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ON THE PECULIARITIES OF THE NEW HUNGARIAN CRIMINAL PROCEDURE ACT

Abstract: *This paper is focusing on the fundamental changes brought by the Hungarian Criminal Procedure Act [Act XC of 2017], which entered into force on 1st of July 2018. New or renewed legal constructs of the criminal procedure are being reviewed. These range from the introduction of a split model of the investigation, to the introduction of two ways of cooperation with the defendant and affect several legal institutions. The new procedural act brings a completely new approach to the parties' right of disposal, the extension of the victim's rights, the secret information gathering, and many other issues. The author seeks to capture those provisions of the act that fundamentally define and reflect this new image of the criminal procedure.*

Keywords: *Hungarian law of criminal procedure; Hungarian criminal procedure act; Hungarian criminal justice*

INTRODUCTION

In my present paper, regarding the origins of Act XC of 2017 on criminal procedure I try to give an answer to the questions: why a new codex was needed and whether there was codification exigency. Would not it have been sufficient to introduce the alternation within the framework of a comprehensive, novel modification and remedy the deficiencies of the previous act (Act XIX of 1998 on criminal procedure)? Without doubt it is tradition not only in criminal law, that the revision of the codes of substantive law is usually followed by the codification of procedural laws in a few years' time, since the application of the altered substantive law regulations implies the introduction of new procedural regulations. Besides this practice, which can be regarded general, the particular reasons and aims of the codification of the new act on criminal procedure have to be examined. The explanation of the act mentions that the previous act became fragmented:

since its passing it had been effected by 89 laws and 15 resolutions of the Constitutional Court and its original text had been modified in about 2000 passages. Several new instruments (e.g.: security deposit, restraining order, waiving the right to a trial, cases of paramount importance) did not fulfil the hopes and were occasionally or not applied in practice at all.¹ In order to remedy fragmentation during procedural legislation – partly contrary to the approach noticeable during the legislative procedure of substantial law – the procedure in its entirety has to be particularly focused on. Referring to the telling example of Barna Miskolczi: procedural law is like a spider's web; you may touch it anywhere, the whole system shakes and shivers as the effect of the touch is conducted along.² As a result the principles, guarantees and legislative aims whose implementation was both professionally and socially expected could only be realized in systematic dimensions by enacting new laws. Among social and professional expectations and requirements several items can be mentioned in a non-exhaustive list, e.g.: the requirement regarding the effective operation of criminal justice, the request for fair and just procedure ensuring unconditional enforcement of guarantees, the focus on revealing so called substantive (objective) justice, the requirements of timeliness and procedural economy. In general it can be stated that not only a shift in priorities but a comprehensive change in policy ensued in criminal justice, whose corner points were defined in a document about the regulating principles of the new law of criminal procedure approved by the government in February 2015.³

In my paper I outline in 12 items those novelties of the law entering into force on 1st July 2018 that caused radical changes compared to the provisions of the previous law.

1. SUPPORTING DUE PROCESS FOR VICTIMS AND PERSONS WITH SPECIAL NEED

The new law of criminal procedure emphasizes restorative justice and addresses the ensuring of the exercise of rights of the injured party as a priority thus it resulted in a substantial change in its policy in relation to victims. Although the new codex distinguishes the procedural notion of the injured party and the criminal notion of the victim,⁴ the procedural subjectivity of the injured party was

¹ <https://www.parlament.hu/irom40/13972/13972.pdf>, 316., 24 May 2021.

² Miskolczi Barna, „Az új Be. főbb vonásairól (1.)”, *Ügyvédkörkép* 2/2016, 22.

³ <https://www.kormany.hu/download/d/12/40000/20150224%20IM%20el%C5%91terjeszt%C3%A9s%20az%20%C3%BAj%20b%C3%BCntet%C5%91elj%C3%A1r%C3%A1si%20t%C3%B6rv%C3%A9ny%20szab%C3%A1lyoz%C3%A1si%20elveir%C5%91l.pdf>, 24 May 2021.

⁴ During codification the notion of injured party were proposed for a while, which resembles to the notion of victim used in the Victim Protection Act. Act CXXXV. of 2005. *Magyar Közlöny* 156/05.

rethought. Among the wide scope of the rights of victims, Victim Personal Impact Statement (VPS) is a novelty, which is an excellent example of incorporating victim protection acquis into criminal procedures. In the VPS victims can inform authorities about the physical, emotional, spiritual, etc. impacts they suffered as a result of a criminal offense (Law of Criminal Procedure Subsection (2) of Section 51).⁵ VPS is an established legal institution in several European countries, which does not only strengthen the procedural legal position of the victim in Hungarian criminal procedures – as victims can justly feel that they can influence criminal procedures and they are not only objects during evidentiary procedures restricted to the position of witness – but the court evaluates their statement when imposing a sentence.

