



# EUROPEAN LAW ANNOUNCEMENTS

*Iustitia est regnorum fundamentum*


**Volume 1, number 1 (2020)**

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# European Law Announcements

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# ***CONTENTS***

**DR. ANTÓNÍUSZ NÁNDOR KUDRUN-TONIGOLD:** Preamble....6.

**DR. FRIGYER LÁSZLÓ – DR. MÁTYÁS SZABOLCS – DR. NYITRAI  
ENDRE:** National and International Investigation Team  
....7.

**DR. FRIGYER LÁSZLÓ – DR. MÁTYÁS SZABOLCS – DR. NYITRAI  
ENDRE:** Facial photograph analysis and specific profiling  
in law enforcement ....13.

**REFERENCES:**....21.

## *PREAMBLE*

### *Dear Reader!*

I am pleased to welcome you on behalf of the management of the European Law Center, and I sincerely hope that you will enjoy our studies in issue 1 of our 2020 Volume I.

By publishing in this periodical, we want to meet our multiple objectives. On the one hand, we also want to age the quality of the work of online journals. On the other hand, we want to provide a professional publication opportunity for researchers, scientists, writers and experts from different fields. This also helps them to have another opportunity to publish their reasonably demanding, legal, professional and scientific publications.

We hope to be able to publish quality announcements on topics that will encourage further reflection by the Dear Reader.

I wish you more good strength and health for your scientific and professional delicacy!

Regards:

Dr. Kudron-Tonigold Nándor Antóniusz  
Executive Director of the Center for European Law

**DR. ENDRE NYITRAI PhD – DR. SZABOLCS MÁTYÁS PhD –  
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### **National and International Investigation Team**

The aim of this study is to introduce the significance of establishing a joint investigation team in cases that require particularly sound or complex judgment. In most cases, it is expedient to set up a national or an international investigation team, however, aside its positive impacts it may raise several difficulties as well.

**Key words:** investigation, joint investigation team, organised crime, information, inspection

#### **Introduction**

In many cases the volume of data requires several persons to successfully assess, analyse and evaluate information. Nevertheless, other aspects may also justify the progress of joint investigation teams.

Effective combat against cross-border and diversified organised criminal groups require specific measures and forms of procedure, one of which is the joint investigation team, coordinating the investigation and the exchange of information.<sup>1</sup>

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<sup>1</sup> SZALÁRDI Gábor: A közös nyomozócsoport alkalmazásának hazai gyakorlata, eddigi tapasztalatai, Belügyi Szemle 2014/10. szám, Budapest, 135. o.

This study shall introduce the conditions and legal background of setting up joint investigation teams within and across the border. The progress of the group demands the cooperation of several agencies, thus both national and foreign organisations.

Establishing the forms of quick information exchange is a must, and it can be pursued most effectively within the frames of the joint investigation team, as probed and proved in several cases in the past. However, in international cases, gathering information and evidence must be conducted in accordance with the national, international law and the norms and legal provisions of the European Union.

### ***Joint Investigation Team (JIT)***

The basic legal frameworks of the institution of the joint investigation team are set forth in Article 13 of EU's Convention of Mutual Assistance in Criminal Matters<sup>2</sup> and in the Council Framework Decision on joint investigation teams adopted on 13 June 2002.<sup>3</sup>

A joint investigation team is established upon a written agreement concluded between the competent authorities of two or more member states for the purpose of carrying out specific investigating measures, for a certain period, but with the power to extend by consent, in order to pursue criminal investigations in one or more members states participating in the establishment of the group.

Setting up a joint investigation team may especially be appropriate when during the inspection of criminal actions one of the member states must to conduct an extensive and complex criminal investigation that would effect other member states, or several members conduct investigation inspecting criminal activities that require synchronized, coordinated and agreed process of the affected member states.

Any member states may request the establishment of the JIT, whereas it must be set up in one of the member states where the investigation should foreseeably be pursued.<sup>4</sup>

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<sup>2</sup> Az Európai Unió tagállamai közötti bűnügyi jogsegélyegyezménynek az Európai Unióról szóló szerződés 34. cikke szerinti létrehozásáról szóló, 2000. május 29-i tanácsi jogi aktus, HL C 197/1., 2000.7.12.

