



Investigating Bodily Injury

Endre Nyitrai

Kornel Girhiny

Laszlo Boi

Henrietta Farkasne dr. Halasz

Orsolya Haspel

University of Public Service, Faculty of Law Enforcement, Hungary

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Abstract

This study shall analyse the statutory provisions on bodily injuries or batteries with a special outlook on the difficulties caused by the pandemic. The study formulates forensic recommendations based on the Hungarian national standard and knowledge of criminal procedure and analyzes the methodology of the investigation of bodily harm exclusively from the Hungarian point of view. It approaches the detection of the crime from a practical and empirical point of view, as well as from a legal point of view. The study shall introduce the relations of corona virus and HIV virus to bodily injuries. Interpretation of the recommendations of criminalistics is indispensable for the detection of bodily injuries, similarly, the identification of the methods revealing criminal actions and the questions to be asked during the interrogation of the suspect are also absolute necessities in the process.

Keywords: Bodily injury (battery), corona virus, HIV virus, interrogation, data source

Introduction

Both in our country and worldwide, committing bodily injuries are almost acknowledged as an everyday issue that may be conducted by causing

bodily harm on the one hand or by abuse on the other. Quite often, other criminal acts might be conducted parallel to bodily injuries, for example, vandalism or truculence. Multiple counts of offenses may be established if a singular action of the perpetrator meets the statutory provisions of the criminal acts of truculence and bodily injury or vandalism, under the condition that the statutory punishment of bodily injury or vandalism does not exceed the punishment of truculence (34. Bkv.).

In the time interval of 2013-2018, 67145 cases of bodily injuries offenses were registered, while further 22887 cases have been recorded from July 2018 until today (bsr.bm) (Figure 1).

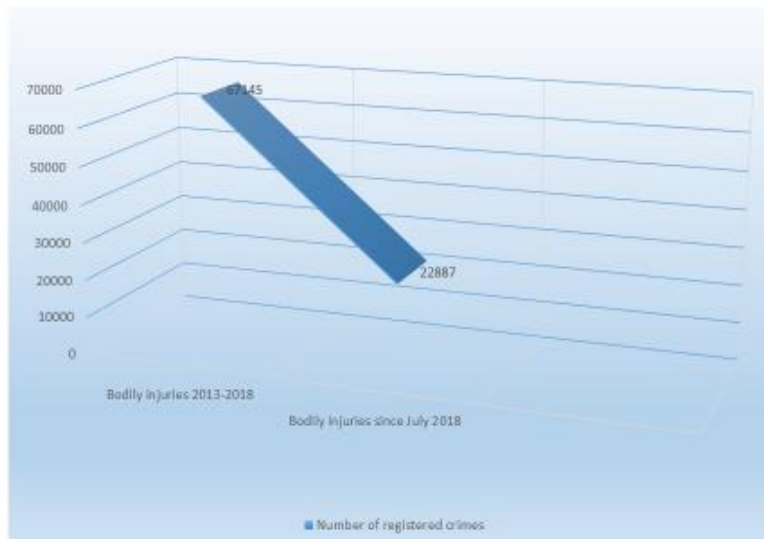


Figure 1. Number of registered bodily injury cases

Statistics confirm that it is advisory to analyse the relevant statutory provisions, as well as to introduce the recommendations and methods of criminalistics that may promote and facilitate the efficiency of the criminal procedures. Last but not least, the reintegration of penitentiary efficiency is also supported (Czenczer, 2019., 135-146.).