In order to ensure effectively the due process for persons with special needs the law introduces a new and wider scope of measures (Law of Criminal Procedure Chapter XIV.)⁶ Persons with special needs, who are hindered in understanding/being understood, exercising their rights and fulfilling obligations or effectively participating in criminal procedures cannot be only the victims or the involved parties with procedural subjectivity of witnesses, but also – so called secondarily involved parties – the accused party, defenders, experts, financially affected parties, etc. Authorities acting in criminal cases examine ex officio or upon the request of an involved party whether the conditions of special treatment subsist. Circumstances supporting special treatment can be the age, the intellectual, physical and health conditions of the involved party, the interrelation between involved parties or the extremely violent nature of a criminal offence. If authorities qualify the involved party for a person with special needs, the applied measures have to be in proportion to the circumstances substantiating special treatment. Measures specified by the description of special treatment are obligatory to be applied – without a court decision – if the involved party is younger than 18 years old, if he/she is qualified by the relevant law as mentally handicapped or if he/she is the victim of sexual abuse. The instruments of special treatment is a dual system based on the principle of gradualism: besides measures ensuring due process and consideration (e.g.: high level of protection of private life, high level of protection of personal data, appointment of an assistant, a separate room, sound and image recordings, using different means of telecommunication) security measures (e.g.: distorting sound and image recordings when using telecommunication means, restricting the right of attendance of the accused party and the defense, disregarding confrontation, closed data management) are also included. The scope of measures applied during special treatment is extremely wide: as a rule, procedural activities have to be prepared in a way that they could be carried out without being repeated,

⁵ Act XC. of 2017. *Magyar Közlöny* 99/17.

⁶ Act XC. of 2017. *Magyar Közlöny* 99/17.

a meeting between the involved party and other persons not involved in the criminal procedure at the scene of the procedural activity has to be avoided, and some witness protection measures (e.g. highly protected witnesses, personal protection, participation in protective programs) are also codified. From 1st of January, 2021. the so called “Barnahus model” also can be used in the Hungarian criminal investigation.⁷

2. MORE CONSISTENT ENFORCEMENT OF THE DIVISION OF FUNCTIONS

The demand on the consistent enforcement of the principle of the division of functions (i.e. accusation, defense and judgement have to be separated during criminal procedures) made the confrontation of different viewpoints regarding the clarification of truthful facts of a case indispensable during codification. The problem concerning this topic can be summarized in short as follows: whose responsibility and evidentiary obligation is it to construct and create the truthful facts of a case? It is an old rule in Hungarian law of criminal procedure that the burden of proof is on the prosecution, that is regarding the facts needed for evidence the burden of proof (*onus probandi*) is on the prosecution. It is the obligation of the prosecutor to reveal the facts indispensable to evidence, to obtain and provide the means of evidence and present them to the court. Regarding the means of evidence the prosecutor submits an offer of evidence to the court in order to collect them.

During the codification procedure of the new codex remarkable modifications of the previous law were not made in this respect: although the clarification of the truthful facts of a case remained a fundamental objective of the court, judges may not be compelled to clarify the facts *ex officio* (in the absence of an offer of evidence); as a general principle they may clarify the facts according to the offers of evidence submitted by involved parties. (Law of Criminal Procedure, Section 164.)⁸ In the absence of an offer of evidence judges are legally entitled to clarify facts of a case, but as regards the decisions made by them the consequences of an unsubstantiated decision may not be applied in an appellate proceeding just because in the absence of an offer of evidence by the prosecutor judges did not obtain the necessary means of evidence and as a result the conclusion of facts remained unclarified. (Law of Criminal Procedure, Subsection (4) of Section 593.)⁹ It is a positive and progressive modification for judges but according to some experts a

⁷ Act XLIII. of 2020. *Magyar Közlöny* 129/20.

⁸ Act XC. of 2017. *Magyar Közlöny* 99/17.

