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# THE HUNGARIAN CRIMINAL PROCEDURE LAW

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# The Hungarian Criminal Procedure Law

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by

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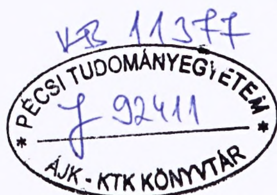


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## PREFACE

Political science and law is divided into three groups. Political and legal theory deals with the State and the law as a whole. The second group consists of the history of politics and law which analyzes the development of the State and law from a historical approach. The third is made up of single specific branches of the profession which examine particular institutions, forms and specific correlations of the State and the law, and analyze their practical role and impact. Two main branches may be differentiated: private law and public law. One of the subdivisions of the latter is criminal law. Within the area of criminal law there are three chief branches:

- Criminal substantive law: The main part of this area generally defines what is considered a crime, which main regulations apply to the perpetrators and what kind of sanctions may be taken against them. A more specific part includes the criteria of crimes and theories of punishment.
- Law of criminal procedure defines the legal order of amenability to criminal law.
- The legal regulations of the execution of sentences stipulate how the imposed sanctions must be enforced within the realms of legal procedure.

Similar to other branches, criminal law also has its auxiliary branches. Among these, the most important is criminology (which deals with delinquency as a social phenomenon) and criminalistics (the rules of the investigation of single crimes), but the areas of forensic medicine, criminal psychology and criminal statistics, etc. must not be forgotten.

As may be seen from the preceding, the Hungarian legal system is a part of the continental legal system. Contrary to the Anglo-Saxon system based on lawmaking by the judges, Hungarian law is primarily (and almost exclusively) based on written law and legal sources. In Hungary, judicial legislation and case-law generally have only a theoretically governing role in the decisions of individual applications of law (see Supreme Court decisions). At the same time, both the Constitutional Court (in the form of constitutional resolutions) and the Supreme Court (unity of law regulations) issue binding judgments to individual courts.

According to the XI Act of 1987 regarding legislation, there are two main forms of legal sources: acts and other legal tools for federal governance.

Laws stand out among the acts. The highest law in Hungary is the XX Act of 1949, the Constitution, which has been altered in numerous cases. Fundamental acts regarding social and economic order, fundamental rights and duties of citizens must be composed on a legal level. For this very reason, the main regulations of both criminal law (IV Act of 1978) and law of criminal procedure (XIX Act of 1998) may be found in the law. Only a law can modify regulations. In the area of law of criminal procedure, such an important modification (so-called novella) was the I Act of 2002 and the II Act of 2003. However, the law also regulates numerous other matters related to the law of criminal procedure. Here, primarily organisational laws must be emphasized (e.g., the LXVI Act of 1997 regarding the establishment and administration of the courts, the V Act of 1972 dealing with the prosecution, the XXXIV Act of 1994 concerning the police and the XI Act of 1998 regarding solicitors).

Several of the so-called statutory rules which came into existence prior to the political change are still in effect today. For example, the third main branch of criminal law, law of execution of sentences, still presently includes regulations of the 11th statutory rules of 1979.

The third level of judicial hierarchy are the government decrees, followed by the order of the Prime Minister and the Ministries, lastly the order of local government. Supplementary sources of law are associated on every level with the law of criminal procedure. This could be in the form of government decrees (e.g., the 53rd Act of 1993 regarding judicial experts or the

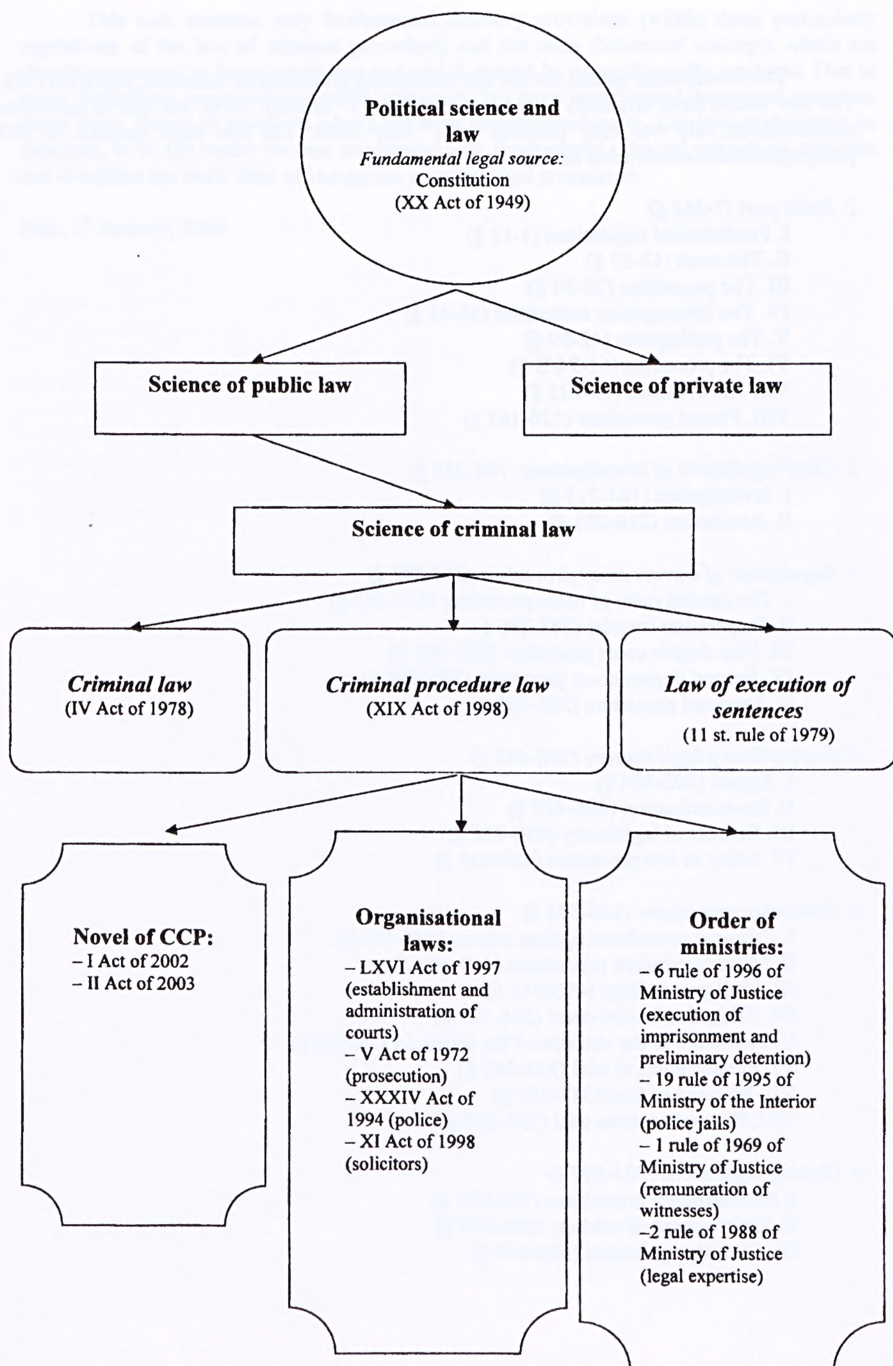
34th Act of 1999 concerning participants in criminal action, as well as the conditions of establishing personal protection for those under the authority of the procedure and the enforcement of regulations), orders of individual ministers, primarily the Minister of the Interior and the Minister of Justice, (e.g., Act 19/1995 of the Ministry of the Interior regarding police jails, Act 6/1996 of the Ministry of Justice concerning regulations for the execution of imprisonment and preventive arrest and Act 1/1969 of the Ministry of Justice concerning remuneration of witnesses, etc.). Individual framework regulations may also be filled in by even lower level regulations, such as those of local governments.

Other legal tools of state administration are resolutions, mandates, regulations for the central bank and releases of statistics and legal guidance. These do not count as judicial acts, but do however have a significant effect on the application of the law. Regarding the law of criminal procedure, we refer to two such special legal sources, whose nature has long been disputed, but which have a significant role in the daily application of the law. These two "quasi legal sources" are the fundamental regulations of the Supreme Public Prosecutor and the positions of the Supreme Court.

Among the main mandates of the prosecution, Act 11/2003 must be mentioned, which deals with duties of the prosecution regarding preparation for indictment, surveillance beyond legitimacy and accusation; Act 12/2003 regarding legal activities before criminal court, as well as Act 1/1992 of the Supreme Public Prosecutor and Ministry of the Interior concerning the cooperation of public prosecutors, prosecutors of the Ministry of the Interior and police institutions during investigation.

The legal character of the Supreme Court's theoretical governing activities is shown on one hand by the fact that they are mandatory for lower courts; on the other hand, the same theoretical corporate decisions also end up being announced in the Hungarian Journal. The legal character of the Supreme Court's positions are also subsequently supported by the fact that it is not rare for these positions to be found practically verbatim in laws and thus become an elemental part of them (e.g., the majority of the Ministry of the Interior's §354, Paragraph 4, is based on the position of the Supreme Court BK157.)

The following diagram shows the position and system of the legal source of the law of criminal procedure:


**Political science and law**
*Fundamental legal source:*
Constitution
(XX Act of 1949)
**Science of public law**
**Science of private law**
**Science of criminal law**
*Criminal law*
(IV Act of 1978)
*Criminal procedure law*
(XIX Act of 1998)
*Law of execution of sentences*
(11 st. rule of 1979)
**Novel of CCP:**
– I Act of 2002
– II Act of 2003
**Organisational laws:**
– LXVI Act of 1997 (establishment and administration of courts)
– V Act of 1972 (prosecution)
– XXXIV Act of 1994 (police)
– XI Act of 1998 (solicitors)
**Order of ministries:**
– 6 rule of 1996 of Ministry of Justice (execution of imprisonment and preliminary detention)
– 19 rule of 1995 of Ministry of the Interior (police jails)
– 1 rule of 1969 of Ministry of Justice (remuneration of witnesses)
–2 rule of 1988 of Ministry of Justice (legal expertise)

The fundamental source for the law of criminal procedure is, therefore, Act XIX/1998. The law would have originally come into effect on 1st January 2000, but due to numerous modifications, this was only possible on 1st July 2003. The law itself consists of 607 paragraphs and is constructed as followed:

*1. Static part (1-163 §)*
- I. Fundamental regulations (1-11 §)
- II. The court (12-27 §)
- III. The prosecutor (28-34 §)
- IV. The investigation authorities (35-41 §)
- V. The participants (42-59 §)
- VI. The procedure (61-74/B §)
- VII. The evidence (75-125 §)
- VIII. Forced provisions (126-163 §)

*2. Chief regulations of investigations (164-233 §)*
- I. Investigation (164-215 §)
- II. Accusation (216-233 §)

*3. Regulations of correct court procedure (234-391 §)*
- I. The general rules of court procedure (234-262 §)
- II. Preparation for trial (263-280 §)
- III. First degree court procedure (281-344 §)
- IV. Second degree court procedure (345-384 §)
- V. Repeated procedure (385-391 §)

*4. Extraordinary legal redress (392-445 §)*
- I. Appeal (392-404 §)
- II. Re-examination (405-429 §)
- III. Redress of legitimacy (430-438 §)
- IV. Unity of law procedure (439-445 §)

*5. Particular procedures (446-554 §)*
- I. Criminal procedures against minors (446-468 §)
- II. Military criminal procedures (469-492 §)
- III. Civil proceedings (493-515 §)
- IV. Allegation before court (516-525 §)
- V. Procedure in the absence of the accused (526-532 §)
- VI. Renunciation of trial (533-542 §)
- VII. Waiving of trial (543-550 §)
- VIII. Exemption from trial (551-554 §)

*6. Closing regulations (554-607 §)*
- I. Extraordinary procedures (555-587 §)
- II. Enforcement of verdicts (588-599 §)
- III. Closing regulations (600-607 §)

This note contains only fundamental statutory provisions (within these particularly regulations of the law of criminal procedure) and the main theoretical concepts which are closely connected to these provisions and which should be unconditionally mastered. Due to space limitations, some extraordinarily important, but more complicated theoretical questions (legal force, theory of proof, etc.) have not even been touched upon. The goal of the notes is, therefore, to let the reader become acquainted with fundamental criminal procedural concepts and to outline the main lines of Hungarian criminal legal procedures.

Pécs, 1st January, 2006

# I. BASES OF CRIMINAL PROCEDURE

## 1.1. Basic conceptions

### 1.1.1. Conception of criminal procedure and criminal procedure law

Criminal procedure is the essential and only method to realise jurisdiction, as it is possible to establish guiltiness and to impose punishment legally only within the frames of a legal criminal procedure.

Criminal procedure law is the formal part of criminal law. While the other parts of criminal law consist of regulations on the one hand determining actions considered as crimes and sanctions to be applied against perpetrators (material criminal law), and on the other hand methods and circumstances of their (punishment executive law), criminal procedure law (formal criminal law) regulates the order of impeachment. This way, criminal procedure law is the legal order of impeaching for the crimes committed, which consists of a net of criminal actions and a tissue of procedural relations substantially.

### 1.1.2. Functions of criminal procedure

Functions of criminal procedure indicate
a) designation, general duties of procedure (outer functions),
b) "main characters" in criminal cases (inner functions).

ad a) Criminal procedure has three outer functions:

- Enforcing material law: criminal procedure as the formal part of material law has to provide the discovery of crimes defined in the Criminal Code, and this way to enforce the application of criminal laws of the Hungarian Republic.
- Ensuring legality in the procedure: it is an essential element of the concept of criminal procedure, that establishing guiltiness and imposing punishment is possible only in the frames of a criminal procedure. This way legal procedure serves on the one hand as the main pledge of a successful procedure and on the other hand as the possible method to preclude the unjustified limitation of human rights.
- Ensuring justice: it is the obligation of authorities – in all sections of criminal procedure – to set up a thorough, proper and adequate to reality statement of facts, and to take into consideration all incriminating and attenuating, increasing and mitigating circumstances, when establishing criminal responsibility.

ad b) Inner functions of criminal procedure: charge (crime investigation), defence and sentencing. The inner functions of criminal procedure indicate the circles of interests, functioning as prime movers of criminal procedure. These circles of interests (main roles), in accordance with the 'principle of contradictorium' are separated from each other, so this principle excludes the inquisitional (investigating-based) characteristic of the procedure. During an inquisitional procedure the essential actions become absorbed in the competence of one authority, as opposed to the accusatorial (charge-principled) procedure. During this, as a result of the separated roles, it is possible to avoid a (false) defence and imposing of a grave punishment resting on presumption of guiltiness.

### 1.1.3. Sections of criminal procedure

The first one from the three main sections of criminal procedure is the investigating section, in the frames of which – in case if the person of perpetrator is unknown – the investigating authority endeavours to discover the personage of the unknown perpetrator first (exploration), and – being aware of the individual of the perpetrator and even applying coercion measure if necessary – to collect the proofs needed for the charge (inquisition).

The second section of criminal procedure is the so called intermediate proceeding, including impeaching and preparing sections.

The third section is the procedure in the court. Inevitable part of the en court section is the procedure of first instance (except for two types of procedure: with renouncing or omitting the trial) is which can be possibly followed (depending on the declarations of those entitled to apply) by a second instance procedure, being closed with a non-appealable sentence. Not necessary element of the en court proceeding is the special legal redress, which can result in absolving res judicata in case of certain conditions, and at the request of concretely determined persons.

### 1.1.4. Independent judgment of criminal responsibility

Neither the court, nor the prosecutor nor the investigating authority depend on judgements brought in other procedures, or statement of facts determined in them, according to the rules of independent judgment of criminal responsibility:

*Art. 10 While deciding whether the accused committed a crime and if so, what crime, the court, the prosecutor and the investigating authority are not bounded to resolution – or the statement of facts in them – passed in other procedures, especially civil-, contravention- or disciplinary proceedings.*

One of the essential requirements of a just criminal procedure is that everyone had the right to have his case judged on a fair and open trial in a legally set up, independent and impartial court (right for trial in court). It is naturally related to the regulation above that establishing guiltiness and punishment is possible only in the frames of a criminal procedure and in a resolution brought in an en court procedure. Statement of facts, established in other (civil-, infringement- or disciplinary-) proceeding, or a decree passed according to these facts cannot be decisive, so the proceeding authorities are obliged to execute their procedural actions in an independent criminal procedure. If consideration of a preliminary question is a precondition for considering criminal responsibility by another authority, then the criminal proceedings are to be suspended.

### 1.1.5. Force of the CPA

The CPA determines its regional, temporal and personal powers among the basic regulations. According to them, criminal proceedings in cases falling under the force of the Hungarian criminal authority (Art 3, 4 Criminal Code) are to be conducted according to the actual Act in force (CPA).

The CPA has regional power on the land determined by the Criminal Code. This way, in cases of crimes committed on the territory of the Hungarian Republic, furthermore, in all crimes, committed on ships or aircrafts belonging to Hungary, the procedure is to be conducted in conformity with the Hungarian criminal procedure law.

Personal power of the CPA covers issues as follows:

- all accused persons committing a crime inland, their nationality, in accordance with regional power of the CPA.
- all Hungarian citizens, irrespectively of the scene of the crime and the local criminal laws,
- all actions considered as crime both by the Hungarian and the local laws, just like crimes committed against the state or human kind by not Hungarian criminals.

Time-related force of the CPA – differently from regional and personal forces – was not established on the basis of Criminal Code. According to the same power of Criminal Code – in conformity with principles 'nullum crimen sine lege' and 'nulla poena sine lege' – the actual law in force is valid for the criminal material norms. In contrary, the criminal procedure is to be conducted always in compliance with the law operative when the crime is committed, irrespectively of whether the crime was committed before or after enforcing this law.

## 1.2. Principles of criminal procedure

Scientific interpretation of principles has two directions basically. One of them considers that legal (normative) regulation of principles is not necessary, owing to their general – standing beyond statutory law – nature. As opposed to this the other view even emphasises normativity of principles. The latter opinion reflects in codifying practise of Hungarian criminal procedure, as the CPA sums up all general requirements and prohibitions among its foregoing regulations. Thus, principles laid down in the Act on the one hand formulate criteria, cogent in the field of establishing partial regulations for legislation, on the other hand they influence law-interpreting activity of the proceeding authorities, helping with this the legislator to enforce his will when executing less clear regulations.

Within the principles of criminal procedure we distinguish institutional principles for the authorities participating in judicature, and operational principles – concerning only the process of criminal procedure. Majority of operational principles of CPA are determined in Title1 among the general regulations, however, some principles are placed among the other regulations of the Act as the legislator considered it more expedient from the point of view of taxonomy. Thus, general principles placed among single partial regulations (e.g. evaluation of proofs, open trial, right for legal remedy) – in accordance with the compilation of the law – are determined and explained in details among the questions belonging to the given subject in the present course book also.

### 1.2.1. Right for procedure in the court

Right for the procedure in the court is declared in the Art3 of CPA as follows:

*Sec 1, Art 3. Everyone has the right for having a charge against him considered in the court.*
*Sec 2 Only the court is competent to establish responsibility and to impose punishment related to it.*

Though the right for procedure in court has been a constitutional right since 1989 – Sec 1, Art57 of the basic act, stating that everyone had the right to have his case judged on a fair and open trial in a legally set up, independent and impartial court – the legislator of the CPA in force inserted it among the principles of criminal procedure. This principle considers judicial proceeding as the only possible way, thus it means on the one hand that the court should make a decision on charge, and on the other hand that establishing guiltiness and imposing punishment are judicial monopolies, as only judicial procedure may include all guarantees of an impartial and just decision.

### 1.2.2. Principle of contradictorium

Sharing procedural duties (contradictorium) concerns the so called inner duties, basic criminal procedural activities and roles:

*Art 1 The charge, the defence and the sentence are separated from each other in the criminal procedure.*

From the two main historical models of criminal procedure this principle unambiguously excludes the inquisitorial (investigating) procedure, where the charge, resting on presumption of guiltiness, the defence based on confession, and the grave, unavoidable are concentrated in one hand. The practise in Hungary follows the accusatorial (charge-principled) procedure, where the charge, the sentence and the defence are consistently distinguished from each other. Every duty is to be carried out by different persons (institutions). The charge is presented and represented by the prosecutor as public accuser or the offended as private accuser (additional private accuser), the defence is represented by the accused or the attorney. The sentence is to be delivered by the court, as the only repository of judicature. Beside the basic principle, the principle of contradictorium is provided by the institution of exclusion also, not letting persons in different procedural functions to fulfil rules of other functions within the same procedure.

The regulation on the basis of the procedure in court, while emphasising the relation between the charge and the sentencing, is also related to the principle of contradictorium.

The essential meaning of the principle of charge is that the existence and content of legal charge are indispensable conditions of beginning and conducting a juridical procedure. The sentence is passed by the court with the charge as procedural basis. The division between charge and sentencing is shown in that neither the accuser can establish guiltiness or punishment, nor the court can do it without the charge. It is the prosecutor who may initiate statement of responsibility in the court for committing a crime, and imposing punishment or other legal outcome. The court is bounded by the charge from two directions: the court can decide on guiltiness only of the accused and only on actions included in the charge. The accuser appears in the court only when occupies all facts (or their evidence) necessary for establishing the charge, or they are provided by the investigating authorities, independently or according to the instructions of the prosecutor.

Equality of clients is characteristic for the relation between charge and defence. They have equal rights in submitting proposals, notices, proofs and in questioning the interviewed witness, expert or other persons during the evidence process. This equality of rights is called ‘equality of arms’, which serves as guarantee of impartial decisions.

### 1.2.3. Presumption of innocence

Criminal procedure (mainly its official period) has considerable significance because guiltiness of the accused is established there. According to this both the Constitution and the CPA discusses presumption of innocence separately.

*Art. 7. No-one can be considered as guilty until their guiltiness was not established in the final resolution of the court.*

As a critique against statutory law it is emphasised that on the one hand it mentions only the so called presumption of integrity (praesumptio boni viri), though a theoretical approach to the presumption of innocence should be considerably wider than this. On the

other hand, it lets appear so as if the regulation above concerned everyone and excluded all personal opinions regarding guiltiness. However, this way presumption is not proper, as the principle is to be considered as related to the personage of the accused (and not anybody!). Furthermore, the category of not-guiltiness refers not to the criminal responsibility of the person under procedure, but his legal right position. Thus, presumption of innocence in a narrower sense can be discussed as follows: the accused is to be considered as not guilty (convicted) until the court establishes guiltiness in a final judgment.

Another objection against the current definition of presumption of innocence is that the court establishes guiltiness or non-guiltiness, and not innocence. It is also not correct to determine the principle as presumption, since presumption means a simplified (accelerated) evidence, in the frames of which a non-proved fact (presumed) is considered as proved (e.g. presumption of paternity). But there is nothing of the kind in criminal procedure, as the accused is persons are guilty provably in most cases, such as if it is a real presumption, it would be proved false in almost all cases (90%).

There are two further outcomes (declared as separated basic regulations in the CPA) of the current definition of presumption of innocence in criminal procedure – beyond the presumption of integrity. One of them is that presumption of innocence is to be proved false by the accuser, such as evidence of charge burdens the accuser (burden of proof, onus probandi), while the other is that during proving guiltiness only the facts without any doubt can be evaluated against the accused (in dubio pro reo):

*Art 4 The evidence of the charge is burdened on the accuser. Facts, not proved without all doubt cannot be applied against the accused.*

The burden of proof makes it clear that guiltiness of the accused is to be proved in the court by the accuser. Direct consequence from this requirement is that the accused cannot be expected to prove innocence, such as evidence burden cannot be turned over. Proof of verity is an exception from this (exceptio veritatis, when – e.g. during a procedure of libel action – in the interest of avoiding the establishment of guiltiness the accused is obliged to prove that the stated fact is real and that the statement, report of the fact or the usage of an _expression directly referring to it was justified by public or someone's personal interest.

In case of doubt, based on decision in favour of the accused, if the accuser could not prove guiltiness of the accused undoubtedly, the accused is to be discharged. Thus, guiltiness can be established only on the basis of certainty. From the point of view of criminal procedure the most genuine summery of this proposition is as follows: in the decisive resolution, only the fact undoubtedly provable can be evaluated as against the accused. If the fact representing the subject for evidence, having explored all possibilities to prove, is still not verified undoubtedly, it is to be evaluated in favour of the accused in the decisive judgement.

### 1.2.4. Prohibition to be compelled to self-incrimination

The new – compared to CPA – principle is connected to the presumption of innocence through onus probandi:

*Art 8 No-one can be obliged to make a confession or provide proofs against themselves.*

Prohibition to be compelled to self- incrimination serves to ensure freedom of making confession for the accused or the witness, and the right to deny to provide proofs or to cooperate in the evidence procedure (this way to summon up even extenuating circumstances)

- From the point of view of the accused, prevail of the principle is ensured by the Miranda-warning: the authority is obliged to draw the attention of the accused to that he is not compelled to make confession (Sec2 Art117) and to that he may deny to give answers (to the single questions) in any period of the procedure. Furthermore, if he makes confession, everything he says may be applied (either against or in favour of him) during the proceedings. After this triple warning the accused is well aware of the possibility that he may withhold the confession or keep back the proof possibly incriminating for himself.
- The witness also may avoid the possibility of self-incrimination (Art 82). At the beginning of the interrogation the witness is informed that he may deny giving answers for those questions, which could incriminate himself or his relatives in committing a crime. (prohibition of self-incrimination)

Besides the above mentioned, prohibition of self-incrimination covers also the forcing someone to make confession. However it does not prohibit for the authority to obtain the object or document of evidence through house- or bodily search. Such as those evidence actions can be executed as against the will of the accused, which may serve with proofs possibly evaluated against (or in favour) the accused.

### 1.2.5. Principle of defence

The third main role of criminal procedure (beside charge and sentencing) is defence. Criminal procedure is considered as fair (impartial) and proper if the only aim is not to detect and ascertain the crime and the criminal, but to ensure the rights for the accused entirely as well.