<sup>3</sup> Council Framework Decision on joint investigation teams adopted on 13 June 2002, HL L 162/1, 20.06.2002. The framework decision shall cease to have effect when the Convention of Mutual Assistance in Criminal Matters between member states of the European Union has entered into force in all member states (Article 5)

<sup>4</sup> 2005. évi CXVI. törvény az Európai Unió tagállamai közötti kölcsönös bűnügyi jogsegélyről szóló, 2000. május 29-én kelt egyezmény és az egyezmény 2001. október 16-án kelt kiegészítő jegyzőkönyve kihirdetéséről. (Az Európai Unió tagállamai kölcsönös bűnügyi jogsegélyegyezménynek az Európai Unióról szóló szerződés 34. cikke szerinti létrehozásáról szóló, 2000. május 29-i tanácsi jogi aktus HL C 197/1., 2000.7.12. 13. cikk)



The personnel of Europol may assist the process of the joint investigation team and may exchange information with all members of the joint investigation team, although they can not participate in the practice of the coercive measures.

Based on their role of facilitating and forwarding information, of coordinating mutual assistance in criminal matters, Europol and Eurojust may also recognise the appropriate cases where setting up a joint investigation team is required, and consequently, they may request the member states to cooperate. Further on, they coordinate the activities of the groups, compare the data gathered by the group with their own registries on the site, and finally, they evaluate the information with the Analyst Work Files.<sup>5</sup>

Eurojust can provide financial and logistical support to the joint investigation teams, whereas Eurojust is represented in the joint investigation team.

The motion for the establishment of a joint investigation team based upon the Act on mutual assistance in criminal matters or on the legal framework between the member states of the European Union must include:

- data and information on the foreign criminal procedure and on the foreign agencies pursuing the criminal procedure and
- the name and contact of the officers of the investigating authority appointed to participate in the joint investigation team.<sup>6</sup>

Nevertheless, there are certain difficulties and problems related to joint investigation teams, such as, for example, the negative attitude that might arise in connection with waiving specific elements of national sovereignty, the issue of legal control and supervision, also, the traditional suspicion that is always related to anything new, difficulties arising from the lack of appropriate knowledge of the ‘common’ language, eventual misunderstandings, the issue of appropriate evidence (due to different legal regulations of each member state), the issue of governing law, the incompatibility of technical measures or problems of financing.<sup>7</sup>

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<sup>5</sup> NAGY Judit (2004): Az Europol, In: Hollán Miklós (Szerk.), Az EU mint a szabadság, a biztonság és a jog térsége: Magyarország az Európai Unióban 2004–2014, Nemzeti Közszerzői Egyetem, Budapest, 147-148. o.

<sup>6</sup> 100/2018. (VI. 8.) Korm. rendelet a nyomozás és az előkészítő eljárás részletes szabályairól 37.§ (9) bek.

<sup>7</sup> NAGY Judit (2014): Az uniós bűnügyi együttműködés tendenciái, In: Ruzsonyi Péter (Szerk.), Tendenciák és alapvetések a bűnügyi tudományok köréből. Nemzeti Közszerzői Egyetem, Budapest, 2014. 155-156.o.

## **The raison d'être of national joint investigation teams**

In accordance with the provisions of Government Decree No. 100/2018 (VI. 8.) on the detailed rules of the investigation and the preparatory procedure, the authorised leaders of the investigating authorities may agree to set up a joint investigation team. In order to pursue the agreement, the authorised leaders of the investigating authorities shall conduct a meeting. However, such meetings may not lead to unreasonable delay of the procedure.

The agreement shall include:

- a) the identification of the investigating agencies, authorities and bodies participating in the joint investigation team,
- b) appointment of the management of the joint investigation team,
- c) determination of the case of cases to be investigated by the joint investigation team (purpose of the JIT),
- d) the duration period of the joint investigation team, in case it is different from the termination of the investigation,
- e) as of Section d), the possibility and method of extension,
- f) number of members and composition of the joint investigation team,
- g) indemnification rules for damages caused by the joint investigation team (liability),
- h) planned costs related to the operation of the joint investigation team, the technical conditions of the operation, the rules bearing the costs and method of providing technical facilities,
- i) description of operational conditions of the joint investigation team,
- j) rules of dispute resolution, and
- k) in case of termination of the joint investigation team
- ka) the determination of the competent and authorised investigating authority that shall continue the investigation, or kb) the fact that the joint investigation team shall be entitled to make a motion for the appointment of the competent and authorised investigating authority prior to the termination of the JIT. The agreement must be forwarded to the prosecutor's office for approval.