⁹ Act XC. of 2017. *Magyar Közlöny* 99/17.

stricter enforcement of the principle of the division of functions is needed, based on which in the absence of an offer judges cannot be obliged let alone entitled to obtain and examine evidence.¹⁰

3. THE NEW SYSTEM OF COVERT INFORMATION-GATHERING AND COVERT DATA ACQUISITION FOR LAW ENFORCEMENT PURPOSES

The Law of Criminal Procedure integrates covert information gathering for law enforcement purposes: relevant previous regulations codified in sectoral legislation were integrated in the new law. As for their denomination the law uses 'covert means' instead of the dual usage of covert information-gathering and covert data acquisition – used respectively in the different stages of procedure –, when it refers to the relevant concept. Furthermore, the new codex allows crime detection with covert methods within a short deadline prior to the order of open investigation but within the frame of a criminal procedure in order to establish or exclude suspicion of crime.¹¹ The new law specifies the so called preliminary stage as an independent procedural stage, which may be an optional operative phase of the criminal procedure with the participation of the agency of the police responsible for crime prevention and crime detection, anti-terrorist agencies besides the public prosecutor's office and investigation authorities, which are entitled to take procedural steps in order to obtain necessary information for the decision to be made on ordering investigation¹² for a limited period of time (for six – exceptionally for nine – months). During this period of time covert means can be applied. Since 1st July 2018, criminal procedure has been divided into separate stages, which is represented by the trio¹³ of preliminary procedure – crime detection – crime examination during covert and open investigation.

While the preliminary stage ('information confirmation procedural stage') is initiated on the basis of basic information, investigation is based on suspicion. Besides the preliminary procedure covert means may be applied during two other

¹⁰ Erik Mezölaki shares this viewpoint, see Mezölaki Erik, "A funkciómegosztásról, különös tekintettel a vádlói és a bírói feladatok elkülönüléséről", *www.jogiforum.hu/publikaciok/24.08.2014.*, 613. Furthermore, see István Kónya: (...) the strength and efficiency of Subsection (1) of Section 164. of the Law of Criminal Procedure are weakened by the fact that the prosecutor's move for the acquisition of evidence provides a sufficient way for the prosecution to be relieved of the liability of 'obviousness' (without any real procedural activity). Kónya István, "Az alapvető rendelkezések jelentősége az új büntetőeljárási törvényben", *Belügyi Szemle* 3/2018, 49.

¹¹ Fantoly Zsannett – Budaházi Árpád, „*Büntető eljárásjogi ismeretek I. Statikus rész*” Dialóg Campus Kiadó, Budapest, 2019. 129.

¹² The general explanation of Act XC. of 2017. *Magyar Közlöny* 99/17.

¹³ Finszter Géza – Korinek László, "Az eltűnt gyanú nyomában", *Belügyi Szemle* 3/2018, 104.

stages of the investigation (crime detection and crime examination – *see in details in item 6.*). When applied fundamental rights – inviolability of private homes, protection of privacy, confidentiality of correspondence, protection of personal data – are limited by authorized agencies without the knowledge of the involved person (Law of Criminal Procedure Subsection (1) of Section 214.).¹⁴ The aim of the application of covert means besides/during open investigation is to ensure substantiated indictment.

The necessity of covert investigation and the right of states to apply it are recognized by both the European Court of Human Rights and the Hungarian Constitutional Court, but they emphasize that it may be applied as last resort, in accordance with the strict criteria of necessity-proportionality and it has to be target-assigned, with special request to legal certainty and limited by strict procedural guarantees, since it is interference in fundamental rights without the knowledge of the involved person.¹⁵ In order to guarantee the legal application of these means the law decrees the examination of necessity-proportionality as a general rule, which states that covert means may be applied only if there are reasonable grounds to believe that the acquired information or evidence is absolutely necessary to achieve the goal of the criminal procedure and they cannot be obtained in any other way (1); the application does not limit the fundamental rights of the involved party unproportionally to the goal of law enforcement (2); and with the application, information or evidence connected to criminal offence can be obtained (3) (Law of Criminal Procedure Subsection (5) of Section 214.).¹⁶

Those measures that guarantee the access to the courts, the rights of the defense, and the rights of due process have to be ensured during and after the interference in fundamental rights. Concerning the system of covert means the Law of Criminal Procedure contains a threefold division; measures which do not require authorization by the judge or the public prosecutor (1) (e.g.: probing, traps), measures which require authorization by the public prosecutor (2) (e.g.: ghost shopping, employment of undercover investigator) and measures which require authorization by the judge (3) (e.g.: wiretapping, secret investigation). Measures which do not require authorization by the public prosecutor or the judge and as a main rule those measures which require the authorization of the public prosecutor may be applied without a time limit according to the law of Criminal Procedure.¹⁷

¹⁴ Act XC. of 2017. *Magyar Közlöny* 99/17.

¹⁵ Kardos Tímea, „A bűnüldözési célú titkos felderítés strasbourgi megítélése, a hatályos magyar szabályozás főbb problematikája”, *Katonai Nemzetbiztonsági Szolgálat Szakmai Szemle* 2/2017, 121 – 135.

¹⁶ Act XC. of 2017. *Magyar Közlöny* 99/17.