*Sec 1 Art 5 The accused has the right for defence.*
*Sec 2 Everyone has the right for being defended when at large. This right or personal freedom can be limited only in a reason and through a procedure as determined in the Act.*
*Sec 3 The accused can defence himself personally in any section of the procedure. The court, the prosecutor and the investigating authority ensures that the individual, against whom the proceedings are conducted, could be defended as determined in the Act.*
*Sec 4 The proceeding of a defender is obligatory in cases as determined in the Act.*

Basic claim lain against criminal procedure – as it is stated in the Constitution also – to assure the possibility of practising the right of defence for the accused in all sections of the procedure. This right manifests itself in practising on the one hand the procedural rights of the accused, on the other hand employing a defender (freedom of choosing the defender), thirdly in the legal status of the defender, and at last in practising the rights of accused at the authorities (cognition of the case, presence on procedural actions, document inspection, procedure – advancing contact with the defender).

The main subject of the defence, the accused, may enjoy defence at large, but this right may be limited by the proceeding authority, based on the regulations of CPA regarding preliminary arrest. The accused has right to choose defender freely. It means both that he may decide on his defence, this way defence may be accomplished either by the accused personally or by a counsel (facultative defence), and a counsel cannot be forced by the authority upon the accused. Nevertheless, freedom of choice of defender is limited so that in the accused cannot disclaim a counsel in some concrete cases determined in CPA (obligatory defence).

Presence of the counsel is obligatory in the criminal procedure (Art 46).

- if the accused is restrained,
- the accused is deaf, dumb, blind or mentally disturbed – without consideration of mental competency,
- the accused does not know Hungarian language or the language of the procedure,
- the accused cannot defend individually of any other reason, or
- in other cases, established in CPA as follows:
  - on sessions of the investigating judge held through closed tele-communicational net
  - on the trial in the court as stated in Art 242 (at first instance in the county court, at first instance in the local court if at least five years imprisonment is to be imposed or if additional private accuser appears in the case),
  - in most special procedures (criminal procedure against the juvenile, in procedure with bringing to trial, in procedure conducted in the absence of the accused, in procedure with renouncing the trial, in military criminal procedure if close supervision of the accused is ordered or the accused is liable to military service),
  - in some events of special legal redress (over-review, legal remedy) or
  - in some particular procedures (ordering preliminary arrest of the juvenile, security).

This obligation of the defender is determined to such an extent that if the accused does not use his right to choose defence freely, then a counsel is to be appointed for him by the authority (if not, it commits absolute procedural infringement). Against the obligatory appointment of counsel the accused cannot appeal, but may achieve employing another counsel.

Regulations, aiming at a decrease of the accusing authority's predominance are in close relation with the principle of defence. These are the cases of favour of defence (favor defensionis). The CPA mentions several issues of favor defensionis, some of them prevail in criminal procedure, and the other part of them is connected definitely to the single procedural sections. Examples of favour defensionis are as follows:

- presumption of innocence, and in respect with it, burden of proof existing during the whole procedure (onus probandi), in case of doubt, deciding in favour of the accused is possible when passing the decisive resolution (in dubio pro reo),
- legal institution of obligatory defence prevails during the whole procedure
- in trials of first instance, in the line of pleadings the right of the last say is also an issue of favor defensionis,
- defence enjoys favour when practising legal redress, as the prosecutor has right to appeal in favour of the accused, just like the necessity of an agreement from the accused when the appeal proposed in favour of him is repealed,
- in procedure of second instance e.g. principle of entire revision, release of partial legal force, and prohibition to exacerbate, as institutions established in favour of defendant,
- in events of special legal remedy favour defensionis is that they can be initiated easier and with more favourable conditions in favour of the accused, as against him.

It is still to be noticed that legal defence is not a favour but a natural right of the defendant, thus it is to be ensured by the authority.

### 1.2.6. Principle of officiality

Principle of officiality is one of the most important claims of modern criminal procedure, as this principle determines as obligation of the state to secure life, health, freedom and rights of citizens', likewise maintenance of public order and security. The most significant requirement of answering these obligations is to establish and operate such institutions (proceeding authorities) which are to conduct procedures through initiation of private individuals and related to the graveness of the committed crime.

*Sec.1 Art 6. The court, the prosecutor and the investigating authority are compelled to initiate and conduct criminal procedure if all conditions of it are answered.*

The principle of officiality is in close connection with the principle of criminal law legality, which, in accordance with general prevention, calls upon to keep laws and avoid committing actions infringing them. If conditions for committing a crime exist, (dispositionality, social danger, guiltiness) then the criminal is punished with sanctions as stated in the law. Thus, motivating power of officiality is the injure, caused by a crime, sanctioning of which is the interest of the public – as all delicts disturb the order of society. Criminal procedure this way cannot be related to judgement of private individuals (except for in procedures of crimes initiated by private proposal).

The principle of officiality (and the above mentioned legality) may be infringed only of special reasons, mentioned in CPA (opportunity), such as there exist a conditions, as a result of which the investigating authorities do not accomplish criminal procedure or they omit the punishment. Such a condition is not practising or omitting the right to accuse of the injured or an institute (lack of request, private proposal, or exclusive accusing right), or supporting other social interests (e.g. omission of investigation, postponing the act of charge etc.). The breaks in point are systematized in the table below:

| | **Breaks in legality of Criminal Code** | **Breaks in officiality of CPA** |
|---|---|---|
| **By an exterior person (extraneous)** | • private proposal<br>• extra accuse (authorisation)<br>• request | • private accuse (additional private accuse)<br>• constraint to charge<br>• constraint to legal redress claim |
| **By an interior person (authority)** | • diversion<br>• reprimand<br>• omitting to impose punishment | • omitting the investigation (act of charge, evidence)<br>• agreement with the accused<br>• procedure against covert agent<br>• omitting the act of charge |

### 1.2.7. Principle of using mother tongue

Usage of mother tongue is stated in the law in accordance with the Constitution, which prohibits language-related discrimination, and ensures the usage of mother tongue for the national and ethnical minorities.

*Sec 1 Art 9 The language of criminal procedure is Hungarian. No-one can be in a disadvantageous situation because of not speaking Hungarian language.*
*Sec 2 During criminal proceedings everyone can use their mother tongue, their regional or minority language based on lawful international contracts, or – if not speaking Hungarian – use a language appointed by him.*
*Sec 3 The court, the prosecutor or the investigating authority decides on translating the resolution or other official document, which passed or presented it.*

Basic regulation of CPA is that the language of criminal procedure is Hungarian, such as proceeding authorities, the members of the court, counsels, and representatives of participants in the procedure use Hungarian language during the procedure. With the same significance the law declares that the participants in the procedure can never be in underprivileged situation because of not speaking Hungarian language. They can use their mother tongue either in written or in spoken form. Inasmuch the accused, the aggrieved, the witness or other participants in criminal procedure wish to practise this right, then interpreter is to be employed on the expense of the state, and the official documents are to be translated. It derives from the constitutional principle of using mother tongue that ensuring the usage of a mother tongue other than Hungarian is the duty of authorities, just like providing interpreter or translating documents.

# II. Subjects of Criminal Procedure

Subjects of criminal procedure are those authorities and persons who take part in the procedure. The circle of subjects is divided into two main groups: the first includes the proceeding authorities in criminal procedures, as the other group are the individuals cooperating in the criminal procedure – in roles, clearly distinct from each other.

## 2.1. Proceeding authorities

In accordance with the CPA, execution of criminal procedure concerns well defined organs, in the circle of which

- investigating authorities are burdened with discovering and examining,
- prosecution (besides investigating power) with accusing and charge representing,
- and the court with sentencing obligation.

### 2.1.1. Investigating authorities

Investigating authorities conduct investigation separately, according to the order of the prosecutor, if the crime was recognised by him, the denunciation was reported to him or he got know of it any other way. Partial duties of investigating authorities – following the statement of committing the crime – are inspection and examination. Aim of inspection is to establish the personage of the criminal if a procedure is initiated against an unknown criminal. Examination aims at collecting the incriminating and extenuating circumstances and proofs in order to state criminal responsibility of the accused.

#### *2.1.1.1. Types of investigating authority*

The CPA does not accomplish the proper classification of investigating authorities. It only determines the general investigating authorities, indicating police beside the prosecutor. Compared to this other than general investigating authorities, based on their procedural power and obligations are classified as follows:
a) exclusive,
b) secondary
c) and special types.

ad a) Exclusive investigating authorities are the ones accomplishing investigation with absolute competence in cases of crimes listed in the CPA. Such investigating authorities are the General Directorate of Custom and Finance Guard (see delicts, e.g. excise violation, smuggling and illegal import of goods, etc. indicated in a)-d) points Sec2 Art36) or the competent commander as military investigating authority who – if no investigation is executed by a military prosecutor – accomplishes investigation in cases of crimes falling under the military criminal procedure.

ad b) Secondary investigating authorities may proceed in cases belonging into their competence if the crime is realised by them or the accuse is reported at them. Secondary investigating authority is the Border Guard in cases as follows: infringing entry and residence prohibition (Art 214 Criminal Code), supporting illegal inland residence (Art 214/a Criminal Code), assisting illegal immigration (Art 218 Criminal Code), vandalising landmarks (Art 220

Criminal Code), forging public documents or passport (Art 274 Criminal Code), abusing of drugs, connected to export from or transport through the territory of the country, (Art 282-282/C Criminal Code), abuse of any material, appropriate for making drugs (Art 283 Criminal Code).

ad c) Special investigating authorities are – by virtue of its particular status – the commander of a Hungarian commercial ship or civil aircraft staying abroad but falling under the territorial and personal power of the Hungarian Civil Code. If there is usually no such investigating authority present on the board of a ship or aircraft, which could initiate the investigation of crimes committed on the board, then the commander is responsible for accomplishing the investigating acts of these crimes.

#### *2.1.1.2. Circle of power and competence of investigating authorities*

Regarding practical issues, the CPA when defining the circle of power and competence of investigating authorities, entrusts it to the organisations of investigating authorities.

Circle of power and competence of the police as general investigating authority is stated in the 15/1994 (14th July) Regulation of Ministry of Internal Affairs. According to this, the police as investigating authority is divided into of local, regional and central investigating competences, and the single investigating authorities – based on their special duties – consist of investigating organs (departments, sub-departments of examination, criminal investigation, criminal security, traffic regulations etc.) Local investigating authorities are the local police departments, regional ones are the police headquarters of the given counties, the and central one is the National Police Headquarters. The local investigating authorities have general investigating power, such as they proceed in the crimes as a main rule.

### 2.1.2 The prosecutor

The prosecutor enforces crime investigating claim of the state, so in order to execute the investigation more effectively and prepare the act of charge more professionally – instead of supervising the earlier investigation – the investigation is headed by the prosecutor. The circle of individualism of the investigating authority is narrower. Further obligation of the prosecutor is to take into consideration all circumstances, incriminating or discharging the accused, and aggravating or mitigating the criminal responsibility.

#### *2.1.2.1. Duties of the prosecutor*

Duties of the prosecutor are different in the single periods of criminal procedure as follows:

a) on the one hand, the prosecutor makes investigation accomplished or investigates himself, or – although investigation is not concluded directly by him – supervises the legality of investigation;

b) on the other hand, within his public accusing duties, the prosecutor brings and represents the charge and – except for private and additional private accuse – may decide on postponing or partially omitting the indictment.

ad a) If the investigating authority investigates separately or accomplishes single investigating actions, the prosecutor supervises whether the participants in criminal procedure could practise all their rights. In the interest of this, the prosecutor is provided with rights to be informed and to order in the case, having so called essential rights. Such as the prosecutor:

- can order to investigate by his right to order it, or can entrust the investigating authority to accomplish it, or can order the investigating authority – within the circle of its competence – to execute investigating actions or further investigation, to finish investigation in the term he determines or to abate investigation;
- based on its right to be informed he can be present at investigating actions, can inspect the documents or can request them to himself
- has essential decisive rights, such as can change, repeal or deny the decision of the investigating authority, may judge the complaints appealed to him against the decision or abate the investigation.

The prosecutor has to consider not only the interests of the authority, but the rights of the accused during the procedure. In order to this the prosecutor not only has to judge the complaints emerging in connection with the investigation but he has to control legal execution of coercion measures accompanied by imprisonment or limiting personal freedom.

If the prosecutor accomplishes investigation, then may order any investigating authority – in its circle of competence – to execute a prosecuting action. The supreme public prosecutor may employ – with the permission of the supreme leader – the members of the investigating authority.

Investigation is accomplished only by the prosecutor:

- in some cases committed by individuals fulfilling public functions (e.g. MPs, constitutional judges etc.) or by persons enjoying international legal immunity, or against them, or in crimes committed in connection their functions;
- homicide committed against members of some given authorities (e.g. judge, prosecutor, prosecuting investigator, policeman), violation or robbery against official personage, bribery,
- any crime committed by them (or crime committed by the associate judge and related to jurisdiction),
- not military crimes committed by professional members of police or civil security services or the General Directorate of Custom and Finance Guard, and by revenue investigator;
- crimes against jurisdiction (e.g. false charge, misleading the authority, bearing false witness etc.)
- crimes committed against professional person from abroad or clearness of international public life.

ad b) It derives from the public accusing function of the prosecutor that he is the lord of the case (dominis litis), such as he commands the case freely, may withdraw or modify the charge (may change, extend, or restrict it). However, the prosecutor, according to the principle of contradictorium – enjoys no longer official rights belonging to him during investigation. On the trial, in the evidence process, the prosecutor has the same rights as the defence (accused, counsel).

In accordance with this, the prosecutor

- may be present on the trial within the circle of his rights (but may renounce them), may inspect the documents and ask for information,
- in the frames of his right to promote the case – beyond disposal of the charge – the prosecutor has right to propose in any issue on which the court makes decisions, may hold pleading and practise legal remedy.

*2.1.2.2. Competence and sphere of authority of the prosecutor*

Competence and sphere of authority of prosecutions, conformed to the institutional system of courts (city and county prosecution, appellate prosecution, and the Supreme Prosecution) are determined by the competence and sphere of the court they cooperate with. In cases of crimes belonging to the sphere of competence of different prosecutions prevention is normative, such as that prosecution proceeds which was taking measures in the case earlier.

The CPA takes into consideration – though the prosecuting institutions operate as prosecuting magistrates with determined courts –that prosecution is a hierarchical, centralised institution – and as against the right for "legal judge", the citizen has no right for "legal prosecutor". That is why the CPA, taking into attention the special features of prosecuting institutions states that – if the appellate prosecutor, county chief prosecutor or the Supreme Prosecutor orders so – he can proceed in such cases also, on which his authority or competence otherwise would not be expanded. If there emerges disagreement between the prosecutions in the question of competence or authority, the proceeding organ is appointed by the superior prosecutor.

## 2.1.3. The court

Jurisdiction is constitutional obligation and monopoly of the court. It means that only a legally set up, independent and impartial court may decide on guiltiness of the accused, coercion measures limiting personal freedom, or imprisonment.

The so called institutional principles claimed against jurisdiction enjoy special significance during the procedure in the court. Within their circle – beside requirement of judicial independence, equality in law, institutional unity of courts, and cooperation of the courts – the presence of the associate judge is to be emphasised. They represent the non-professional elements in the criminal decisive process, having significant role in establishing factual questions (however, when passing a resolution, they can decide on legal questions, as they represent numeral majority above the judge or judges.) The role of the lay associate judges is not general during the criminal procedure, as the court can pass a judgement as single court, (then there is no associate judge on the trial), and in the second instance court, or in the court of appeal – where there are mainly legal issues in point – only the council of official judges can pass a sentence.

*2.1.3.1 Legal authority, sphere of authority, competence*

The Hungarian courts can proceed in cases falling under the competence of the Hungarian criminal legal authority. The rules of legal authority are included in Articles 3-4 of Criminal Code, which in fact meets personal and regional powers of CPA mentioned earlier.

After finding the competent legal authority (such as that a Hungarian court can proceed in the case) the institutional set up of proceeding court (sphere of authority) is to be cleared (local, or county court, high court of justice or the Supreme Court).

Finally, if the question of authority is cleared, the next issue is to decide which of the 111 local, 20 county (capital), or 3 high courts – with identical institutional set up – should proceed in the case. This issue is answered in the regulations on competence.

Competence and sphere of authority are always to be officially examined before beginning the trial. If the court considers so that the procedure is beyond its competence or authority, the issue is transferred to the competent court.

The court does not have to examine its competence after beginning the trial. Exclusions from this are as follows:

- local judge realises that the case falls under the competence of county court or military criminal procedure, or
- the court notices a lack of exclusive competence.

*2.1.3.2. Proceeding courts and their sphere of authority*

A four levelled judicial institution is connected to the one instance normal legal remedy in Hungary. The regulations on sphere of authority are described here in parallel with the introduction of judicial system. According to this, there exist
a) local (city or district in Budapest) courts,
b) county (capital) courts,
c) high courts of justice and
d) Supreme Court,
and a special judicial forum is also to be mentioned,
e) the institute of investigational judge.

ad a) at first instance the local court (city court, in Budapest district court) is the court with general sphere of authority. Decision-making in those crime falls under the sphere of authority of the local court at first instance, which are not transferred under the competence of county court by the CPA.

Constitution of local court can be different:

- usually proceeds as single court (then only an official judge decides without associate judges,)
- as exception, passes sentence in the so called small council (beside the official judge two associates make up the council); in cases if the crime is to be punished with minimum 8 years of imprisonment
- at last we can talk about the so called councils. The CPA includes special regulations on the constitution of councils: this way the judge appointed by the Hungarian Jurisdictional Council is the president of the court of first instance in cases with exclusive competence and in criminal procedure against the juvenile.

On first instance the duties of the single court and the president of the council can be fulfilled by the court secretary in special cases as stated in CPA (measures taken to find an unknown person or object, interrogation through closed tele-communicational net, personal interrogation in private accusing cases etc.). In those instances determined in special regulations the court secretary may have right even to sign.

ad b) The county court may be first and second instance forum as well. It proceeds on second instance in issues, finished non-appealably by the court of first instance.

The first instance sphere of authority of county court may be cogent, dispositive or different:

- The cases falling under cogent, sphere of authority of the county court on first instance are listed in Art 16 of CPA.
  - The gravest crimes: all those crimes, for which the Criminal Code can impose 15 years or life-imprisonment, and crimes against state or humankind.
  - The gravest crimes against life and person: preparation for murder, negligent manslaughter, second degree murder, bodily harm causing life danger (death),

kidnapping, trading with people, and crimes against sanitary interference, searching order of medical science or medical self-determination.
- Crimes against public administration, jurisdiction, purity of public life: such as against the order of elections, referendum or national initiation, infringing state- or service secret, administrative crimes, violence against a person enjoying international immunity, prisoners' mutiny, crimes committed against jurisdiction in the international court, and against purity of (international) public life.
- Mainly some crimes connected to organised crime: terrorism, infringing obligations related to international law, seizing an aircraft, train, ship or any means of public transport or vehicles suitable for transport of goods in great quantity, or participating in a criminal organism.
- Some economical crimes: infringing obligations according to transport of products and technologies under international control, capital investment swindle, organising pyramid games, coinage offence, stamp forgery.

- As dispositive case, the county court may proceed if commonly considers cases, falling under the competence of different (local and county) courts (e.g. if decides on a murder and a stealing committed by the same accused, then the county court has competence not only in the murder but in the stealing as well.)
- It is considered as special matter if a military criminal procedure is referred under the competence of county court. It falls under the competence of five county (capital) courts where military council operates, and not the county (capital) courts in general sense.

ad c) One of the most important results of the general jurisdictional reform, having been initiated following the change of political regime is the four-levelled judicial system. It was established through inserting courts of appeal. The reason of this institutional change was not only the request to proceed faster and with more experts, but to improve the system of legal remedy. This way, the burden deriving from the first instance competence of local and county courts, from ordinary and special legal remedy duties of Supreme Court, and the theoretical directional right of sentence bringing can be decreased. With the help of this institutional reconstruction a logical anomaly can be avoided, such as that the same court was both the general first, and later the special legal remedy system in the same case.

The High Court proceeds on second instance in matters falling under the first instance competence of county courts; this manner the composition of the court is simpler: it passes a sentence in a council of three official judges. Composition of this council can be special also: e.g. in proceedings against the juvenile and or military criminal procedure.

ad d) By providing the highest ordinary legal remedy competence for the High Court, the Supreme Court proceeds neither on first, nor on second instance – with the exception of single regulations brought by the High Court as determined in the CPA. Consequently, the sphere of authority of the higher levelled judicial forum is limited to theoretical direction of lower courts and judgement in single special legal remedy cases (over-review, approximation procedure.).

The Supreme Court usually passes a resolution as a council of three official judges. Exception from this is if over-review proceeding is initiated against a resolution of the Supreme Court, or approximation procedure, when a council of five official judges proceeds.

ad e) The function of investigative judges has also become regulated following the jurisdictional reform. The investigative judge is to make a decision before proposing the bill of indictment, in cases falling under the competence of the court, regarding human right questions (especially about coercion measures limiting personal freedom and execution of information obtaining means). In the most important decisions, passed during the investigation and in cooperation with the investigative judge – in accordance with the principle of contradictorium – inner functions of criminal procedure can be well distinguished (charge or crime investigation, defence, sentencing or decision making.). Likewise, the rights to notify and to propose become manageable, and not at last possibilities of legal remedy emerge with the necessary guarantee.

Competence of the investigative judge is adjusted to the authority of prosecution operating on the territory of the county court, without respect to whether the judgement of the case falls under the sphere of authority of county or the local court. The sphere of authority of the investigative court is described in details in the section about investigation.

*2.1.3.3. Competence of proceeding courts*

Competence of proceeding court determines concrete proceeding obligation of courts of identical sphere of authority. It is necessary to establish and to examine competence (sphere of authority) in case of both courts of first and second instance.

From the instances of the court the second instance competence is simpler. The second instance court, on the territory of which the local court had passed the resolution on first instance, proceeds (county court or High Court).

Competence of court of first instance – compared to second instance – is more complicated, as it can be
a) general
b) exclusive and
c) particular.

ad a) By the cogent rule regarding general competence, the court of first instance is competent, on the territory of which the crime was committed.

Besides, CPA includes dispositive rules on competence also:

- if the crime was committed on the territory of more courts, or the place of committing the crime cannot be located, from the courts of identical courts that one proceeds, which was proceeding in the case earlier (prevention). An exemption from this, is if the place of committing the crime becomes known before the trial, and the prosecutor (accused, attorney, additional private accuser, private accuser) initiates a procedure according to the place of the crime, than the court of cogent general competence proceeds.
- The court, on the territory of which the accused lives, may also proceed if the prosecutor, the additional private accuser or the private accuser brings the charge there.
- In case of more accused, the court, competent in case of one of the accused, can proceed related to the other accused persons also if it does not exceed its sphere of authority.

ad b) Sections 5 and 6, Art 17 of CPA lists single crimes, in the judgement of which the county town court is related (local court of the county town or in Budapest the Pest Central District Court). This sphere of authority was characterised in the earlier legal special

literature as particular. When it is an absolute procedural contravention, the ministry reasoning determines it as reason for practising exclusive competence.

County town courts have exclusive competence to proceed in crimes (crime groups): as follows:

- some crimes of endangering: at job, against the juvenile, causing public danger, disturbing the operation of industrial unit of public interest;
- transport crimes: on the one hand transport crimes (Sec 3, Criminal Code) (apart from driving while intoxicated or dazed, or prohibited assigning of vehicle) on the other hand crimes, not determined in the Sec 13 of Criminal Code, but committed while participating in transport, (e.g. running someone down on purpose, than in given case it may be considered as not transport crime, but aggravated assault);
- some crimes related to atomic energy: abuse of radioactive material, abuse of operating nuclear industrial unit, abuse of applying atomic energy;
- economical crimes (Sec 17, Criminal Code) (apart from financial crimes);
- criminal procedure against the juvenile.

ad c) Particular cases of competence are the crimes falling under the power of Hungarian criminal legal authority, when they were committed by the perpetrator outside of the borders of Hungarian Republic. The court, on the territory of which the accused lives or inherits is competent to proceed in this case, in lack of this the court, on the territory of which he is jailed. If the procedure is conducted in the absence of the accused, the court competent is at the place he had lived before.

*2.1.3.4. Appointing the proceeding court*

In case if competence or authority conflict emerges between the courts, a proceeding court is to be appointed, following the prosecutor's proposal. To appoint the proceeding court,
a) the second instance council of county court,
b) the High Court,
c) the Court of second instance,
d) and the Supreme Court is competent.

ad a) The second instance council of county court decides on appointing, if the conflict emerged between courts on its territory.

ad b) The High Court decides on appointing in two cases:

- conflict authority emerged between the county court and on its territory, the local court,
- conflict of competence emerged between county courts or between local courts on the territory of county courts.

ad c) Second instance court may appoint another court or another council of the same court to judge the case, in its decree on invalidating first instance resolution and repeating procedure.

ad d) In all other cases the Supreme Court appoints the court

- in case of conflict authority, if it occurs between:
    - local courts and county courts belonging to different High Courts,
    - military council of county court and other council of county court or other county court,

  - county court and High Court,
  - military council of Budapest High Court and other council of it or other High Court,
  - Supreme Court and High Court.
- In case of conflict competence between:
  - High Courts,
  - county courts belonging to different High Courts or local courts
- if circumstances determining competence cannot be established.

### 2.1.4. Exclusion of members of proceeding authority

Essential requirement of fair trial is that there was no worry or plea of incompatibility against the proceeding authority possible to be emerged. Relieving incompatibility is ensured by the rules of exclusion, providing objective, impartial, free from personal influence procedure (besides, as it was already referred, they support validation of principle of contardictorium). Concerning characteristics of incompatibility exclusion rules can be as follows:
a) general,
b) particular.

