

**HERKE Csongor<sup>1</sup>:**  
**General lines of the new Hungarian criminal procedure law**

**I. Introduction**

The Act XC. of 2017 on criminal proceedings (Criminal Procedure Code, hereinafter referred to as: CPC) has significantly altered criminal procedure in its structure and its content. The Act XIX. of 1998 (old CPC) followed the earlier (socialist) criminal procedure laws (in contrast with basic concept), the traditional investigation - (intermediate procedure) – governed the criminal procedure within a judicial procedure system<sup>2</sup>. Effective laws however allow for a lot more leeway for criminal procedures based on agreement, respectively confession by the defendant (acceptance of the facts) enable a number of simplifications. Through this, the progression of the criminal procedure (possible outcome) is a lot more complicated and diversified as in the earlier linear procedure<sup>3</sup>.

Construction of the CPC is similar to earlier laws, i.e. the static provisions (of the first eight Parts) are followed by dynamic rules (from the Ninth Part):

First Part: General provisions (1-10. §)

Second part: The court, the prosecutor and the investigating authorities (11-36. §)

Third part: Participants of the criminal procedure (37-73. §)

Fourth Part: General provisions regarding the procedural actions (74-162. §)

Fifth part: The proof (163-213. §)

Sixth part: Covert instruments (214-260. §)

Seventh part: Data acquisition (261-270. §)

Eighth part: Coercive measures (271-338. §)

Ninth part: Preparatory procedure (339-347. §)

Tenth part: The investigation (348-424. §)

Eleventh part: General rules of court procedure (425-462. §)

Twelfth part: Court procedure before charge (463-483. §)

Thirteenth part: Pre-trial (484-513. §)

Fourteenth part: Court procedure of first instance (514-588. §)

Fifteenth part: Court procedure of second instance (589-616. §)

Sixteenth part: Court procedure of third instance (617-625. §)

Seventeenth part: Evaluation of appeal against the repeal of the court of second and third instance (626-631. §)

Eighteenth part: Repeated procedure (632-636. §)

Nineteenth part: Extraordinary legal remedies (637-675. §)

Twentieth part: Separate procedures (676-836. §)

Twenty-first part: Special procedures (837-843. §)

Twenty-second part: Other procedures connected to criminal procedure (844-865. §)

Twenty-Third part: Closing provisions (866-879. §)

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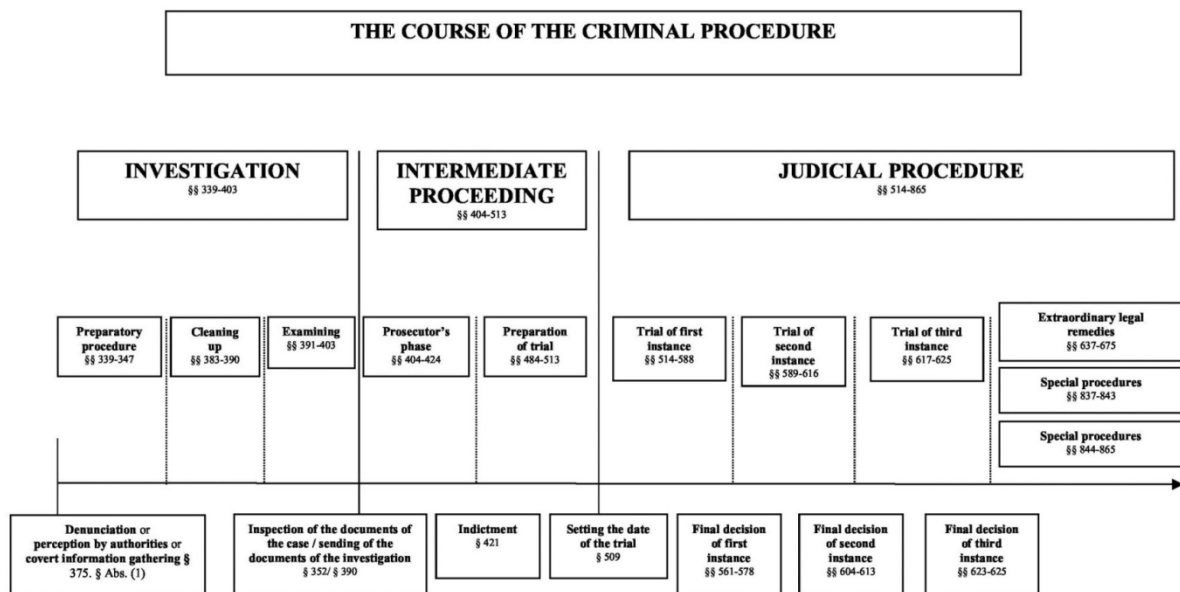
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<sup>2</sup> Hautzinger Zoltán – Herke Csongor – Nagy Mariann: Einführung in das ungarische Strafverfahrensrecht. Schenk Verlag, Passau, 2008. 176 p.