¹⁷ Fantoly Zsanett – Budaházi Árpád, „Büntető eljárásjogi ismeretek I. Statikus rész”, Dialóg Campus Kiadó, Budapest, 2019. 130.

4. THE EXTENSION OF THE SCOPE OF TELECOMMUNICATION DEVICES

The possibility of interrogation and trials via video conference was included in the previous law, but the new Law of Criminal Procedure and the Government Decree on the Detailed Rules of Investigation and Preparatory Procedure¹⁸ widened its scope of application and significantly broadened the categories of cases when video communication may be applied. The use of telecommunication devices makes the criminal procedure faster since involved parties do not have to appear in person at the scene of the procedure. The connection between the scene of the procedure and other, separate locations is provided by sound and video recording or continuous sound recording. The latter category (communication via continuous sound recording) may be applied in three cases only: interrogation of witnesses (1), ensuring the presence of an interpreter (2), hearing of the experts and interrogation of the accused party during investigation (3). It has become an important instrument in the practice of penal institutions.¹⁹ Besides modernity, opportuneness, cost efficiency and the specific support of the defense of the involved parties – first of all that of the victim – the use of telecommunication devices does not endanger the guarantees of criminal procedure and the regulation enforces the right of the accused party to a trial and also the principle of immediacy.²⁰

Although it does not belong strictly to the topic of telecommunication devices, I find it important to mention the 'contact by electronic means'.²¹ The new Law of Criminal Procedure introduces the obligation for acting authorities and specific private individuals (typically the public defender) of the use of electronic contact in their written communication. The Law also recognizes the optional form of contact by electronic means, in which case paper-based communication may also be used (Law of Criminal Procedure Chapter XXVII).²²

5. THE NEW SYSTEM OF THE REGULATION OF COERCIVE MEASURES

The new Law on Criminal Procedure outlines the system of coercive measures classified, grouped and with respect to the principle of proportionality. The

¹⁸ 100/2018 (VI.8.) Korm. rendelet, *Magyar Közlöny* 81/18. 4012-4065.

¹⁹ Juhász Zsuzsanna, „Videokommunikáció alkalmazása a börtönügyekben”, *Miskolci Jogi Szemle* 2/2019. 428-437.

²⁰ The general explanation of Act XC. of 2017. *Magyar Közlöny* 99/17.

²¹ The detailed rules concerning electronical communication are contained in Act CCXXXII of 2015 (Act of e-administration) 202/15, 26809 – 26859.

²² Act XC. of 2017. *Magyar Közlöny* 99/17.

coercive measures affecting personal liberty may be applied exclusively to the accused party or the person who is seriously accused with committing criminal offence and their personal liberty is either limited or deprived.²³ The unambiguous innovation in the Law is that it emphasizes the priority of alternative coercive measures over detention by the classification of those measures starting from the less stringent ones to the most serious ones.²⁴ Among the coercive measures affecting personal liberty, detention is the only measure which may be ordered by the investigation authority, the public prosecutor's office and the court; the others (restraining order, judicial supervision, arrest, preliminary involuntary treatment in a mental institution) are coercive measures affecting personal liberty subject to judicial authorization. Detention may be applied as ultima ratio by the authorities, it is preceded by all other alternative measures (security deposit, restraining order, specific forms of judicial supervision). The upper limit of detention remained one, two, three or four years depending on the sentence of the criminal offense, except in the case of criminal procedures concerning offenses of life imprisonment sanctions when the arrest has no upper limit.

Previous legal regulations concerning the scope of coercive measures affecting property (2) : search, body search, seizure, impoundment, provisional suppressing of electronic data – were not modified substantially. The right to capture an offender in the act is a special coercive measure since it authorizes the citizens to restrain the personal liberty of the offender until the arrival of the investigative authority (Law of Criminal Procedure Part 8).²⁵

6. THE NEW MODEL OF INVESTIGATION

According to the new divided model of investigation the procedure is divided into two phases: crime detection and inspection. Crime detection (1) begins with the appearance of suspicion concerning criminal offense and lasts until the communication of the well-founded suspicion concerning a particular offender. The detection of criminal offenses and their perpetrators belong to the tasks of the investigative authorities which have the necessary personnel and forensic expertise. On the other hand, there are cases when investigation is initiated against a particular person based on well-founded suspicion of criminal offense. In this case crime detection is omitted and investigation starts with the inspection phase. Inspection can also be omitted if the perpetrator makes an agreement during the investigation procedure since in this case the investigative authorities – besides the

²³ Belovics Ervin, „A kényszerintézkedések” (eds: Belovics Ervin – Erdei Árpád), *„A büntetőeljárás törvény magyarázata”*, HVG-ORAC Kiadó. Budapest, 2018. 347.