The preceding is valid for all members of proceeding authority, while the latter is valid only for a part of proceeding authority and in a determined period of criminal procedure.

ad a) By the general rules of exclusion those cannot proceed as a member of authority, who take part in the procedure as

- accused or defender, offended or private accuser (additional private accuser) or private party, representative or their relatives,
- witness or expert,
- or from whom impartial decision in the case cannot be expected.

ad b) Among the particular rules of exclusion there are special rules to exclude members of investigating authority, prosecutor or judge.

Those may not proceed as a member of authority, who

- proceeds in the case as judge, or is a relative of the judge proceeding or proceeded earlier in the case,
- during investigation in retrial, who was a member of investigating authority in the basic case,
- the whole investigating authority cannot proceed if against its head a reason for exclusion emerged (if this reason to exclude merged against the head of investigating authority with competence for the whole state, the investigation is accomplished by the prosecutor).

Beyond the general rules of exclusion, cannot proceed as prosecutor who

- took or takes part in the case as accuser or adviser,
- proceeded in the case as judge, or is a relative of the judge proceeded or proceeding in the case,
- in retrial, who executed investigation in the basic case, or accomplished single investigating actions, preferred or represented charge,

- and – apart from the Supreme Prosecution – the prosecution, against the head or deputy head of which reason for exclusion emerged (if the reason to exclude emerged against county chief prosecutor or the deputy, then the local authority on the territory of county chief prosecution proceeds in the case).

The CPA regulates the rules of excluding the judge in the widest circle. According to them, cannot proceed as judge, who

- took or takes part in the case as accuser or adviser,
- proceeded in the case as prosecutor or member of investigating authority, or is a relative of the prosecutor or the member of investigating authority proceeded or proceeding in the case,
- made decisions in the case on secret information collection, not regarding whether the information collected through secret process was applied in the case or not,
- in the further procedure of the court, who proceeded in the case as investigative judge, in second instance procedure, who participated in the first instance judgement of the case,
- in a repeated first instance or second instance procedure during invalidation, who took part in passing the resolution on invalidation, or in passing the resolution, invalidated because of groundlessness,
- in special legal remedy procedure, who took part in passing the offended resolution,
- at last, apart from Supreme Court, the court, against the president or deputy president of which reason to exclude emerged.

Common rule of exclusion of proceeding authorities is that the member of authority (judge, prosecutor, member of investigating authority) has to declare if reason to exclude emerged against him. In this case the member of authority cannot cooperate in the further process. Against the member of proceeding authority other participants (accused, defender, offended, private accuser, private party, or their representative, in case of exclusion of judge beside them also the prosecutor and the additional private accuser) can propose a reason to exclude. If against the member of the court someone else proposes a reason to exclude, then – excluding the declaration of the court president, when the exclusion is valid with no delay – the concerned in exclusion can take part in the procedure, but has to restrain from executing actions (if judge from passing a sentence, if prosecutor from denying accuse, abating investigation, presenting charge etc., if member of investigating authority from executing coercion measures).

The superior organ decides on the execution of the prosecutor and the member of investigating authority. Execution of the judge can be accomplished two ways: administrative or procedural way. The administrative way is if the president of the court takes measures in appointing other judge, if the reason to exclude was declared by the president of council or he approved. Then there is not need to pass a special resolution, but the president of the court appoints another judge. In all other cases the other council of the court decides, if there is no council not concerned in the exclusion, than the superior court.

## 2.2. Participants of the procedure

Participants of the procedure are characterised as main- and subordinate characters. Main persons are the accused (who – with exception of inspections, initiated against an unknown perpetrator – is always the object of the procedure), the attorney (whose collaboration depends on comprehension of the accused, and the cases of obligatory defence), and the offended, (whose right or rightful interest was threatened or offended by the crime).

The subordinate persons can be divided into groups also based on their connections to the procedure. Those concerned because they relatives of someone in the case belong to the first group (relative or inherent of the accused, relative or inherent of the private party), those cooperating in evidence (witness, expert, adviser, interpreter) to the second, and others concerned in the case (owner of a seized subject, or searched building) belong to the third group, while the fourth group is made up by other persons (accuser, representatives, supporters).

Main persons in criminal procedure are described in details below.

## 2.2.1. The accused

The accused is the subject in criminal procedure in an accumulated disadvantaged situation. Reason of this is that the authorities have predominant power against him during the whole procedure: the authorities take measures against him in cooperation with each other. While the procedure for the authorities in only a "legal debate", the accused is sufferer of it, in case of imprisonment the accused leaves closed with a decreased possibility to defence.

### *2.2.1.1. Concept of the accused*

The accused is a person against whom criminal procedure is executed. This way, depending on the single sections of the procedure, he is called

- impeached after the denunciation,
- suspected during investigation,
- accused on trial in court (but the impeached person to the end of procedure in case of private accuser),
- condemned following the establishment of guiltiness, or
- discharged, if the event of acquittal.

So, the accused is the central character of criminal procedure, as the issue to be decided is his criminal responsibility,

### *2.2.1.2. Legal status of the accused*

The rights of the accused can be divided into two groups: rights to inspect and promote the case, which are regulated in Art 43 of CPA.

According to his inspecting rights the accused can

- become aware of the subject of the suspect and the charge, likewise their changes (right to be aware of the case)
- be present at procedural actions – if it is not limited in CPA (right to be present)
- inspect in documents during the procedure (right of inspection),
- obtain information from the court, prosecutor, and investigating authority (right to have information),
- in trial period ask questions from the heard person about his rights, obligations, (right of direct questions).

Promotional rights of the accused:

- right to be defended, to have appropriate time and possibility to prepare for defence and can presents the facts serving his defence in any section of the procedure,
- right to propose in any section of the procedure,
- right of annotation,
- right of speech on the trial,

- right for legal remedy: both during the trial, and against the decisive resolution can request for legal remedy.

The accused kept confined, if foreigner, can establish contact with the representative of his country, and can communicate with him without control, and with his relatives or other persons in oral form under supervision, and in written form under control.

Procedural obligation of the accused living on the territory of Hungarian Republic is to let the proceeding authority be aware of his residence or its changes. Furthermore, obligation of the accused is to

- appear when summoned (otherwise can be brought in)
- respect the order of procedure and prestige of proceeding authority (as sanction he can be ordered to be led out from the trial, and it can be continued – in the presence of the defender – in the absence of the accused.
- bear procedural actions concerning him directly (house search, seize, bodily search).

### 2.2.2. The defender

During criminal procedure a counsel – briefed or appointed – can proceed in the interest of the accused. If defence is obligatory then a council is supposed to proceed. Only a counsel can be employed as defender, in the interest of providing as professional and effective defence as possible. The only exception from this is a limited proceeding opportunity of lawyers in training, who can proceed beside the attorney or as his deputy, up to presenting the bill of impeachment in the local court.

In the interest of the accused more defenders can proceed, in this case the official documents (summon, announcement) are to be sent to the so called head defender, who first proposed the authorisation from the accused. He or a person appointed by him has primary right for legal remedy declaration and hold the pleadings.

The defender can be authorised first by the accused, but with a simultaneous announcement to the accused, also by the representative, relative of majority age, of the accused, or in case of foreign accused the consul of his country. The authorisation is to be appealed to the proceeding authority, before which the criminal procedure is in process. The accused may withdraw the authorisation both from the counsel appointed by him or by someone else.

#### *2.2.2.1. Excluding the defender*

The defender's final duty is to apply all legal means in the interest of the accused, and to support discovery of all discharging and mitigating facts concerning criminal responsibility of the accused. That is why it is reasonable that defence of the accused was accomplished by a person being in a status not contradictory to the interests of the accused. This requirement is regulated in the CPA, when it states that one defender proceed in the interests of more accused only if their interests are not contradictory to each other. According to the Art 45 cannot be a defender who:

- is offended, private accuser, additional private accuser, private party or their representative or relative,
- proceeds in the case as judge, prosecutor or member of investigating authority or their relatives
- showed behaviour contradictory to the interests of the accused, or whose interests are contradictory to the ones of the accused,

- took part in the case as expert or adviser,
- took or takes part in the case as witness (as exception, can proceed in cases of some witnessing obstacles), and the attorney proceeding in the interest of the witness,
- takes part in the procedure as accused.

The court decides on excluding the counsel, even if the procedure is in investigating period. Professional and effective defence is to be ensured for the accused even against his wish. This is the reason why the CPA considers the presence of the defender obligatory in some cases.

#### *2.2.2.2. Legal status of the defender*

The rights of defender – because of the circle of interest of the accused, based on the principle of contradictorium – are similar to the rights of the accused, what is more, the defender may practise the rights of the accused independently from him – apart from some exclusive rights (e.g. renouncing the trial).

The defender can collect all information and data, such as defence should not rely on only the data collected by the authorities. Besides, the defender has individual right for remedy, although it is not unlimited as the defender cannot withdraw it without the authorisation of the accused, and can initiate special legal remedy also with the authorisation of the accused.

The defender is obliged:

- to establish contact with the accused with no delay,
- to apply all legal means and methods of defence in time and in the interest of the accused,
- to inform the accused about the legal means of defence and about his rights,
- urging to discover facts discharging the accused, or mitigating his responsibility.

### 2.2.3. The offended

The offended is the character in the procedure, whose rights or legal interest has been offended by the accused. However, crime can be committed not only against natural, but against legal person or institution, that is why these latter subjects are also included in the concept of the offended.

During the criminal procedure the offended may cooperate on the one hand as a passive subject, or on the other hand – under circumstances determined in law – as private accuser, additional private accuser or private party, even can be interviewed as witness. This multiplied legal status of the offended is called multi-position.

#### *2.2.3.1. Legal status of the offended*

The rights of a so called "simple offended" (the offended is not private accuser, additional private accuser or private party) are divided into two groups as inspecting and case-promoting rights. Within inspecting rights the offended can

- be present in procedural actions – if it is not limited in CPA (right to be present)
- during the procedure inspect in documents (right for document inspection),
- obtain information from the court, prosecutor, and investigating authority (right to have information),

- ask questions from the heard person about his rights in trial period (right for asking direct questions)

  With respect to case-promoting rights of the offended he can:
- make a proposal in any period of procedure (right to propose)
- make notices (right to make notices)
- request for legal remedy: both during the trial or against a decisive resolution in some cases (e.g. denying denunciation, abating investigation, imposing disciplinary penalty) (right for legal remedy).

In case of death of the offended his rights can be practised by relatives directly descended from him, partner in marriage, partner in life or legal representative. If the offended was a clergyman, who – in compliance with the rules of the church he belonged to while living – could not get married, after his death the rights as offended can be practised by his principal at the church, because of lack of relative (inherent).

Obligations of the offended are usually related to his qualification as witness (the offended enjoys priority among the witnesses, primus inter testes). This way the offended as witness is obliged

- to appear when summoned,
- to testify
- to tell the truth when testifying,
- to participate in the expert's examination,
- to provide all necessary data.

*2.2.3.2. The offended as private accuser*

The private accuser is an offended, who represents accuse individually in the court, in the event of some crimes (assault, impeaching private- or letter secret, slander, defamation, irreverence). In these cases principle of officiality is not valid: the crime is not investigated as public accuse.

Private accuse has four main forms: main public accuse, additional private accuse, subsidiary private accuse and counter accusation. (See: 6.1.1.: concept and types of accuse)

Identical features, concerning the relation between private accuse and private proposal are that both legal institutions are procedure initiating privileges of the offended in the crime. However, they are different in some respects as follows:

- all private charge cases can be punished as private accuse, but it is not true the other way (e.g. stuprum is to be punished only as private accuse, but is to be investigated as public accuse);
- private proposal is partly criminal material law and partly procedural law _expression, while private accuse has only procedural concept
- private accuse is impartible, such as in case of more perpetrators private proposal appealed against one of them is valid for the other ones also, private accuse, in contrary with that is dividable.
- private proposal is irrevocable, while private accuse can be withdrawn,
- appeal of the private proposal has a 30 days term under forfeiture of forth, while private accuse can be levelled up to withdrawal as first instance resolution (in case of counter accuse).

Conditions, procedural rules of private-, additional private- and counter accuse will be introduced when explaining private accusing special procedure.

#### *2.2.3.3. Private party*

Private party is an offended, who practises civil right request (such as civil competence request) in criminal procedure.

Civil legal can be asserted only

- as a material damage
- of the offended,
- as against the accused,
- and only in causative connection with the action considered as the subject of the charge.

It does not exclude the possibility of asserting civil legal request in any other legal way if the offended does not stand as private accuser,

While asserting civil legal request decisions on the merits and those not are brought. In the foregoing type the court can justify civil legal request on its merits. If the court neither justifies nor denies civil legal claim (because it is not established) then (in case of a discharging sentence or when abating the proceedings, or if the judgement results in a prolongation) a decision not-on-its-merits is made. Such as the criminal court transfers the consideration of the request to other legal way (such as the offended can enforce his claim in a civil court.)

When considering the civil right request, regulations of the CPA are to be applied. If there are no regulations on the given procedural question in the CPA, then civil procedural law is normative, but it cannot be contrary to the CPA. This way, especially the accused cannot assert claim against the private party, there is no room for declaring the resolution as executable preliminary, and in the procedure of second instance the civil right request can not be expanded, its sum cannot be enlarged.

### 2.2.4. Other participants of the procedure

Apart from the members of the authority (court, prosecution, investigating authority), and main participants (accused, defender, offended) other persons can also appear in the procedure (e.g. expert, adviser, interpreter, witness), participating partly in their own or the others' interest. From the latter the others interested, representatives and supporters can be emphasised.

Others interested are individuals, whose right or rightful interests will be possibly influenced by the resolution brought in the criminal procedure, who can make proposals or notices in the circle of issues they are concerned, can claim for legal remedy against the points of the resolution related to them, and can be present on the trial.

The offended, private accuser and others interested (if CPA does not states obligation to cooperate personally) can practise rights through a representative. As representative

- attorney or relative of majority age through authorisation (attorney as representative is obligatory in case of additional private accuser),
- legal representative or instead of him casual guardian ex lege,
- entitled employee of a state- or economical institution,
- public utility institution, in the event of more offended, or one of them,
- patron attorney, in case of an offended unable to practise rights – if does not have representative – (private accuser, private party, other concerned)
  can proceed.

# III. Evidence and proofs

## 3.1. Concept and systems of evidence

Evidence, accomplished in criminal cases is a special section of observation, during which individual actions, having been enacted in the past and human behaviour, just like inner and outer circumstances related to them, are to be proved. Because of its individual nature, criminal evidence is close to everyday cognition. It is different from theoretical evidence with scientific claim, which intends to discover general theories and not to establish facts.

Based on all this, evidence – in the opinion of Tremmel is a cognitive process. It is directed to state facts in the single cases adequately with reality, being in relevance with criminal law, and as a duty of the proceeding authority first, but of the court in the last resort.. Evidence is realised in actions like collecting, examining and evaluating proofs.

According to the order of means and methods of evidence and evaluation of proofs during its history four evidence system have been developed:

- Settled in a positive way evidence system: the law determines proofs and their proving power (e.g. testimony of eye-witness 1/2, ear-witness 1/4, admitting confession of the accused 1/1). The accused is to be convicted if the proofs prevail in the quality and quantity stated in the law (1/1).
- Settled in a negative way evidence system: it is grounded on the principle of minimum proof. The law determines the lower limit of guiltiness being proved, but it is not obligatory for the judge, such as he can discharge the accused if does not acknowledge the proving power of the evidence.
- Completely free evidence system: it accepts no limit during the proceedings. The law does not define rules to establish guiltiness of the accused, so during evidence circumstances originating from any source and both related to guiltiness or non-guiltiness of the accused can be applied.
- Not completely free evidence system: the proceeding authorities conduct proving procedure within the frames of rules determined in the law. Such basic restriction is that proofs can originate only from legal sources and the decision related to the establishment of guiltiness is to be reasoned in details.

The evidence system of Hungarian criminal procedure is not completely free, as it is limited in the law itself – although Art 78 of CPA determines almost as an essential principle – among the general rules of evidence – that all proving means can be applied in criminal procedure and all evidence proceedings which do not have preliminary determined power. Such limitations of freedom of evidence are some regulations of CPA, making obligatory the application of some single evidence means (e.g. obligatory verification of the age of the juvenile by documents, or interviewing of his guardian in all cases). The clausal of legality related to evidence also limits complete freedom, according to which during the procedure only the proofs, discovered, collected, ensured and applied by the regulations of CPA can be considered. An other regulation – stating that if execution of evidence actions, examination and report of evidence means and method of conducting proving proceedings are regulated by law, no way it is possible to depart from them – also promotes legality. Further guarantee of legality is that during evidence proceedings human dignity, personal rights of the concerned and reverence rights are to be respected, just like safety of personal data is to be ensured.

The CPA establishes a special, freedom- limiting prohibition for evidence, in which states that a fact – having been obtained through committing a crime or other prohibited way by the court, prosecutor or investigating authority, or through significantly restricting procedural rights of participants – cannot be evaluated as proof.

## 3.2. Concept and types of proofs

Proof is a fact originating from evidence means or evidence procedure and concerning details necessary for the establishment of relevant facts in respect of criminal law. As a formal requirement it has to originate from a source permitted by law.

Proofs by a traditional division can be:

- personal (e.g. testimony of witness, opinion of the expert) or objective (pl. deeds) by the general features of their source,
- original (examined directly by the court, so called ancient sourced) or indirect by the directness of their source,
- incriminating (aggravating) or discharging (mitigating) concerning the interests of the person under procedure and
- direct or indirect by their feature of relevance in respect of criminal law, such as referring to the crime directly (testimony of witness on a crime he saw) or indirectly (traces of committing a crime).

The CPA divides proofs into groups of evidence means and evidence procedures, instead of the earlier, unified list of proofs.

## 3.3. Means of evidence

The CPA enlists thoroughly (taxative) the means of evidence as carriers of proving facts, expressing with this that other evidence means are not possible to be applied. According to this, means of evidence are as follows: testimony of witness, expertise, object of evidence, deeds and confession of the accused.

### 3.3.1. Testimony of the witness

As witness only persons supposedly being aware of the provable fact can be interviewed in a criminal procedure. As there is a room for evidence not only in respect of criminal responsibility of the accused directly, but with some indirect aims also (in special procedures), interviewing of the witness can be necessary in the latter case too.

#### *3.3.1.1. Legal status of the witness*

As essential obligation the witness is to be present if summoned and make testimony (he can be permitted not to testify if obstacles emerge, but if testifies, than has to tell truth). The witness is obliged to cooperate in the procedural actions as determined (re-enactment, introduction for confrontation) and present reports, documents and other subjects possibly necessary in evidence at the authority's disposal (or deliver to it). If the witness misses to fulfil these obligations – apart from the obligation of telling truth, when commits the crime of bearing false testimony – can be imposed a fine and has to settle the costs caused by him.

The witness is due to get witness fee, such as compensating his expenses he asserted in order to fulfil his obligations as witness. Furthermore, an appointed attorney can proceed in the interest of the witness. If there is reason to deny or to free the witness from bearing testimony, the attorney can support the witness effectively, but also can control the record of

the testimony, related to which has right to make notices. Besides some limited rights for legal remedy (the witness can claim for legal remedy against the established witnessing fee or condemnation of caused costs) the witness in some cases can have opportunity to deny bearing testimony or may fall under testifying prohibition.

### *3.3.1.2. Obstacles of the witness to bear testimony*

According to the CPA, obstacles of the witness to bear testimony can be on the one hand absolute, allowing no deliberation (absolute obstacles), on the other hand – depending on a subjective estimation of the witness – there can be exemption from bearing testimony also permitted (relative obstacles). As essential principle of legal criminal procedure the court has to consider consequently the prohibitions to bear testimony, and to inform the witness about the reasons of freedom from testimony and his rights at the beginning of the interview. This warning and the answer of the witness given to this information are to be recorded. In case of missing to warn the witness this way, the testimony cannot be applied as evidence means.

There can obstacles to testify emerge in issues as follows:

| **Prohibitions to testify** | **Freedom from testimony** |
|---|---|
| • *priest* (clergyman): on what he has obligation of official secrecy,<br>• *defender*: on what he obtained information as a defender or about what he informed the accused in his quality of a defender,<br>• person from whom cannot be testimony expected because of body or mental *state*<br>• *public secret:* about facts considered as state secret (official secret) the one cannot testify who has not received relieve from obligation of official secret | • *relative* of the accused<br>• *prohibition of self accuse:* the ones who would impeach themselves self or their relatives when answering the questions related to them<br>• *private secret:* who is obliged to keep secret based on job or public officiality, if the given answer would infringed the obligation of secret |

Exception from the absolute prohibitions to testify, is the so called relative prohibition because of body or mental state. In the sense of this, on the one hand knowledge of only those facts are not expected from a handicapped, which he could not perceive because of his handicap, on the other hand a handicapped also can bear testimony on some facts, not disregarding that the fact of his handicap becomes clear for the authority during the interview.

Exemption from bearing testimony is to be referred by the witness separately when he denies testifying.

### *3.3.1.3. Security of the witness*

The rules of security of witness serve security of the witness who exposes himself (or his relatives) to danger while fulfilling obligations as witness. The rules of witness security are regulated in degrees as follows:

a) keeping all the presented personal data in secret: lightest category of security, when the proceeding authority ensures that the data obtained from the witness could not come open from documents or from any other data.
b) considering the witness as especially secured: it is necessary when the testimony of the witness is related to important circumstances of an especially grave crime, or it is not possible to obtain the proof expected from the testimony any other way, or personality of the witness is not known for the accused (or the defender) and by revealing his personality, his safe or freedom would be threatened.
c) personal security: the CPA expands the regulations concerning security of witness to participants of criminal procedure (accused, witness, offended, expert, adviser, interpreter, authority witness) and in respect of them also to other persons, when it determines security of all participants in criminal procedure. It is ordered when the personality of participants is known for the accused, and their life or safe are threatened because of their participation in the procedure.
d) changing personal identification of the witness: program of witness security is a legal institution which was introduced when the CPA came into force. Based on this the new personal identification and place of residence are known only for the organ representing security, which organ on the one hand keeps contact between the authority and the witness (summon, announcement) on the other hand guarantees the fulfilment of procedural obligations of witness through appearing on the trial.

### 3.3.2. The expertise

If during criminal procedure special competence is necessary for establishing or evaluating the facts to be proved, expert is to be employed (in contrary with civil procedure, where the judge may rely on his own expertise). It is obligatory to employ an expert if

- the fact to be proved or question to be decided concerns a person's disturbed mental state or dependence on alcohol or drugs,
- the fact to be proved or question to be decided concerns necessity of coercion medical treatment or coercion cure,
- personal identification is accomplished through biological examination,
- in case of exhuming a corpse.

Professional questions can usually be decided by employing one expert, however, some less simple cases make unavoidable to employ more experts or experts' group. Two experts are to be applied if the issues to decide are reasons and circumstances of death or mental state.

The court, the prosecutor and the investigating authority employ mainly forensic experts from the registration, if it is not possible then a person or institution (non-recurrent expert), appropriately competent can be appointed.

#### *3.3.2.1. Legal status of the expert*

As essential obligation the expert appointed is to cooperate in the procedure and giving an expertise. The expert can be exempted from these obligations only in some special cases (e.g. lack of competence, lack or obstacles of circumstances to fulfil the expert's duty.)
The expert has to complete expertise based on examination in accordance with the actual state of science and latest professional knowledge. In order to this he has right to be aware of all information necessary for the expertise. In frames of this the expert has right for inspecting in the documents and right to request for data.

The rules of exclusion – similarly to proceeding authorities – can ensure the impartial and objective work of the expert. In the sense of this, cannot be expert who

- is concerned in the case in any other quality (e.g. accused, defender, offended, proceeding authority, relative etc.),
- the doctor who treated the dead person directly before death, or who established the fact of death, in the event of examining the reasons and circumstances of death, when exhuming
- expert from an experts' institution, if the exclusion is valid for the head of the given institution,
- who was employed in the case as adviser,
- from whom impartial expertise cannot be expected in any other reason.

The expert has to announce the reason for being excluded to his appointing person; in case of an institution appointed as expert, the announcement is to be made through the head of the institution. The court, prosecutor or investigating authority before which the procedure is conducted, decides on excluding an expert.

#### *3.3.2.2. Structure of the expertise*

The expert submits the expertise from his own name in oral or written form, within the terms determined by the proceeding authority. The expertise includes

- data regarding the object (finding) of examination, the examining processes and means, changes occuring in the object of examination,
- short introduction of examining method and summary of professional statements (special fact establishment) and
- consequences driven from fact establishment, within the frames of this answers given to the questions (opinion).

#### *3.3.2.3. Evaluation of the expertise*

The opinion submitted by the expert is evaluated by the court. The fact that the court assigns an expert because of being not competent in the given special issue, but the complete expertise is still valued by the court, is a paradox in the evaluation of the expertise.

The deliberation of expertise can have five steps as follows:

- if the expertise is incomplete, obscure, contradicts itself or if it simply seems to be necessary the expert can be called upon to provide further information,
- if this information is still not enough, the expert has to complete the opinion,
- if it is still not appropriate, another expert is appointed beside the first one (it is obligatory to assign another expert if the prosecutor or the investigating authority during investigation appointed an expert, and the accused or the defender appealed for appointing an other expert for the establishment of the same issue within 15 days from the delivery of the bill of indictment).
- if there is a difference in a decisive question regarding the outcome of the case among the opinions of experts assigned, than the dissensions are to be cleared with a parallel listening of the experts
- if the parallel listening of experts is not successful, the proceeding authority orders to obtain another expertise.

