purpose of the retrial is likely to be met.<sup>23</sup> In the case of false or falsified evidence and misconduct of authorities, retrial may only be allowed where the offence indicated as reason for the retrial was determined by a legally binding decision and such offence affected the decision of the court. The reason for refusal in the case of such reasons was that there were no final decisions made for any such cases even when investigations were started against a member of the authority, and it was terminated, and so any reference to this could not be upheld. In cases when the final decision was made in the absence of the defendant, it was obligatory to order a retrial. Reference to a sentence item occurred in one case in 2014, when the defendant stated that he/she was convicted in two cases for an offence committed in violation of the same victim. However, in this case, it was concluded that although the victim is the same person the dates of the offences committed against the victim are different; so, a cause for retrial cannot be established.<sup>24</sup> In order for a retrial to be allowed, it is not the means of evidence but the evidence that must be new regarding the fact incurred or not incurred in the main proceedings, and with the assessment of the evidence a potentially different factual finding may arise, which suggests that a major issue of the judgment made in the main proceedings must be changed significantly.<sup>25</sup>

## **8. The Occurrence of Review as the Other Extraordinary Remedy for Cases Affected by Retrial**

When examining retrial cases, I found data on the fact that the defendants also took advantage of the legal institution of review, although less frequently. The lower number is due to the stringent conditions of review, as it may be submitted only once and can only relate to questions of law. It even occurred that the decision regarding the review pointed out that the reasons submitted

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22 BH2001. 163.

23 According to Section 408, subsection (4) of the Act on Criminal Procedures.

24 Court of Appeal of Debrecen. Bpkf. II. 826/2014/2.

25 BH2015. 123.

in the review should actually be examined in a retrial, and so the retrial motion was submitted automatically. In respect of the relationship of the two legal institutions, I find it important to emphasize: considering that the decision made on the admissibility of the retrial is not decisive, and so review is not possible, it is still possible against the final decision of the retrial overruling the decision made at first instance.<sup>26</sup>

## 9. Frequency of Submitting Motions for Retrial

### *Data*

**Table 1.** Cases affected by retrial investigation, according to the decision, Court of Appeal of Debrecen

2005				2014			
Appealed retrial case		Retrial case at first instance		Appealed retrial case		Retrial case at first instance	
First	repeated	first	repeated	first	repeated	first	repeated
101	26	18	2	118	15	23	15

### *Conclusions*

Compared to the number of cases at first instance, a greater number of motions were re-submitted in 2014, meaning that the defendants submitted the motion over and over again. The reason for this is partly the fact that these cases are of substantive weight, and the defendants find it hard to accept more severe penalties. The defendants are likely to submit the motions even if they were rejected before.<sup>27</sup>

## 10. Retrial Investigation

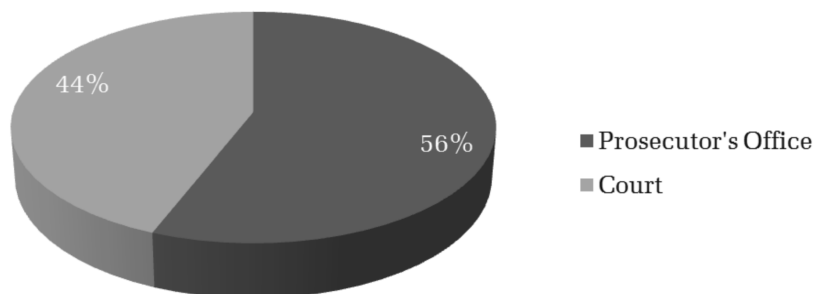
Pursuant to Act XIX of 1998 on Criminal Procedures, a retrial investigation may be ordered by the prosecutor or the Court as well. The prosecutor is entitled to this power before the motion for retrial is sent to the Court, while the Court may order an investigation to find evidence indicated by the petitioner.

<sup>26</sup> BH2006. 352.

<sup>27</sup> For example, there is a case when the defendant submitted 31 motions for retrial related to the same conviction (manslaughter) although in the meantime the sentence was completed.

## Data

A few more – but not much higher in percentage – of the cases examined<sup>28</sup> include retrial investigations ordered by the prosecutor's office. The obvious reason for this is that prosecution orders an investigation regarding the admissibility of the retrial to investigate the well-foundedness of the subject of the submission. However, the Court ordered retrial investigations in a similar proportion. In my opinion, the background to this is that the Court considers finding the material truth a priority in spite of the existing and legally binding decision. The diagram below shows this distribution.