<sup>3</sup> Hautzinger Zoltán – Herke Csongor: The Hungarian criminal procedure law. PTE ÁJK, Pécs, 2006. 102 p.

In Chapter I. of the criminal procedure code, the basic principles regulated under General Provisions serve as a norm for legislation, e.g. the rules for exclusion had to be created so that these fit with the principle of function sharing (contradictorium). In other cases these can be applied in practice (e.g. principle of in dubio pro reo). The remaining static rules relate primarily to the subjects of the procedure (authorities and participants) and the procedural actions (evidence, coercive measures).

The dynamic provisions regulate the progression of the procedure, from the beginning till the binding conclusion (moreover even further, see extraordinary legal remedies, special and other procedures). Collating these dynamic rules, the progression of the criminal procedure can be viewed as follows<sup>4</sup>:



## II. The investigative phase

The investigative phase can consist of three parts:

- a) preparatory procedure;
- b) cleaning up;
- c) examining.

If there is no preparatory procedure, the criminal procedure commences with investigation, cleaning up and examining:

- the aim of cleaning up is the determination of objective and personal reasonably suspicion, and to search and ensure the means of evidence;
- during the examining (if necessary, by way of gathering and examining mean of evidence) the prosecutor's office<sup>5</sup> decides on the closure of the investigation (termination of the procedure or indictment).

### 2.1. The preparatory procedure

<sup>4</sup> Herke Csongor: Büntető eljárásjog. PTE ÁJK, Pécs, 2018. 163 p.

<sup>5</sup> Nyíri Sándor: Az ügyészségről. BM Kiadó, Budapest, 2004.

The aim of the preparatory procedure is to determine whether the suspicion of a crime is present. This takes place, when the available data is insufficient for the determination of the crime, and it can be expected that, based on the preparatory procedure a decision can be made whether the preparatory procedure should be terminated or an investigation should be ordered.

The preparatory procedure can be carried out by the prosecutor's office, the investigating authority, the internal crime prevention and forensics body of the police or the police's counter-terrorism unit.

The body that carries out the preparatory procedure may carry out the following activities:

- application of some covert instruments that are not tied to judicial or prosecutorial permissions (use of secretly cooperating person, data gathering and control, covert surveillance);
- use of some covert instruments that are bound to permission by the prosecutor (surveillance of payment operations, false purchase, undercover agent);
- application of all covert instruments bound to judicial permissions (but only against the person that is suspected to be the perpetrator or of whom can be presumed that he was in contact with the perpetrator, and the obstacles for giving testimony shall be observed);
- carrying out data gathering activities (but a warrant cannot be issued and data provision can only requested from certain bodies, see § 342 Subsession 3).

If, based on the data gathered during the preparatory procedure, suspicion of a crime can be determined, investigation ought to be ordered.

The preparatory procedure shall be terminated if

- based on the acquired data, there is no suspicion of a crime,
- no result can be expected from the continuation of the preparatory procedure or
- the term for the preparatory procedure has expired.

In these cases, the acquired data cannot be used as evidence in a criminal procedure.

## **2.2. The cleaning up**

The investigation is initiated by the prosecutor's office or the investigating authority based on

- knowledge gained of data within official scope of authority,
- denunciation or
- covert data gathering.