*3.3.2.4. Special experts*

Similar legal status as the expert has the
a) interpreter
b) patron supervisor.

ad a) The employment of an interpreter answers the principle of mother tongue and the communication with a person not able to communicate by everyday methods. The legal state of the interpreter applied during criminal procedure is the same as the expert's ones, the only difference concerns competence, as interpreter (or translator) can only be a person with appropriate qualification.

ad b) The court and the prosecutor can decide on obtaining the patron supervisor's opinion before executing punishment or measurement, or delaying the act of charge. The opinion of patron supervisor describes the personality and living circumstances of the accused, particularly family circumstances, health state, harmful habits, conditions of stay, education and qualification, profession, place of work, employment, wages, financial conditions. Further on, it refers to possible connections between the facts or circumstances and the crime committed.

In his opinion, the patron supervisor provides information about the possibilities of employment for the accused, according to his abilities, or about the possibilities to be placed in a medical or social institution, and can recommend applying an individual behaviour rule with respect of the accused.

The patron supervisor is obliged and has the right to become aware of all data which is necessary for completing the opinion. In order to this he may inspect in the documents of the case and may inquire at the accused, offended, witnesses and other persons included in the proceedings. If it is necessary for accomplishing his job, he may ask the prosecutor or the court for more information, documents or data.

### 3.3.3. Material (hard) means of evidence

By the definition of the law, material means of evidence are the subjects, which are appropriate to prove a fact (relevant in criminal respect) under evidence. This way especially subjects which

- are carrying traces from committing the crime,
- came into existence as a result of the crime,
- were applied as a means for committing the crime
- for which the crime was committed.

From this list it is clear that the CPA enlists the material means of evidence only as examples, so every subject found at the scene of the crime can be applied as a proof even if not included in the list above. The law expands the concept of material means of evidence also on documents, drawings, and other subjects which record data in electric, chemical or other form. These issues can be considered as material means of evidence, because the authority deduces facts form the information they are carrying.

### 3.3.4. Deeds and documents

The documents are such proving means, which were completed in order to certify facts, realness of data or declarations. The CPA explains the concept of document also as expanded, when considers the extracts of a deed as document, just like a subjects which records data in electric, chemical or other form.

According to all this, in a criminal procedure – which considers public and personal documents identically –documents possible to be applied basically are as follows:

- document (deed) concluded in order to verify a fact or circumstance
- subject serving for recording data in electric, chemical or other form
- document or protocol including confession (declaration).

### 3.3.5. Confession of the accused

Admitting confession of the accused – compared to investigating based (inquisitorial) procedural rule of it – is not enough in itself to make the evidence resulted in excluding guiltiness without any doubt. The law states that even in case of admitting confession all other proofs are to be collected. The confession is an especially significant proof in those cases if cognition of the accused – knowledge of such facts, which only the accused can be aware of – is taken into attention when evaluating proofs.

The confession of the accused can be applied as proof in those cases — in the sense of prohibition to be obliged for self-accusing – if following the record of personal data (it is obligatory), the authority announces the so called Miranda rule at the beginning of hearing. According to this, the accused

- is not obliged to confess
- can deny to confess or answer the single questions during the hearing at any time (though after denying to confess he can decide on yet confess any time), and
- if confesses, (or disposes any document or deed for the authority) it can be applied as proof.

If the accused decides on bearing confess, then he is to be warned of that he is not allowed to accuse an other person with committing a crime falsely. If the accused denies confessing, the warning has to be expanded to the fact that he can not prevent the process of procedure with silence. Another requirement in connection with the hearing of the accused is that he is to be given a possibility to submit the confession in a summed up or in written form. Such a confession, independent from the outer circumstances can be important for the authority, because may clear facts which would not have been asked in the questions otherwise. If the accused digresses from his confession, the reason has to be cleared.

## 3.4. Proving proceedings

Proving proceedings are proving methods of forensic characteristics, being realised in criminal procedural actions of the proceeding authorities, and aiming at the collection of evidence means. Such proving procedure is the crime scene investigation, interrogation at the scene, confrontation, parallel report of experts.

### 3.4.1. Crime scene investigation

Crime scene investigation is a procedural action ordered and executed by the court (or the prosecutor). It aims at discovering and establishing facts to be proved through inspecting or observing subjects or the scene.

An expert is to be employed during the scene investigation if in the later sessions of the procedure expertise will be possibly necessary. When executing investigation, the circumstances, significant from the point of view of evidence are to be recorded, and searched. Furthermore, hard evidence means are to be collected and expertly secured. If necessary photos, voice-record or sketch are to be taken of the subject and they will be added to the record on the investigation.

If it is not possible, or it is expensive or difficult to take the subject to the authority, then the investigation is to be held at the scene.

### 3.4.2. Interrogation at the scene

The court or the prosecutor orders and executes interrogation at the scene if a fact is to be established whether the action or phenomenon could occur in a determined place, time or circumstances. According to this, interrogation at the scene is to be held under possibly identical conditions as the examined event happened.

### 3.4.3. Introduction for recognition

Introduction for recognition is an evidence action ordered by the court or the prosecutor, when the accused or the witness selects the person or subject known by him from at least three persons or subject, by their identical features. If the subjects of this action are from persons, features for identification are: sex, age, build, skin colour, clothes; if they are objects: group identity, group similarity. The witness is interviewed in details on the circumstances he met the person or object in question, and on what is their relationship, and what characteristic features of the person or subject the witness is aware of.

From the point of view of security of witness it is important that this proving action was executed the way that the person to be identified could not realise the witness.

### 3.4.4. Confrontation

Confrontation is an evidence procedure aiming at clearing the contradictions found in the testimonies the accused, persons or witnesses. During the procedure, conducted in oral form, the contradicted persons can ask questions of each other. Contradiction can be avoided if the security of the witness or the forbearance towards the juvenile expects so.

### 3.4.5. Parallel report of the experts

It often occurs that the experts are in different opinions in a question. In order to clear these contradictions, the experts can be reported in the presence of each other, when they can express their opinions and can make notices of each other's expertise. This way the parallel report of experts can help the proceeding authorities to select the more appropriate expertise, from the point of view of judging the case.

At the same time, this proving procedure replaces the old practise of over-review of expertise. This method is reasoned by that the earlier 'over-review expertises' enjoyed special respect, this manner influencing the evaluation of the given proof.

# IV. Coercion measures

## 4.1. Concept and division of coercion measures

The state has the right and is obliged to assert criminal legal request against the perpetrator of a crime. In order to ensure this, the proceeding authorities – if the clauses determined by law are met – can take measures even contradictory to the will of the person brought under procedure. Coercion measures are actions of the authority in criminal procedure with coercion content, consequently limiting personal freedom. Proceeding authorities apply these coercion measures in the interest of the success of criminal procedure, with well definable procedural aims, in legally determined cases and ways.

Taking the above conceptual definition of the coercion measures as starting point, they can be classified according to
a) their procedural aims
b) the human rights limited by them.

Beyond this, coercion measures can be distinguished by
c) their subjects and
d) their dependence on resolutions.

ad a) Coercion measures can have procedural targets as

- ensuring presence of participants or other persons (e.g. habeas corpus, detention etc.)
- ensuring non-attendance of participants or other persons (e.g. eject from the court, expel etc.)
- obtaining evidence means (e.g. house search, seize, bodily search etc.)
- ensuring undisturbed execution of proving actions (e.g. physical coercion)
- keeping the order of procedure (disciplinary penalty)
- preventing from delay of procedure (award costs),
- ensuring execution of criminal resolution (e.g. preliminary arrest, temporary medical treatment, sequestration).

ad b) In respect of human rights there are coercion measures limiting and not-limiting personal freedom. The latter can concern more rights of citizens, e.g.

- proprietary rights (e.g. size, sequestration),
- human dignity (e.g. bodily search),
- inviolability of domestic peace (house search) or
- inviolability of correspondence.

ad c) According to subjects there are active subjects (persons applying coercion measures) and passive subjects (concerned in the measure):

- coercion measures can usually be applied by the authorities. Some coercion measures can be ordered by any authority (e.g. house search), others only by given authorities (e.g. preliminary arrest only by the court). The only coercion measure, which can be applied by anyone, is capture of a person caught in the act.
- in most coercion measures (deriving the characteristics of criminal procedure) the accused is concerned. Some coercion measures can be ordered only as against the accused (see: the gravest coercion measures or sequestration), many of them can be

applied against other participants (or even against an outsider) (e.g. house search, removal from the scene of investigation, disciplinary penalty).

ad d) The CPA usually claims that coercion measures should be applied only after starting criminal procedure (ordering the investigation), as coercion measures serve procedural aims. In most cases coercion measures are to be preceded by two resolutions: the one ordering the investigation and another one decreeing the given coercion measure. In some cases (see: not coercion measures of pressing necessity) they can be applied before decreeing the investigation, than only the coercion measure itself is ordered before its execution.

## 4.2. Coercion measures limiting personal freedom

From coercion measures limiting personal freedom detain in custody, custody, and institutions replacing them, temporary medical treatment and judicial warrant will be introduced here.

### 4.2.1 Detain

Detain is a temporary limitation of personal freedom of the accused It can be ordered by the court, prosecutor or investigating authority for no longer period than 72 hours. Clause of decreeing detain is that it is to be applied only against a person whom can be suspected reasonably of committing a crime, especially in case of catching in the act, when preliminary custody is expected. Than detain is a coercion measure preparing custody, as on the one hand during the process of ordering it the prosecutor – if the conditions of preliminary arrest exist in his opinion – has to propose for custody, on the other hand the court has to decide on the given proposal. If the court, because of a lack of the prosecutor's proposal does not order custody, the accused has to be set free.

Detain can be ordered repeatedly for the same crime only if the circumstances have been changed (e.g. new proof has appeared against the accused).

The closest relative of the accused or in case of lack of him the person named by the accused is to be informed about the execution of coercion measure and the place of imprisonment within 24 hours. If the accused is a soldier the competent superior at his effective force has to be acquainted. The juvenile child of the accused, staying without care, or other person under the accused's care are sent to a relative or a competent institution, and measures are to be taken to secure the fortune and the flat of the accused left without care.

Other cases of detain other than custody preceding preliminary arrest are as follows:

- the one has to be detained against whom warrant is valid (Art 73),
- persons disturbing the order in the court can be detained up to the end of trial (Art 245),
- during particular procedures detain can be ordered and the accused can be arrested to the end of the trial (session) but maximum for 6 days (Art 555),
- persons claimed to be extradited are to be taken in for 72 hours as extradition arrest. (Art 19 Act 38, 1996),
- in case of a contravention possibly punished with imprisonment, the police (if the perpetrator is caught in the cat) can detain him in order to accomplish a rapid judicial procedure, but maximum for 72 hours (Art 77 Act 59, 1999)
- at last, the local immigrant control can place a foreigner under custody for 5 days for ensuring execution of deportation (art 46 Act 29, 2001); the period of this latter custody with its prolongations can exceed 6 months.

### 4.2.2. Preliminary arrest (custody)

Preliminary arrest is the most serious coercion measure, as it is a deprival of personal freedom of the suspected by the court, preceding the final resolution (Art 129). Target of this legal institution is to ensure the presence of the suspected on the procedure, and preventing him from committing other crimes.

#### *4.2.2.1. Clauses of arrest*

Clauses of ordering arrest are determined in the CPA with respect of the aims of arresting. According to this, conditions can be formal and material, these latter ones are divided into groups as general (collective), special (alternative).

System of conditions of preliminary arrest is introduced below as follows:

| FORMAL CONDITIONS | MATERIAL CONDITIONS | | |
|---|---|---|---|
| | *General conditions* | *Special conditions* | |
| | | *Positive conditions (reasons for arrest)* | *Negative conditions (reasons excluding arrest)* |
| 1. starting the procedure | 1. two directional established suspect | 1. escape, hiding, or attempt to do them, crime repeating | 1. reasons connected to crime |
| 2. judicial judgement | 2. being threatened with imprisonment | 2. danger of escape or hiding | 2. reasons in connection with the accused |
| 3. prosecutor's proposal | 3. juvenile: particular material weight | 3. danger of collusion | |
| 4. listening the accused | | 4. danger of repeating the crime | |
| 5. established resolution | | 5. period of the penalty of first instance | |
| | | 6. soldier: official or disciplinary reason | |

Within material conditions the general conditions have to exist collectively (conjuctive): in lack of any of them preliminary arrest cannot be ordered.

Conditions of ordering the arrest are completed by special conditions ensuring procedural aims mentioned earlier. From the unusual positive conditions (reasons for arrest) one is enough to deprive the suspected temporarily from his freedom. Such condition is (as noticable from the table above), if

- the suspected escaped, hidden from the court (prosecutor, investigating authority), attempted to escape, or during the procedure against him another procedure was started because of committing a new crime intentionally possibly punishable with imprisonment,
- in respect of danger to escape or to hide it can be supposed that his presence on the procedural action cannot be ensured,

- it can be supposed that if left free, especially through influencing or intimidating the witnesses, or destroying, falsifying or hiding material evidence means or documents, the suspected could upset, render or endanger evidence (danger of collusion),
- it can be supposed that if left free, the suspected would execute the prepared or attempted crime, or would commit another crime punishable with imprisonment,
- the period of the penalty of first instance is too long,
- the suspected is a soldier, the arrest can be ordered if against him a procedure is being conducted for a military crime, or crime committed at official place or related to service, and expectedly punishable with imprisonment, so the accused because of service- or disciplinary reasons cannot be left at large.

#### *4.2.2.2. Length ofpreliminary arrest*

Length of preliminary arrest is regulated in the CPA related to procedural sessions and for periods within them. Length of preliminary arrest is to be examined
a) during the investigation,
b) during judicial procedure of first instance,
c) after passing final resolution first instance.

ad a) Before proposing the bill of indictment preliminary arrest ordered by the investigating judge can last until the resolution passed during preparation of trial, but maximum one month. The term can be prolonged by the investigating judge casually with maximum three moths, altogether maximum with one year from ordering preliminary arrest. After this the county court may prolong the arrest proceeding as single judge, with two moths at every occasion.

ad b) Preliminary arrest ordered or reserved by the court of first instance after proposing the bill of indictment lasts until the final resolution of the court of the same court.

ad c) Preliminary arrest ordered or reserved by the court of first instance after announcing the final resolution, or custody ordered by the court of second instance lasts until a non-appealable finish of the proceedings, but maximum until the length of the imprisonment imposed in the non-final decree. In case of repeal of the decisive resolution of the court of first instance, or of re-trial on first instance, the preliminary arrest ordered or reserved by the court of first instance lasts until the decree of the court of first instance passed at the end of the repeated trial.

If the length of custody, ordered after presenting the bill of indictment (see. b) and c)) lasts

- monger than 6 months, and the court of first instance has not passed final resolution yet, the same court,
- or following this the court of second instance over-reviews the reasons of custody.

If the length of custody reaches 3 years it is to be abated, except for in the event of preliminary arrest ordered after the announcement of final decree, or if retrial is conducted (because of repeal).

#### *4.2.2.3. Ordering preliminary arrest*

With the aim of respect procedural rights and because of the characteristics of coercion measures accompanied by serious legal disadvantages, when ordering them the

proceeding authority (especially the court) decides within the frames of complex rules. According to this the investigating judge holds a session, if the subject of the proposal appealed to his office

- a coercion measure curtailing or limiting freedom (preliminary arrest, prohibition to leave domicile, domestic home custody, temporary medical treatment, confiscating of passport, or in case of a soldier accused if placed under strict supervision),
- prolonging preliminary arrest for more than six months from the date of ordering it
- accepting bail,
- ordering observation of mental state.

The session is a forum, competent in passing decisions with great significance, on which parties are reported together, and the judge decides after become aware of the proofs grounding the proposal. Then the judge examines whether preliminary conditions exist, there were any obstacles to start criminal procedure or there were reasonable doubts against the establishment of the proposal.

The investigating judge decides on the proposal in a reasoned resolution, admitting – completely or partially – or refusing it. The reasoning includes the essence of the proposal, a short description and qualification of the crime serving as basis for the procedure, the existence of legal conditions of the proposal or refers to the lack of them. If the proposal is refused by the judge, there is no room for another proposal on unchanged grounds. Against decree only that person can appeal, who was informed about the resolution. The appeal has to be proposed without delay after the announcement. The ones not being present on the announcement of the resolution can appeal within three days from the session. An appeal against the resolution delivered can be proposed within three days from delivery.

The investigating judge sends the appeal to the county court without delay after its arrival or after exceeding the appealing term. The appeal is concerned in the county court on a session of second instance. In case if there was an order brought to accomplish a coercion measure, curtailing or limiting personal freedom, it can be executed without respect to the appeal. Appeal of the prosecutor against abating coercion measures curtailing or limiting personal freedom, if the abating was not proposed by the prosecutor, has a delaying power.

#### *4.2.2.4. Institutions replacing the arrest*

The following institutions, replacing preliminary arrest are regulated in the CPA:

a) bail (the only material surrogatum)
b) prohibition to leave domicile,
c) home custody,
d) confiscating of passport.

ad a) Bail means a lighter limitation in rights in contrast with preliminary arrest. It is a material type replacing institution. The court can omit or abate preliminary arrest if

- danger of escape or hiding of the accused prevails, or with respect of that the presence of the accused on procedural actions otherwise can not be ensured, or
- with respect of the crime committed and the personal circumstances of the suspected, the presence of the accused on procedural actions is probable even in case of giving bail.

A bail can be offered by the accused or anybody else, and for accepting of the bail the accused or the defender may propose. On accepting the offered bail and its sum the investigating judge decides on a session, through listening the prosecutor, accused, defender,

and the offender together. The court establishes the sum of bail with respect of personal circumstances and financial state of the accused in its resolution, in order to avoid its consideration depending on financial state. At the same time the court may order prohibition to leave domicile, home custody, or confiscation of passport.

The prosecutor may appeal against the resolution on omitting or abating preliminary arrest because of accepting the bail. The accused and the defender may appeal repeatedly against refusing the proposal for accepting the bail, if they can refer to new circumstances.

The bail accepted by the court has to be settled in cash, following it the arrested accused is to be set free without delay.

Preliminary arrest of a person let be at large because of settling a bail can be ordered by the court if

- the accused has not appeared on a procedural action after being summoned, and non-presence was not explained reasonably,
- after accepting bail another reason emerged to arrest the accused.

In the former case the person paying the bail in looses his right for the sum, otherwise, it is to be returned to the person paying it in, if

- the accused is arrested again not because of infringing the rules in connection with the bail,
- the prosecutor abated the investigation, omitted or postponed the act of accuse,
- the court closed or abated the procedure in a final sentence,
- in case of ordering imprisonment the execution of arrest has been begun.

ad b) Prohibition to leave domicile is a coercion measure, limiting freedom to move and choose domicile freely, under the validity of which the accused cannot leave the determined territory or district without permission, and cannot change place for stay or residence. This coercion measure is ordered if the aims of preliminary arrest can be achieved this way also, regarding the type of the crime, personal or family circumstances of the accused – especially health state or elderly age – or his behaviour during the procedure.

As a stricter degree of prohibition to leave domicile, the court may prescribe for the accused in a resolution to report occasionally, or may limit the personal freedom of the accused any other way. Execution of it is supervised by the police, or in military criminal procedure by the commandant (if prevented, by an other superior).

Prohibition to leave domicile is regulated similarly to preliminary arrest, according to the procedural sections:

- prohibition to leave domicile ordered before presenting the bill of impeachment is valid until the resolution of first instance brought during the preparation for the trial,
- prohibition to leave domicile ordered after this has force until the announcement of final resolution of first instance,
- prohibition to leave domicile ordered by the court of instance after the announcement of final resolution lasts until non-appealable finish of the case on second instance,
- prohibition to leave domicile ordered by the court of second instance is valid until the end of procedure.

If prohibition to leave domicile was ordered before presenting the bill of impeachment, and six months have pasted since then without the prosecutor's act of charge, the necessity of the prohibition is over-reviewed by the court. For this the prosecutor proposes five days before the term expires.

Prohibition to leave domicile is abated if

- the term has expired without prolongation,

- the investigation was abated or its term has expired without prolongation,
- the act of charge was postponed,
- the procedure was finished non-appealably.

Prohibition to leave domicile is to be abated if

- the reason to order it has been dissolved,
- the accused infringes the rules of prohibition,
- does not appear on procedural action on his own fault.

If prohibition to leave domicile is abated from a fault of the accused, as further coercion measure, disciplinary penalty, arrest, domestic arrest or preliminary arrest can be ordered. For abating prohibition to leave domicile the prosecutor also may propose until presenting the bill of impeachment.

ad c) The gravest form of prohibition to leave domicile is domestic arrest, in case of which the accused is not allowed to leave the flat and the territory belonging to it as determined by the court or may leave only with aim stated in a resolution of the court, such as ensuring everyday necessities or having medical treatment, and only for the stated distance and time. Domestic arrest cannot be ordered against a soldier within his service term. Keeping the measures of domestic arrest can be supervised by the police, even with the help of accessories which are checking the movements of the accused.

If the accused infringes the rules of domestic arrest or does not appear on procedural acts from his own fault, can be punished with disciplinary penalty, can be detained or arrested preliminary.

ad d) Confiscation of passport is originally a replacing institution of preliminary arrest. However, he CPA regulates it not only as a superrogatum, but in case of presence of some certain circumstances, as an obligatory applied coercion measure as well.

The court can order confiscation of passport from the accused – until the presentation of the bill of impeachment, if the procedure is based on such a crime which is to be punished with 3 or more years imprisonment, and the confiscation of the passport from the accused is reasonable in order to ensure his presence on the procedural acts. The one, whose confiscation of passport was ordered, may travel abroad only in a reasoned case with a special permission.

The court abates confiscation of passport if the reason for confiscation has been dissolved, or the procedure has been finished with a final resolution. Confiscation of passport is abated by the prosecutor if case of closing the investigation down, postponing the act of charge, or if the reason of confiscation had ceased before proposing the bill of impeachment. The prosecutor or the court announces the competent authority about the abating. The authority then returns the passport to the accused, unless if there is a regulation with different measures on returning of passport.

#### *4.2.2.5. Compensation*

Compensation can be requested for coercion measures or punishment suffered innocently (preliminary arrest, temporary medical treatment). The compensation for preliminary arrest and temporary medical treatment has positive and negative conditions (Art 580) as follows:

| Positive (collective) conditions | | | Negative (alternative) conditions | |
|---|---|---|---|---|
| *The court orders* the arrest | *Formally innocent* accused | *Final* resolution | *Dispositive* excluding reasons | *Cogent* excluding reasons |
| | • lack of crime<br>• lack of proof<br>• reason excluding being punished (except for two reasons)<br>• obsolescence<br>• res iudicata<br>• dismissal of charge | • discharging<br>• abating the procedure<br>• abating the investigation | • (attempt to) escape, hide<br>• misleading behaviour of the accused | • ordering coercion medical treatment |

On the method and degree of compensation regulations of Civil Code are to be applied. Request for compensation is to be proposed within six days after announcing the resolution. The sum of compensation has to be stated in the request, just like the proofs and documents serving as grounds for it. The request is sent by the criminal court to the civil court, which decides on it in civil procedure.

### 4.2.3. Temporary medical treatment

The temporary medical treatment is a judicial limitation of personal freedom without final resolution in case of accused with disturbed medical state, supposing that medical treatment will be ordered. This way, conditions of coercion measures are identical to the ones of medical treatment:
a) the accused committed violent crime against a person, or crime causing public danger,
b) the accused cannot be punished because of his mental state,
c) it apprehend that the accused should repeat the crime,
d) if can be punished, it can be more than one year imprisonment.

Temporary medical treatment cannot be applied at the same time as preliminary arrest but the CPA makes it possible that the accused in preliminary arrest underwent psychological treatment, if against him temporary medical treatment cannot be applied. Psychological treatment of an accused during both temporary medical treatment and preliminary arrest is to be executed in the Forensic Supervising and Psychological Institute (Budapest).

Term of temporary medical treatment lasts from the proposal of the bill of impeachment until the resolution of the court of first instance brought during preparation for the trial. If six months have gone since starting temporary medical treatment and the prosecutor has not proposed the bill of impeachment, the reasonableness of temporary medical treatment is supervised by the court. For supervision the prosecutor proposes for five days before exceeding the term.

If one year has gone since starting temporary medical treatment, reasonableness of it is supervised by county court proceeding as single judge by the rules concerning procedure of investigating judge. For the supervision the prosecutor proposes in five days before exceeding the term.

After proposing the bill of impeachment, temporary medical treatment, ordered by the court of first instance lasts until the announcement of decisive resolution of first instance. The temporary medical treatment, ordered on first instance after the announcement of decisive resolution lasts until finishing the second instance procedure. Temporary medical treatment, ordered by second instance court lasts until the end of the procedure.

Temporary medical treatment is abated, if

- its term is exceeded
- the investigation was abated, the term of it is over without postponing,
- the procedure was finished non-appealably.

Or it is to be abated, if

- the reason of ordering it ceased.

Temporary medical treatment can be closed down by the prosecutor also, until proposing the bill of impeachment. Against ordering temporary medical treatment the partner in marriage of the accused or his legal representative can appeal, or they can propose for ceasing it also.

### 4.2.4. Bringing in the court

Bringing in the court (compulsory attendance) is the lightest form of coercion measures limiting personal freedom, with the aim of making the person concerned (accused, witness) appear in the court, before the judge or prosecutor, or take part in a given procedural act. It has three forms:
a) bringing forth
b) preparing the way
c) suit the superior

ad a) As a main rule bringing forth can be executed by the police, but in special cases, when other authority is investigating in the case, it can also execute make the suspected appear in the court, within its territory of competence. When executing bringing forth even force can be applied, otherwise, if possible it is to be accomplished with indulgence to the person concerned and his surroundings, between 6.00 am and 12.00 pm at night.

ad b) A lighter form of bringing in the court serves also the forbearance of the concerned, when the ordering organ (court, prosecutor, investigating authority) states that the policemen – or another member of investigating authority – is to check whether the concerned person is set forth to the court. This form of coercion measure can be applied only if the aims can be reached this way also.

ad c) Soldiers cannot be brought forth by the police or other authority, in this case the competent superior is called upon to execute the measure.

