

Threshold of criminal responsibility for property offences: a new empirical research on legal consciousness in Hungary<sup>1</sup>

## 1. SHORT DESCRIPTION OF THE PROJECT

Our three-year research project "Novelties of Criminal Law in Legal Consciousness" focuses primarily on mapping knowledge and attitudes toward regulatory novelties in criminal law. However, we also paid attention to the traditional question of the extent to which different social factors (gender, age, etc.) influence legal consciousness.

According to our research hypotheses

- an everyday person has a fragmented knowledge about the legal system (this is the level of "legal consciousness of everyday people"),
- older norms are more frequently known by an everyday person ("legal consciousness is more difficult to move than regulation");
- legal consciousness (and also the awareness of novelties) is strongly influenced by crime-related concerns along with other socio-economic factors.

As part of the project, a questionnaire was conducted in October 2018 on a national representative sample of the adult Hungarian population. Respondents had to decide, on the one hand, whether the act described is punishable or not. In addition, they could answer whether, if they were legislators, the act would have been punished or not. The questionnaire was related to 12 topics that are common in everyday life and in the media.

In this paper, we are analyzing the responses to questions related to the threshold of criminal responsibility. We have asked respondents to assess the following four situations:

1. A 15-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF.
2. A 15-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break.
3. A 13-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF.
4. A 13-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break.

The third question concerns regulatory novelty, because it has been punished since 1 July 2013.<sup>2</sup>

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<sup>2</sup> Cf. in detail chapter 1.

## 2. METHODOLOGY

The survey fieldwork was conducted by the Median Institute for Opinion and Market Research between October 12 and 17, 2018. The data were collected at the respondents' homes using a structured questionnaire as part of an omnibus survey. The self-administered interview was conducted under the supervision and assistance of the interviewer on a sample of 1,200 people representing the adult population of the country. The method of sampling was a multistage stratified random process.

Smaller sample distortions were corrected by four-dimensional weighting based on gender, age, education, and settlement type based on census data. For this analysis, the weighted data file was used.

## 3. THE LEGAL BACKGROUND

Traditionally, Hungarian criminal law (Criminal Code of 1878 and the General Part of the Criminal Code of 1950) made it possible only the prosecution of persons over the age of 12.<sup>3</sup> In addition, anyone who, at the time the crime or offense was committed, was over the age of 12, but has not attained the age of 16, may only not be punished, if he has the necessary discernment to establish the guiltiness of his act".<sup>4</sup> The HCC also stated that convicted offenders of this age may not be punished, but may only be placed in a correctional institution.<sup>5</sup>

Criminal Code of 1961 raised the age-limit of criminal responsibility for all types offenses to 14 year.<sup>6</sup> Perpetrators under the age of 14 was only subject to correctional measures regulated by administrative law. Like its predecessor, Criminal Code of 1978 did not make persons under the age of 14 punishable.<sup>7</sup> After 1989, the legal literature has argued both against and in favor of lowering the age of criminal responsibility.<sup>8</sup>

The proposal of the Hungarian Criminal Code of 2012 lowered the threshold of criminal responsibility when the perpetrator committed homicide or assault with life-threatening or fatal consequences.<sup>9</sup> However, a perpetrator of these offenses under the age of 14 could only be prosecuted if he "had the insight necessary to recognize the consequences of the offense. Punishments (imprisonment or fine) was not applicable against those persons, but only correctional measures."<sup>10</sup>

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<sup>3</sup> § 83 of HCC of 1878.

<sup>4</sup> § 84, first sentence of HCC of 1878.

<sup>5</sup> § 84, second sentence, of HCC of 1878.

<sup>6</sup> § 20. of of HCC of 1961.

<sup>7</sup> § 22. point a), §23. and § 107, paragraph (1) of HCC of 1978.

<sup>8</sup> See in this regard KIRÁLY Réka: „A 14. születésnap mint korhatár [14th birthday as a threshold of responsibility]” *Család és Jog* 2005/1. 17-25.