The first main phase of investigation is cleaning up. The following main questions should be emphasised:

- a) coercive measures;
- b) application of covert instruments;
- c) evidentiary actions during cleaning up<sup>6</sup>;

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<sup>6</sup> Tremmel Flórián: Bizonyítékok a büntetőeljárásban. Budapest-Pécs, 247 p.

d) sending the investigative documents.

ad a) The CPC generally demands that coercive measures are applied following the initiation of the procedure (order of investigation), since coercive measure serve procedural aims. Concordantly, coercive measures are preceded by two decrees: the ordainment of the investigation and of the given coercive measure. In certain instances (so-called undelayable coercive measures) the application of coercive measures can take place before the ordainment of the investigation (e.g. search, custody). In these cases, only the coercive measures are ordered before its carrying into effect (in urgent cases, not even then, e.g. search, body search)<sup>7</sup>.

§ 272. classifies the coercive measures according to 2 main aspects:

- coercive measures concerning assets and limiting personal freedom according to human rights of the involved person<sup>8</sup>;
- differentiates between coercive measures bound to or not bound to judicial permission.

Coercive measures that can be applied to the detriment of the defendant can only take place following the pronouncement of reasonable suspicion (the defendant legal status only opens up following this). The pronouncement of reasonable suspicion and the questioning as a suspect take place in the final phase of the cleaning up, so, it can be stated, that during cleaning up, those coercive measures can be ordained, that can be ordained to other persons too (not just the defendant)<sup>9</sup>. Based on the previous, the most important coercive measures can be grouped as follows:

<b>When can the coercive measure be ordained?</b>	<i>Coercive measure limiting personal freedom</i>	<i>Coercive measures against property</i>
<b>Also during cleaning up</b>	<ul style="list-style-type: none"> <li>• capture of a perpetrator caught in the act (§ 273.)</li> <li>• apprehension (§ 118.)</li> <li>• custody (§§ 274-275.)</li> <li>• application of bodily force (§ 129.)</li> </ul>	<ul style="list-style-type: none"> <li>• search (§§ 302-305.)</li> <li>• body search (§§ 306-307.)</li> <li>• seizure (§§ 308-323.)</li> <li>• sequestration (§§ 324-332.)</li> <li>• temporary rendering electronic information inaccessible (§§ 335-338.)</li> <li>• disciplinary penalty (§§ 127-128.)</li> </ul>
<b>In examining phase (following cleaning up)</b>	<ul style="list-style-type: none"> <li>• accompany (§ 117.)</li> <li>• restraining order (§ 280.)</li> <li>• criminal supervision (§ 281.)</li> <li>• technical tool for tracking the defendant's movement (§ 283.)</li> <li>• bail (§§ 284-288.)</li> <li>• detention (§§ 296-300.)<sup>10</sup></li> <li>• preliminary involuntary treatment in a mental institution (§ 301.)</li> </ul>	

<sup>7</sup> Szilovics Csaba: Csalás és jogkövetés az adójogban. Budapest, 2003. 193 p.

<sup>8</sup> Bárd Károly: Fairness in criminal proceeding. Article six of the European Human Rights Convention in a comparative perspective. Budapest, 2008. 350 p.

<sup>9</sup> Fenyvesi Csaba (szerk.): Kihallgatási taktika. Pécs, 2009. 96 p.

<sup>10</sup> Herke Csongor: A letartóztatás. Dialóg Campus Kiadó, Budapest-Pécs, 2002. 367 p.

The table clearly shows that during cleaning up primarily ordained coercive measures are against assets (all of them can be ordained during cleaning up, except against the defendant), and the coercive measures limiting personal freedom are mainly characteristic for the examining phase.

The coercive measures that can be ordered in the cleaning up can be ordered in the examining phase as well.

ad b) According to § 214., application of covert instruments limits basic rights connected to inviolability of private residence, protection of personal data and privacy and confidentiality of correspondence, and is a special activity within the criminal procedure which is carried out by the entitled bodies without the person concerned having knowledge of it.

During investigation covert instruments may be applied by the prosecutor's office and the investigating authority for the

- clarification and proof of a crime,
- discontinuation of an ongoing crime,
- determination of identity of perpetrators and their places of residence, search and apprehension, and
- clarification and retrieval of assets stemming from a crime.