## 4.3. Coercion measures not limiting personal freedom

### 4.3.1. House search

House search is a coercion measure ordered by the court, prosecutor, or investigating authority, concerning (limiting) inviolability of privacy. During it the investigating authority examines a house, flat, other rooms or fenced in places, vehicles, electronic appliances or other data recorders placed there in the interest of a successful procedure. House search in offices of public notaries or attorneys and in health care institutions can be ordered only by

the judge (except for searches in order to find the perpetrator) and can be executed only in presence of the attorney.

Hose search is reasonable if it leads to

- recovery of the perpetrator,
- recovery of traces,
- recovery of means of evidence or subjects to be confiscated.

House search may concern not only the criminal, but any other person. However, single legal guarantees limit the absolutism of authorities. If the search is executed in order to obtain a concrete subject, and the owner of it handles it over to the authority voluntarily, the search can be continued only if there is a suspect of existing further means of evidence or subjects to be confiscated.

House search is to be executed in the presence of the person concerned (or representative, defender or authorised person). If the person concerned is not present, a representative is to be appointed.

The CPA includes the main rules of executing house search together with regulations concerning seize and bodily search. According to this, these measures

- are to be taken showing consideration for the person concerned,
- possibly between 6.00 a.m. and 12. p.m.
- by ensuring that items of his privacy not related to the crime could not come open,
- no unnecessary limitation is employed,
- circumstances and place of finding a subject are to be recorded,
- persons preventing house search can be forced to bear it, or – apart from the accused – fined with disciplinary penalty.

### 4.3.2. Bodily search

Bodily search is a measure concerning human dignity and aiming at finding a subject to be confiscated and possibly used as means of evidence. In order to this

- clothes, body of the accused or other persons,
- vehicles or other subjects

are checked.

Bodily search is ordered by the prosecutor or investigating authority. Before executing it, the concerned person is called upon to handle the subject in point voluntarily, and only if refuses bodily search can be accomplished.

According to the so called "double sexual rule" bodily search can be executed (and can be present) only by a person of identical sex to the searched one, apart from a doctor.

### 4.3.3. Seize

Seize is a coercion measure limiting right to own and within that right to possess and use a subject, during which

- a subject qualified as means of evidence,
- subject can be confiscated by law,
- subject possessing which infringes the law

is taken away from its possessor, and places under the possession of the court temporarily.

Basic aim of seize is on the one hand ensuring means of evidence necessary for the procedure and on the other hand public security. It can be ordered by any authority, but to order seize of some documents, (in offices of public notaries or attorneys and in health care institutions) is competent only the court. In latter case the prosecutor and the investigating authority can place the given subject under detention (seize) in cases not bearing delay, but the resolution from the court is to be obtained without delay also.

Objects cannot be seized are as follows:

- letters and written information between the accused and the defender,
- notices of the defender considering the case
- letters and written information between the accused and a person having right to refuse to testify, and documents, concerning the content of which testimony can be refused, if these documents are in the possession of this witness.

This limitation is not valid, if

- the person having right for refusing to bear testimony can be suspected with cooperation, aiding or abetting in a crime, or fencing,
- the subject to be seized is a means of committing a crime,
- the subject is handled by the person – having right for refusing to bear testimony – voluntarily.

The subject seized is to be placed in deposit, after making a record of it. The subject is to be secured in unchanged state, ensuring that the traces from the crime stayed on it, the subject could not be replaced with another subject.

Seize can be abated by the court, prosecutor, or investigating authority, if it is no more necessary for the procedure. Size has to be abated if the investigation is cancelled, or its term had exceeded without prolongation. When abating seize the subject

- is to be given back to the one who was its owner at the time of committing the crime and can certify it with no doubt,
- in case of lack of owner it is to be given to the person proposing reasonable request for possessing it,
- in lack of such a person to the person it was seized from,
- if all above mentioned points are not valid, it can be given to the accused,
- a subject seized from the accused, if it is unambiguously possessed by someone else but the owner cannot be identified, is placed under possession of the state,
- if the subject has no value, and no one proposes request for having it is to be demolished.

A subject seized can be sold by the court if

- it is exposed to rapid decomposition,
- not suitable for long storage,
- its values would be decreased by a longer storage,
- no rightful request was proposed for its owning.

The worth after selling the subject replaces the seized subject in the procedure.

If the possession of the subject is against public security or legal regulations, the court orders to seize it if the prosecutor proposes so, until the presentation of the bill of indictment. A subject, ordered to be given to the accused can still stay kept back if there is a valid fee, fortune seize, criminal cost or civil legal claim against him.

### 4.3.4. Obligation to preserve data recorded by computer

Obligation to preserve data recorded by computer can be applied against the operators of electronic data bases. It is a securing type coercion measure to prevent the operators from influencing these easily changeable data. The obligation to preserve these data does not derive the data operator from his right of possession, as against seize.

Obligation to preserve data recorded by computer can be ordered by the court, prosecutor, investigating authority in case of data,

- being means of evidence,
- necessary for finding means of evidence,
- necessary for identifying the accused, or
- his place of residence.

The person obliged has to preserve the data recorded on computer from the date being announced of the obligation in unchanged form, and prevent from changing, deleting, destroying, copying, or approaching to them.

### 4.3.5. Sequestration

Sequestration is a coercion measure applied against the accused, ensuring satisfaction of

- property confiscation,
- obligation to settle a value falling under confiscation or
- civil legal claim.

Sequestration can be ordered against property (part or subject of property), which is not possessed by the accused. During this coercion measure the accused's right to dispose, concerning these subjects are suspended by the court, which arranges the record of them in a public registration.

Sequestration is to be is to be released when

- reason for its ordering has been ceased,
- investigation is abated or its term has exceeded (apart from the case if civil plea is initiated within 60 days),
- sequestration was ordered to ensure a given sum, and this sum is placed in deposit,
- the procedure was finished without property seize, in case of deciding on civil legal claim if
  - it was refused,
  - it was sentenced but the private party did not claimed compensation within 30 days from expiring of the determined term of execution,
  - it was transferred to other legal way and the prosecutor or the private party did not certify within 60 days that the claim was fulfilled.

### 4.3.6. Securing measures

Securing measure can be ordered by the prosecutor or the investigating authority, with the aim of ensuring the success of sequestration, when right to dispose of

- moving and real property
- securities embodying property right,
- financial means handled in financial institute by contract,
- part of business of an economic association

of the accused or other person concerned is temporarily limited.

This coercion measures can be applied if the conditions of sequestration exist, and it can be supposed being well established, that the accused would hide, alienate, or convey these subjects. Temporary characteristic of this securing measure means that it can serve only for ensuring sequestration, such as following the measures taken for executing it – when the authority confiscates the subjects – sequestration has to be proposed.

### 4.3.7. Disciplinary penalty

Disciplinary penalty is a financial coercion measure because of infringing procedural obligations or disturbing the order of procedure. The sum of it can be from one to two hundred thousand Forints, in especially serious cases to five hundred thousand Forints.

Against disciplinary penalty there is a room for postponing legal remedy, while if it is not settled, the punishment may turn into arrest. If so, in cases of a punishment from one to five thousand Forints, confinement can be one day no shorter, and it can never be longer than one hundred days.

The confinement is executed in criminal executing institution. Postponement or discontinuance of it can be permitted only if treatment in hospital is necessary.

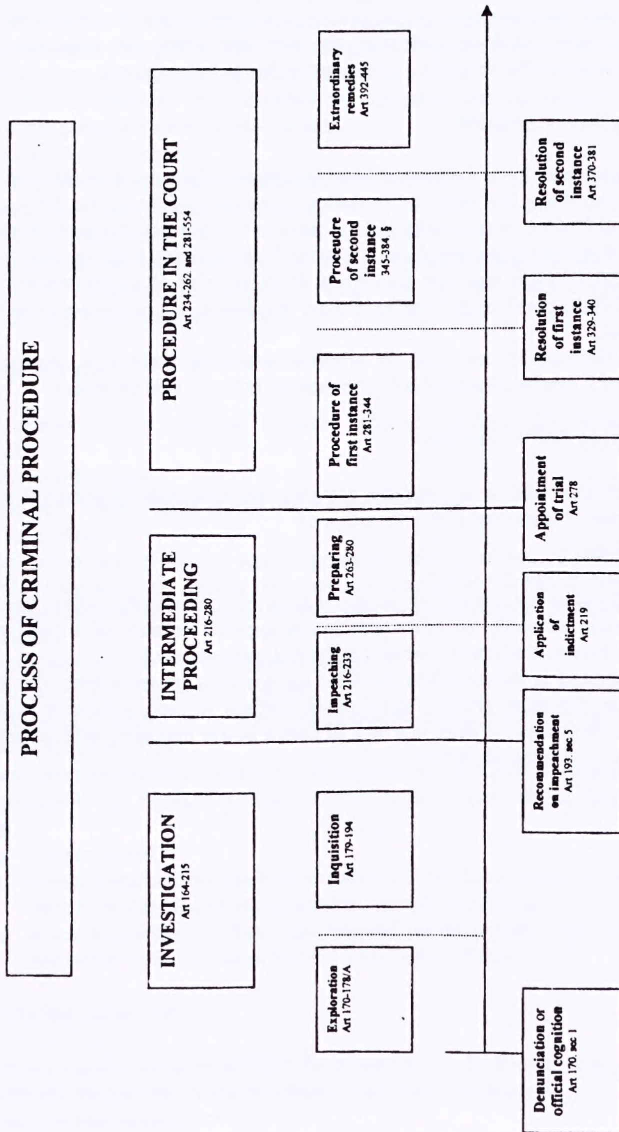
### 4.3.8. Applying body coercion

Body coercion can be ordered for ensuring the execution of coercion measures in criminal procedure. It is applied if the execution of

- a procedural or
- an evidence action

is considered as not ensured by the court ordering a procedural action, the prosecutor, or the investigating authority no body coercion is applied, because of a passive or active resistance of the person concerned (accused, offended, witness, etc.).

Body coercion is adapted into the CPA as coercion measure from the Police Act, determining it as the most simply, and lightest method to stop resistance against police measures. It can be applied, if there is a lack of police power majority, with more policemen, or calling others, by forcing physically.


PROCESS OF CRIMINAL PROCEDURE
INVESTIGATION
Art 164-215
INTERMEDIATE PROCEEDING
Art 216-280
PROCEDURE IN THE COURT
Art 234-262 and 281-554
Exploration
Art 170-178/A
Inquisition
Art 179-194
Impeaching
Art 216-233
Preparing
Art 263-280
Procedure of first instance
Art 281-344
Proceudre of second instance
345-384 §
Extraordinary remedies
Art 392-445
Denunciation or official cognition
Art 170. sec 1
Recommendation on impeachment
Art 193. sec 5
Application of indictment
Art 219
Appointment of trial
Art 278
Resolution of first instance
Art 329-340
Resolution of second instance
Art 370-381

# V. Investigation

The criminal procedure usually starts with investigation, during which the authority does not have to intend on discovering the factual state, but only to make the case suitable for the act of impeachment. This way,

- it has to discover the crime,
- its perpetrator,
- and ensuring the means of evidence.

Investigation is accomplished by the prosecutor, who can order the investigating authority to execute investigating actions in oral or written form. The authority is to accomplish them within the defined term by the prosecutor.

## 5.1. Initiating the criminal procedure

### 5.1.1. Rights and obligations of denounce

Anyone can denounce because of a crime (general denouncing right). There are only two exemptions from these main rules:
a) criminal procedure in a crime to be punished by private charge can be started only by the denounce of a person competent to present private charge (so in this case not anyone can denounce).
b) crimes to be punished by request (in cases of slander or insult against persons of diplomacy enjoying personal exemption) criminal procedure starts only if the offended person claims so.

Besides the right to denounce the Criminal Code and the CPA state cases when it is obliged as follows:
a) everybody is obliged to denounce in cases determined in the CPA (violent change of constitutional order, organisation against constitutional order, rebel, destruction, treason, infidelity, supporting the enemy, spying, violation of state secret, terror action, infringing international legal obligation, soldier's escape to abroad)
b) member of authority, official person has to denounce if becomes aware of a crime (if the perpetrator is known, with specifying him).

There is an exemption from the latter obligation to denounce: if a special regulation entrusts it to the discretion of an authority. In this case the data emerging in connection with the crime are to be announced to this authority.

### 5.1.2. Method of denounce

Denounce is not connected to formal methods, it can be accomplished in oral and in written forms, even on phone or by email, to any authority. If it is not an investigating authority, then the denounce is transferred to the investigating authority having sphere of authority and competence in the case. The authority has to make a report in case of oral denounce and it is registered with no delay.

### 5.1.3. Initiating investigation

Investigation can be initiated

- officially (based on data coming to knowledge of the prosecutor or the investigating authority)
- following the denounce.

Investigation is ordered by the investigating authority, of which record is made, including that

- what crime
- (if the person denounced is known) against whom
- when investigation was started.

Investigation can be initiated without ordering it as a real act. Then the prosecutor or the investigating authority accomplishes investigating actions in order to

- ensure means of evidence,
- establishing identity of the person can be suspected, and preventing him from hiding, finishing the crime or committing another crime or
- accomplish other investigating actions in a reason not bearing delay.

In these cases record on starting investigation is accomplished afterwards but as soon as possible.

## 5.2. Starting the investigation

Investigation can be started following denounce, report, or notice of an authority. Then the authority accomplishes actions in their merits and those not in the merits.

The former actions include sending and transferring denounce, in issues as follows:
a) not postponable investigating actions,
b) refuse of denounce,
c) ordering the investigation.

ad a) Not postponable investigating actions are ordered by the prosecutor and the investigating authority. In this case some coercion measures can be accomplished (arrest, house search, seize, obligation to preserve data recorded by computer) and single securing measures (scene investigation, interrogation at the scene, introduction for recognition).

ad b) When starting investigation, refuse can be accomplished occur three ways as:
1. simple,
2. combined,
3. and particular refuse.

ad 1. Denounce coming known for the prosecutor can be refused within tree days, if it can be stated from the denounce that

- the action is not a crime,
- the suspect of crime is missing,
- a reason to be non-punishable exists (lack of private proposal, denounce or request),
- in some reasons preventing being punished (death, lapse, mercy)
- the action has already judged in non-appealable judgement.

Apart from the more difficult reasons to exclude possibility to be punished, the investigating authority also has the right to refuse in these cases.

ad 2. Combined refuse of denounce

- refuse with announcement (if the crime is only a contravention the authority has to be announced),
- announcement with reprimand (if the act is less dangerous for the public),

ad 3. Particular refuse of denounce has three forms:

- refuse with investigating bargain (the prosecutor can refuse the proposal if the national security- or criminal- interests of the cooperation with the suspected person exceeds the interest of the state to practise its criminal investigating request).
- refuse against the undercover investigator, (if the crime was committed by a person at service and the criminal investigating interests is more significant than the request to punish him),
- investigation cannot be started because of public document forgery, if the forged document is used for entering a foreign country (supposing that the office competent in cases related to aliens is conducting a procedure against him, and there is no need to start investigating proceedings because of another crime).

In the first two cases the damage caused is burdened on the state.

ad c) Finally, the investigation is can be started if there is an established suspect of committing a crime and there is no obstacle of ordering.

## 5.3. Conducting the investigation

### 5.3.1. Main rules of conducting investigation

Conducting investigation has three rules by the CPA. During executing the investigating authority executes the single investigating actions (interviews, obtaining hard evidence and expertise, house search, bodily search, seize and other coercion measures etc). The order of actions is not determined in the CPA.

From the rules of investigation, regulations concerning

a) term of investigation,
b) inquiry,
c) interview of the suspected,
d) secret data collection depending on the judge's permission

are to be emerged here

ad a) Investigation is to be accomplished in the shortest term as possible, but maximum 2 months. This basic term can be prolonged if the case is difficult, or there is an unpreventable obstacle:

| | Investigating authority investigates | Prosecutor investigates |
|---|---|---|
| | Basic term: 2 months | |
| **Can prolong with 2 months** | the prosecutor | head of prosecution |
| **After this can prolong with no more than one year** | county chief prosecutor | superior prosecutor |
| **Can prolong with more than one year** | State Superior Prosecutor | |

ad b) Investigating authority can execute data collection after starting criminal procedure in order to state whether means of evidence exist and if so, where (inquiring). During this the police can

- use criminal data bases as determined in the law,
- claim for inspecting in the documents, giving information, establishing damage or accomplishing examination,
- view the scene of the crime,
- employ an expert,
- check all information obtained.

During inquiring an undercover agent can be employed and data collection can be accomplished independently from the court's permission. A report is to be recorded about the inquiry which can be taken into consideration in the procedure as evidence.

ad c) The CPA emphasises the announcement of well established suspect and the interview of the suspected. The prosecutor (or if the prosecutor does not dispose other way the investigating authority) announces the established suspect, if based on the data available the defined person can be suspected well established with committing the crime. The arrested suspected has to be interviewed within 24 hours after bringing him to the investigating authority, (later in any chosen time until finishing the investigation). The latest time for appointing a defender for the arrested suspected – if he has no authorised defender – is following the first interview.

ad d) secret data collection depending on the judge's permission is regulated in details in the CPA. In the sense of this the prosecutor and the investigating authority

- can observe and record everything happening in privacy,
- can obtain and record letters (other postal consignment or information forwarded through tele-communicational system),
- obtain and employ forwarded and stored data forwarded and stored in electronic system.

with a permission of the judge without establishing the identity or place of residence of the perpetrator, without arresting him, or in case of obtaining means of evidence even without his knowledge.

Secret data collection is allowed only in cases of crimes punishable with at least 5 years imprisonment, if the procedure is conducted because of a case

- related to crimes extending over the boards of the country,
- directed against juvenile,
- committed in series, or in organised form,

- related to drugs,
- being in connection with counterfeiting or forgery of securities
- committed with using firearms.

If investigation is accomplished by the prosecutor, he may employ secret data collection in other cases also.

About the permission of secret data collection the court decides after the prosecutor's proposal, it can be permitted for maximum 90 days (can be prolonged with more 90 days once). In non-postponable cases secret data collection can be ordered by the prosecutor for 72 hours, but then the proposal is to be appealed to the court. Secret data collection is connected to the target, its results can be employed in the procedure if the conditions of ordering it exist, and the aims of employment are identical to the ones of the original order.

### 5.3.2. Suspending the investigation

In the event of temporary obstacles emerging during investigation it can be suspended by the prosecutor or the investigating authority. In some cases the prosecutor can establish a term of one year. If the term is over without success, the procedure is to be continued. Conditions of suspension of investigation are as follows:

| | **Competent only the prosecutor** | **Competent the prosecutor and the investigating authority** |
|---|---|---|
| **Without term** | • chronic, serious illness or mental disorder of the suspected occurred as a result of the crime<br>• a decision brought in a former question during the procedure has to be obtained<br>• crime committed abroad by not Hungarian citizen, a decision for starting criminal procedure is to be obtained<br>• in cases falling under the competence of international criminal court the Hungarian authority is called upon in order to transfer the case | • the suspected residents in unknown place or abroad, and the procedure cannot be continued in the absence of him<br>• the personage of the perpetrator was not possible to be established during investigation<br>• there is a need to fulfil a relief request by a foreign authority, and there is no need of further investigating actions within Hungary |
| **With a term of max. one year** | • the person has returned from abroad<br>• in the interest of establishing the personal state of the concerned<br>• there is a need to fulfil a relief request by a foreign authority, and there is no need of further investigating actions within Hungary | – |

### 5.3.3. Procedure of the investigating judge

During the investigation duties of the court are fulfilled by the investigating judge. The investigating judge is appointed by the president of county court. The decision of the investigating judge is passed
a) on a session or
b) based on the documents.

ad a) Investigating judge passes decision on a session, in questions as follows:

- ordering coercion measure limiting personal freedom (preliminary arrest, prohibition to leave domicile, domestic arrest, confiscating the passport, temporary medical treatment, placing under strict supervision),
- longer than 6 months prolongation of preliminary arrest from the date of ordering,
- accepting bail,
- ordering observation of mental state (if the suspected cannot be present because of his health state or cannot practise rights),
- accomplishing evidence action (interviewing a witness, especially secured, in state endangering life directly, under the age of 14, or such evidence which is supposedly could not be produced in the judicial procedure.

The prosecutor, the accused and the defender can be present on the session (in case of interviewing especially secured witness only the prosecutor and the witness proceeding in the interest of the witness, in case of a witness under 14 only the legal representative). At the beginning of the session the proposing person presents the proofs in written or oral form and it is possible to make notices on the proposal.
The resolution passed on the session has to be announced without delay.

ad b) The investigating judge passes decision based on the documents

- on other coercion measures falling under the competence of the court before proposing the bill of indictment (house search in offices of public notaries or attorneys and in health care institutions can be, seizing the documents kept there, preliminary selling of the seized documents, obligation to preserve data recorded by computer),
- on excluding the defender,
- on permitting or abating secret data collection,
- on ordering to continue investigation after it had been abated,
- by the prosecutor's proposal announcing the witness as especially secured,
- proposal for over-review,
- changing disciplinary penalty into arrest.

The investigating judge brings decision in a resolution within three days from the proposal. The resolution is to be delivered by post with no delay.

### 5.3.4. Legal remedy during investigation

During investigation (depending on against which resolution or measure of which authority it is directed)
a) complaint,
b) proposal for over-review,
c) objection,

d) appeal for continuing investigation and
e) appeal
can be requested.

ad a) Considering whom the resolution of the investigating authority includes regulation, may appeal with complaint within 8 days from delivery. The complaint usually does not have postponing effect. With granting, the authority against whom the complaint was proposed, also can decide on it. If not so, it has to be submitted within three days to the competent authority. Complaint can be claimed by the prosecutor against a resolution of investigating authority, and against a resolution of the prosecutor by the superior prosecutor, within 15 days.

ad b) Against house search, bodily search, confiscation of the not delivered postal consignment or the documents of a person having right to refuse making confession, an appeal for over-review can be proposed to the prosecution, which sends the proposal together with the documents to the investigating judge.

ad c) The one who is considered in the measure of the investigating authority can propose an objection. The measurements necessary based on the objection, are made by the prosecution.

ad d) If the investigation was abated because of the possibility to be punished was cancelled based of procedural mercy, the continuation of investigation can be claimed within 8 days. Then investigation will be continued.

ad e) Appeal can be proposed against a resolution of investigating judge within 3 days from delivery. The investigating judge sends the appeal to the council of the second instance county court, which decides on the appeal on a council session.

There is no room for appeal against

- resolution on house search accomplished in offices of public notaries or attorneys and in health care institutions, confiscation of documents kept there or seizing documents of a person having right to refuse making confession,
- resolution concerning secret data collection,
- judgement of over-review appeal,
- changing disciplinary penalty into arrest,
- resolution on interviewing an especially secured witness, being in a state endangering life directly, under the age of 14, or
- resolution considering accomplishment of an evidence action.

With no respect to the appeal, coercion measures considering personal freedom can be executed. Against abating of such coercion measure based on documents the prosecutor may propose in a postponing appeal.

## 5.4. Closing the investigation

Closing the investigation can be accomplished two ways:
a) if it was not successful, with abating it
b) if it was successful, by finishing it.

### 5.4.1. Abating the investigation

Abating of investigation can happen with reasons similar to refuse of denounces, and the same way, there are simple, combined and particular investigation abating resolutions. Although, if investigation is partially abated, after an interview with the suspected, the prosecutor can omit investigation in a less grave crime, compared to a more serious crime committed.

Rules of refusing denounce are also valid when abating investigation.

| | **Prosecutor may decide** | **Both prosecutor and investigating authority may decide** |
|---|---|---|
| **Simple reasons to abate the investigation** | • based on information from the investigation no committing of a crime can be established<br>• not the suspected committed the crime or the perpetrator cannot be established from investigation<br>• reason excluding being punished (apart from expectable coercion medical treatment)<br>• other reasons excluding being punished<br>• two years have gone since ordering investigation against the given person | • action in point is not a crime<br>• child age as excluding reason<br>• death, lapse, mercy<br>• procedure obstacle<br>• res iudicata |
| **Combined reasons to abate the investigation** | • abating with reprimand<br>• abating with announcement | – |
| **Particular reasons to abate the investigation** | • investigation plea<br>• undercover agent | – |

Resolution to abate investigation is not a non-appealable judgement, so in case of new data or new proofs appearing, new investigation can be ordered again against the same person.

### 5.4.2. Finishing the investigation

Finishing of the investigation has three sections:

a) disclosure of investigation files, about which the suspected and the defender are informed. During disclosure of investigation files the suspected or the defender may propose for completing investigation, may make notices and other proposals, or ask for copies of documents;

b) if completion of investigation is not proposed, or the proposal is refused, or investigation was completed, the investigating authority announces the suspected and defender about the finishing of investigation;

c) at last investigating authority within 15 days from announcing about the finish of investigation sends it to the prosecutor with the denounce proposal.

# VI. INTERMEDIATE PROCEEDINGS

The intermediate proceeding is inserted between the investigational section and the judicial procedure in the court, it includes impeachment and drawing under charge (in Hungary: trial preparation).

## 6.1. Act of Indictment

### 6.1.1. Concept and types of indictment

The charge is a criminal request of the state, which is claimed by the competent person (accuser) against a determined person (accused) before the court, when the suspect of committing a crime by the determined person can be well established.

The charge has two types. Rights to represent the charge in cases of public accuse are provided for the public accuser, and in cases of private accuse for the private accuser.

There are four forms of private accuse:
a) main private accuse, where the offended has right for charge representation without authorisation of the prosecutor (actually, it is the valid private accuse);
b) subsidiary private accuse: in parallel with the prosecutor, only a subsidiary, or relatively individually expressed charge representation from the side of the damaged or offended person;
c) additional private accuse: instead of the prosecutor, the offended accomplishes charge representation, if the prosecutor withdraws the charge and does not appeal against the discharging sentence;
d) counter charge: in case of commonly committed crimes the accused may also present charge against the private accuser.