<sup>9</sup> § 16. of the proposal of the HCC of 2012.

<sup>10</sup> § 106, paragraph (2), second sentence of HCC of 2012.

According to the official reasoning of the proposal „nowadays [...] the biological development of children has accelerated” and “as a result of the information technology, minors reach the various influences of society that they were previously protected from in their fourteenth”. It was also pointed out, that “violent behaviour is increasingly prevalent in children between the ages of twelve and fourteen”. It was considered according to the legislator to change the age limit of criminal responsibility for violent offences against life”.<sup>11</sup>

The final version of the Criminal Code of 2012 was a result of an amendment which extended the scope of the lowered age-limit to offences of robbery and aggravated cases of despoliation. The explanatory memorandum of this proposal stated that these offences “are analogous to the facts contained in the submitted proposal in that they can also be carried out with violence”.<sup>12</sup>

This modification was criticised in the legal literature. According to Mihály Tóth „it is highly doubtful whether the modification was really warranted or it was a measure chosen for only to serve the demands of the vox populi”. When „it was required by the severity of the case, the institutionalization of these persons was provided by administrative law (under the Child Protection Act)”.<sup>13</sup>

#### 4. ANALYSIS OF THE KNOWLEDGE OF LAW

##### 4.1. KNOWLEDGE OF SPECIFIC ASPECTS OF THE REGULATION

Most of the respondents (73 percent) are aware that persons 15 years old are punishable for robbery according to the HCC. Slightly fewer (63 percent) are aware that theft committed by persons of the same age is also punishable.

Only slightly more than half (55 percent) of the respondents are aware that a 13-year-old robber could be punished. Fewer (49 percent) are aware that theft of the same age is not punishable.

A 15-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF. Is it punishable? (percentage)

	awareness
punishable	73
not punishable	26
don't know	1

\*without those (N=29) who did not answer any questions

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<sup>11</sup> Official reasoning attached to the § 16 of the proposal of the HCC of 2012.

<sup>12</sup> Proposal for modification No. T/6958/169 (30 May 2012).

<sup>13</sup> TÓTH, Mihály: „Az új Btk. bölcsőjénél [At the Cradle of the New Hungarian Criminal Code]” *Magyar Jog*, 2013/9. p. 531.

A 15-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break. Is it punishable? (percentage)

	awareness
punishable	63
not punishable	35
don't know	2

\*without those (N=29) who did not answer any questions

A 13-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF. Is it punishable? (percentage)

	awareness
punishable	55
not punishable	43
don't know	2

\*without those (N=29) who did not answer any questions

A 13-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break. Is it punishable? (percentage)

	awareness
punishable	49
not punishable	49
don't know	2

\*without those (N=29) who did not answer any questions

#### 4.2. KNOWLEDGE IN GENERAL

The majority of respondents (67 percent) do not consider the type of the act or the age of the perpetrator as a factor influencing criminal responsibility. More than four-tenths (44 percent) thought that the offense was punishable regardless of how old (15 or 13 years old) the offender was, or whether he robbed or stole. According to the knowledge of these respondents, each situation therefore constitutes a criminal offense under the legislation in force. More than two-tenths (23%) who, on the contrary, believe that none of the cases qualifies as a crime for persons of this age.

However, one third of respondents said that there is a difference between the regulation of the situations. Almost a quarter of all respondents (23% and 24%) aware of differentiation by age of the offender and about one tenth (9% and 12%) aware of regulatory difference by the type of the act.

With regard to acts committed by 15-year-old persons, the majority knows that theft and robbery are punishable. With regard to 13-year-old perpetrators, the proportion of those who say they are being punished in both cases and those who thought none of the cases is punishable is almost the same. Compared to this, the difference between theft and robbery is much smaller: in the case of robbery, slightly more people know that offenders regardless of their age may be punished.

