

Special Procedures Provided for in the New Hungarian Code of Criminal Procedure

I Introduction

Traditionally, Hungarian criminal procedural law recognises three types of criminal procedures. The process of criminal prosecution is governed by the general rules. Where justified by a special circumstance, it is nevertheless possible to derogate from the general rules. Special procedures provide for rules governing criminal prosecution in derogation from the general rules. Special procedures may be justified by the person (juvenile or soldier) of the accused, the subject matter of the procedure (private prosecution in the case of offences specified by law, ‘substitute private prosecution’ where the conditions established by law are met, or the procedure in the case of offences related to the border fence). Further reasons include the absence of the accused during the procedure (procedure *in absentia*, procedure against an accused residing abroad, provision of security), as well as the simplification or expedition of the procedure (bringing to justice, procedure for issuing a penalty order and procedure if a plea bargain has been reached). The third type of criminal procedures are the so-called ‘particular procedures’, which are not about adjudicating criminal liability, but are related to a final judgment, and their primary purpose is to rectify or supplement such a judgment in matters that do not affect the determination of criminal liability.

The new Hungarian Code of Criminal Procedure¹ (hereafter referred to as the ‘new CCP’) retains the three types of criminal procedure known previously, but makes some slight changes to the system of special procedures. One of the main objectives of this new statute, in addition to the enforcement of the right to a fair trial, is to rationalise the length of proceedings. One of the most important means to achieve this objective is the re-regulation of the ‘procedure aimed at reaching a plea bargain’, which is the best way to expedite the procedure. An important and major innovation of this statute is that it provides a coherent framework for and integrates the rules of the Code of Criminal Procedure previously in

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¹ Act XC of 2017 on Criminal Procedure, date of entry into force: 1 July 2018.

force² (hereinafter referred to as the ‘CCP’) on ‘substitute private prosecution’ (in Hungarian: *pótmagánvád*) under a separate special procedure.

The table below provides an overview of the system of special procedures (special procedures are listed in the same order as in the statute).

Table 1.

CCP	New CCP
1. Procedure against juveniles	1. Procedure against juveniles
2. Criminal procedure against soldiers (and members of certain armed forces)	2. Criminal procedure against soldiers (and members of certain armed forces)
3. Private prosecution	3. Procedure in the case of a person enjoying procedural immunity
4. Bringing to justice	4. Bringing to justice
5. Procedure in absentia	5. Procedure if a plea bargain has been reached
6. Waiver of right to trial	6. Procedure for issuing a penalty order
7. Procedure in the case of offenses related to the border fence	7. Procedure in absentia
8. Judgment without trial	8. Procedure in absentia of an accused residing abroad
9. Procedure in the case of a person enjoying procedural immunity	9. Procedures where the provision of security is required
10. High-priority cases	10. Private prosecution
11. Asset recovery procedure	11. Substitute private prosecution
	12. Procedure aimed at confiscating property or assets or rendering data inaccessible
	13. Procedure in the case of offences related to the border fence

The above table illustrates the most significant changes made by the new statute, both taxonomically and in terms of their nature. Certain changes made to the special procedures are worth looking into.

II Special Procedures Established in View of the Person of the Accused

1 Procedure against Juveniles

Under the statute previously in force, procedures against juvenile offenders must be conducted in an age-appropriate manner, and so that they promote the juveniles’ respect for

² Act XIX of 1998 on Criminal Procedure.

the law. Under the new statute, criminal procedures against juvenile offenders must be conducted so as to ensure the *social inclusion* of juveniles and to *prevent them from committing another crime* by promoting *education, as well as the physical, intellectual, moral and emotional development* of juveniles. It is evident that the purposes of this type of procedure have become more complex and more specific. According to the new rules, not solely the living conditions and age of the accused should be taken into account, but the involved authorities and court are required to adopt a more proactive approach. Special prevention, socialisation and the promotion of physical, intellectual, moral and emotional development have become the purposes of this procedure, going far beyond 'mere' prosecution. Through this, the criminal procedure itself has also been given an 'educational' nature, which is strongly manifested in the enforcement of criminal penalties. These changes in the purposes of this procedure and in the manner in which it is conducted anticipate and illustrate the legislator's intention to take better account of the situation of juveniles and better protect them.