### 6.1.2. Relation between the charge and the judicial proceedings

There are three principles characteristic for the relation between the charge and the judicial procedure
a) charge is the basic condition of the judicial proceedings,
b) prohibition to expand the charge,
c) obligation to exhaust the charge.

ad a) Judicial proceedings can be initiated and conducted only based on a legal charge (the charge is indispensable condition of the procedures as conditio sine qua non). This clause has am emphasised significance, infringing it is considered as absolute infringement of rules, likewise if the charge is repealed the court is compelled to abate the procedure.

ad b) The prohibition to expand the charge is valid during the judicial procedures. The charge serves as a negative frame for them: the court can proceed only against an individual, against whom charge has been presented and only because of an action included in the charge. There are two exceptions from this prohibition:

- if the court realises another crime beyond the charge, or a new person possible to be brought under charge, than it calls upon the prosecutor to propose for expanding the charge;

- during preparing for the trial it can state a classification different from the one established in the charge.

ad c) The charge serves as a positive frame for judicial procedures: the court has to proceed against all accused persons and in all actions included in the charge, so it is obliged to exhaust the accuse. The only exception from this can be when omitting evidence but the court is to pass resolution concerning the point in the charge in this case also.

### 6.1.3. Relation between the charge and the decisive resolution (uniformity of facts)

The court builds its decisive resolution on the charge. It cannot deviate from the statement of facts established in it, thus the facts in the sentence are to be adjusted to the ones include in the charge (bill of indictment). It can emerge some problems as follows:

- the statement of facts in the sentence is much longer than the one in the charge, so they cannot be identical,
- the possible mistakes of the prosecutor are to be corrected,
- new facts can emerge during the trial owing to the new proofs.

Based on all this, it is necessary to analyse the relation between the charge and the decisive resolution in details both in the field of
a) facts
b) legal issues.

ad a) In the field of factual questions the principle of being bounded to the charge is valid, so the sentence cannot deviate from the main elements of it. Although, the court is not bounded to such facts as the location, time, means and methods of committing the crime etc., as they can be précised during the evidence proceedings. Another exception is the omission of evidence because of a less significant crime related to the one included in the charge.

It can lead to repeal of the sentence, if the court infringes the issue of uniformity of facts (considers an action not included in the charge.

ad b) In legal issues the principle of non-boundedness is valid as main rule, such as the court may deviate from the proposal on punishment or the classification etc. In case of repealing the charge the court is properly bounded to the mistaken classification laying in the foreground of the repeal. The court cannot state a classification graver than the one in the charge and cannot establish repeatedness of crime in contrary to single crime stated in the accuse.

The principle of being not bounded concerning legal issues can be infringed by not exhausting the charge.

### 6.1.4. The prosecutor's revision and the introduction of the charge

After introducing the documents, the prosecutor examines the documents (Art 216) (if it was executed by the authority than within 30 days from receiving the documents, but within 90 days in some exceptional cases). The prosecutor may choose from six options:
a) executing further investigating actions (or orders them);
b) suspends investigation;
c) abates investigation;
d) omits the introduction of charge partially;

e) postpones the introduction of charge
f) presents the charge.

ad a) The prosecutor executes further investigating actions I the statement of facts has not been cleared properly. After executing these actions the prosecutor examines the documents again.

ad b) and ad c) The general rules of suspending and abating investigation are valid in this case.

ad d) The prosecutor can omit the introduction of the charge in a resolution because of a crime having less significance relate to the action included in the charge. It has to be referred in the bill of indictment and the offended is to be informed about it (he can propose as civil legal claim or there is a room for additional private accuse with respect of the actions omitted).

ad e) The CPA distinguishes three types of postponing impeachment, one of them is possible, the two other types are obligatory:

- in case of a crime to be punished with no more than three years imprisonment, the indictment can be postponed with 1 or 2 years in respect of seriousness of the crime committed, if a positive influence of it is predictable on the behaviour of the suspected,
- the impeachment can be postponed with 1 year if a suspected living on drugs tends to undergo a treatment curing his dependence,
- the indictment is to be postponed with 1 year because of failing to pay alimony, if then the fulfilment of obligation is probable.

The act of charge cannot be postponed if the suspected is a habitual criminal or if he committed a premeditated crime during suspended imprisonment or before imprisonment.

The prosecutor can determine behaviour rules and obligations also while postponing the indictment. In this case a supervisor officer's opinion is to be obtained.

Within obligations the prosecutor can prescribe for the suspected to compensate the damage for the offended or for the public, undergo psychiatric treatment or curing alcohol dependence.

ad f) The impeachment has four forms. In proceedings of public charge: bill of indictment (most typical), in additional private charge: proposal of charge, in private accuse: denouncement, in special procedure with bringing before court: oral denouncement of prosecutor.

Main parts of the bill of indictment are as follows: introduction, explanation, operative part, (main resolution, such as charge formula and subsidiary resolutions: notifications, proposals) and date. It is unusual, compared to resolutions that the explanation is placed before the operative part.

Main parts of the bill of indictment and the proposal for charge are as follows:

| | Bill of indictment | | Proposal for charge |
|---|---|---|---|
| | Obligatory content | Optional content | |
| **Introduction** | • heading<br>• personal data of the accused | | • heading<br>• personal data of the accused |
| **Explanation** | • description of the action representing the subject of charge | | • description of the action representing the subject of charge |
| **Operative part** | • qualification of the action representing the subject of charge by the Civil Code<br>• persons to be summoned and informed<br>• means of evidence and the facts they are to prove<br>• proposal for the order of recording the evidence | • procedural condition<br>• sphere of authority and competence of the court<br>• if the prosecutor was not present on the trial: proposal for the punishment (measure)<br>• civil legal claim<br>• other proposals<br>• proposal for coercion measures limiting personal freedom<br>• proposal for abating supervising right of parents<br>• because of abuse of drugs, proposal for continuance of the suspended proceedings<br>• referring to interviewing a specially secured witness | • qualification of the action representing the subject of charge by the Civil Code<br>• persons to be summoned and informed<br>• civil legal claim<br>• other proposals<br>• indication of documents, based on which the additional private accuser, in spite of refusing the indictment, proposes for conducting the procedure<br>• the competence of the court at place of residence of the accused can also be proposed for |
| **Date** | • date, signature | | • date, signature |

### 6.1.5. Withdrawing and modifying the charge

The prosecutor disposes on the charge, so he can withdraw it any time before finishing the procedure. The only condition laid by law is that if withdrawal of charge takes place after beginning the trial, than the fact of withdrawal is to be explained by the prosecutor. Withdrawal of charge during the preparation for the trial does not need explanation.

The prosecutor can not only withdraw but modify the charge also. It includes rights to change, expand or narrow the charge. In case of changing the charge, within the frames of identity of acts, the prosecutor claims that the court stated if the accused was is guilty in a crime other than the one indicated in the original bill of indictment. (e.g. embezzlement, instead of fraud). The formal aggregation is also to be mentioned here, so if in the opinion of the prosecutor the crime of the accused realised another crime also than it considered as charge changing. When expanding the charge, new facts are emerging, based on which prosecutor proposes for the establishment of responsibility because of an other crime,

constituting material accommodation, besides the earlier crime (e.g. beside the earlier stealing, illegal obtaining of vehicle). Compared to this, charge narrowing may be called as a negative charge expansion, when charge is concentrated on a less crime in contrary with the original one.

## 6.2. Preparation for the trial

After the impeachment, (but before the trial in the court) the procedure of indicting is conducted. This procedure serves on the one hand, to filter the crimes, for that only well established and legal charges were brought before the court. On the other hand it has technical function as well, as it is to provide fast and unite, such as effective consideration (issuing summons, requests etc.) There are more models of indictment. In the English law this procedure is conducted by the grand jury, while in the French law by a judicial council with a construction different from the one of sentencing court. In Hungary the procedure of indictment has no emphasised significance, so the sentencing court itself executes it during the preparation for the trial.

During preparing for the trial the court passes resolution in eight main (and smaller) questions, six of which falls under the sphere of authority of the president of the council, who brings decision in informal, single-judge questions. The other two questions are decided by the whole judicial council, in some cases on the preparing session. The sphere of authority in decision making in the given issues is introduced as follows:

| Decision on what question? | Who decides and in what form? | What legal remedy can be applied? |
|---|---|---|
| 1. Transfer | *President of the council* | By general rules |
| 2. Consolidation, separation | *President of the council* | By general rules |
| 3. Suspension of procedure | *President of the council* | By general rules (but not possible: in case of accused residing abroad or in an unknown place, or requesting further evidence from prosecutor) |
| 4. Abating the procedure | *Judicial council* *President of the council* | By general rules (but: not possible: in case of withdrawal of charge / in case of abating with reprimand: trial can be claimed |
| 5. Measures for executing procedural actions | *President of the council* | Not possible |
| 6. Resolution on coercion measures limiting personal freedom | *Judicial council* *On a preparing session* | By general rules |
| 7. Establishment of possibility to qualify differently from charge | *President of the council* | Not possible |
| 8. Sending to a council of five | *President of the council* | Not possible |
| 9. Other questions (e.g. appointing defender, scheduling the trial) | *President of the council* *(but: in case of especially secured witness: the judicial council on apreparing session)* | Usually not possible (e.g. against summoning, notice, scheduling of trial, postponing) |

The court holds preparing session to order preliminary arrest, prohibition to leave domicile, home custody, temporary medical treatment, and in case of proposal to abate special

security of the witness, or if the hearing of the accused is necessary. The preparing session is open for clients, (prosecutor, accused, defender are present). Otherwise, the council may decide on any issue falling under the sphere of rights of the president, and may hold preparing session if considers it necessary (it is obligatory only in the cases above).

# VII. Proceedings in the court

## 7.1. Proceedings in the court of first instance

### 7.1.1. Process of the trial

The process of trial in the court can usually be divided into six sections:

1. Opening the trial (Art 281-283): by the presiding judge. It is only an administrative section with indication of the case, reckoning of those present, calling upon the witnesses to leave the courtroom (apart from the offended) and presenting the single proposals (on transfer, consolidation, separation, exclusion, etc.)

2. Beginning the trial (Art 284): the first section on the merits. It has several requirements (e.g. examining authority, exclusion etc.). The prosecutor presents his position first here, and then the offended introduces the civil claim. At last the offended to be interviewed as witness is called upon to leave the courtroom.

3. Record of evidence (Art 285-313): the most important (and longest) section of the trial. The trial is especially significant even due to the record of evidence, that is why the CPA includes highly detailed regulations concerning this section. The record of evidence is begun with hearing of the accused, followed by the interviews of the witnesses (usually first the offended). Than comes the record of all further proofs (listening to the opinion of the expert, reading the expertise, the documents and deeds, application of the record taken of the procedural action, judicial inspection, employment of dispatched judge or requested court). Evidence can be omitted or supplemented in this section; the charge can be modified or withdrawn with explanation. After executing the evidence proceedings, if there was no motion on evidence presented, or if it was refused by the court, the presiding judge declares the evidence proceedings concluded.

4. Pleadings and speeches: the prosecutor holds presentation, the defender holds the defence argument, and the accused, the offended, the private party and other interested can also hold speeches. The line of pleadings is begun with the prosecutor's presentation. In that the prosecutor (if considers the guiltiness of the accused possible to be established) presents his motion on what facts and in what crime the court should consider the accused as guilty, what punishment should be exposed or what measure should be applied, and what measure to take (but cannot present motion on the determined extent of the punishment or measure). If the prosecutor considers not possible the guiltiness to be established, he presents an explained motion for discharging the accused. After the prosecutor's presentation the other speeches succeed (the offended, private party, other interested), and then defender's arguments (if the accused has more defenders, then only one of them). The defender's arguments (contrary to the speech of the prosecutor) have no requirements determined in the CPA. Defence pleading can be held by the accused if there is no attorney. If the accused has one attorney can ask for permission to speak in his own defence after the arguments of the defender. The speeches of the prosecutor and the defence are followed by counter answers (and than answers on them etc.), the defence can answer last. Before the final resolution of the court, the accused has the last say.

5. Passing the resolution (Art 321): the final resolution is passed on the session of the judicial council with excluding all publicity. First the council consults, than it adopts a decision by vote. The ordering part of the resolution is to be written down, and it is signed by the members of the court.

6. Announcing the final resolution: last section of the judicial proceedings. When announcing the resolution, its ordering part is read by the president of the council standing (all those present are listening to it sitting), than, having sat down, the president of the council expresses the explanations. (If the case is extremely difficult or expanded, the announcement can be postponed with 8 or in special cases with 15 days). After introducing the ordering part and explanations, the judge asks those having right to appeal to do so if the wish, and than the appealing declarations are presented (lodging the appeal, motion on upholding three days for declaration or renouncing of appeal). The court passes a decree considering the appeals and announces it. (accepts or refuses in formal reasons and disposes on introduction of documents). If the decisive resolution is not non-appealable (appeal is announced or three days are upheld for it), than a decree is to be passed on the strictest coercion measures (preliminary arrest, temporary medical treatment, prohibition to leave domicile, home custody). If the resolution of first instance is non-appealable and conditions of the concurrent punishment exist, the court executes the concurrent sentence proceedings immediately. The last section is closed by adjourning the trial.

### 7.1.2. Presiding and keeping the order on the trial

The trial is presided by the president of the council, who prescribes the order of procedural actions, and usually executes hearings, listens to the opinion of the expert (who can be asked questions by not only the members of the court, but by the prosecutor, the accused, the defender, the private party or other interested or other experts) in the questions they are concerned. If the prosecutor, accused or defender proposes for it, the president of the council can permit to interview the witness first by the prosecutor and the defender through asking questions (cross questioning). In this case the witness is interviewed first by the person the witness was presented by, than the other 'party', when the presenting person may ask again questions emerging from the other party's inquiring. Members of the council may ask questions any time after the cross questioning.

The trial can partially be held through closed tele-communicational net also. In this case indirect connection between the scene of the trial and the place of residence of the interviewed person is provided through an audio-video apparatus. It is usually applied if the witness is under 14, offended by violent crime, being under witness secure program, being in a bad health state, or if the witness is imprisoned, as determined in the CPA.

Duty and right to keep order in courtroom is divided between the president of the council and the whole judicial council, but most of these acts are taken by the president (exclusion from the courtroom, warning to keep order in the courtroom, calling to order, ejecting out, removing etc.) The judicial council has the right to execute the strictest order maintaining measure: exposing disciplinary fee, or can arrest the person disturbing the order for the day of the trial.

There is no possibility to appeal against these resolutions, except for if it is a resolution on disciplinary fee, obligation to bear costs or arrest.

### 7.1.3. Omission or supplementation of evidence

Omission of evidence can be applied if proceedings for more crimes are concluded against the accused. Then the court can omit the evidence concerning the lighter crime, which has no significance regarding the impeachment. (This is a kind of exception from the obligation to expose charge).

If the court considers the result of the evidence not satisfactory to take a position in the issue of criminal responsibility of the accused, it can decide on supplementation of evidence in order to clear factual state properly (Art 305 and 268). There are some possibilities of doing so as follows:

1. The court can supplement the proofs right on the trial (e.g. interview of a person present or executing confrontation etc.)
2. If it is not possible to supplement the evidence on the trial, it is to be adjourned, and when it is continued, the new proofs are to be recorded (e.g. summoning a new witness)
3. If it would be extremely difficult to record the evidence on the trial, it can be admitted beyond it, by dispatched or requested judge (e.g. in the flat of a handicapped witness, residing in significant distance from the scene of the trial).
4. At last if the evidence cannot be supplemented with any of the above mentioned ways although it is necessary, the court may take measures to find means of evidence or correct deficiencies in the bill of indictment. During this the court may request the prosecutor, order to obtain opinion from the supervising officer, get the record of the testimony of an especially secured witness, or may call upon the investigating judge to interview the especially secured witness again (if he was asked questions). At the same time with the measures of proceeding actions the court can even suspend the procedure if needed.

### 7.1.4. Final resolutions

In the final resolutions the court usually decides on the merits about legal qualification of the crime and the criminal responsibility of the accused, and the applied legal consequences. Definitive resolutions have two main forms:

a) sentences and
b) summons.

ad a) There are sentences discharging or establishing guiltiness.

Discharging sentence and reasons to discharge are regulated in Art 331. One part of the classic procedural obstacles is a discharging reason on the trial, while the other part is reason to abate the procedure (during preparing the trial they are all reasons to abate trial!). The accused is to be discharged if guiltiness cannot be established and the court does not abate the procedure. In the explanation of the sentence the reason to be discharged is to be referred (lack of criminal action, lack of cogence, reason excluding possibility being punished or reason to abate). In a discharging sentence against the accused sanctions cannot be applied but in special cases coercion medical treatment, seize or fortune seize can be executed, likewise infringement can also be considered.

In an offending sentence the accused is declared guilty if it is established that committed a crime and it is possible to punish him. Than punishment is exposed by the court, the accused is sent on trial period, grants in reprimand, or his punishment can be omitted.

ad b) Definitive summons are either procedure abating or trial omitting. The latter is described in details in the chapter on the special procedure with omitting trial.

The court can pass a summon, abating the procedure during preparing trial or in the second instance procedure (or possibly during particular legal remedies). Reasons to abate procedure are as follows:

| *Reasons to abate* | **Preparation of trial** (Art 267) | **Trial of first instance** (Art 332) | **Second instance** | | **Particular legal remedies** (Art 392, 399, 426, 437, 443) | **Special procedures** (Art 487, 511, 512, 554) |
|---|---|---|---|---|---|---|
| | | | **session of council** (Art 373) | **trial** (Art 377) | | |
| *Lack of crime* | • the action is not crime | – | – | – | • reopening a case: possible (because of res iudicata the ordering itself can abate)<br>• over-review, judicial legal remedy, approximation procedure: the Supreme Court itself can abate | • Military CPA: the perpetrator cannot be punished because of military crime, if one year has passed since finishing service<br>• private accuse procedure: implied withdrawal of charge is possible + charge can be withdrawn on second instance also<br>• immunity procedure: if immunity is not released |
| *Obstacles to be punished* | • child age<br>• procedural obstacle<br>• low degree of danger on society<br>• reasons abating possibility to be punished<br>• participation on drug treatment<br>• fulfilling obligation to pay alimentation | • procedural obstacle<br>• reasons abating possibility to be punished (except for: cessation of danger on society) | • procedural obstacle<br>• death, statue of limitation, mercy | – | | |
| *Other reason* | • res iudicata<br>• withdrawal of charge<br>• insignificant crime | • res iudicata<br>• withdrawal of charge<br>• insignificant crime | • res iudicata | • insignificant crime | | |

Reasons to abate procedure are always prior to reasons of discharge (so if both discharging the accused and to abate procedure is possible, than the procedure is to be abated).

## 7.2. Procedure of second instance

### 7.2.1. Context and division of legal remedy in the judicial section of the procedure

Legal remedies in the trial section are legal redresses enforced in judicial section: they are to avoid real or considered as real, legal or factual faults of the court. It is a narrower context to general legal remedy: all legal remedy in the trial period is legal redress but it is not true inversely. (e.g. complaint is legal remedy enforced not in the judicial but in the investigational period)

Legal remedies in the judicial section can be qualified by four points of view:

a) legal remedies in narrower or wider sense: narrower legal remedies are the ones generally considered as remedy in legal special literature and by the judicature.

b) Ordinary or special remedies: ordinary ones before and special ones after being validated

c) Devolving and non-devolving ones: the former is considered in a court with level higher than the one passing the offended resolution, in case of the latter the court passing the resolution decides

d) Suspending and not suspending legal remedies: the former has postponing effect on executing the resolution.

The single legal remedies in the judicial section are characterised as follows:

| | In narrower or wider sense | Ordinary or special | Devolving and non devolving | Suspending and non suspending |
|---|---|---|---|---|
| ***Appeal*** | narrower | ordinary | devolving | suspending |
| ***Reopening of trial*** | narrower | special | non devolving | non suspending |
| ***Review, judicial redress, approximation procedure*** | narrower | special | devolving | non suspending |
| ***Plea for trial*** | wider | Ordinary | non devolving | suspending |
| ***Plea for verification*** | wider | special | non devolving | non suspending |

### 7.2.2. The appeal

Appeal is the most general legal remedy against resolutions. Main rules of appeals against the sentence (and definitive summons) are regulated in Art 324-325, 346-347 and 356-357 of the CPA. It is characteristic for the persons having right to appeal that on the one hand the CPA differentiates between the direction of appeal (in favour or against the accused); on the other hand the circle of rights (in whole circle or only in some cases):

| | In favour of the accused | Against the accused |
|---|---|---|
| **Comprehensive** | • accused<br>• prosecutor<br>• defender<br>• legal descendant of juvenile accused | • prosecutor<br>• private accuser, additional private accuser |
| **Partial** | • descendant of accused (against resolution accepting)<br>• legal descendant or partner in marriage married of a legal-aged accused (in case of ordering coercion medical treatment) | • private party (against resolution on the merits considering civil claim) |
| | • whom the sentence includes regulation against (and against the regulation concerning him) | |

The term for introducing the appeal depends on the way of informing about the final resolution. If it is announced then the persons present and having right to appeal can introduce it immediately, or they can ask for 3 days to think of it (in this latter case there is no room for verification). If the sentence is delivered by post, the term for appeal is 8 days (and the authorised person can verify if could not receive it in time). In the appeal all (legal or factual) reasons and aims are to be presented, and it can be explained in details.

The CPA states that there is no room for appeal

- in case of single suspensions of procedure (the accused is abroad for a longer time; the court called upon the prosecutor to search for means of evidence or correct the deficiencies in the bill of indictment);
- abating a procedure because of withdrawing the charge (if there is no room for additional private accuse);
- against refusing the redress declaration presented after cognizance of resolution

Those concerned in the appeal can make comment on the appeal until introducing the documents, to the court of first appeal, after the introduction of documents to the court of second instance. The appeal can be withdrawn until the session of the court of second instance held to pass resolution, but

- appeal of the prosecutor can be withdrawn after the introduction of documents by the prosecutor applied next to the court of second instance, and
- appeal presented in favour of the accused by someone ale can be withdrawn only in agreement with the accused (except for the prosecutor).

### 7.2.3. Rules of procedures of second instance

Similarly to procedure of first instance, the proceedings of second instance consist of preparatory and a decision-making section. Passing a decision may be divided into three parts: the court of second instance decides (depending on the question to be decided)
a) on a council session,
b) open session or
c) on a trial.

Appeal (expect for if it is excluded by law, originated from a non-competent person or it is late) can be presented to the court of second instance within 30 days through the prosecutor employed at the court of second instance.

The presiding judge of the council of second instance examines, based on the documents introduced whether it is necessary

- to supply missing documents, to send them to the prosecutor, to ask for information from the court of first instance;
- to call upon to complete the appeal within 8 days;
- to send the documents back to the court of first instance if the appeal was withdrawn;
- to deliver the appeal of someone else and the proposal of the prosecutor being employed on with the court of second instance for the defender and the accused;
- to send the explanation of the accused or the defender to the prosecutor of the court of second instance (if it was introduced before the court of second instance).

ad a) The section of the council of appeal – just like the trial – is conducted before three official judges, excluding the public, and it is closed with a sentence or order.

The court of second instance decides in an order if

- there is a room for an order of no merits (ordering transfer, suspending trial)
- the appeal is refused because of formal reasons (it is late, excluded, or originated from a non-competent);
- the sentence of first instance repealed and the procedure is abated (death, lapse, mercy, procedural obstacles, res iudicata);

- repeals the sentence of first instance and orders a new procedure (in case of absolute procedural infringements, conducting renouncing of trial with a lack of its conditions);
- repeals the sentence of first instance and sends the documents to the prosecutor (if the court of first instance considered the case with a lack of legal charge or the proposal was made with a lack of conditions).

ad b) The court of second instance holds an open session if

- correct statement of facts can be established from the content of documents or can be determined by factual conclusion in a groundless case, or
- in order of a further clearance of circumstances of imposing punishment, a hearing of the accused is necessary.

The court of second instance summons the person, whose interview is considered necessary, to the open session and takes measures to bring the arrested person to the court. The prosecutor, the additional private accuser, the accused, the defender and the offended are informed about the open session.

When holding open session, the rules of holding trial are to be applied, with that introduction of the case (if those present do not ask for it) can be omitted.

ad c) There are three questions to be considered in connection with the trial of second instance:

1. presentation on the trial,
2. process of trial of appeal
3. rules concerning orders possible to pass the trial of appeal.

ad 1. Persons obliged to be present on the trial of appeal (apart from three official judges and the court reporter) are as follows:

- the accused: if evidence is presented on the trial or presence of the accused is necessary by the opinion of the court (measures are to be taken to bring the arrested person to the court);
- defender if defence is obligatory.

If the presence of the above mentioned characters is not obligatory, they, the prosecutor and those appealed are still to be informed.

ad 2. The rules of trial of first instance are generally valid when conducting a trial of appeal, although there are some differences:

- the case is introduced by the president of the council (so the trial does not begin with the presentation of the prosecutor), who pronounces the sentence of first instance, the appeal, the notices made concerning it, and the necessary parts of the documents (related to this the members of the court, the prosecutor, the accused, the defender or the offended may ask for supplementation). Explanation of the sentence of first instance can be omitted (or required also);
- evidence (in contrary with the procedure of first instance) is rarely established on second instance;
- there is a difference in the order of speeches on the trial, as not always the prosecutor but the appealing party holds the first speech (if both charging and defending party appealed than the prosecutor).

ad 3. Sentences and orders can be passed on the trial of second instance also. The court of second instance may pass the sentences in their merits, such as may repeal the sentence of first instance and order the court to accomplish a new procedure in cases as follows:

- if the decisive resolution of first instance is affirmed, the appeal has no grounds or if the decisive resolution of first instance is not to be changed (Art 371);
- in case of repealing or procedure abating order in an insignificant crime (Art 377);
- in the event of repealing in relative infringements or order to start a new procedure (Art 375)
- in case of non- avoidable groundlessness (Art 376).