Perception of similarity on the basis of awareness in the four situations (percentage of all respondents)

	both situations are known to be punishable	none of the situations are known to be punishable	vary	don't know
15 year olds	62	25	12	1
13 year olds	48	42	9	1
robbery	52	23	24	1
theft	45	31	23	1

\*without those (N=29) who did not answer any questions

If we look only at the knowledge of those who did not consider the regulation of all situations to be the same, the "diagonal pattern" is clear: while for 15-year-olds, they are punishable for theft and robbery, the opposite is true for 13-year-olds: none. Likewise, 13 and 15-year-olds are held criminally responsible for robbery, while the same ratio of respondents think the opposite is true for theft: none of this age-group is punishable.

To sum it up: more people think that the age of the perpetrator matters than they think there is a difference in the law between robbery and theft.

Perception of similarity on the basis of awareness in the four situations (in the percentage of those who have different awareness on the criminalization of the four situations, N=381)

	both of the situations are known to be punishable	none of the situations are known to be punishable	vary	don't know
15 year olds	54	9	37	0
13 year olds	10	59	29	2
robbery	23	3	74	0
theft	3	28	67	2

Only 3% of all respondents are fully aware of the thresholds of criminal responsibility for offences against property. Two-thirds (62 percent) of the respondents answered three questions correctly. Most (44 percent) are just unaware that a 13-year-old thief is not being punished.

A quarter of respondents (25 percent) knew only one question correctly: the vast majority (22 percent) knew of the impunity of a 13-year-old thief. However, since those who responded in this way had the same answer for all other situations (namely it not punishable). Thus, it was more a kind of schematic response, rather than real manifestation of legal awareness.

Number of correct answers (percentage)

	%
none	1
one	25
two	9
three	62
all four	3

Total	100
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Combinations of correct answers (percentage)

	awareness
the only thing they <b>don't know</b> that a 13-year-old thief is punished	44
the only thing they <b>know</b> that a 13-year-old thief is punished	22
the only thing they <b>don't know</b> that a 13-year-old robber is punished	14
the only thing they <b>don't know</b> that a 15-year-old theft is punished	4
the only thing they know that a 15-year-old robber is punished and the 13-year-old thief is not punished	5
correct answers for all the four situation	3
other	8
TOTAL	100

#### 4.3. KNOWLEDGE AND SOCIO-DEMOGRAPHIC GROUPS

For each question, we also examined whether there is a difference in the legal consciousness of various socio-demographic groups.

The following groups are more often aware that a 15-year-old robber is punishable: those living in the countryside, those over 30, the least educated, those with higher income, regular viewers of the two oldest commercial channels (RTL Klub, TV), and those who improved their position over the past 12 months.

More people knew that it is a crime if a 15 year old steals in the following groups: with higher incomes, who are in no way come across a crime and news viewers.

More often aware that it is now a crime if a 13-year-old robbers: among people in the villages, the least educated, and regular viewers of the news.

That a 13-year-old theft is not being punished more people knew in Budapest, those who were come across a crime in some way, their financial situation deteriorated and, in this case, those who does not watch the news.

As in the latter non-punishable situation, "turned around" which groups are characterized by higher knowledge a more detailed analysis became necessary. We examined whether the reason was rather that certain groups in each of the four situations believed that they were punishable and therefore did not answer this non-criminal question correctly. This was confirmed by the villagers, who were not involved in crime and the viewers of the tabloid news. So they knew significantly more situation as *criminal* than other groups. So many of them responded to all four questions with this scheme, which resulted that they are not being among the groups who has higher awareness of the impunity of the case with a 13-year-old thief. But on the other hand

since the right answer is “punished” in three of the four questions, they seem to know more situations *correctly*. This is the case for villagers and news viewers (also for the uneducated and those with higher incomes). But even with these two independent variables, there is no strong relationship with the number of correct answers.<sup>14</sup>

However, it may be concluded that in case of the questions on threshold of criminal responsibility, our results do not necessarily reflect the exact knowledge of statutory instruments. Even former researchers touched the question whether the measured data was based on positive legal knowledge or simply the standard of moral norms or the influence of social practice.<sup>15</sup>