According to the rules in force, there is no separate juvenile court or exclusive jurisdiction in procedures against juveniles, and the new statute does not bring changes in this respect either. In cases involving juveniles, current rules provide that specially composed courts must be set up to take the best interests and particularities of juveniles into account. The new CCP provides for even *more complex* regulation, not only for judges but also for lay judges (also known as lay assessors, in Hungarian: *ülnök*). According to the previous rules in force, one of the two lay judges participating in the criminal procedure must be a pedagogue. The new CCP requires that lay judges possess specialist knowledge. However, in addition to pedagogues, the new CCP allows the involvement of psychologists and persons who work, or had worked earlier, in a position requiring specific college or university qualifications and serving the healing, nursing, employment, development, care, education of or providing social assistance to or remedying the situation of young people in the framework of family, child or youth protection services or child welfare administration.

One of the guarantee rules is that, in certain cases, *the time limits for investigations* are reduced in the case of procedures against juveniles. In the case of criminal offences punishable by a custodial sentence of no more than 5 years, investigation must be completed within 1 year, while in the case of criminal offenses punishable by a custodial sentence of more than 5 years, this time limit is set at 2 years and may not be extended. Time limits are counted from the moment of the accused's first interrogation as a suspect.

The new CCP intends to provide more possibility for *derogation*, and broadens the scope of application of alternative justice options that can be used instead of prosecution. It therefore allows the application of such justice options in the case of offences punishable by a custodial sentence of no more than 8 years (in contrast to the 5 years laid down in the statute in force before). Earlier, juveniles were not allowed to accept a plea bargain, but the new rules do not exclude the conduct of the procedure to be applied after a plea agreement has been reached. This is sort of a paradigm shift, because the current rules have so far focused on the need to conduct a trial in procedures against juveniles exactly because a

trial was considered to be best suited to take into account the particularities of juveniles and to achieve the purposes of the procedure. Enabling plea bargains introduces the option to avoid trial, which is intended to expedite completing the procedure. This is an opportunity that juveniles may benefit from under the new CCP.

2 Criminal Procedure against Soldiers (and Members of Certain Armed Forces)

The nature of criminal procedure against soldiers (and members of certain armed forces) (in Hungarian: *katonai büntetőeljárás*) has not changed; however, some of the detailed rules have been amended, mainly for pragmatic and practical reasons. It is important to note that the new CCP maintains the institution of lay judges, i.e. the involvement of lay people in the judicial process, in the case of criminal procedure against soldiers (and members of certain armed forces), similarly to criminal procedures against juveniles.

The current rules do not lay down provisions for cases where both *a juvenile and a soldier* are involved in a procedure. Previously, there had been a pertinent rule, but it was repealed. The new statute considers that the ‘unregulatedness’ of this matter needs to be remedied, and therefore provides that if the cases of two accused people are related, and one of the accused people is a juvenile and the other is a soldier, then both cases should be dealt with under a criminal procedure against soldiers (and members of certain armed forces). However, the provisions on criminal procedures against juveniles shall be applicable to the juvenile accused.

In a criminal procedure against soldiers (and members of certain armed forces), a special investigating authority is the ‘competent commander’ (in Hungarian: *illetékes parancsnok*), the person who investigates cases in which the military prosecutor has no exclusive investigative powers (i.e. non-military offences). It is an innovation of practical significance that the competent commander may not only act personally, but also exercise their powers by delegating them to an investigating authority or an investigating officer entrusted with the specific task. Investigations shall be directed and supervised by the competent commander. The investigating officer shall act on the commander’s instructions during investigations.

3 Procedure in the Case of a Person Enjoying Procedural Immunity

Essentially, the new statute does not amend the rules of this special procedure.

II So-called ‘Consensual’ Special Procedures Designed to Simplify and Expedite the Procedure Based on the Accused’s Plea of Guilty

1 Bringing to Justice

The simplified and expedited procedure called ‘bringing to justice’ (in Hungarian: *bíróság elé állítás*) is a special procedure often used in practice; it was therefore justified to widen the scope of application of this particular form of procedure. Instead of the current 8 years, the new CCP allows ‘bringing to justice’ in the case of offences punishable by no more than 10 years. Similarly to the currently effective one, the new statute provides separate rules for the case when the accused is caught *in flagrante delicto* (i.e. in the act of committing a crime) and when they confess to the crime. In such a case, the accused shall be brought to justice within 15 days of committing the crime; if they make a confession then this time limit is longer: one (1) month from the questioning as suspect.