The duties of the authorised leader of the investigating authority shall be performed by the manager of the joint investigation team under this Government Decree.<sup>8</sup>

A joint investigation team should be set up especially if

- the suspects are partially or entirely the same in the criminal investigation procedures pursued by the different investigating authorities,
- the subject of the investigation is a criminal offense committed by a criminal organisation, whereas the operation of the certain criminal organisation is projected to conduct criminal acts falling under the competence of several investigating authorities, or
- more extensive cooperation of the investigating authorities is required due to the serious gravity of the criminal offense subject to the investigation or for other reasons.

Nevertheless, the joint investigation team shall terminate

- upon termination of the investigation,
- if the prosecution refers the investigation in its own competence,
- if the duration term determined in the agreement has terminated without extension.<sup>9</sup>

To sum it up, setting up a joint investigation team is necessary in case of grievous or especially complex criminal offenses, as in the planned or committed criminal offenses can be inspected and detected more efficiently and sooner. However, the preparation of an investigation plan is indispensable for priority criminal offenses. The tasks, the officers responsible for the execution of the measures and the deadlines must also be set forth in the plan. The characteristics of the investigation team's operations from the aspects of criminalistics are: *'... usually, the members of the investigation team do not have a general view on the entire case: they only pursue partial tasks and are only access the information necessary to perform their own duties out of all data available on the case. Therefore, they are not able to decide or evaluate, whether the specific information is relevant or not.'*

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<sup>8</sup> 100/2018. (VI. 8.) Korm. rendelet a nyomozás és az előkészítő eljárás részletes szabályairól 28. § (1) bek.

<sup>9</sup> 100/2018. (VI. 8.) Korm. rendelet a nyomozás és az előkészítő eljárás részletes szabályairól 28. § (1) bek. (5) (7)

*For this, the acquired information must be recorded and forwarded precisely, without any distortions...*<sup>10</sup> I find undistorted data recordings especially important, similarly, I can not emphasize enough the importance of precise recording of verbal information if the specific case requires so.

However, I still find the practice of having the member of the investigating team to learn and proceed upon only partial (fragmental) information unacceptable, since it may not be eligible to make relevant decisions or significant observations.

In many cases, the officers and the members of the investigation team completing partial duties gain access only to partial (fragmental) information out of all data available in the investigation, depending on the nature of their responsibilities, therefore, losing information is a realistic procedural deficit. We could raise several examples, however, according to my opinion, the member of the investigation team is only able to perform his partial duties if supplied with the most relevant information on the case, as possible, so during his filtering – researching process he may have the opportunity to reveal certain cause and effect relations that even did not occur to the leader or other members of the investigation group when assigning the tasks. Yet, it must be highlighted, that there are particular partial tasks that truly require limited communication only, which is eligible to proceed with the partial job, so exhaustive or detailed knowledge of the case is not necessary.

## **Summary**

The study has pointed out, that particular national tasks of criminal inspection often require the establishment of national investigation teams on the one hand, and, due to the opening of state borders, the setting up international joint investigation teams on the other hand as well. These days, in the era of digitalisation, criminals can easily keep contact and organise their preparatory activities through the Internet. Joint investigation teams may significantly affect the efficiency of the investigation, as they may also fasten the flow of information. However, it is definitely advisory to share the available information already at the determination of the tasks, so even tiny little details will not be left out of sight, which would ease both the inspection and the evidentiary procedure.

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<sup>10</sup> Lakatos János (2004): A nyomozás tervezése és szervezése, In: Lakatos János, Krimináltaktika I., Rejtjel Kiadó, Budapest, 2004., Budapest, 49-50. o.

**DR. ENDRE NYITRAI PhD – DR. SZABOLCS MÁTYÁS PhD –  
DR. LÁSZLÓ FRIGYER**

**Facial photograph analysis and specific profiling in law enforcement**

In the future, facial photograph analysis based on several different registries and the so-called specific profile making shall have an outstanding role in the identification of perpetrators. This study shall introduce the two methods, both indispensable for efficient investigation and inspection, also for criminal prevention.

**Key words:** facial photograph analysis, profile, fundamental questions of criminalistics, electronic data, digitalization

**Introduction**

In today's digital society the possibilities offered by electronic data have grown immensely. Every day, we leave numberless data and information behind, either deliberately or without any conscious motion. Gathering and organising such data may support the law enforcement authorities, since the data registered in the forming databases, whether photographs or personal data, can be used for comparison, analysis or for setting up a profile. The study intends to introduce the two fastest developing and most commonly used methods, highlighting their significance.