**Figure 10.** The frequency of submitting motions for retrial

**Table 2.** Cases affected by retrial investigations by subject

Subject of the case	Number of cases
Robbery crime	7
Fraud crime	6
Fraud misdemeanour	1
Theft misdemeanour	3
Theft crime	6
Drug abuse crime	1
Affray misdemeanour	2
Affray crime	3
Vandalism misdemeanour	2
Depredation crime	1
Violence causing death	1
Assault causing danger of death	1
Aggravated assault crime	4

28 The range of data from cases in 2005–2015 at the Court of Appeals of Debrecen.



Subject of the case	Number of cases
Murder committed for profit	5
Murder of a minor, under the age of 14	1
Murder attempt	1
Murder committed with particular cruelty	1
False accusation	2
Corruption	1
Bribery	1
Illegal use of non-cash means of payment	1
Fraudulent bankruptcy	1
Tax evasion	3
Forgery of private documents	3
Road traffic accident resulting from careless driving	5
DUI vehicular manslaughter	1
Dangerous driving	1
Public endangerment	1
Animal cruelty	1
Misuse of firearms	3
Offence concerning professional conduct	1
Acquisition of stolen property	1

### *Conclusions*

Retrial investigations were mostly ordered in the case of the following crimes: crime against property or life, attacks upon the physical integrity of a person, or road traffic offence. The reason for this may be that in the case of these crimes there are frequent references made to new expert opinion.

## **11. Decision Made on Retrial Admissibility**

The first phase of the retrial is making a decision on admissibility. In this phase, the Court orders the retrial – if the motion for retrial was considered well-founded – and forwards the case to the Court which conducted the main proceedings as well as to the Court having the jurisdiction to conduct the retrial. However, in case the motion for retrial was unfounded, it must be rejected.

In this way, at first stage, the Court may order a retrial, reject the motion, or order a retrial investigation.

In case the motion for retrial is well-founded, the actual phase of retrial begins, but that still does not mean that the decision made at first instance will be changed as even after the retrial the decision made in the main proceedings may remain in effect.

### *Data*

In 2005, out of the examined 147 cases, retrials were ordered for 10 cases, while in 2014, out of the examined 174 cases, retrials were ordered for 2 cases.

### *Conclusions*

The above data show that retrials were ordered in an extremely small number, which means that motions for a retrial are groundless in a very high percentage.

## **III. Summary**

In my opinion, my hypothesis has been proved to be correct. Examining the period of 10 years of the operation of the Court of Appeal of Debrecen, it can be stated that retrial as an extraordinary legal remedy is constantly present for clients, mostly used by defendants to mitigate their punishment or achieve dismissal. In case of a rejection, they keep trying to prove their right within the framework of this legal institution by providing new items. During this time, the regulatory environment and the judicial practice could also be regarded relatively stable in respect of retrial conditions. It can be stated that at the beginning and at the end of the 10-year interval retrials were ordered in an extremely small number. It is shown that *res judicata* is well ‘entrenched’ for the interests of legal certainty. However, the small number of successful retrial cases still proves that *res judicata* is not identical with judicial infallibility and may not be considered a symbol of it, and for the avoidance of doubt it is necessary to maintain legal remedies to overrule it.

The draft of the new criminal procedure code does not change the scope of reasons for retrial; it neither expands nor reduces them. Apparently, the reason for this is the recognition that expansion would cause a number of uncertainty factors, while reduction would violate the principles of guarantee. According to the draft, the main difference is that it has to be regulated in different points if several final judgments were made for the defendant regarding the same offence or if the defendant was not sentenced under his/her real

name;<sup>29</sup> furthermore, absence as reason for retrial is placed in a separate section, and this section no longer includes that it is obligatory to order the retrial.<sup>30</sup> The success of retrials can be attributed to expert opinions, attached by the defendants by way of their defenders. However, according to the new law, if the private expert opinion will not be a means of proof, then it may result in even fewer retrials, where appropriate.

It can be stated that both the text of the law and judicial practice leaves little room for *res judicata*, and this arises from the principle that the court's judgment must be considered true.

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29 This provision is regulated according to Section 408, subsection (1), point b) of the Act on Criminal Procedures.

30 Pursuant to Section 409, subsection (3) of the Act on Criminal Procedures and Section 408, subsection (1), point e), a motion for retrial may be submitted only in case the defendant may be cited from his/her place of residence. In that event, conducting the retrial is obligatory.

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