An order modifying the sentence of first instance can be brought only on the trial and in the sentence of second instance.

As there has already been a resolution on its merits passed by the court of first instance, some special rules concerning also its content are valid for the resolutions of the court of second instance. This court cannot act with full powers when passing resolutions, but it can examine the factual and legal questions of a resolution passed on second instance, within some given restrictions. Three from such significant questions are introduced below (extent of over-review, prohibition to aggravate, and constraint to the statement of facts), when analysing them we will survey the main regulations on procedural infringements and repeated proceedings.

### 7.2.4. Extent of over-review

The extent of over-review shows how much the court of second instance is related to the request of legal remedy. If it was related to it completely, partial legal power could be valid in a wide circle, as the court of second instance could not modify the sentence of first instance in all such questions, not offended by the legal remedy request. This way these parts without respect to the appeal would be rendered final. So the mistakes in the sentences, which could easily be corrected on second instance, still stay unchanged. However, if a court of second instance could freely over-review, the procedure of second instance became completely unforeseeable with all its harmful consequences.

The CPA states the principle of total over-review as main rule, such as the court of second instance can over-reviews the sentence and the whole procedure of first instance without respect to that who and with what reason appealed. Although, partial legal power can be validated in two cases.

a) If the appeal concerns an accused person, than it can occur that partial legal power is validated in case of material accumulation or accessory appeals, such as some parts of the resolution are rendered valid and the court of second instance cannot over-consider them.

One of issues is material accumulation. If a sentence of first instance is brought against the accused because of committing more crimes and none of the discharging or procedure abating resolutions was offended with appeal, than they will be brought to legal power (this is favor defensionis case at the same time).

The other possibility, when the appeal is proposed only against subsidiary questions (civil legal claim, abating supervising rights of parents, criminal costs, abating seize), but main orders of the resolution are not offended. Then the resolution brought in the main question comes valid and the second instance may modify only the subsidiary questions. While in the first case it is the interest of the accused not to have some parts of the sentence over-reviewed, than partial res judicata is enforced here in the interest of emerging the resolution on non-appealable level.

(Here it is to be mentioned that because of the prohibition to aggravate it can happen that some parts are emerged to non-appealable level.)

b) If there are more accused persons concerned in the sentence and appeal was proposed only connected to one of them, then the CPA considers the principle of not valid as a main rule. It states that the parts concerning the accused (not appealed) are brought to legal power. In this case still there is a room for over-review in two cases, if the accused concerned with the appeal

- is discharged,
- the procedure against him is abated,
- the qualification (or punishment) of the crime committed by him was lightened (it was changed into measurements).

Then in case of the other accused the partial legal power is to be repealed, and in case of him the same proceedings are to be conducted. Further condition of such a repeal of partial legal power is that these lightening measurements were taken because of so called correlative reasons, such as reasons discharging the accused were also valid for the other accused (etc.)

It can happen that discharging is ordered related to the accused concerned in the appeal in the repeated procedure. The rules of repealing the partial legal power in connection with the accused not concerned in the appeal are also valid here mutatis mutandis, if discharging is expectable in connection with him. Then the acceptable decision is not to be awaited in the repeated procedure – concerning the accused not mentioned in the appeal – but the power of the resolution can be dissolved when revealing it.

### 7.2.5. Prohibition to aggravate

The court on second instance may modify the sentence of the court of first instance – either in favour or against the accused – but always in a form of sentence. In all other cases it decides in a summon. There is no theoretical problem emerging in connection with modifying the sentence in favour of the accused (reformation in melius), it is permitted both if the appeal was proposed in favour or against the accused.

There are more possible problems emerging if a modification of the sentence against the accused comes to be necessary. Legal remedies, when they appeared in the history served to avoid mistakes of the authorities and only the sentences in favour of the accused could be modified. Later (especially because of a sharp division of the different procedural functions) the prosecutor had more possibilities to criticize the resolution of first instance, which became possible to be changed against the accused also. After this appeared the claim of limiting this modification (or else the defence party did not mere to appeal, if because of its appeal the accused's position could be changed worse).

There are two types formed of prohibition to aggravate: absolute and relative. In case of absolute prohibition to aggravate, the court of second instance can never pass a decision worse for the accused (even if the appeal was proposed against him): if it recognises that a graver punishment than the imposed one in the sentence is necessary, the sentence of first instance is to be repealed. The court of second instance then orders the court of first instance to start a new procedure. Relative prohibition to aggravate means that decision making competence of the court depends on the direction of the appeal: if it was proposed against the accused than the sentence of first instance can become graver on second instance, while the appeal was presented in favour of the accused, then it cannot. The relative prohibition to aggravate is generally valid in Hungary.

The CPA regulates prohibition to aggravate differently if the question of passing a graver decision is emerged in
a) procedure of second instance (Art 354-355),
b) repeated procedure (Sec 1, 3 Art 389),

c) in a procedure with omission of the trial (Sec 4 Art 549),
d) military criminal procedure (Sec 7 Art 485/B) or
e) in a procedure with renouncing the trial. (Art 542).

ad a) In case of an appeal proposed against the accused in the procedure of second instance it is prohibited to establish the guiltiness of an accused discharged on first instance, or to impose a graver punishment for an accused sentenced guilty on first instance. (So in case of an appeal against the accused, the CPA permits the modification in favour of the accused, but if the appeal was proposed in favour of the accused than modification can be made only in favour of him.

If the court of first instance discharged the accuse in one crime but sentences him guilty in an other, and an appeal was proposed only for dismissing the procedure, than the sanction against him can be modified only if the appeal against discharging was successful.

Related to application of CPA it is qualified as graver as follows:

- in case of life imprisonment, modification of the earliest date of probation is changed to a later date,
- punishment against the one, whose case was considered on first instance with applied punishment,
- public work or imprisonment, instead of pecuniary penalty,
- imprisonment, instead of public work,
- executed imprisonment, instead of suspended imprisonment,
- imprisonment of longer term, instead of executed imprisonment,
- suspended imprisonment, instead of executed pecuniary penalty or public work,
- executed pecuniary penalty, instead of suspended pecuniary penalty,
- executed pecuniary penalty of a bigger amount, instead of executed pecuniary penalty (even if suspended),
- application of a subsidiary punishment, not applied by the court of first instance,
- main punishment, applied instead of subsidiary punishment replacing main punishment of first instance,
- aggravating a legal conclusion applied by the court of first instance because of infringement.

The court of second instance may pass decision on seizing also in a case if there was no appeal proposed against the accused.

ad b) Rules of prohibition to aggravate are valid also in the first instance procedure, repeated during repealing the process. If there was no appeal proposed against the sentence of first instance and against the accused but in favour of him, and the court of second instance over-reviews the order, and having it repealed orders a new procedure, then the guiltiness of the accused, discharged in the first instance procedure cannot be established, or the imposed punishment cannot be aggravated.

As repealing is usually applied when there was a serious procedural mistake made in the procedure of first instance (see: cassation because of procedural infringement) or there was a serious mistake when establishing factual statement (groundlessness), so in some cases the law allows aggravating even if against the earlier sentence of first instance appeal was proposed in favour of the accused. However, prohibition to aggravate is repealed if

- the three most serious absolute procedural infringements (the court was established legally incorrect, the judge who passed the sentence has earlier been excluded or has not been present on the trial, the court has over-exceeded its authority, passed a

sentence in a military criminal case or a case falling under the exclusive competence of another court),

- non-exterminable groundlessness,
- trinity of novum (in the repeated (new) procedure based on new evidence the court establishes a new fact and a graver punishment is to be imposed),
- while expanding the charge by the prosecutor, the guiltiness of the accused is to be established in an other crime also,
- the repeated trial was executed during over-review initiated against the accused.

If repeal of partial legal power is initiated in the event of an accused not concerned in the appeal (in hope of a more advantageous sentence), then in the repeated procedure a less advantageous sentence cannot be passed against him.

ad c) In a procedure with omission of the trial, against the order of omitting the trial appeal cannot be proposed, but holding of a trial may be requested. A procedure, directed based on such a request is to be conducted according to the rules of procedure of first instance, but the court usually cannot impose a graver punishment. Aggravating is accepted only if

- the trial is held based on a request against the accused,
- new evidence emerges on the trial, based on which,
- the court establishes such a fact, in the respect of which,
- a graver punishment is to be imposed, or instead of a graver punishment a measure is to be taken.

ad d) If a crime is considered in military criminal procedure in a disciplinary proceeding, and disciplinary punishment is applied against the accused, then the defender of the punished accused may request for over-review. In this case the court cannot impose a graver sanction, so prohibition to aggravate is valid here also.

ad e) In the procedure with renouncing the trial absolute prohibition to aggravate is valid. After an appeal, proposed against the sentence passed on open session modification can be made only in favour of the accused in the procedure of second instance.

### 7.2.6. Principle of restriction to the statement of facts and groundlessness

The order of the court of second instance can base its sentence only on the statement of facts established on first instance. As a main rule the second instance deals only with legal questions, and cannot modify the statement of facts established on first instance, cannot conduct evidence procedure and cannot evaluate proofs differently from as the court of first instance did.

There is a possibility to modify the statement of facts established on first instance in two cases: if the sentence of the court of first instance is groundless or a new proof is referred in the appeal.

The sentence of the court of first instance is considered as non-grounded I n cases as follows:

- the statement of facts has not been cleared (such as the relevant facts have not been proved by the court of first instance);
- the court has not established statement of facts or it is incomplete (some facts are not established related to some actions or perpetrators);

- the stated facts are in contrast with the contents of the documents (e.g. the facts in the record and those in the sentence are contrary to each other);
- there is an illogical, illogical inference in the sentence (.g. the court draws a conclusion from such facts which do not have causative connection with each other).

With respect to the above mentioned the groundlessness can have two main reasons: whole (grave): if the statement of facts have not been established properly or the court has not stated it, while in the other issues there is partial groundlessness (incomplete statement of facts, contrast with the documents, incorrect consequences).

The groundlessness of the sentence of first instance does not cause automatically repeal and retrial, but the court of second instance can make attempts to correct the mistakes. It has three means for that: evidence recorded on second instance, drawing correct consequence from the contents of the documents of first instance.

There are different rules valid for the elimination of groundlessness related to whether it is partial or whole:

- In the event of partial groundlessness all three means can be applied (so called small reformation: correcting or completing the statement of facts).
- Whole groundlessness: so called grant reformation is applied. The court may establish a statement of facts different from the one of first instance, if there can be a room for revealing the accused or abating the procedure, based on the proofs recorded on second instance.

If the partial or whole groundlessness cannot be eliminated through the above mentioned means, cassation can be applied and after the procedure of first instance an established sentence is to be passed.

The court of second instance can evaluate the proofs differently from the evaluation of the first instance court, which are recorded by it. To record the proofs it is necessary (generally) to hold a trial even on second instance. (in some cases an open session is also enough).

### 7.2.7. Procedural infringements

During the procedure of the court of first instance material infringements may occur (error in iure), formal such procedural infringements (error in procedendo) or factual mistakes (error in facto). From these the material infringements have the widest range legal means to be corrected; the elimination of factual mistakes was detailed when we discussed groundlessness.

Procedural infringements can be relative or absolute, which occur through infringing procedural rules in the proceeding of first instance. The differences between the two types of procedural infringements are as follows:

a) with absolute procedural infringements the court deals on a session of the second instance court, while the relative procedural infringements are considered on the second instance trial.

b) the absolute procedural infringements are enlisted in the CPA in details as follows (Art 373):

- the court was established incorrectly;
- the sentence was passed by a judge being excluded earlier or not present on the trial;
- the court has exceeded its competence or considered a case falling under the authority of another court or military court;

- the trial was conducted in the absence of a person whose presence was supposed obligatory;
- the court of first instance proceeded without legal charge;
- the procedure with renouncing the trial was held without answering the necessary legal conditions.

Relative procedural infringements are not enlisted in details in the CPA, only in exemplificative way. It is to be considered as relative infringement especially if

- the persons participating in the procedure could not practise their legal rights, or they were prevented in doing so,
- the court of first instance did not meet its obligation to explain or
- the public was excluded from the trial of first instance without reasonable explanation.

c) In case of absolute infringements the second instance cannot deliberate. In the event of relative infringements, the court of second instance can repeal the sentence of first instance only if the infringement influenced the sentence significantly, such as the infringement effected the

- proceeding of the trial,
- establishment of guiltiness,
- qualification of the crime,
- imposing of the punishment, or applying a measure.

### 7.2.8. Contents of the order of repeal and the special rules of repeated procedure

The order of repeal and starting a new procedure in the second instance procedure (cassation) is passed because of procedural infringements or non-exterminable groundlessness. Besides, the Supreme Court may order to repeat the procedure of second instance.

The order of cassation has obligatory and optional elements:

- the explanation of the order or repeal always has to include the reason of the repeal and the directives of the repealing court concerning the repeated procedure (this directive compels the court ordering to conclude the repeated procedure and if it does not fulfil them, then cassation is to be repeated);
- as optional elements, the repealing court can disposure the case to be considered before other council or court.

The repeated procedure is generally concluded by the rules of ordinary proceeding, expect for if (Art 387-389)

- the judge who proceeded in the basic case cannot consider in the repeated proceedings because of cassation deriving from groundlessness;
- the court proceeds extraordinary in the repeated procedure;
- after beginning the trial the president of the council announces the repealing resolution of the court of second instance, the repealed order of the court of first instance, or if exists, the modified bill of indictment;
- if the accused does not wish to testify, the president of the council can read his testimony made on the trial serving as basis for the repealed order;

- instead of interviewing the witness (or the expert) the record of the testimony of the witness, made on the trial serving as basis for the repealed order can be read, expect for if the cassation was executed by groundlessness because of this testimony;
- at last we refer to that the prohibition to aggravate is valid in the repeated procedure in a special way (see earlier).

## 7.3. Extraordinary remedies

Extraordinary remedies are those judicial proceedings, which are concluded when a final resolution is rendered final. Extraordinary remedies are not suspending, such as they do not have suspending power on the execution of the decree. In the interest of legal secure these procedures are concluded – contrary to the ordinary remedies – only in special cases. Thus, in case of factual mistakes retrial, while in case of legal mistake over-review, judicial remedy or approximation procedure can be concluded.

### 7.3.1. Reopening of a case

Three main fields within the rules of retrial are to be emerged here:
a) conditions of retrial,
b) introducing the retrial proposal and
c) sections of retrial.

ad a) The conditions of retrial are regulated in the Art 392. Related to this, reopening of a case can be executed of five main reasons, which are valid with some given restrictions:

<table>
<tr><td>1. New, conclusive evidence</td><td colspan="2">new proofs are emerged, related to facts either known in the in basic case or not, which make it probable that<br>1. it is to be modified significantly in favour of the accused:<br>• the sentenced accused is to be discharged<br>• significantly lighter punishment is to be imposed<br>• instead of punishment, a measure is to be applied<br>• the criminal proceedings are to be abated<br>2. It is to be modified significantly against the accused<br>• guiltiness of the discharged accused is to be established<br>• fundamentally graver punishment is to be imposed<br>• instead of measure, punishment is to be applied<br>• the measure applied instead of the punishment is to be aggravated essentially</td></tr>
<tr><td>2. Infringing res iudicata</td><td colspan="2">there were more final sentences passed against the accused because of the same crime, or the accused was sentenced not under his real name</td></tr>
<tr><td>3. False evidence</td><td>in the basic case false or forged proofs were employed</td><td rowspan="2">as a condition in both cases:<br>there is a final sentence behind it (or it was excluded because was not verified)<br>this crime influenced the order one</td></tr>
<tr><td>4. Official crime</td><td>in the basic case the court, the prosecution or the member of the investigating authority infringed his obligation, violating the criminal code</td></tr>
<tr><td>5. Decision was passed in the absence of the accused</td><td colspan="2">only in favour of the accused!</td></tr>
</table>

ad b) The proposal of retrial can be introduced by more persons (prosecutor, accused, defender, legal representative, relative, after the death of the accused descendents of direct line, while against him only the prosecutor (for discharging or abating the procedure the private accuser, for only discharging the additional private accuser also). Against the accused there is a room for reopening a case only in his life and only within the term of limitation.

In the question of inadmissibility of reopening the trial

- the county court decides, if in the basic case the court of first instance proceeded on first instance,
- the high court of appeal decides, if the county court proceeded on first instance,

ad c) The procedure of retrial consists of three sections:

1. Prosecution section: the request is to be proposed to prosecutor of the court competent in retrial, who – after a possible investigation – within 30 days, with his declaration sends it to the court, competent in retrial.

2. Council session of the court: the court competent in retrial passes a resolution on a session on the question of inadmissibility. If the court considers it necessary, it can call upon the prosecutor to conclude investigation to examine the existence of conditions of retrial. The general rules of investigation are valid for the retrial investigation, but the strictest measures cannot be imposed.

3. Trial section of retrial: if the court competent in retrial considers the proposal for retrial as grounded, the case is sent to the court of first instance proceeding in the basic case, in order to conclude the repeated trial. The general rules are valid for the trial, with some differences: (together with the summon the order of retrial is also delivered, at the beginning of the trial instead of the bill of indictment the sentence offended with retrial and the order of retrial are announced by the president of the council). The court (depending on the result of the trial) can pass two different sentences:

- if the retrial is grounded: the sentence passed in the basic case or the part of the sentence offended with retrial is repealed, and passes a new sentence,
- if the retrial is considered unfounded: it is refused.

After ordering retrial, there is a room for legal remedy against the resolutions brought, based on the general rules.

### 7.3.2. Over-review

While the reopening of the trial (expect for res iudicata) serves the elimination of legal mistakes in the final resolution, then the other extraordinary remedies –just like over-review – are to dealing with mistakes of final resolutions on their merits. In connection with over-review we have to concern

a) reasons of over-review,
b) introducing the proposal of over-review,
c) sections of the over-review procedure,
d) main rules related to resolutions passed during over-review procedure.

ad a) Reasons of over-review can be divided into three groups (Articles 405-406):

<table>
<tr><th>Criminal material law mistake<br>(infringing the Criminal Code)</th><th>Criminal procedure mistake<br>(infringing the CPA)</th><th>Ordered by another resolution</th></tr>
<tr>
<td>1. Law infringing decision on the issue of guiltiness: infringing the rules of criminal material law<ul><li>discharging of the accused or abating the trial is ordered</li><li>conviction of the accused or ordering coercion medical treatment</li></ul>2. Sanction infringing law: because of qualification of crime infringing law<ul><li>punishment infringing law was imposed</li><li>measure infringing law was applied</li><li>execution of punishment was suspended infringing law</li></ul></td>
<td>1. Absolute procedural infringements:<ul><li>the court was set up incorrectly</li><li>a judge, excluded or not present on the trial participated in the process of passing the sentence</li><li>the court exceeded its competence, or a military court considered a case falling under the competence of another court</li><li>the trial was held in the absence a person, whose presence would be obligatory</li><li>the court proceeded without legal charge</li><li>the procedure with renouncing the trial was conducted without answering the conditions</li></ul>2. Infringing the prohibition to aggravate<ul><li>in the procedure of second instance</li><li>in the repeated trial</li><li>in procedure with omitting trial</li></ul></td>
<td>1. The Constitutional Court ordered the over-review of a case closed down with final criminal procedure<br>2. International organisation of human rights stated the infringing of international treaty<br>3. Because of a harmonized decision of the Supreme Court in the case not concerned in the harmonized decision, the establishment of guiltiness of the criminal responsibility of the accused<br>4. The accused was convicted by an unconstitutional criminal regulation and the unconstitutionality was stated by the Constitutional Court Constitutional Court</td>
</tr>
</table>

ad b) There is no room for over-review if

- the infringing of law can be cured in special procedure,
- against the harmonizing and remedy resolution of the Supreme Court,
- in case of over-review initiated against the accused after 6 moths from the introduction of the final resolution.

The circle of those having right to propose request for over-review is the same as of the ones with the right to request retrial.

The proposal for over-review is considered by the

- 3-memebered council of the Supreme Court,
- 5-membered council of the Supreme Court against a resolution of the Supreme Court,

- 3-membered council of the Court of Appeal against a – non-appealable on first instance – resolution because of absolute procedural infringements

ad c) The proceedings of over-review can be divided into three sections:

1. Section of the court of first instance: The procedure is to be started in that court of first instance, in which the basic case was considered, by indicating the reason and the target. The proposal for over-review is presented to the court competent in passing a decision on the application within 30 days.

2. Section of the chairman of the council: Chairman of the council of the court competent in passing a decision on the application examines the proposal from formal point of view: proposals excluded, applied by unauthorised person, proposed repeatedly by the same authorised person, or late proposals are refused, or if necessary, a defender is appointed. If the refusal is not justified, the proposal for over-review is sent to the Supreme Prosecution (General Prosecution of Appeal), with all the documents of the basic case enclosed, in order to make a declaration. The declaration is sent back by the prosecutor within 15 days, then it is delivered to the appealing person, who can make notices concerning it within 15 days.

3. Examination on its merits: the proposal for over-review is considered through an open session or council session.

The application is considered on a council session if

- the proposal is formally not correct (excluded, applied by unauthorised person or late);
- the procedure is to be terminated because the proposal is withdrawn;
- the reason of the appeal procedure is an absolute procedural misdemeanour.

In all other cases an open session is to be held (if necessary even in the cases above). The open session cannot be accomplished in the absence of the prosecutor and the attorney. The defendant and those authorised to appeal are to be informed at least 8 days before the session, the defendant being in custody is to be brought in the court.

Having the open session opened, the judge, who is appointed by the chairman of the council announces the proposal for over-review, the objected resolution and those details from the content the documents objected, which can be necessary announced in order to consider the proposal. After presenting the case the proposing person, the defender, the prosecutor, and those authorised in the proposal can hold their speeches. After their speeches replicas can be made.

ad d) There are four types of resolutions possible passed through a proposal for over-review:

| Revoking resolution | Repealing resolution | Modifying resolution | Affirming resolution |
|---|---|---|---|
| The court proceeding in the case of the proposal for over-review<br>• orders the court proceeded earlier to initiate a new trial because of a material law fault or in case of infringing the prohibition of aggravation<br>• orders the court competent and having sphere of authority to initiate a new trial in case of the 4 classic procedural misdemeanour .<br>• delivers the documents to the prosecutor or orders the court in case of infringing the rules of renouncing the trial. | The proceeding court considering the proposal for over-review repeals the objected resolution if the lawful indictment is missing | • The proceeding court considering the proposal for over-review can pass a resolution adequately to the act in case of material law or criminal procedure law fault, if the discharging of the defendant (termination of the procedure, commutation of sentence) is justified<br>• The Supreme Court itself can also pass a resolution adequately to the act, if the execution of the punishment was suspended against the CC<br>• The Supreme Court itself can also pass a resolution adequately to the act based on the documents if the over-review is ordered by an other resolution | The proceeding court upholds the objected resolution in its force if does not approves the proposal for over-review. |

### 7.3.3. Legitimacy remedy

The ACP regulates the rules of arranging legitimacy remedy in its Chapter XVIII, with the title 'Remedy in the interest of legitimacy'.

From them we mention the

a) the reasons,
b) the announcement of legitimacy remedy,
c) and there solutions can be passed based on it.

ad a) By Art 431 legitimacy remedy can be announced with the conditions as follows:

| The **Supreme Prosecutor** can announce it | Against an **unlawful resolution** of the court (never against the resolution of the Supreme Court) | Only against a **definitive** resolution | Can be enforced only in the **Supreme Court** | Only if the resolution **cannot be objected through another legal remedy** |
|---|---|---|---|---|

ad b) The announcement of legal remedy has no term. The legitimacy remedy is concerned on an open session:

- the supreme prosecutor, the defendant and the attorney are to be informed about the open session,
- the defendant and the attorney can make notices concerning the proposal for legitimacy remedy,
- the open session can not be held in the absence of the prosecutor,

- the supreme prosecutor (representative), the defendant or the attorney can deliver a speech or make applications,

ad c) Two types of resolutions can be passed based on legitimacy remedy:

1. Sentence: if the Supreme Court considers the announced legitimacy remedy as substantiated, it states in its sentence that the objected resolution infringes the law. In this case
   - the defendant is discharged, the coercion medical treatment is withdrawn, the procedure can be terminated,
   - less strict punishment can be imposed or less strict measures can be executed,
   - in the interest of passing such a resolution the objected decision can be repealed and if necessary, the proceeded court can be ordered to start a new procedure,
   - in other cases the resolution of the Supreme Court can state only the infringement of the law.

2. Summons: if the Supreme Court considers the announced legitimacy remedy as not substantiated, it can refuse it in its resolution.

### 7.3.4. Approximation procedure

From the rules of approximation procedure
a) the reasons,
b) the proposal and
c) sections
of it will be discussed here in details.

ad a) Approximation procedure is justified by Art 439 in cases as follows:

| In the interest of unified legal practise | In case of a request of an altering resolution |
|---|---|
| In the interest of developing legal practise or ensuring the unified sentencing practise it is necessary to pass an approximation resolution | One of the councils of the Supreme court wishes to deviate from a resolution of another council of the Supreme Court in a legal issue, especially if<br>• the high court of appeal, the county court or the local court has brought a final resolution in a theoretical question different from an other earlier final court resolution<br>• The chairman of the Supreme Court or the supreme prosecutor finds it necessary to decide in the theoretical question |

ad b) In case of a request for an altering resolution or if the approximation procedure is proposed by the chairman of the Supreme Court (head of the criminal board, the supreme prosecutor), the approximation procedure is obligatory accomplished.