**Facial photograph analysing registry**

The Automatic Facial Photograph Analysing and Identification System (3AR) has been replaced by the Automatic Facial Photograph Analysing Registry.

For the purposes of prevention, inspection and termination of criminal offenses, also, with the objective to arrest and prosecute perpetrators, furthermore, in order to request for the identification or for checking the identity of the defendant, moreover,

to support gathering secret intelligence and for the purpose of identification or for checking the identity of the individuals attempting to cross state borders, the investigating authorities may access and use the facial photograph analysing registry.<sup>11</sup>

The facial photograph profile registry includes:

- a) facial photograph profiles generated upon the facial photographic image recorded in the personal data and domicile register,
- b) facial photograph profiles generated upon the facial photographic image recorded in the central aliens policing registry,
- c) facial photograph profiles generated upon the facial photographic image recorded in the refugee's registry,
- g) facial photograph profiles generated upon the facial photographic image recorded in the central travelling documents' of Hungarian citizens not recorded in the personal data and domicile register, yet, holding travelling documents.

The authority obliged to process the data shall render a technical registry number to each private person and his / her facial photograph recorded in the registry under its disposal.

The authority obliged to process the data shall forward the facial photographic image and the related technical number to the central authority (head office) through direct data connection. The head office shall generate a facial profile from the forwarded facial photographic image and shall register the data together with the related technical registration number.<sup>12</sup>

The social interest in criminal prevention and in the fastest possible identification of unidentified perpetrators based on the possibilities of modern technology require the amendment and improvement of personal identification methods.

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<sup>11</sup> 11/2016. (IV. 29.) ORFK utasítás az arcképelemzési nyilvántartás és arcképelemző rendszer igénybevitelével kapcsolatos feladatokról

<sup>12</sup> 2015. évi CLXXXVIII. Az arcképelemzési nyilvántartásról és az arcképelemző rendszerről szóló törvény 4. § (1), (2), (3)

There are two basic types of facial photograph analysis activities:

- identification of an unidentified (unknown) person,
- checking personal identity.

In the course of identifying unknown persons, the profiles generated upon the facial photographic images acquired from the authority entitled to request data<sup>13</sup> are being compared to all facial photographic profiles held and processed in the facial photograph profile register.

In case of checking personal identity, on the other hand, the profile generated from the facial photographic image of the given person is being compared to the profile of the individual held in the facial photograph profile register.

The first phase is the digital comparison of the facial photograph profiles, followed by the second phase, namely the assessment and evaluation of the results.<sup>14</sup>

Most of the local (city) police departments have facial analytical programs, however, a special department, the Section for Facial Recognition Analysis now operates under the Department of Criminal Services of the Hungarian Institute of Forensic Sciences, with the main activity to conduct facial recognition analysis, upon the request of authorities.

The analysts continuously expand their skills and deepen their knowledge by taking courses and participating in trainings in various scientific areas (biology, anthropology, criminalistics), and in the fields of IT developments, or by further studying the morphological characteristics of the human face.<sup>15</sup>

In accordance with the provisions of Section 29 (4) and (4a) of Act XXXIV of 1994 on the police:

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<sup>13</sup>2015 CLXXXVIII. pursuant to Section 1 (b) of the Act facial image: a recording of a citizen's portrait made using an IT device or processed using an IT device, which is suitable for creating a portrait profile, while a portrait profile: an alphanumeric data set formed from a portrait, which is not suitable for reconstructing the underlying portrait.

<sup>14</sup> 2015. évi CLXXXVIII. törvény indokolása az arcképelemzési nyilvántartásról és az arcképelemző rendszerről

<sup>15</sup> <http://nszkk.gov.hu/kozponti-intezetek/arckepfelismero-elemzo-osztaly> (2020.09.14.)

‘If the checked person refuses to verify his personal identity, the individual may be intercepted for the purpose of identification, also, in case of unsuccessful identification – if the person’s identification can not be completed otherwise or there is no credible evidence for the identification - the police officer is authorised to take a photograph, take fingerprints of the individual I for the purpose of identification, furthermore, the officer may record the individual’s external features by perception and measurement.