#### 4.4. KNOWLEDGE OF NOVELTIES

One of the basic questions of our research was whether the time elapsed since the creation of a regulation have any impact on the knowledge of law. We could not validate our hypothesis regarding the threshold of criminal responsibility in cases of crimes against property. Respondents were not the least aware of the issue of the criminalization of a 13-year-old robber. However, based on the data, the hypothesis cannot be refuted. Indeed, when compared to the two situations in which the "punishable" is the correct answer, the novelty is the least known regulation.<sup>16</sup>

### 5. ANALYSIS OF OPINIONS

#### 5.1. OPINIONS ON EACH SITUATIONS

More than nine-tenths (92 percent) of respondents would punish a 15-year-old robber. Almost the same ratio (87 percent) of respondents gave the same answer about their opinion when the criminal responsibility of a 15-year-old thief was concerned.

Nearly nine-tenths (89 percent) the ratio of those who would punish a 13-year-old robber, and slightly more than eight-tenths of respondents would do the same with a 13-year-old thief.

A 15-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF. Should or should not be a crime?  
(percentage)

	opinion
should be punishable	92
should not be punishable	6

<sup>14</sup> The two variables together account for only 2 percent of the variance (Adjusted R square= ,022)

<sup>15</sup> Sajó András: Jogtudat, jogismeret [Legal consciousness, knowledge of law] (Budapest: MTA Szociológiai Intézet 1983) Kulcsár Kálmán: A jogismeret vizsgálata [Analysing knowledge of law] (Budapest: MTA JTI 1967)

<sup>16</sup> The fourth question referred to a situation in which (13-year-old thief) his act was not punishable neither under previous nor current law.



don't know	2
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\*without those (N=29) who did not answer any questions

A 15-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break. Should or should not be a crime? (percentage)

	opinion
should be punishable	87
should not be punishable	11
don't know	2

\*without those (N=29) who did not answer any questions

A 13-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF. Should or should not be a crime? (percentage)

	opinion
should be punishable	89
should not be punishable	9
don't know	2

\*without those (N=29) who did not answer any questions

A 13-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break. Should or should not be a crime? (percentage)

	opinion
should be punishable	83
should not be punishable	16
don't know	1

\*without those (N=29) who did not answer any questions

*5.2. OVERALL OPINIONS ON THE THRESHOLD OF CRIMINAL RESPONSIBILITY*

An overwhelming majority (79 percent) would punish all four of these acts. Very few (5 percent) would punish none of them.

How many of the four situations should be a crime?(percentage)

none	5
one	1
two	9
three	6
all four	79
Total	100

Only 3 percent are those who would regulate crimes against property in accordance with our criminal law in every detail examined. This is the ratio of those who would not punish only (the thirteen-year-old thief) who is not punishable by law.

Different combinations of opinions on criminalization (percentage)

	opinion
would only punish robbery (regardless of age)	4
would only punish 15 year old (regardless of act)	3
would punish everyone except the 13 year old theft	3
would punish all the cases	79
would punish none of the cases	5
other	6
TOTAL	100

Overall, 16 percent of respondents would make a difference in regulation based on the type of act or age of the perpetrator. More than eight-tenths of respondents would punish perpetrators of both ages and both types of acts. Eight percent would not be punish a 13-year-old perpetrator

for any crime against property, while only 5 percent would leave a 15-year-old perpetrator unpunished. Similarly, theft would be unpunishable at both ages according to the opinion of 9 percent of respondents, which 4 percent in cases of robbery.

Perception of similarity on the basis of opinions in the four situations (percentage of all respondents)

	both of the situations are judged to be punishable	none of the situations are judged to be punishable	vary	don't know
15 year olds	85	5	8	2
13 year olds	82	8	9	1
theft	81	9	9	1
robbery	86	4	8	2

\*without those (N=29) who did not answer any questions

Most of the opinions go into the same vein: the most of the respondents would punish all four situations, and to a lesser extent, none. Those who differentiate (16 percent) are most likely to punish robbery regardless of age (47 percent) and 15-year-olds regardless of the act (41 percent). However, nearly three-tenths (28 percent) would not punish 13-year-olds for any crime against property. On the other hand, a few percent more (33 percent) would not punish theft by either 13 or 15 year olds. All in all, the otherwise strict public opinion is somewhat more lenient towards 13-year-olds than 15-year-olds, against theft than robbery. Public opinion in this part thus pointing in one direction with the actual regulation.