²⁴ Miskolczi Barna, „A kényszerintézkedések új rendszere” *Ügyvédlátó* 5/2016, 22.

²⁵ Act XC. of 2017. *Magyar Közlöny* 99/17.

interrogation of the accused party – do not carry out acts of prosecution otherwise necessary.²⁶ The duties of the investigative authorities and the public prosecutor's office and their relations are different during crime detection and inspection. During crime detection phase the investigation authorities have to report to the public prosecutor's office about the state of investigative every sixth month. Investigative authorities act basically independently during crime detection phase (under the legal supervision of the public prosecutor's office), but during the phase of inspection (2) – when the focus is on obtaining evidence against particular perpetrators – the procedural activities of the investigative authority are instructed and directed by the public prosecutor's office. Indictment or its alternatives constitute the last measures of the phase of inspection. It results in an anticipated responsibility for decisions on behalf of the public prosecutor, due to its anticipated decision on the possibilities of opportunity (e.g.: proposals for decrees or measures by the public prosecutor's office, conditional suspension by the public prosecutor, initiating mediation procedure, offering agreement of the first type) the investigative authorities have to report to the public prosecutor's office about their position concerning the particular case within eight days of the notification of the reasonable suspicion. The public prosecutor is in a decision-making position at an early stage of the inspection and is able to define the future course of the procedure.²⁷ In legal practice diverse measures of indictment is preferred, which results that the number of classical indictments decreases.

7. THE RENEWED SYSTEM OF COOPERATION ON BEHALF OF THE ACCUSED

Two types of cooperation on behalf of the accused party is defined by the new law: besides the so called first type of cooperation, which may be applied during investigation, a so called second type, which may be applied at the preliminary hearing, was introduced. The first type cooperation (1) is a formal, written agreement made between the accused party, the defense and the public prosecutor's office – independently from the court – on the confession during the investigation procedure. In this case indictment is made according to special rules: the written agreement constitutes the appendix of the indictment. The court can examine the legality of the agreement but cannot modify its content. If the court approves the agreement by an order because it established its legality ruling can be made at the

²⁶ Farkas Ákos, „A nyomozás” (eds: Belovics Ervin – Erdei Árpád), *„A büntetőeljárási törvény magyarázata”*, HVG-ORAC Kiadó, Budapest, 2018. 473.

²⁷ According to Péter Hack the new regulations create an opportunity of decision for the prosecution and also interest in closing a case in some way by bringing these decisions forward to an earlier stage of the procedure. Hack Péter, „A büntetőeljárás újításának esélyei” *Belügyi Szemle* 3/2018, 81.

preliminary hearing or the following hearing. If the court does not approve the agreement and dismisses it, ruling is made according to the rules of ordinary procedure at a hearing following the evidentiary procedure in the form of a final decision (Act of Criminal Procedure Chapter LXV).²⁸

In the case of the second type cooperation (2) investigation and indictment takes place according to the general rules, and there is no opportunity of making a formal agreement during investigation. The negotiation begins after the indictment at the preliminary hearing and even if the accused party pleads guilty it is not recorded in a written agreement. Practically, the public prosecutor's office states in the bill of indictment the type, the extent and the term of the proposed punishment if the accused party pleads guilty, and when this 'motion to punishment' is accepted by the accused and he/she waives their rights to a trial the second type of cooperation materializes. In this context if the accused party pleads guilty and his confession is accepted by the court, ruling may be made at the preliminary hearing or at the following hearing, but the imposed sanction may not be more severe than the one proposed by the public prosecutor in the bill of indictment. If the confession is not accepted by the court, the final decision is made after a regular process following the evidentiary procedure (Act of Criminal Procedure Chapter LXXVI).²⁹

Unlike plea deals in the US, conclusion of facts and its legal classification may not be the subject of the agreement; they are defined and notified to the accused by the public prosecutor. The scope of the procedure of negotiation may apply only to the sanction, its type, extent and term; and other incidental measures (e.g.: costs of criminal procedure, civil claims).

I submitted my present paper three years after the new Hungarian Law of Criminal Procedure had entered into force. After examining the jurisprudence of this three years it can be concluded that the first form of the most important uniform measures of the new law; the first type cooperation, when agreement is made during investigation phase, is very rarely applied (during the first six months only 22 cases were recorded), while the second type of cooperation, when agreement is made at the preliminary hearing, is applied much more frequently, the result of which preliminary hearing, as a special form of public trial is becoming an accepted form of court procedure.