There are three groups of applicable covert instruments:

<b>Covert instruments not bound to prosecutorial or judicial permission (§ 215.)</b>	<b>Covert instruments bound to prosecutorial permission (§§ 216-230.)</b>	<b>Covert instruments bound to judicial permission (§§ 231-242.)</b>
<ul style="list-style-type: none"> <li>• use of covertly cooperating person</li> <li>• covert information gathering, control</li> <li>• applying a trap</li> <li>• replacement of victim or other person</li> <li>• covert surveillance</li> <li>• conveying false or deceptive information</li> </ul>	<ul style="list-style-type: none"> <li>• monitoring payment actions</li> <li>• prospect of evasion of criminal liability</li> <li>• surveillance with permission</li> <li>• false purchase</li> <li>• application of covert investigator</li> <li>• application of a member of a body entitled to apply covert instruments or a covertly cooperating person for false purchase</li> <li>• use of cover documents, cover institution and cover data</li> </ul>	<ul style="list-style-type: none"> <li>• covert surveillance of information system</li> <li>• covert search</li> <li>• covert surveillance of place</li> <li>• covert cognition of consignment</li> <li>• wire-tapping</li> </ul>

ad c) Though according to the CPC, cleaning up mainly serves the clarification of suspicion of a crime and the clarification of the assumed perpetrator, we do not find any elementary limitations regarding proof and evidence. I.e. during cleaning up, all means of evidence and evidentiary actions can be carried out. Questioning of the suspect is the final part of cleaning up. Following this, the case will go over into the examining phase.

Evidences are divided into two main groups by the CPC<sup>11</sup>:

Means of evidence	Evidentiary actions <sup>12</sup>
<ul style="list-style-type: none"> <li>• witness testimony<sup>13</sup></li> <li>• defendant testimony</li> <li>• expert opinion</li> <li>• opinion of probation officer</li> <li>• physical evidences (document, record)</li> <li>• electronic data<sup>14</sup></li> </ul>	<ul style="list-style-type: none"> <li>• inspection<sup>15</sup></li> <li>• questioning on the scene</li> <li>• reconstruction</li> <li>• presentation for identification</li> <li>• confrontation</li> <li>• control of testimony with instruments</li> </ul>

ad d) The investigating authority shall send the documents pertaining to the investigation to the prosecutor's office within 8 days of questioning the suspect. At the same time the investigating authority

- shall report on the standing of the investigation,
- shall advise on procedural actions necessary during examining or the termination of the investigation,
- shall inform the prosecutor's office whether the defendant has given a confession and envisage prosecutorial measure or decision or an arrangement has been initiated.

### 2.3. The examining

The next stage in the investigation is the examining. This takes place after questioning of the suspect (this is the reason why the questioning of the suspect is the final substantive phase of the cleaning up). In certain cases the case transfers swiftly to the examining stage (if the defendant is taken into custody, he shall be questioned within 24 hours and following this the files need to be sent within 8 days). In case of getting caught in the act, the cleaning up phase can essentially be omitted, unless a thorough cleaning up has foregone the getting caught in the act.

In the examining phase the following main questions should be emphasised:

- a) coercive measures;
- b) evidentiary actions during examining.

ad a) In connection with coercive measures, we have previously established that the majority of personal freedom limiting coercive measures are ordained during the examining (defendant legal standing is required), while other human rights limiting coercive measures can already be applied during cleaning up. There are some exceptions, e.g. custody is usually ordained for the goal of questioning and some coercive measures concerning property (such as sequestration) are more characteristic for the examining phase. If a perpetrator is caught in the act, the case shall go into the examining phase almost immediately then the coercive measures (such as search) that are typically characteristic for cleaning up can also be ordained during the examining phase.

<sup>11</sup> Herke Csongor - Fenyvesi Csaba - Tremmel Flórián: A büntető eljárásjog elmélete. Dialóg Campus Kiadó, Budapest-Pécs, 2012. 382 p.

<sup>12</sup> Tremmel Flórián – Herke Csongor – Fenyvesi Csaba: Kriminálisztika Tankönyv és Atlasz, Dialóg Campus Kiadó, Budapest-Pécs, 2005.

<sup>13</sup> Varga Zoltán: A tanú a büntetőeljárásban. Budapest, 2009. 222 p.

<sup>14</sup> Gál István László – Nagy Zoltán András (szerk.): Informatika és büntetőjog. Pécs, 2006. 188 p.

<sup>15</sup> Fenyvesi Csaba (szerk.): A helyszíni szemle kriminálisztikai sajátosságai. Pécs, 2009. 95 p.