In addition to this shorter time limit, the procedure is expedited by the fact that the stage of preparations for the trial is skipped in this procedure. The prosecutor is required to ensure that the administrative duties associated with preparations for the trial are carried out, and the court shall ensure the conditions necessary for holding the trial. The new CCP integrates into its provisions the current prosecutorial practice, namely that when someone is ‘brought to justice’, the prosecutor *prepares a memo*, in which they record the essential elements of the charges made earlier orally, as well as the personal data of the accused, the act on which the procedure is based, its classification under the Criminal Code and any evidence. In order to conduct a procedure within a reasonable period of time, it is necessary that the procedure cannot be protracted, even when the first instance judgment is appealed against. It is therefore an important innovation of the new statute that *it also sets a deadline for the court of second instance to conduct its procedure*. Appeals must be considered within 2 months. Since the rules governing the procedures of third instance refer back to the procedures of second instance, this two-month time limit also applies to the procedures of third instance.

2 Procedure if a Plea Bargain Has Been Reached

This special procedure, which is based on the accused’s guilty plea and therefore the avoidance of a criminal trial, is very rarely used in practice, even though it is intended to simplify and expedite the procedure; it was therefore necessary to ‘reform’ this particular type of procedure. Its essence has remained unchanged: it allows the accused to exercise their right of disposal under which they are entitled to choose the form of the judicial procedure, i.e. to choose a simpler and expedited procedure instead of a trial. The detailed rules, however, have changed completely.

It is possible for the accused to accept a plea bargain only *before* an indictment is filed. The prosecutor and the accused agree on the facts of the case and how the offence will be charged, while the latter pleads guilty. The prosecutor subsequently proposes to the court, in an indictment, to approve the plea bargain and to impose a corresponding penalty on the accused. The court approves the plea bargain by means of an order during a so-called *preparatory meeting*, against which no appeal lies. The court has to examine several aspects, in particular whether or not the acceptance of the plea bargain and its content are in conformity with the statutory provisions; whether or not the accused is aware of the nature and consequences of the plea bargain; whether or not the accused pleaded guilty upon his own decision; and whether or not their confession was unambiguous and is supported by the case files. Where the court finds it necessary on the basis of the statements of the accused or the available evidence, the accused will be interrogated.

Wherever possible, the court clarifies any matters not covered by the plea bargain during the preparatory meeting; otherwise it will hold a *hearing* and collects evidence on the undecided matters. In its judgment, the court may not derogate from the facts of the case as set out in the indictment and the legal classification of the offence, as well as the penalty, measures and other provisions specified in the approved plea bargain. This latter rule implies that the court *is left with no discretion with regard to the imposition of penalties* and, if the plea bargain is lawful, it must impose the penalty specified therein. Given the nature of plea bargains, *the right to appeal is limited*. No appeal lies against the finding of guilt or the terms and conditions of the plea bargain (facts of the case, legal classification, or the type, duration or extent of the penalty). It follows from the foregoing that the decision-making powers of the court of second instance are limited; it is only allowed to modify the judgment of first instance if it can be established without a trial that the acquittal of the accused or termination of the procedure is justified. The judgment of first instance shall be annulled in the event that the court should have refused to approve a plea bargain.

3 Procedure for Issuing a Penalty Order

The special procedure, which is currently named ‘avoidance of trial’ (in Hungarian: *tárgyalás mellőzése*), will be regulated by the new CCP under the name ‘procedure for issuing a penalty order’ (in Hungarian: *büntetővégzés meghozatalára irányuló eljárás*). However, no substantive changes have been made to the procedure itself.

III Special Procedures That May Be Applied *in Absentia*

1 Procedure *in Absentia*

A special procedure may be conducted *in absentia* (i.e. against an accused who is absent) if the accused is a fugitive, or is hiding or otherwise unavailable in order to avoid criminal

prosecution; the actions taken to find the accused have not yielded results within a reasonable time; and the gravity of the offence or the public opinion on the case justifies the conduct of a judicial procedure. If the conditions necessary for conducting the procedure are not in place then it shall be suspended.