For the purpose of identification, the photo taken at in accordance with subsection (4) can be checked right on the spot through an electronic instrument designed for this purpose, using the automatic comparative measures regulated under the Act on facial analysis registry and the facial recognition system, according the regulations stipulated in the Act thereto.’<sup>16</sup>

It is clear, that the data of the facial analysis registry plays a rather significant role not only the investigation, but in the course of checks as well.

### **Specific profiling**

The criminalistic way of thinking, and its fundamental elements, the principals of criminalistics serve as a theoretical basis and play a significant role in the course of the specific profile making.

The analysis and evaluation of the answers given to the fundamental questions of criminalistics start a chain of information. The assessed data (the received answers) may result in investigative measures, where, again, the issues of criminalistics can reveal the truth about how the relevant actions and events might have happened.

The elements of the criminalistic way of thinking, and the principal questions of criminalistics play an indispensable role, both during the inspection and in the evidentiary procedures. According to certain theories, the issues of suspicion and reasonable suspicion should also be considered as the elements of the criminalistic approach. Some approaches find that ‘the investigative way of thinking starts with suspicion’.

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<sup>16</sup> 1994. évi törvény a Rendőrségről 29. § (4) (4a)



Undoubtedly, these two definitions are connected to the criminal procedure, however, several questions may emerge during the investigation, where these issues or definitions are not even being involved, let alone they are the initials of the criminalistics' approach.<sup>17</sup>

The inspection process and the recognition of the event is conducted through the chain of theoretical measures, starting with the basic element of hypothesis basis of facts. Hypothesis is an intermediate stage of the cognitive process, guiding us from the stage of not-knowing to cognizance.

Hypothesis requires practical skills and life experience, also, the use of the rules of logic. However, such knowledge and skills are not exactly well founded at the stage of recognition, consequently, they are not an eligible base to draw conclusions. Therefore, hypothesis and conclusions must be delimited.<sup>18</sup>

The fundamental questions of criminalistics function as a guideline or a compass, pointing and leading to the knowledge necessary to recognise and understand the relevant events of the past. There is no unified list, agreed number or definition of fundamental questions.

The generally approved classification is the following:

- what happened?
- where?
- when?
- how?
- who?
- with whom?
- why?<sup>19</sup>

Garamvölgyi classifies the fundamental questions of criminalistics according to the following scheme: 'who?', 'what?', 'how?', 'with what?', 'when?', 'where?', 'why?' and 'with whom?'.

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<sup>17</sup> BALLÁNÉ Füzster Erzsébet – LAKATOS János (2012): Kriminálisztika I. A kriminalisztika egyes elméleti kérdései, Budapest, 61. o.

<sup>18</sup> KATONA Géza (1990): Valós vagy valótlan? Értékelés a büntetőperbeli bizonyításban. Budapest, 42. o.

<sup>19</sup> BALLÁNÉ – LAKATOS i. m.: 63–65. o.

He states that the questions referring to the subject or to the material aspects of the criminal offense are: ‘what happened?’, ‘with what?’, ‘when?’, ‘where?’, ‘how?’; and, according to his specifications, the questions ‘why?’, ‘who?’, ‘with whom?’ apply to the personal aspects of the criminal act.<sup>20</sup>

Taking the *modus operandi* into consideration, the fundamental questions of criminalistics can usually be supplemented with the issue of fitting into a particular series of actions, furthermore, in case of specific profiling, with the answer to the question ‘what is he / she like?’. A profiler does not seek the answer to the singular question ‘who?’ out of all principal questions of criminalistics, but to the question ‘what is he / she like?’, in other words, ‘what can the perpetrator be like?’. (The question ‘what is he / she like?’ can be answered upon the profile, while finding the answer to the question ‘who?’ remains the task of the detective.)

In the course of specific profile analysis, especially in homicide cases or in cases of sexual offenses, the detective may amend the basic 7+1 fundamental questions of criminalistics with the question ‘what is he / she like?’, acknowledging the fact, that determination of the perpetrator’s personality, as an individual set may significantly support the cognizance of the past event and to the success of the investigation.<sup>21</sup>

The profile making is a method that may support the investigation in case the perpetrator is not known.<sup>22</sup> In line with the development of criminalistics, the admissibility of the method continues to gain grounds in the investigation procedure, outlining and setting a hypothesis concerning the personality and character of the perpetrator, who committed the criminal offense. It may also narrow the scope of suspects, furthermore, its results may be used during the preparation of the interrogation and the tactical plans.