Perception of similarity on the basis of opinions in the four situations (in the percentage of those who have different opinions on the criminalization of the four situations, N=193)

	both situations are judged to be punishable	none of the situations are judged to be punishable	vary	don't know
15 year olds	41	7	49 (37% would punish robber)	3

13 year olds	19	28	53 (43% would punish robber)	0
theft	13	33	54 (39% would punish the 15 year olds and wouldn't punish the 13 year olds)	0
robbery	47	4	47 (29% would punish the 15 year olds)	2

\*without those (N=29) who did not answer any questions

### 5.3. OPINIONS IF SOCIO-DEMOGRAPHIC GROUPS

The 15-year-old robber would be punished more often by those living in the countryside. A 15-year-old thief would be punished more often by the inhabitants of rural towns, by those whose financial situation deteriorated lately, and those who would not read, but watch the news. The 13-year-old robber would be punished more often by those who live in the villages, whose financial situation deteriorated and who wouldn't read daily papers. The 13-year-old thief would also be punished more often by the latter two groups, and in addition, by those who live in a rural town and have a higher education of 8 grades.

All in all, people living in the countryside, whose financial situation deteriorated lately and who do not read any newspaper, have significantly higher willingness to punish.

In summary, we can say that Hungarian society has a high willingness to punish crimes against property, especially among those living in the countryside and those who perceive their financial situation as deteriorating.

## 6. OPINION VS. SUPPOSED REGULATION

In each of the four situations, there is a majority who know the law according to their opinion, and the proportion of those who believe the law punishes something that they would not punish is almost negligible (1 or 2 percent). Differences in opinion and knowledge tend to lead to criminalization (22-36 percent). There is a higher percentage of those who want to criminalize 13-year-olds because they think that they are not being punished at the moment and this is condemned by them.

In all four situations, opinions and the supposed regulation coincided by half of the respondents (50 percent), while case-independent criminalization is only 16 percent and general decriminalization is negligible (1 percent). Thus, two thirds of the respondents has (not only schematic knowledge, but also) schematic opinion.

**Opinion** vs. **supposed regulation**  
(only among those who reported their awareness and opinion of the regulation, percentage)

	agree with the	criminalization	decriminalization	TOTAL
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	supposed regulation			
A 15-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF	77	22	1	100
A 15-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break	71	27	2	100
A 13-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF	63	36	1	100
A 13-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break	62	36	2	100

Hence, we can see mainly opinions behind the knowledge: for half of the respondents this may be the most decisive element. For those who believe that the situation is not punished by law, although they believe it should be punished, in the first three situations we are talking about lack of knowledge, as they are currently being punished. At the same time, those who would criminalize a 13-year-old thief (36 percent) should logically be considered "different", since they are (apparently) aware of the regulation, meaning that this act is not punishable. But almost half of them (15 percent of the total sample) have the same pattern for all four situations: they think / know it is not punished by the law, but they would punish. Thus, the remaining 21 percent are most likely to answer on the basis of real knowledge that a 13-year-old thief is not punishable, as they did not respond to each questions in a single scheme.

## 7. OPINION VS. SUPPOSED AND CURRENT REGULATION

When opinions had been contrasted with not only the supposed, but actual regulation, we have found a big difference in the assesment of the situations.<sup>17</sup> On the one hand, only 1-2 percent of those, who knows the current regulation well, would change the regulation of the first three situations (that are currently punished). On the other hand, 36 percent of the respondents would punish the 13-year-old thieves, while knowing rightly that this is not punishable at the moment.

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<sup>17</sup> This is illustrated in three-dimensional tables below, where both the subjective viewpoint (rows) and the objective (those in bold type whose knowledge coincides with the current regulation) are represented. The proportion of each pair of knowledge-opinion can be seen in the cells.