In the approximation application the issue to be considered (legal question), and the recommendation of the proposing party are to be indicated. The official copy of the court resolutions regarded in the case are enclosed to the application.

The approximation application is considered by a five-membered council. The chariman of the approximation council is the chairman of the Supreme Court or the head of the criminal board.

ad c) The approximation procedure is prepared by the chairman of the council, the case is appointed for a council session or a session:

1. Council session: the council
a) refuses the proposals excluded by law or originating from an unauthorised person without considering it on its merits,
b) terminates the approximation procedure if the application is withdrawn.

2. Session. If the proposal is considered on its merits, it makes decision on a session. Having the session opened, the judge sums up the essence of the theoretical question to be sentenced and the approximation proposal, announces the view of the members of the council. The supreme prosecutor and the proposing person can deliver a speech on the session

The approximation council can pass two types of resolutions on the session:

- Justifying: if the regulation of the final resolution, concerned in the approximation application and stating the criminal responsibility of the defendant unlawful, the council repeals the unlawful regulation and discharges the defendant or terminates the procedure.
- Refusing: The approximation council refuses the approximation application if it is not necessary to pass approximation resolution.

# VIII. SPECIAL PROCEDURES

The special procedures are regulated in the Section 20-27 of CPA. As these procedures serve the consideration of criminal responsibility, mostly the general rules are valid for them, and these eight sections regulate the divergences from the general ones. The special procedures compared to ordinary procedures either provide extra guarantee (e.g. procedure against the juvenile), or contrary, the section of ordinary procedure can be omitted.

The CPA regulates eight special procedures as follows:

- criminal procedure against the juvenile,
- procedure of private accuse,
- military criminal procedure,
- bringing before court (prosecution),
- omitting the trial,
- renouncing the trial,
- procedure in the absence of the accused,
- immunity procedure.

The legal policy of the reasons to regulate special procedures is diverse. Although, several regulations of the CPA serve the fastening and simplification of the ordinary procedure. The aim of proceedings with private accuser, omitting the trial, prosecution with bringing before court and procedures in the absence of the accused is concluding a faster and simpler procedure. The reasons of the special rules in the three other procedures are the different life conditions and the different regulations in the Criminal Code.

The rules of the single special rules can sometimes be applied in parallel with each other (e.g. bringing before court of a soldier of juvenile). However, in some procedures or by a special regulation of the law, or as it is obvious, common application is not possible. Changing from general procedure to special procedure can also be possible – if conditions of the single special procedures do not exist – the court changes into ordinary procedure and concludes it so. This change can occur in the other way also, if the authority that there is a room for applying a special procedure realises in a later period of the procedure.

## 8.1. Criminal procedure against the juvenile

Conditions of a procedure against the juvenile and its borderline cases are as follows:

| **Condition:**<br>the accused when committing the crime had already turned 14 but has not reached 18 | | |
|---|---|---|
| **Mixed case in time:**<br><br>if the accused turns 18 during the procedure, but was juvenile when committing the crime:<br><br>*The rules of procedure against the juvenile are to be applied* | **Criminal accumulation:**<br><br>if against the same accused crimes are considered committed when juvenile and when adult:<br><br>*The rules of ordinary procedure are to be applied* | **More cooperating accused**<br><br>here are both juvenile and adult among them:<br><br>*partial procedure against juvenile* |

From the cases above the partial procedure against the juvenile are to be described in details. Than the special rules only against the juvenile are to be fulfilled, but not those concerning the adults. Some rules of the procedure against the juvenile effect the adult criminal also. Other rules – e.g. obligatory defence, obligatory means of defence – are valid only for the juvenile.

The rules of a procedure against the juvenile have four main fields:
a) subjects,
b) proofs,
c) circle of coercion measure, and
d) some particular rules of the procedure.

ad a) In a procedure against the juvenile the presence of the defender and the prosecutor is always obligatory. The court is constructed in a determined way and in cases falling under the competence of first instance authority of the local court the so called county courts proceed. The legal representative, as supplementary defender has several rights, and in some cases a casual guard is to be appointed.

ad b) In a procedure against the juvenile characteristic evidence means are recorded, like environmental scanning, school or work place characterization, testimony of the attendant and verifying the age by documents. So in this procedure the principle of free evidence is infringed partially, but recording of some means of proof is obligatory.

ad c) Finally, some measures related to preliminary arrest are to be mentioned:

- the circle of the general conjunctive conditions is increased with one
- the interview ordering the preliminary arrest cannot be hold without the prosecutor
- the legal representative can also hold a speech on the interrogation,
- the resolution connected to the preliminary arrest is also to be announced to the legal representative and the attendant,
- preliminary arrest can be executed also in the reformatory.
- the term of preliminary arrest ordered against the juvenile is maximum 2 years

ad d) Other rules indicating the special characteristics of the procedure can also be found in the CPA. The impeachment can be postponed also in case of a crime to be punished with more than 5 years. When postponing the impeachment against the juvenile, compensation for the public cannot be ordered.

From the trial the public can be excluded also in the interest of the juvenile, even the part of the trial can be held in the absence of the juvenile. Against the juvenile neither private accuse procedure, nor trial in his presence, nor renounce of the trial can be applied. The juvenile and the witnesses are always interviewed by the president of the council.

## 8.2. Procedure with Private accuse

The CPA recognises two main types of private accuse:

- main private accuse
- additional private accuse.

The rules of private accuse are included in the Section 22 of CPA within the frames of special procedures. With a disputable legislative solution the regulations related to additional private accuse cannot be found among special procedures, but among the single rules of

procedure and randomly. With respect to that this form of charge representation is significant, thus the rules of that will also be introduced here.

### 8.2.1. The private accuse special procedure

The private accuse special procedure has two positive and two negative conditions. The positive conditions are conjunctive, such as both of them are to exist for that the private accuse procedure could be conducted, while the negative conditions (excluding conditions) – as usually – are alternative conditions:

| Positive (conjunctive) conditions | Negative (alternative) conditions |
|---|---|
| 1. One of the 6 crimes included in the Sec 1 Art 52 of the CPA has to exist (bodily assault, infringing private secret or correspondence, slander, defamation)<br><br>2. The criminal can be punished through private proposal (e.g. through request or public charge) | 1. The accused cannot be a soldier<br><br>2. The accused cannot be juvenile<br><br>3. The prosecutor cannot take over the representation of charge |

In cases of not grievous bodily assault committed commonly, slander or defamation there is a room for counter charge, which can be independent or indirect, depending on that whether it was introduced within the 30 days or over it. The individual counter charge can be kept up independently from the private accuse, while the indirect counter charge shares the faith of private accuse.

The private accuse procedure can be initiated only through impeachment. Investigation is usually not concluded, but the court or the prosecutor may order it. Special part of private accuse procedure is the personal interrogation, the main aim of which is the conciliating. If the attempt to conciliate is not successful, than the aim of personal interrogation is clearing the grounded suspect of the crime and preparation for the trial. The accuser and the accused, the defender and the representative are summoned for personal interviews. The personal interview can be executed by associate judge or the judicial secretary, and they may pass any resolution by the CPA on the personal interview. If the accuser does not appear personally on the interrogation, then it is considered as supposed withdrawal of the case and the procedure is to be abated.

There are rules different from the general in the procedure of first instance also

- the court announces the essence of the charge, if the private accuse does not have representative, as there is no prosecutor,
- shortened record may be taken if the private accuse is withdrawn, which initiated the private accuser to present private accuse,
- the withdrawal of the charge cannot be explained.

The private accuser cannot appeal in favour of the accused. In case of appeal the documents are introduced to the court of second instance not through the prosecutor but directly. The private prosecutor may withdraw the charge also in the procedure of second instance, and can initiate retrial or over-review only in case of abating the trial.

### 8.2.2. Procedure with additional private accuse

The conditions of additional private accuse procedure are as follows:

| The **offended** can take a stand as additional private accuser | **Procedural obstacle** is present: | **Obligatory representation of solicitor** | **Negative conditions:** |
|---|---|---|---|
| In case of his death within 30 days his relative of direct line, partner in marriage, or legal representative can take his place | 1. By the resolution of the prosecutor or investigating authority:<br>• refusing the impeachment<br>• abating the investigation<br>2. By the resolution of the prosecutor<br>• partial omission of the impeachment<br>• discharging | Expect for if the natural person has passed higher legal special examination | There is no place for standing as additional private accuser, if the possibility of being punished is excluded because of<br>• childhood<br>• mental incapacity<br>• death of the criminal |

The CPA includes special regulations concerning the single procedural sections. From these we are dealing in details with the regulations concerning

a) investigation,
b) judicial procedure,
c) particular legal remedy.

ad a) After complaint is refused, the offended has to have right to see the documents concerning the crime committed against him. If the offended wishes to act introduce additional private charge, then presents indictment through his attorney to the court having proceeded in the case earlier. The indictment is forwarded to the court competent and having authority in the case.

The court refuses the indictment if

- the additional private accuser presented it later then 30 days after announcing the refusing decision,
- the additional private accuser is presented not by the attorney (and the additional private accuser does not have legal special examination),
- the indictment was proposed not by the competent,
- the factual or legal basis of the indictment is missing.

If the court has not refused the indictment, then it is to provide the means of proof to be available and may order coercion measures if necessary.

ad b) The additional private accuser practises the prosecutor's rights (with some exemptions) in the judicial procedure, including the appeal for ordering coercion measures serving deprivation or limitation of freedom of the accused. It is obligatory to be present for the representative of the additional private accuser and the defender. If the additional private accuser cannot provide representation by counsel because of his financial state and he certified this fact as it is described in a special regulation, and if he appeals for it, the court

may permit relief from charges for him. In this case, when asking for copies, one time he has the right for prenotation of duty, and the costs are advanced by the state.

If there is a room for additional private accuse when withdrawing the case, the declaration of the prosecutor on withdrawing the charge is sent to the offended within 15 days, who may act as additional private accuser within 30 days. After withdrawing the case the offended is to be given the opportunity to inspect the documents concerning the crime committed against him (apart from the documents considered as closed). If the procedure is being conducted because of more crimes committed and the prosecutor withdraws the charge in one of them, than the additional private accuser may act only if the case with the withdrawn charge can be separated (and it is to be separated then).

The additional private accuser cannot expand the charge. The pleadings are held by the representative of him. The additional private accuser cannot appeal against the final decision of the court of first instance in favour of the accused. If the charge is represented by the additional private accuser when presenting the appeal, the documents are introduced to the court of second instance directly by the court of first instance.

ad c) The additional private accuser can present re-trial proposal against the defendant only in order to establish the guiltiness of a discharged accused. The additional private accuser introduces the proposal for re-trial directly to the court competent in making decision.

The additional private accuser has right to present a proposal for over-review only in case of discharging or abating the procedure. Proposal for over-review, introduced by someone else and against the decision being brought, is to be sent to the additional private accuser also.

## 8.3. Military criminal procedure

The conditions of the military criminal procedure are included in the Art. 470 of CPA, based on which there is a room for military criminal procedure in cases as follows:

| In case of any crime | In case of military crime | In case of connections (connexity) |
|---|---|---|
| 1. if committed by official members of armed forces<br>2. if committed at the place of duty or in connection with to duty, by official members of civil national security/ criminal executing organ<br>3. committed in Hungary by member of allied armed force | committed by a soldier during his real service relation | 1. Personal connections: committed more crimes by a perpetrator falling under the competence of military CPA<br>2. Objective connections: one crime committed by more perpetrators, falling under the competence of military CPA because of one of them |

A soldier is a person,

- being official member of armed forces or
- professional member of police, criminal executive organ or civil national security service,

by the Sec 1 Art 122 of Criminal Code.

Special objective regulations (similarly to regulations passed in procedures against the juvenile) are as follows:

a) The court: the sphere of authority and competence of military councils are special. Military criminal procedure can be conducted only by a military council of five county courts (Budapest, Győr, Debrecen, Szeged, Kaposvár), so their competence is expanded on more counties, though on second instance there is only one competent organ, the military council of the Budapest High Court of Appeal. The president of the council of first instance is the military judge, members of the council are associate judges.

b) The prosecutor: military supreme prosecutor or military supreme prosecutor of appeal. The competence of military supreme prosecutor (or military supreme prosecutor of appeal) is adjusted to the military council. The military prosecutor fulfils duties of investigation also, besides charge representation.

c) The competent commander – beside the military prosecutor – completes the duties of the investigating authority. Other investigating authorities may also execute investigating actions, without ordering the investigation, and completed as real actions, but they have to inform the military prosecutor about it.

Within the proceedings and the regulations of the procedure, the preliminary arrest, the consideration of a crime in disciplinary procedure and the regulations of obligatory defence on the trial will be introduced below.

Different regulations of preliminary arrest ordered against a soldier:

- Preliminary arrest can be ordered also if the defendant cannot left at large because of disciplinary or service reasons
- Preliminary arrest cannot be executed in a detention facility, but in the police jailhouse,
- Special replacing institution of preliminary arrest is the strict supervision (appropriate to prohibition to leave domicile): the defendant brought under strict supervision cannot fulfil armed service, and may leave his place of service only with a permission of the prosecutor and the court, during the investigation,
- In favour of a soldier bail cannot be furnished.

If the target of a punishment can be reached also with disciplinary warning because of a military delict, the military prosecutor

- refuses the indictment or
- abates the investigation,

and sends the documents to the commander, competent in disciplinary proceedings.

Following this, the commander may impose the disciplinary punishment adjusted to service relations.

Investigation is to be ordered if the suspected or his defender make a complaint against the decision on refusing the indictment and there is no other reason of the refuse. The soldier falling under the disciplinary punishment and his defender may propose for over-review of the resolution imposing the punishment within 3 days. The court passes resolution as single-judge on a trial, after interviewing the punished soldier, base on the documents. The commander and the prosecutor may hold speeches on the trial (or may declare in written form). The court considers the proposal in a decree and either refuses it or imposes a lighter punishment.

The reasons of obligatory defence are expanded in contrary to the regular procedure on a military criminal trial. Based on that the presence of the defender is also obligatory on the trial if

- the imposed punishment is five or more years imprisonment

- the accused is at draft age and
- additional private accuser acts (although there is no room for additional private accuse in the military criminal procedure).

## 8.4. Bringing before court (Prosecution)

The prosecution is the fastest type of criminal procedure, when the final resolution can be enforced within 15 days after committing the crime.

The prosecution has six conditions as follows (Art 517):

| Objective conditions | Alternative conditions | Subjective conditions |
|---|---|---|
| • maximum 8 years imprisonment is imposed for the crime by the Criminal Code<br>• maximum 15 days passed since committing the crime | • the case falls under the competence of the local court or first instance authority of military council<br>• catching in the act or confession | • consideration of the crime is simple<br>• the proofs are available |

In case of catching in the act (if other conditions are answered) the prosecutor is to bring the defendant before the court, when the prosecutor informs the suspected about that because of what crime and based on what proofs he is brought to the court. Defence is obligatory. During bringing before court coercion measures limiting personal freedom last up to the day of the trial, and there is no room for private accuse.

The prosecutor informs the court about the fact of prosecution and presents the charge orally. There is no preparation for trial, instead of this the prosecutor brings the defendant before the court, summons the defender and provides availability of proofs.

The documents are sent back to the prosecutor if

- it comes clear – at the beginning of the trial – that the term of 15 days or the possibility to be punished with 8 years imprisonment is exceeded,
- more proofs are to be searched,
- based on the expanded (changed) charge there is no room for bringing before court.

## 8.5. Procedure with omitting the trial

During procedure with omitting the trial the court passes final resolution based on not the trial but the documents, that is why not sentence but decree is passed.

There are subjective (balancing) and objective (cogent) conditions of procedures with omitting the trial also (Art 544) as follows:

| Objective conditions | Subjective conditions |
|---|---|
| 1. prosecutor's proposal (in case of private accuse ex officio)<br>2. defendant at large<br>3. some less strict sanctions can be imposed<br>4. crime is to be punished with maximum 3 years imprisonment<br>5. confession<br>6. decision is made within maximum 30 days since being brought to the court | 1. the state of facts is simple<br>2. target of the punishment can be reached without trial |

The less strict sanctions – within the objective conditions – can be as follows:

- two main punishments (maximum one year of imprisonment, suspended in its execution, or financial punishment);
- some given subsidiary punishments (suspension of licence, expulsion, reduction in rank, or abating service relations);
- other measures (trial period, warning).

The ordering part of the decree has to include designation of the crime and the punishment imposed, the other measures and some given warnings (e.g. there is no room for appeal etc.). The explanation is to be included by the rules of shortened explanation.

Holding of trial can be claimed by the prosecutor, the private accuser, the accused, the defender, the private party or the other competent, within 8 days from delivery. In case of such a claim it is obligatory to hold a trial (the prosecutor cannot claim for trial if the omission of it was proposed by him). The claim has suspending effect related its execution.

If holding a trial, the case is considered as regular procedure, so procedure of first instance is to come as next step.

## 8.6. Renouncing the trial

The special procedure with renouncing of the trial is one form of plea bargain. In Hungary there is no real possibility for bargain between the charge and the defence. In case of renouncing trial the defendant does not know in advance about the measure of the punishment being imposed. The only preference is that in return for confession the case will be considered within lighter punishing conditions.

In case of renouncing the trial the court can establish guiltiness on an open session if the requirements below are answered:

| **Prosecutor's proposal**<br><br>(no private accuse, additional private accuse) | **Crime possibly punished with maximum 8 years punishment**<br><br>(but: in case of organised crime can be graver crime if the accused cooperates) | **The accused renounces the trial** | **The accuses makes admitting confession** |
|---|---|---|---|

In case of renouncing the trial the crime is considered within less strict punishing conditions: the action of the accused (in return for renouncing the right of admitting or the right for trial) is considered within lighter conditions,

- maximum 8 years in case of crime to be punished with more than 8 years of imprisonment (see: except for organised crime),
- maximum 3 years in the event of crime to be punished with more than 5 years imprisonment but no more than 8 years,
- maximum 2 years in case of crime to be punished with punishment more than 3 years but no more than 5 years imprisonment,
- maximum 6 months if the crime is to be punished with 3 years imprisonment can be imposed.

Renouncing the trial can be proposed during the investigation and within 15 days after the presentation of the charge (if the conditions are fulfilled). The prosecutor can propose for the renouncement.

In case of renouncing the trial the court proceeds as single court and holds an open session, on which the prosecutor and the council are obliged to be present. On this open session the prosecutor introduces the charge and his proposal concerning the consideration of the case on open session. After introducing the charge and the proposal the court informs the accused about the consequences of renouncing the trial and his confession before the court. Following this, the court calls upon the accused to declare whether wishes to renounce the trial (before which may discuss it with the defender). The accused is heard after making this declaration, on the action serving as object for the charge.

The court decides on the issue whether it is possible to conduct proceedings with renouncing the trial. During this it examines whether

- the accused is accountability,
- the confession is voluntary,
- the confession responds,
- the confession of the accused is identical to the one made during the investigation.

If the court considers the open session or a graver classification than the one included in the charge is expected, the case is sent to trial (non-appeal able). If the court does not see any reason for this, it can hear the accused on the circumstance of the punishment. Following this the prosecutor, than the defender can hold a speech.

There is no possibility to appeal against the establishment of guiltiness, the statement of facts, identical to the charge, or classification identical with one in the charge.

The court of second instance can over-review the regulations concerning groundedness of the statement of facts of the sentence, establishment of guiltiness and classification of the crime, but cannot over-review the statement of facts or classification identical to the one in the charge, if

- reveal of the accused or
- abating of the procedure is possible,
- or when changing the classification of the crime a lighter punishment, or instead of punishment a measure is to be imposed.

## 8.7. Procedure in the absence of the accused

The criminal procedure is often prolonged because the accused residents in an unknown place or abroad. Than the CPA makes possible the procedure be conducted in the absence of the accused.

There are three main types of procedures in the absence of the accused: (Art 527, 529, 532)

| In case of accused residing in unknown place already during the investigation | In case of accused residing in unknown place after the indictment | Residing abroad but not extradited accused |
|---|---|---|
| • the accused residents in an unknown place<br>• measures to find the accused were not successful<br>• the proofs are available<br>• the prosecutor proposes for conducting the procedure in the absence of the accused<br>• the court orders to capture the accused | • the accused residents in an unknown place<br>• the court calls upon the prosecutor to declare whether wishes to propose for conducting the procedure in the absence of the accused<br>• the court orders to capture the accused<br>• the prosecutor proposes within 15 days | • the accused residents abroad<br>• there is no room for extradition of the accused or it is refused<br>• the prosecutor proposes for conducting the procedure in the absence of the accused |

On a trial held in the absence of the accused the presence of counsel is obligatory. The accused is to be delivered the bill of indictment, the resolutions, the summon and the announcement. The summon is to be delivered both for the accused and the counsel.

If the measures executed to find the accused were successful, the procedure (partially can be repeated):

- if the accused appears before the final resolution of the court, the court continues the trial with announcing the material of the earlier trial, or if necessary, reopens the evidence proceedings;
- if the accused appears after the final resolution of the court, than he may appeal within the given term or may propose for repeating the trial;
- if the accused appears during the second instance procedure, trial of second instance is hold and the accused is heard on it, or if necessary, further evidence is recorded,
- or if the accused appears after passing final resolution, in favour of him retrial proposal can be introduced.

## 8.8. Procedure of persons with immunity

The CPA regulates the procedure in case of persons enjoying immunity is regulated in Art 3, Title 27. These regulations include the consequences of immunity as a procedural obstacle and its repeal.

The persons enjoying immunity can be classified in three groups:

| **Proper immunity**<br>***Based on international right*** | **Partial immunity**<br>***Based on fulfilling public function*** | |
|---|---|---|
| No action can be taken until repealing the immunity | Only in case of catching in the act measures can be taken | |
| *persons enjoying diplomacy immunity* | *preferential public immunity* | *some authority members* |
| person of diplomacy or personal immunity | MPs, ombudsman and their deputies) | (judge, prosecutor, associate judge) |
| | in case of any crime | in case of crimes committed when in these functions |

No criminal procedure can be initiated against the persons enjoying immunity until its repeal and the procedures having been started is to be abated. The immunity is expanded to other functions within the procedure (witness, private party, private accuser).

# IX. PARTICULAR PROCEDURES

During the particular procedures it is not a criminal law question to be considered as the main issue but in matters belonging to other fields of criminal procedure. The particular procedures operate as "miniature procedures"

- within the criminal procedure (e. g. from ordering preliminary arrest or its prolongation)
- before the procedure (e.g. decision on extradition of the accused)
- after it (e.g. abating conditional freedom if the conditions are not answered by the accused).

Particular procedures can be classified in six groups as follows:

1. Procedures connected to execution of punishment (e.g. subsequent establishment of the degree of executing imprisonment, subsequent order of executing a punishment suspended for trial period, changing financial punishment into imprisonment)

2. Procedures in connection with criminal law measures (over-review of coercion medical treatment, procedure in case of ordering trial period, proceedings aiming at seize)

3. Procedures in connection with procedural coercion measures (proceedings related to coercion measures – preliminary arrest, temporary medical treatment – before presenting the bill of impeachment, prolongation of preliminary arrest by the Supreme Court)

4. Procedures in connection with the juvenile, (abating temporary releasing from reformatory, ordering unified measures)

5. Procedures with international respect (security, uphold of foreign sentence).

6. Finally, mixed procedures, not belonging to any of these groups (compensation, release, subsequent measures concerning criminal costs).

The particular procedures can be initiated ex officio, or by the proposal of the prosecutor, the accused or the defender. The coercion measures possibly applied are limited in these cases:

- order to capture can be passed if against the accused residing in unknown place imprisonment can be imposed within the frames of the particular procedure
- by the order to capture the accused can be arrested until the end of the trial, but for maximum 6 days.

Generally, the court passing decisive resolution on first instance proceeds in particular procedures as single judge. The decision is passed based on the documents, but if necessary, the prosecutor, the accused or the defender can also be interviewed. Against the resolutions passed in particular procedures, the prosecutor, the accused and the defender can appeal, the court of second instance decides on it on a council session.

# CURRICULUM VITAE

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|---|---|
| | Dr. Zoltán Hautzinger was born in 1973, in Budapest. He finished the Faculty of Border Guard Police at the College of Police Officers' with an honours degree. He took the University Degree in 2000 at the University of Pécs, Faculty of Law. He has been serving within the officers of Border Guard Officers of Hungarian Republic. During his scientific activity he published two course books for the police for Secondary Schools, and two monographs on forensic science and criminal procedure. His field of interest includes — in accordance with his official service — constitutional regulation of Border Guards, single questions of forensic science from professional lawyer's approach (theory of identification, forensic examination of firearms and explosives)., and military criminal procedure. He is a member of the Military Scientific Association, and one of the editors of the yearly published collection of essays with the title Scientific Releases for Border Guards of Pécs. |
| | Dr. Csongor Herke was born in 1971 in Pécs. He finished the Janus Pannonius University (later University of Pécs) at the Faculty of Law in 1997 with honours 'summa cum laude'. He passed the legal professional exam with excellent result. He saved his PhD degree with the title 'Theoretical and practical questions of preliminary arrest' with 'summa cum laude' result. He has been working for the University of Pécs, Faculty of Law, Department of Criminal Procedure since 1995, since 2003 as an Associate Professor. He is the organiser of the correspondent course at the University of Law, for students having Police Officers degree, from 1996. Besides being a University lecturer, he accomplishes his job as a practical lawyer also. He holds lectures within the field of criminal procedure and forensic sciences at the department. He has published four dozens of works, within them one large monograph, one course book, chapters for two course books and three auxiliary course books. He has been a member of the Criminological Association of Hungary, and since 1999 the leader of Baranya County Section of the Hungarian Helsinki Committee which is responsible for the control of the Hungarian jails. He received the 'Abay Neubauer Gyula' reward as an appreciation of his research works at the university. He is one of the founders of the Central European Criminal Cooperation (CECC) . |