Statutory provisions of bodily injury

In accordance with the provisions of Section 164 of Act C of 2012 on the Criminal Code the statutory provisions on bodily injury are applicable as follows:

Section 164

- 1) Any person who causes bodily harm or injuries to the health of another person is guilty of bodily injury (battery).
- 2) If the injury or illness caused by bodily injury takes less than eight days to heal, the perpetrator is guilty of the misdemeanor of minor bodily injury punishable by imprisonment not exceeding two years.
- 3) If the injury or illness caused by bodily injury takes more than eight days to heal, the perpetrator is guilty of the felony of grievous bodily injury punishable by imprisonment not exceeding three years.
- 4) The penalty for a felony shall be imprisonment not exceeding three years if the minor bodily injury is committed:
 - a) with malice aforethought or with a malicious motive;
 - b) against a person incapable of self-defense or unable to express his will;
or
 - c) against a person whose ability to defend himself is diminished due to his old age or disability.
- 5) The penalty shall be imprisonment between one to five years if the minor bodily injury results in permanent disability or serious health impairment.
- 6) The penalty shall be imprisonment between one to five years if the grievous bodily injury is committed:
 - a) with malice aforethought or with a malicious motive;
 - b) against a person incapable of self-defense or unable to express his will;
 - c) against a person whose ability to defend himself is diminished due to his old age or disability;
 - d) causing permanent disability or serious health impairment;
 - e) with particular cruelty.
- 7) Any person who engages in preparations for the criminal act referred to in Subsection (3) or (6) is guilty of a misdemeanor punishable by imprisonment not exceeding one year.
- 8) The penalty shall be imprisonment between two to eight years if the bodily injury is life-threatening or results in death.

In the legal facts, two basic cases appear, a light physical and a serious physical one, depending on whether the injury or the illness caused by bodily harm heals within eight days or beyond eight days.

The perpetrator of the criminal offense of minor bodily injury shall only be prosecuted upon private motion. In the case of a criminal offense that may only be prosecuted based on a private motion, no criminal proceedings can be instituted unless the entitled party lodges a complaint. The lack of the complaint shall hinder and finally exclude criminal adjudication. Minor bodily injury (assault) may only be committed intentionally, in a deliberate manner.

However, (aggravated cases) of grievous bodily injury may also be committed by way of negligence (complex or praeterintentional criminal offenses). Minor bodily injury shall be deemed as an aggravated offense if it is conducted

- with aforethought malice or with malicious motive,
- against a person incapable of self-defence or unable to express his will; or
- against a person whose ability to defend himself is diminished due to his old age or disability.

Preparation of any grievous bodily injury is penalised by law. The conduct of the offense remains in the stage of attempt if the perpetrator engages in the actions suitable to cause bodily injuries or harm of health without finishing it and without a result (for example, he attacks the injured party with a spear). If the desired result is reached, we refer to a complete criminal act.

Grievous bodily injuries are classified as aggravated acts if the assault is committed

- with malice aforethought or with malicious motive,
- against a person incapable of self-defence or unable to express his will,
- against a person whose ability to defend himself is diminished due to his old age or disability,
- causing permanent disability or serious (irreversible) health impairment, or
- with particular cruelty.

Special classification of aggravated cases if the bodily injury threatens life or results in death.

The protected legal subject is the social interest in other persons' physical integrity. In accordance with Section (1) of Article XX of the Fundamental Law of Hungary, everyone shall have the right to physical and mental health. The injury or illness appears in the form of bodily harm or injury to the health of another person, as the result of the criminal offense. Actions that cause harm to body parts and the integrity of the organs or tissues of the body shall be considered as acts assaulting the physical integrity of an individual (for example, smashes, or bruises). The injury of health is realised when the physiological functions of the organs, body tissues, and the nerve system are disrupted and illness forms, but the organs and tissues remain intact (Karsai, 2012). Thus the injury of the physical integrity is an illegitimate physical impact and assault on the one hand, whereas the external stimulus results in injuries to the human body or in its organs. The harm to health, on the other hand, is not the result of direct abuse of the human body, but caused

by other means of action, for example, poisoning, infecting one with some illness (transferring HIV or corona virus infection), or causing a psychic or mental illness. However, when making a distinction between minor and grievous forms of bodily injuries, the time interval of healing has a role of vital concern.