8. THE SIMPLIFICATION OF COURT PROCEDURE

An important starting point is, that the right of the accused to be present at a trial is a right that may be waived. As a result, the notified absence of the accused

²⁸ Act XC. of 2017. *Magyar Közlöny* 99/17.

²⁹ Act XC. of 2017. *Magyar Közlöny* 99/17.

is regularly accepted by the court during court procedures. This right of the accused implies the ‘broadening’ of the obligations of the defense, since the defense has to participate in trials held in the absence of the accused and has to act as a guardian for service of process on the account of the accused party.³⁰ It must be emphasized that according to the regulations concerning the assignment of a public defender is the obligation of the appropriate regional bar. According to the new Law of Criminal Procedure the seconding authority (investigative authority, the public prosecutor’s office, or the court) requests the appropriate regional bar, which assigns the defender proceeding in the particular case with the help of an IT system operated by the bar itself. It is obviously a clear progress compared to the earlier regulations, according to which the acting (typically investigative) authority in a particular case was obliged to assign a public defender proceeding in the same case. This routine resulted in a less effective defense since authorities preferred public defenders who did not present motions or make comments at trials and were more like passive participants of the procedure than active ones ‘speaking out’ against authorities.

If we compare the present role of the preliminary hearing with measure of minor importance regulated by the previous law, it can be stated that preliminary hearing has become an important centerpiece of the procedural phase. We might assume that within a few years’ time preliminary hearings will be the general procedural form in criminal procedures at courts. Preliminary hearings are public trials, whose aim is that the accused party and the defense can present their viewpoints in connection with the accusation prior to the main hearing and thus they can contribute in the shaping the particular criminal procedure. Preliminary hearing has to be held within three months of the delivery of the bill of indictment. The importance of preliminary hearings is supported by the fact that one type of cooperation on behalf of the accused party (cooperation of second type) is made possible at this stage, or – in case agreement is not reached – the parties can define the basic course of the evidentiary procedure, when they are obliged to make their evidentiary motions. Later, during the trial they may make evidentiary motions only under restrictive conditions.

The introduction of the measure of limited appeal also contributes to the simplification of court procedures. Provided the parties contest only certain resolutions of the final decision with their appeal (e.g.: the type or extent or term of the punishment, resolution concerning civil claims, the explanation of acquittal, etc.) the appellate court is authorized and obliged to review only the contested parts of the judgement. The appellate court may examine *ex officio* the actual – absolute and relative – procedural infringements even in the case of a limited appeal and may even annul the judgement of first instance.³¹

³⁰ Bánáti János, “Védői szemmel a büntetőeljárás törvényéről” *Belügyi Szemle* 3/2018, 91.

³¹ The general explanation of Act XC. of 2017. *Magyar Közlöny* 99/17.

9. THE REFORM OF THE SYSTEM IF LEGAL REMEDY

Limited appeal and – as a main rule – limited review as a consequence both contribute to the simplification of proceedings for legal remedy. According to the intentions of the limited remedy the appellate court reviews only those parts of the contested (final) judgement which were contested by parties entitled to appeal. In this way the appellate court has more time to establish the facts. By dividing the category of groundlessness (complete or partial groundlessness) the new Law also defines its legal consequences. In case of partial (rectifiable) groundlessness (e.g.: facts are partially undetected or contrary to the documentary evidence) the appellate court acts in its reformatory power and corrects/rectifies, completes the facts established by the court of first instance. In case of complete (non-rectifiable) groundlessness (e.g.: facts are completely undetected) the appellate court acts in its cassational power and annuls the judgement of the court of first instance (annuls the conclusion of facts) and obliges the court of first instance to conduct a new proceeding in the case (Act of Criminal Procedure Section 592).³²

A new element of the law is that it allows appeal against rulings of second and third instance annulling previous rulings.

10. THE NEW REGULATORY SYSTEM OF SPECIFIC PROCEDURES

The main duty of criminal procedures is to judge the main questions of a criminal case based on accusation: deciding the culpability and the legal classification of the act, and in case of criminal liability choosing, imposing and enforcing criminal sanctions (punishment, punitive actions). It may happen according to regulations applied in so called ‘regular’ procedures or in specific procedures.³³ During specific procedures – similarly to regular procedures – rulings are made concerning the main questions of a criminal case (criminal liability of the accused party, legal consequences) according to criminal principles (tolerating exceptions), based on specific rules and exceptions defined by the law.

The new law of criminal procedure regulates 13 specific procedures (Act of Criminal Procedure Part 20).³⁴ In criminal procedures against juvenile offenders (1) and at court martials (2) associate judges as lay participants may participate in trials: as a main rule, at juvenile courts teachers, psychologists and child welfare/family protection experts, while at court martials professional soldiers may hold

³² Act XC. of 2017. *Magyar Közlöny* 99/17.