Prior to filing an indictment, it must be declared in a decision that the procedure will be conducted in the absence of the accused. As of that moment, a defence attorney's involvement in the procedure is mandatory. This special procedure may only be conducted at the public prosecutor's request. The rules of this particular form of procedure have not changed essentially; the new CCP has made a few minor adjustments to the rules governing the conduct of this procedure in cases where the accused's location becomes known at different stages of the procedure. According to the rules previously in force, it is necessary to start or resume the procedure at the proceedings of first instance, depending on the stage when the accused was found. The new statute provides for the possibility of not starting the procedure automatically from scratch, but the court of second instance can be ordered to conduct a new procedure, where appropriate. This change also helps to ensure the timeliness of the procedure.

2 Procedure *in Absentia* of an Accused Residing Abroad

If the accused is at a known location but abroad, the rules of the procedure *in absentia* should be applied *mutatis mutandis*. The new rules contain the same provisions, but the category of cases covered by this procedure is regulated under a separate special procedure. It is also possible to conduct this procedure if an accused cannot appear before the Hungarian courts for some reason, regardless of their will. If the *accused is detained*, however, their consent is required to conduct a procedure *in absentia* after filing an indictment.

3 Procedures where the Provision of Security is Required

According to the rules in force, the procedure where the provision of security is required is included in the list of particular procedures; however, it is more logical to regulate it as a separate special procedure, as it is not an auxiliary procedure following a final decision, but the security determines the manner in which the main procedure is conducted.

The public prosecutor's office and the court may authorise the provision of security for an accused resident abroad in cases where the subject of the procedure is a criminal offence punishable by a custodial sentence of no more than 5 years (8 years according to the rules previously in force). Additional preconditions for this procedure are that the imposition of fines or confiscation of property is foreseen; the absence of the accused does not prejudice the procedure; and the accused has retained a defence attorney to act as their agent for service of process. The rule stating that 'no security is allowed if the offence has resulted in the death of someone' has remained unaltered. Where the provision of security is allowed,

the accused can be legally absent from the procedure, and therefore *there is no place for the suspension of the procedure or the application of 'procedure in absentia' or 'procedure in absentia of an accused residing abroad'*.

IV Special Procedures Established in View of the Subject of the Procedure

1 Private Prosecution

The rules applicable to private prosecution remained substantially unchanged. Some conceptual clarifications have been made, and the new CCP lays down rules for the presence and representation of private prosecutors.

The new CCP stipulates among the general rules that there is no place for private prosecution if the accused is a juvenile or a soldier. It is an important innovation that it defines the concept of '*countercharge*' (in Hungarian: *viszonzád*), according to which, where they mutually committed a simple assault (causing minor bodily injury), libel or slander, the accused may also raise charges against the private prosecutor. A new rule has been included stating that, in the case of a countercharge, the public prosecutor's office may take charge of the prosecution if the private prosecutor has not taken charge of or withdrew from the prosecution. It is a new element that the public prosecutor's office is allowed to take charge of the prosecution instead of the private accused on *one occasion* only. It is clearly stated that, even if the public prosecutor's office has taken charge of the prosecution, the rules of private prosecution shall continue to apply. However, the victim's right of disposal does not cease, and the victim may drop the charges at any time.

An important rule is that *the private prosecutor is required to attend the trial in personal*. If they fail to appear and to provide proper justification in advance, this shall be regarded as if they dropped the charges. Private prosecutors cannot be expelled or held in contempt if they cause a disturbance during the trial, but this shall be regarded instead as if they dropped the charges. Private prosecutors may be present at the accused's interrogation. An important change is that the presence of the private prosecutor will be mandatory during the procedure of second and third instance as well.

The new CCP provides for more detailed rules on the extraordinary remedies available in a private prosecution procedure. In accordance with the existing rules in force, the private prosecutor may apply for a *revision (retrial)*, but only against the accused. Private prosecutors may not apply for any of the other special remedies, such as judicial review, legal remedy designed to ensure legality (*törvényesség érdekében bejelentett jogorvoslat*) or appeal in the interest of law (*jogegységi eljárás*), but they may be affected by these procedures, and therefore must be notified thereof. Private prosecutors shall have the right to make comments and express an opinion in these procedures.