The establishment of the time of healing has a decisive importance in the process of classification which is a professional issue to be decided by forensic medical experts, determining whether the act is recognised as a minor or grievous bodily injury. 'However, in the legal classification of crimes committed by causing bodily harm, the so-called actual duration of treatment must be taken as a basis. The actual time of recovery or healing is the time interval determined by medical science under which the injury, the health damage, or illness primarily (not entirely, but actually) does heal. The fact, whether the actual time of recovery is less or more than eight days shall determine the issue of classification between minor or grievous battery. ...'(Karsai, 2012). The adjudication of the criminal action shall always be based on the actual time of healing. Generally, the professional opinion of a forensic medical expert is required in order to establish the actual time of healing (Petőfi, Tóth, 2015. 183-184.).

Furthermore, in some cases we may refer to the presumptive or delayed time of healing, for example, in case the injured party suffers a fatal traffic accident before recovery, the experts participating in the procedure shall presume the time, under which his illness or injury would have been settled (the injured party deliberately delays the recovery). Also, the court shall base its decision on a presumptive recovery time if the act remains in the stage of attempt. Therefore, in case the perpetrator swings his stick towards the shoulder of the injured party with only medium force and does not actually hit the victim, because his friend pushes him away from the attacking force, the court shall only presume the level of injury the victim would have suffered in case of a successful abuse (magyarorszag.hu).

With reference to Methodology Recommendation No. 16 of the Hungarian Institute for Forensic Sciences on forensic expert opinions on bodily injuries and health damages, according to general professional experiences of forensic experts, the following injuries heal in more than 8 days:

- hematomas slurred on more than 10% of the surface of the body (for example, affecting body regions),
- hematoma on the tunica albuginea (inside the testicles) causing pain and walking dysfunctions,
- slurred excoriation or bruising of the epidermis on a larger area (on several or bridging body areas),

- scored, cut, bruised, smashed injuries whereas the side of the scars cannot be overlapped (due to shortage of tissue),
- stabbed, cut, or carved wounds and injuries invading body cavities or the organ/space, or injuries causing significant loss of blood (hgb. and hematocrit),
- bullet wounds,
- -open wounds of the joints, dislocations, string injuries,
- veins or nerve injuries,
- first degree burns or freezing of 10% or more of the body,
- second degree or worse burns, scalds, freezing, or damages to the body from a caustic chemical (chemical burns),
- medium or heavy concussion of the brain,
- organic damages to the central nervous system the brain or other internal organs and their consequences,
- injuries of the sensory systems (provably over 8 days of dysfunctions),
- all fractures (including the nasal bone),
- serious forms of poisoning,
- sexual diseases (except for primer-treated gonorrhoea).

Certainly, all these statements may only be valid in general, whereas the professional determination of the time of recovery of any injuries may only be completed individually, for the relevant case. (Methodology Recommendation No. 16)

The connection between the virus and bodily injuries

Corona virus

Questions have arisen on whether someone is aware of his illness (being infected), yet, decides to breach the epidemic regulations to commit the felony of bodily injury or not.

According to István Ambrus, irrefutable determination of criminal liability for bodily injury could only take place in the extreme situation, where the perpetrator and the victim would be locked together, for example in a room properly disinfected previously, hermetically separated and isolated from any other person or subject, and it would be provable that the perpetrator was already a virus carrier when entering the room, while the victim was still healthy and the virus was not even incubated in his organism, and, when - after at least three days later - released from the premise the victim's Covid test would also be positive (Ambrus, 2020, 9-10.). Further analysing the subject, for example, Ambrus also points out, that attempted grievous bodily injury may be established, if a corona-infected perpetrator would deliberately (*dolus directus*) leave the official quarantine with the intention to infect the hostile victim, and when visiting the victim, he would cough at the victim or onto his

personal effects, or maybe the perpetrator would intentionally infect some objects (maybe with his drool) and sneak items into the victim's apartment (Ambrus, 2020, 9-10).