A 15-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF (percentage; current regulation in bold)

	should be punishable	should not be punishable
punishable	72	1
not punishable	22	5

\* without those who answered "don't know" any question

A 15-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break (percentage; current regulation in bold)

	should be punishable	should not be punishable
punishable	62	2
not punishable	27	9

\* without those who answered "don't know" any question

A 13-year-old knocks down his classmate during the break and takes away his cell phone worth of 55,000 HUF (percentage; current regulation in bold)

	should be punishable	should not be punishable
punishable	55	1
not punishable	36	8

\* without those who answered "don't know" any question

A 13-year-old takes away his/her classmate's cell phone worth of 55,000 HUF during the break (percentage; current regulation in bold)

	should be punishable	should not be punishable
punishable	48	2
not punishable	36	14

\* without those who answered "don't know" any question

## 8. SUMMARY

### 8.1. RESULTS

The threshold of criminal responsibility in case of crime against property is relatively well known among the general population. Most of the respondent is aware that 15-year-old robbers (73 percent) and thieves (63 percent) are punishable. Only the case of a 13-year-old thief seems to be an odd one out: a relatively large group of people (44 percent) are not aware that a 13-year-old thief doesn't commit a crime. However, the second largest group in this respect is precisely those who could judge *only this* question correctly, and therefore answered to all other situations (wrongly) that the acts are not punished. In contrast to these groups, however, a small percentage of the population (3%) is aware of the full range of criminal law on the threshold of criminal responsibility for offences against property.

The willingness of Hungarian society to punish is high in case of the threshold of criminal responsibility for crimes against property. Opinions (similarly to knowledge) also tend to follow a pattern: 79 percent of respondents say that every case should be punished. Thus, two-thirds of the respondents have not only think to have the same regulation for all the cases, but they don't differentiate in their opinion either. In this category, the most serious case, a 15-year-old robber, would be punished by 92 percent of the respondents, but even the slightest act (theft by a 13-year-old) would be punished by 83 percent. Those who differentiated are more lenient towards 13-year-olds and thieves. However, only 3 percent of the population would regulate according to our criminal law on the threshold of criminal responsibility in each and every detail examined. This is the ratio of those who would not punish only one case (the 13-year-old thief) which is the only unpunished situation also by the law.

Knowledge may also be significantly influenced by opinions which may be the most decisive element in half of the respondents. In total, there is a majority who know the law as being in their opinion (50 percent), while criminalization independent of the situation is only 16 percent. Differences in opinion and knowledge tend to lead to criminalization (22-36% depending on situation). There is a higher percentage of those who want to criminalize when it comes to 13-year-old perpetrators, as they know (wrongly for robbers, right for thieves) that they are currently not being punished and they do not agree with the (supposed) law.

When comparing opinions with supposed and actual regulation, we find a big difference in the perception of each situation. Only 1-2 percent of those, who knows the current regulation well, would change the first three situations that are currently punished. A 13-year-old robber, on the other hand, would be punished by 36 percent of all respondents, knowing that this is not punishable at the moment.

### 8.2. HYPOTHESES

when threshold of criminal responsibility for offences against property was concerned, our hypotheses on legal consciousness have only been partially substantiated.

I. It was verified that the average person has a fragmented knowledge about this field of criminal law. The schematic (undifferentiated) nature of the usual answers does not mirror the distinctions of the criminal code. Therefore, it was supposed that the source of the knowledge was rarely the positive law.

II. It was not substantiated that knowledge of law is substantially affected by socio-economic factors, by media consumption or by encountering criminality. The answers may have been influenced by attitudes towards the topic more vigorously.

III. Our hypothesis with regard to the novelties neither was substantiated, nor should be rejected. The novelty of the regulation, namely 13-year-old robbers are punishable, was not the least known situation. Nevertheless, if we compare this case only with the two other situations where "the act is punishable" is the right answer, this is indeed the least known regulation.