2 Substitute Private Prosecution

The new CCP summarises and consolidates the provisions on substitute private prosecution (*pótmagánvád*) in the form of a separate special procedure. Substitute private prosecution may take place where the public prosecutor refuses to act on a petition, a procedure is terminated or the charges are dropped.

Similarly to the statute in force, the new CCP provides that legal representation of the victim acting as a *substitute private prosecutor* continues to be *mandatory*. The public prosecutor may take charge of the prosecution on *one occasion* during the procedure. Even in that case, the victim shall remain the ‘owner’ of the case, and they may therefore drop the charges at any time. The prosecutor may not drop the charges, but they may withdraw from being the legal representative of the prosecution.

According to the regulations formerly in force, in the event of a *refusal to act on a petition or termination of a procedure*, the victim must file an indictment with the office of the public prosecutor that refused to act on the petition. The indictment must be signed by the victim’s legal representative. This provision is associated with the introduction of mandatory legal representation at all times and is also related to the fact that a legal representative must be available as early as at the time when the indictment is drafted. What is new is the provision stipulating that *a victim has 15 days to file another indictment* if it was previously dismissed by the court due to the lack of a legal representative or incompleteness of the indictment, and the ground for refusal no longer exists. If the court accepts the indictment then, from that moment on, the victim may act as a substitute private prosecutor. As a new rule, the statute contains provisions on the *translation of the indictment*, if the accused used a language other than Hungarian in the procedure.

In cases where the public prosecutor’s office *drops the charges*, victims may present themselves as a substitute private prosecutor, within 15 days of receiving the relevant statement from the public prosecutor’s office, by informing the court of their intention to prosecute the case further. Under the new statute, therefore, *there is no need to file an indictment in cases where the charges have been dropped*, which entails a significant simplification and expedition of the procedure.

3 Procedure Aimed at Confiscating Property or Assets or Rendering Data Inaccessible

The new CCP contains a special procedure, the name of which is new, but its content partially exists in the previous statute. It comprises three categories of cases. One of them is the *special procedure for confiscation, confiscation of property, rendering electronic data permanently inaccessible and disposal of seized property*, as named in the current rules in force. This can take place in cases where the necessary measures (confiscation, confiscation of property, rendering electronic data permanently inaccessible, or disposal of seized items) are not possible due to some procedural obstacles, for example that no investigation has

started or the investigation has been terminated or suspended (because the perpetrator's location is unknown, they reside abroad or have a permanent serious illness or their identity could not be established during the investigation). Under the current rules in force, the other category of cases is the *'asset recovery procedure'*, the precondition for which is that enforcement was not possible in the main proceedings in the absence of secured assets. The third category of cases is where *confiscation, confiscation of property or rendering electronic data permanently inaccessible needs to be ordered subsequently, after the court has delivered its final decision*. This is possible if any of these measures subsequently becomes necessary.

In order to prepare a court decision, it is necessary to conduct an *asset investigation* (asset search or asset check). Asset investigations can be ordered by the public prosecutor's office or the investigating authority, or by the investigating authority's asset recovery body once a final decision has been delivered. Usually this takes place when the assets could not be secured or the enforcement did not yield results after delivery of the final decision. Asset investigations may last up to 2 years, and this time limit may not be extended.

If the court delivers its decision based on the available documents, no appeal may lie against the final court order; however, a hearing may be requested within 8 days. An appeal may be lodged against the final court order delivered at the hearing. At the end of the procedure, the court may order confiscation, confiscation of property, rendering electronic data permanently inaccessible or transfer of the possession of seized property to the Government. In a procedure for recovering assets, the court decides whether or not the assets discovered are subject to confiscation of property.

4 Procedure in the Case of Offences Related to the Border Fence

According to the previous rules in force, the appointed judge delivers a judgment as a single judge with regard to offences related to the border fence. The new CCP determines *the court of competent jurisdiction*, presumably having regard to the high number of cases, among other things. In cases falling within the competence of the district courts, the district court of the place where the General Court (*Törvényszék*) has its seat, or in the jurisdiction of the Metropolitan Court of Budapest (*Fővárosi Törvényszék*), the Pest Central District Court (*Pesti Központi Kerületi Bíróság*) shall proceed in these cases.