Ordering the state of danger due to the pandemic required the modification of certain general regulations in the fields of criminal law, criminal procedural law, and in the regulatory frame of law enforcement as well (Tóth, 2020, 45.).

Obstructing the epidemic of the corona virus was not only a health care issue, but also challenged law enforcement to make substantial efforts (Veprik, 2020, 185.).

Due to the epidemic, police had to face several additional tasks, including particular:

- recording data (in the Arrest Warrant Registry System), that is suitable to support conditional measures such as monitoring the duties related to keeping the rules of the official home quarantine;
- monitoring the electronic official home quarantine from a distance [a smartphone that operates by downloading (the application of) the home quarantine system, enabling the authority to monitor the individuals keeping quarantine rules automatically];
- monitoring the observation of the defense measures (curfew and restrictions, monitoring the observation of the rules on the opening hours of shops, and the obligation of wearing masks);
 - on the spot measures (fine or motion of misdemeanor, for example, for breaking the rules of wearing a face mask, or the rules applicable for shops, venues, hotels, and leisure facilities);
 - securing and monitoring crossing the state border (for example, checking the observation of the rules of entering the territory of Hungary by Hungarian citizens and also individuals other than Hungarian citizens)
- execution of operational tasks arising upon the establishment of hospital commandship (supervision of using health care assortments acquired from budgetary resources and monitoring the observation of epidemic measures);
- cooperation with epidemiologist experts – contact tracing [tracing contacts of COVID-19 positive individuals, identifying persons who were or may have come into contact with an infected person];
- participation in the Operative Corps or in The National Police Headquarters Corps (main tasks of the Operative Corps are analysis, evaluation of COVID, furthermore, an efficient organization of the necessary measures, coordination of the operations of the state bodies accordingly) (Nyitrai, 2021, 339-341.)

The listed tasks represent and confirm that the police had to face several extra tasks during the epidemic of the corona virus. Similarly, the criminal interpretation and evidentiary proof of deliberate infection by the virus is a further challenge to the authorities.

HIV virus

The felony of bodily injury may also be committed if the perpetrator infects the victim with the HIV virus intentionally or due to gross negligence.

András Szabó refers to the solution, implemented by court practice to the problem, according to which even in the life of the victim, or in other words, before his death as the condition of aggravated classification would occur, the court shall condemn the perpetrator for causing grievous bodily injury, referring to symptoms revealed at early stages of the illness or to the disfigurement of the victim. Nevertheless, in case the victim dies before or during the criminal procedure, due to the infection or to conditions connected to it thereto, the liability for bodily causing death may be established (Szabó, 2013)

However, according to a study, most criminal procedures ordered for bodily injury committed by HIV infection in the 2000ies were terminated in Hungary (Nogel, 2009, 234.).

Criminalistic aspects of bodily injury

There are various motives for committing the bodily injury, such as revenge (love affairs, child custody disputes), anger, jealousy (Ürmösné, 2018, 126-133), retribution for perceived or real offense, moreover, the consumption of alcohol or any kind of sedatives may also be a factor of conduct.

In a narrow sense, authorities may gain knowledge of bodily injury offenses upon a complaint, (anonymous) notification, recognition by health care institutions (notifications of a practitioner, family doctor, or hospital), recognition of the investigating authorities, or upon interrogation or intelligence gathering pursued in relation to other criminal acts. Certainly, such means of gaining knowledge of a crime shall also apply to other criminal offenses as well.

County (Metropolitan) Police Headquarters exercise competence for the criminal offenses of

- felony of life-threatening bodily injury and bodily injuries causing death
- misdemeanor of bodily injury by way of negligence causing a life-threatening injury.

Police department as a local investigating authority

- in any other case.