³³ Belegi József, „A különleges eljárások”, (eds: Belegi József) Akác József – Belegi József – Belovics Ervin – Csák Zsolt – Czine Ágnes – Kónya István – Láng László – Márki Zoltán – Mészár Róza – Molnár Gábor – Somogyi Gábor – Soós László, „Büntetőeljárás jog I-II.” HVG-ORAC Lap-és Könyvkiadó Kft., Budapest, 2018, 1691.

³⁴ Act XC. of 2017. *Magyar Közlöny* 99/17.

the position of associate judges. Against privileged persons (3) – as a main rule – may not be initiated prosecution until their immunity is waived.

Among specific procedures facilitating and accelerating proceedings, indictment (4) is divided into two categories: being caught in the act (in flagrante delicto) and confession. In both cases judicial procedure takes place within two months from the time of commission. The complex rules of negotiation procedure (5) based on the cooperation with the accused party were described earlier in my paper. In procedures resulting in a criminal order (6), the court makes the final ruling within one month of the receipt of the case – without hearings, based on the documents of the investigation. Suspended imprisonment is most severe sanction of criminal orders, but in this procedure mostly financial penalty is imposed.

The court procedure is not obstructed if the accused party is inaccessible or absconds. The so called ‘in absentia procedure’ (7) against an absent accused party creates the opportunity for a trial even if the accused party is not present. When the abode of the accused is revealed to the authorities at any stage of the court procedure, the accused party may request retrial in his presence. Regulations concerning the accused party staying abroad (8) show many parallels with the criminal procedural regulations in case of the accused in absentia, but they refer to cases when extradition or delivery are not viable solutions.

Procedures when deposit is placed as collateral (9) are also classified as a specific procedure (the previous law classified it as a special proceeding). The objective of procedures with deposit as collateral is that criminal procedures can be conducted against in the absence of the accused living/abiding abroad especially in the case of less serious offenses.

After regulations concerning civil action (10), those of substitute of civil action (11) became codified as an integral whole – instead of sporadic reference in the previous law – among specific procedures in the new law. It is the characteristic of both procedures that the function of accusation is not performed by a public prosecutor – otherwise acting in case of public crime – but the aggrieved party acts with special authorization and possesses subjectivity as a civil suit or in a civil action or substitute of civil action to bring, represent and prove charges. As a civil suit or the aggrieved party may represent accusation in cases of less serious offenses (e.g.: assaults, defamation, libel). As a civil suit or in substitute civil action the aggrieved party may act in three cases: rejection of accusation, termination of investigation and withdrawal of a case.

In case of concealing assets, dispossession or blocking access to data (12) a specific procedure may be initiated if criminal measures cannot be applied in general main proceedings due to certain procedural impediments, but the unlawful situation has to be terminated.³⁵ The perpetrators of criminal offenses against

³⁵ (eds.: Belovics Ervin – Erdei Árpád), „*A büntetőeljárás törvény magyarázata*”, HVG-ORAC Kiadó, Budapest, 2018, 1033.

border fences are mostly foreign citizens. The reason for proceedings against them (13) is the problem of migration and the more effective defense of the Schengen-area border. The new legal regulations concerning foreign citizens are basically identical with the previous version: on the one hand it contains the prohibition of discrimination, that is no one should be disadvantaged because they cannot speak and understand Hungarian, on the other hand it acknowledges the freedom of the use of native language during criminal procedures.³⁶ Procedural regulations regarding foreign accused parties first of all facilitate effective defense, for example foreign citizens are entitled to contact consular representatives of their home country and communicate with them either personally – under supervision – or in postal or electronic ways without control.³⁷

11. EXTRAORDINARY PROCEEDINGS

In case of extraordinary proceedings, the court does not focus on the main question of a criminal case; the criminal liability of the accused, but decides in minor details which were not dealt with during the regular procedure and typically influence the enforcement of the final judgement. Extraordinary proceedings become strictly necessary after normal proceedings due to certain facts or circumstances.³⁸ Basically they do not amend the mistakes or deficiencies of the final judgement (for that purpose extraordinary appeals, e.g.: simplified revision procedures are applied) but they make corrections concerning circumstances arising subsequently. The new law deals with consolidated sentencing or the postponement of the earliest date of parole eligibility in case of life sentences within the system of special proceedings.