It is important to take into account the requirement that the interests of any person under 18 years of age accompanying the accused must not be prejudiced. This requirement must be considered, in particular, during the imposition of coercive measures. For this reason, the new statute regulates in detail *the place of imposition of coercive measures restricting personal liberty* (in addition to penal institutions and police detention facilities, as provided for in the general rules, group homes or reception centres or other immigration or asylum institutions can also be designated).

If an asylum procedure is pending because the accused has applied for asylum, this constitutes a *special ground for suspension*. Application of the *rules governing the procedure against juveniles* is not excluded for offences related to the border fence.

V Summary

In general, it can be concluded that the number of special procedures has increased; in terms of content, however, the new procedures are very similar or identical to the former procedures, just under a new name. Changes are more evident if the special procedures are compared by type.

Table 2.

CCP	New CCP
a) by the accused in the procedure	
– criminal procedure against juveniles	– criminal procedure against juveniles
– criminal procedure against soldiers (and members of certain armed forces)	– criminal procedure against soldiers (and members of certain armed forces)
– in the case of a person enjoying procedural immunity	– in the case of a person enjoying procedural immunity
b) by the subject of the procedure	
– private prosecution	– private prosecution
– procedure in high-priority cases	– substitute private prosecution
– asset recovery procedure	– procedure aimed at confiscating property or assets or rendering data inaccessible
– procedure in the case of offences related to the border fence	– procedure in the case of offences related to the border fence
c) ‘consensual’ procedures	
– bringing to justice	– bringing to justice
– waiver of right to trial	– procedure if a plea bargain has been reached
– judgment without trial	– procedure for issuing a penalty order
d) the accused is absent during the procedure	
– procedure in absentia	– procedure in absentia
	– procedure in absentia of an accused residing abroad
	– procedure where the provision of security is required

The above table shows that the number and nature of the criminal procedures dealing with special categories of accused people have remained unchanged. However, there have been changes to the subject of these special procedures. Substitute private prosecution has been included, which is more of a taxonomical innovation because it only consolidates the existing provisions on the legal institution of ‘substitute private prosecution’ (in Hungarian: *pótmagánvád*) under a special procedure. Special procedural rules for dealing with high-priority matters will cease to exist, primarily on the grounds that general procedural rules,

as a whole, intend to implement the principles concerning high-priority matters, and therefore maintaining this special procedure is not justified. The name and, to a certain extent, the content of the ‘asset recovery procedure’ (in Hungarian: *vagyon-visszaszerzési eljárás*) have been changed, but the new special procedure called ‘procedure aimed at confiscating property or assets or rendering data inaccessible’ covers the same scope. Consensual procedures have remained unchanged; however, the rules applicable to the ‘waiver of right to trial’ have changed and appear under a new name and with new content in the provisions of the special procedure called ‘procedure if a plea bargain has been reached.’ ‘Judgment without trial’ remains fundamentally unchanged. The name change is due to the new statute explicitly specifying ‘penalty order’ (in Hungarian: *büntetővégzés*) as a special type of court order. Since the fundamental purpose of the new CCP is to expedite procedures, it regulates those special procedures that are to be applied when the accused is absent from the criminal procedure, whether on their own will or for other reasons in a more detailed and transparent manner. Under the statute in force, the special procedure *in absentia* covers two categories: where the accused’s location is unknown and where their location is known but it is in a foreign country. The new statute regulates these two categories separately, in the context of two special procedures. The ‘procedure where the provision of security is required’, which also existed in the previous statute, will be regulated under a special procedure in the new CCP.

In summary, it can be concluded that the criminal procedure against juveniles has been modified to the greatest extent, in order to focus more on and better protect the interests of juvenile accused people. The other major change is the re-regulation of the plea bargain-based procedure, which is another attempt to implement in practice a simpler and expedited procedure that is based on an agreement between the prosecutor and the accused. Time will tell whether these changes manage to achieve the objectives set by the legislator.