Data sources supported in the detection of bodily injury offenses:

- notification, statement/testimony of the witness discovering the offense
- report of the officer securing the site; issuing an arrest warrant
- records are taken at the inspection (and annexes)
- interrogation of the witness
- camera footages (public transportation) – securing the footage of surveillance or other cameras
- still image face recognition (Gárdonyi, 2020, 22-33)
- data sources related to the victim (mobile phone, text messages, chat records) (Ürmösné, 2019, 65-75)
- witness testimonies
- registries, databases (discharged persons)
- social media – contact systems, net-cop contact system
- presentation for identification
- arrest warrant (identification)
- expert opinions, assessments (related to the inspection)
- evidentiary procedures (on-site interrogation)
- coercive measures (search)
- testimony of the suspect
- public communication measures, involving the public, bounty fees.

Priority measures for tracing witnesses:

- intelligence gathering at the crime scene,
- intelligence gathering among individuals present or moving around the scene of the crime,
- persons generally present or appear at or near the crime scene due to their scope of activities, personal habits (at the presumed time of conduct)
- accessing public communication instruments (vehicle cameras, news)
- intelligence gathering in the surroundings of the victim or the suspected perpetrator,
- questioning (for example, the interrogated person is able to name another person) (Figure 2).



Figure 2.Tracing witnesses

In the course of investigating bodily injuries, at the stage of collecting substantive testimonies (thus at the significant part of the interrogation), the victim is advised to be asked the following relevant questions in particular:

- where did the assault has taken place (city, district)?
- who was the abuser and who was the abused?
- what kind of injuries were suffered (time of recovery)?
- did the abused visit a doctor, did the victim get a medical report, and if so, where?; he should be asked to attach the injury report!
- did anyone call the ambulance to see the victim?
- did the victim receive any medical care at the hospital?; if so, in which hospital?
- what kind of object was used at the attack? (description of the object: size, material, weight)
- size/measure of the force of the attack (medium; great; smaller, than medium)
- a number of occasions of the impact – hitting, kicking, stabbing
- direction of the impact or attack
- what did the perpetrator say during the assault?
- the body area affected by the hit, kick or stab
- did the perpetrator hit the victim with his hand or fist?
- did the perpetrator kick?; if so, did he use his knee, legs, or feet to trample to the injured?
- did the victim lose consciousness because of the abuse?
- what kind of furnishings, facilities, features, or landmarks was at the site of the assault?
- what was the reason for the assault?
- are there any witnesses?; if so, the victim should give their contact details

- In case the time of healing is less than 8 days, the victim should be asked to make a statement regarding the private motion. During the interrogation, it is important to use the same term consistently for the same thing or phenomenon, thus avoiding misunderstandings (Gárdonyi, 2021, 65).

The most frequently involved expert specialists during the investigation of bodily injuries are: forensic genetic specialists (DNA), other forensic specialists for footprints, tools, objects, fingerprints (evidence research/identification), forensic chemists (on-site technicians), forensic toxicologists, forensic medics, forensic mental specialists, forensic psychiatrists.

Nevertheless, several other evidentiary measures could have been referred to in this study, such as for example, the inspection, questioning on the scene, reconstruction, presentation for identification, confrontation, and the instrumental examination of testimonies (Gárdonyi, 2020, 89-93). These evidentiary measures may also provide various relevant information in order to support the investigation.

Conclusion

We may conclude that relevant data from the past has the most significant role in tracing and proving bodily injury offenses. In order to recognize the relevant factors of the past, or in the case of serial criminal offenses, also the present and future events, knowing and using the recommendation of criminalistics is indispensable. It must be emphasized that a significant amount of electronic data will have to be analyzed and evaluated in the course recognition and assessment, to which artificial intelligence shall prove to be a great assistance.

In the study, the relationship between the coronavirus and the HIV virus with physical assault was presented, as well as the data sources helping to detect the investigated crime, the witness search methods, and the list of relevant questions that can facilitate obtaining a meaningful testimony.

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