12. THE NEW, DIVIDED SYSTEM OF COMPENSATION

The law introduces the divided system of compensation, which includes the simplified compensation procedure based on a tariff system (1); and actions for compensation (2). In the first case an agreement is made between the party claiming compensation and the state without a court procedure, after which no claim

³⁶ Hautzinger Zoltán, „A migráció és a külföldiek büntetőjogi megítélése”, AndAnn Kiadó, Pécs, 2018, 143.

³⁷ Hautzinger Zoltán, „A külföldiekkel és az irreguláris migrációval összefüggő büntetőjog-alkalmazás a 2017. évi büntetőeljárás törvényben” *Belügyi Szemle* 11/2018, 92.

³⁸ Belegi József, „A különleges eljárások” (eds.: Belegi József) Akác József – Belegi József – Belovics Ervin – Csák Zsolt – Czine Ágnes – Kónya István – Láng László – Márki Zoltán – Mészár Róza – Molnár Gábor – Somogyi Gábor – Soós László, „*Büntetőeljárás jog I-II.*” HVG-ORAC Lap-és Könyvkiadó Kft., Budapest, 2018, 1691.

enforcement shall lie. If the claim is justified compensation is paid to the claimer according to a determined tariff system.³⁹ In the second case the party claiming compensation files a suit against the state (Act of Criminal Procedure Chapter CVIII.).⁴⁰

CLOSING ARGUMENTS

‘No area of a practical legal system has a closer connection to the Constitution, and no area has a more direct influence on the most important civil rights and most important assets of the citizens than criminal justice.’ – reads the explanation of Article XXXIII. of 1896 on the code of criminal procedure (the first Hungarian Law of Criminal Procedure).⁴¹ This 125-year-old thought is valid also nowadays: criminal justice is nothing else but the reflection of constitutional rights in judicial practice, which defines the development of the legal culture of any democratic constitutional state. The examination of a new codex raises the question: Has it lived up to the expectations at its codification? Only three years has passed since the new law on criminal procedure entered into force, thus examination covers only a short period of time. It can obviously state that the investigation phase of criminal procedure has shortened and as for court proceedings, preparatory hearings have become more common. Instead of evidentiary procedures at hearings agreements are made at preparatory hearings in significant percentage of cases. This tendency has generated different opinions among the experts of Hungarian criminal justice: according to some experts the decline of the dogmatics of substantive law results in the diminishing role of evidentiary procedures, which – especially in the long run – endangers the future development of the crystal-clear system substantive law dogmatics created during past centuries. On the other hand, some experts believe that the improvement of the timeliness and fastness of procedures results that simpler cases can be solved and closed in simplified procedures thus extra judicial capacity is at disposal to deal with cases which require high level of professional consideration and expertise. This tendency definitely leads to the improvement of substantial law dogmatics.⁴²

‘Hungarians are a nation appreciating and seeking justice (...)’ – reads the general explanation of our new law of criminal procedure. If the new form of procedure, i.e. the procedure resulting in an agreement based on the confession of the accused party, becomes accepted and even widespread in legal practice, it

³⁹ The general explanation of Act XC. of 2017. *Magyar Közlöny* 99/17.

⁴⁰ Act XC. of 2017. *Magyar Közlöny* 99/17.

⁴¹ <https://net.jogtar.hu/ezer-ev-torveny?docid=89600033.TVI&searchUrl=/ezer-ev>, 24 June 2021.

⁴² For details of the discussion see: Fantoly Zsanett, “Szegedi workshop az új büntetőeljárási törvény elméleti és gyakorlati kérdéseiről” *Jogtudományi Közlöny* 9/2019, 373-376.

does not imply that we would renounce the conclusion of facts based on truth and legal classification. Unlike plea bargain applied in the USA, the Hungarian criminal procedure of agreement remained the task of the public prosecutor's office to define the conclusion of the facts and the legal classification of a case. Facilitating and simplifying criminal procedures may not override the due process of law and violate the subjectivity rights of the accused.

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О специфичностима новог мађарског Закона о кривичном поступку

Сажетак: У овом раду у вези новој мађарској Закона о кривичном поступку, који је ступио на снагу 1. јула 2018. године [Закон број ХЦ. из 2017. године], разматрамо темељне промене које се јављају у мађарском кривичном процесном праву као нове или обновљене правне институције. Ове разноврсне специфичности захваћају низ правних институција, почев од увођења поделеног модела испита све до увођења два типа поравнања. Нови процесни закон у односу на раније законе доноси потпуно нови приступ у погледу права располања странака, у вези проширења права оштећеника, њиховог прикупљања доказана и у многим другим питањима. Аутор настоји да открије оне одредбе закона које фундаментално одређују ову нову слику закона.

Кључне речи: мађарски Закон о кривичном поступку; мађарски Закон о кривичном поступку; мађарско кривично правосудје.

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