In the course profiling we do not name a person in particular, but we define the characteristics of the perpetrator. The objective of profiling is the definition of the perpetrator’s characteristics upon the acquired information.

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<sup>20</sup> GARAMVÖLGYI Vilmos (1962): *Kriminalisztikai alapkérdések*, Rendőrségi Szemle 1962. (X. évfolyam) 4. sz., Budapest, 322. o.

<sup>21</sup> NYITRAI Endre (2015): *Bűnelemzés a nyomozásban*, Pécsi Határőr Tudományos Közlemények XVI. kötet, Modernkori Veszélyek Rendészeti Aspektusai. Pécs, 143–145. o.

<sup>22</sup> GAMPEL Andrea – SZÉKELY György László: *A profilalkotás alkalmazásának lehetőségei a magyar büntetőeljárásban*, 20. o.

[http://www.ugyeszek.hu/ftp/tartalom/ugyeszek\\_lapja/20095555/ul2009\\_kulonszam\\_all.pdf?phpMyAdmin=5e79130c4a2a408b3f002bed9c4d2fba](http://www.ugyeszek.hu/ftp/tartalom/ugyeszek_lapja/20095555/ul2009_kulonszam_all.pdf?phpMyAdmin=5e79130c4a2a408b3f002bed9c4d2fba) (2015. július 24.)

The profile is information for the detective, on the scope where he is supposed to look for the perpetrator, who can be taken into consideration, or in other words, the profile is an analytic material of crime that can be used by the investigating authority rather effectively and quickly during its law enforcement operation.

It may introduce and reveal the perpetrator's personality to the authority, and it may also supply ideas of best possible methods of arresting and cooperating with the perpetrator during the procedure.

Profiling is more efficient, if the psyche, social background or culture of the perpetrator has a high impact on his motives, on his choice victims and on the modus operandi. Using the investigation method of profile analysis is especially advisory in priority cases, where are very few traces of evidence that can supply information on the perpetrator. Furthermore, it is most often applied in cases of serial offenses, especially in homicide cases or sexual offenses.<sup>23</sup>

Profile analysis may be conducted in case physical abuse was involved in the conduct of the criminal offence, or if there was some sort of relation between the victim and the perpetrator. In the course of profiling, the analyst shall examine the relevant aspects of the case, and shall 'choose the most similar cases, and shall run a computer program on the selected cases to narrow the scope of possible perpetrators, taking into consideration the motives of statistic nature and the circumstances of the conducted offenses.

The profiler sets the profile most appropriate for the particular case.'<sup>24</sup> At the present, the database used for profiling consists of more than 2000 investigated offenses against life. Approximately 1500 of these cases are completed homicide offenses, and approximately 600 are attempted murder cases.

In the course profiling the profiler shall study the records and minutes taken at the on-site survey, the report of the forensic expert, the photographs taken at the site, and shall visit and examine the crime scene as well. Thus, the profiler sets the profile upon the information recorded in the database and upon his own impressions.

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<sup>23</sup> 13/2001. (X. 2.) ORFK utasítása A Magyar Köztársaság Rendőrsége Bűnelemzési Szabályzatának kiadásáról

<sup>24</sup> NAGY Enikő – ELEKESNÉ Lenhardt Zsuzsa (2004): A specifikus elkövetői profilalkotás elmélet és gyakorlata, Belügyi Szemle, BM Kiadó, Budapest, 2004/6., 52. évfolyam 55. o.

## Summary

Today, law enforcement authorities use facial photograph analysis on a more and more regular basis, and there is an emerging need for specific profiling, especially in the identification of the perpetrators of intentional (violent) crimes.

Nevertheless, I believe, that the results of the two methods may only support to set up a version of the act, that may indicate a flow of information, and the shaping of a chain of evidence. In itself, the results of the two methods are not admissible as evidence, however, they may significantly support the inspection and the evidentiary procedure.

Several similar methods are expected to be developed in the future, especially in connection with the 5G technology, and the possibilities offered by artificial intelligence. The mapping, examination and application of digitally recorded data shall be an indispensable aspect of the investigation.

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2015 CLXXXVIII. pursuant to Section 1 (b) of the Act facial image: a recording of a citizen's portrait made using an IT device or processed using an IT device, which is suitable for creating a portrait profile, while a portrait profile: an alphanumeric data set formed from a portrait, which is not suitable for reconstructing the underlying portrait.

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