Coercive measures bound to judicial permission and touching upon personal freedom can only be ordained following the pronouncement of reasonable suspicion (respectively the charge) and only then when this is paramount for reaching the aims. Special (positive) conditions are based on § 276. and can be summarised as follows:

	To ensure presence of the defendant	In case of (danger of) collusion	To prevention reoffending
Restraining order		X	X*
Criminal supervision	X	X	X
Bail	X		
Detention	X	X	X
Preliminary involuntary treatment in a mental institution			X**

\* referring to the victim

\*\* if involuntary treatment in a mental institution is to be expected

Coercive measures bound to judicial permission and touching upon personal freedom during examining shall be decreed upon by the investigating judge upon motion of the prosecutor (restraining order can be requested by the victim too<sup>16</sup>). The investigating judge is only bound to the motion from “above”, since he cannot ordain graver coercive measures than what has been motioned for. Milder coercive measures can always be ordered.

ad b) The general statement that all procedural actions applicable during cleaning up may ensue during the examining as well holds especially true for the means of evidence and evidentiary actions. Certain means of evidence (e.g., testimony of the witness<sup>17</sup>, physical evidence) may arise in both stages, however, some are expressly specific to cleaning up (e.g., inspection on the scene) and some to examining (e.g., confrontation<sup>18</sup>). As it is clear from the above, the borderline between the two stages is the questioning of the defendant, which terminates the cleaning up stage and commences the examining (when, as a rule, the defendant may be interrogated several times).

Certain means of evidence or evidentiary actions are specific to the examining:

- opinion of probation officer;
- confrontation (especially if conducted in presence of the defendant);
- control of testimony with instruments.

### III. The Intermediate proceeding

The intermediate proceeding is not expressly regulated by the CPC. However, albeit the actions of the prosecutor following the investigation on the merits (aiming at its completion) are structurally contained in the chapter on investigation under the CPC, the actions are not substantively part of the investigation (as the actions are not designed to detect either the crime or the perpetrator or to obtain relevant evidence, etc.). Also, the pre-trial may not conceptually constitute part of the judicial procedure, since its aim is to state whether the judicial procedure (arraignment) is necessary or it

<sup>16</sup> Tóth Andrea Noémi: A távoltartás jogintézménye. Debrecen, 2018. 242 p.

<sup>17</sup> Elek Balázs: A vallomás befolyásolása a büntetőeljárásban. Debrecen, 200 p.

<sup>18</sup> Fenyvesi Csaba: Szembesítés. Szemtől szembe a bűnügyekben. Budapest-Pécs, 319 p.

results in the omission of the judicial procedure.

### 3.1. The prosecutor's phase

As mentioned above, the cleaning up shall be concluded by the investigating authority serving the files of the investigation to the prosecutor's office within 8 days following the questioning of the suspect (§ 390.). In doing so the investigating authority does not only report on the status of the investigation and make recommendations on the procedural actions deemed necessary during the examining, but it may also motion for the closure of investigation. This may be especially justified if the suspect has admitted the commission of the crime, which resulted in the initiation of envisage prosecutorial measure or decision or the conclusion of an arrangement. If so, the investigating authority shall serve a report to the prosecutor's office without delay.

Either the investigating authority informed the prosecutor's office about the confession of the suspect or the suspect confessed to the crime upon the instruction of the prosecutor, the prosecutor may take the following measures:

- a) suspension of the procedure in order to conduct a mediation or, with respect to the result of the mediation, the termination of the procedure<sup>19</sup>;
- b) conditional prosecutorial suspension and, with respect to its result, the termination of the procedure;
- c) termination of the procedure or rejection of the denunciation with regard to the cooperation of the suspect;
- d) entering into a plea bargain (arrangement on the confession to culpability);
- e) if none of the above is possible, the prosecutor shall submit the charge to the court, however, even in that case the measures required for arraignment or a penalty order may be taken and, in certain cases, it is not the prosecutor's office that submits the accusation to the court (private prosecution, substitute private prosecution).

The prosecutor's office shall bring charges via the submission of the indictment to the court (§ 421.). The prosecutor's office working beside the court competent to adjudge the case of first instance is generally authorised to bring charges, in case of criminal acts subject to the competence of various prosecutor's offices, the prosecutor's office which took measures earlier according to the principle of precedence shall proceed (§ 29.).

If the prosecution and the accused has concluded an arrangement, the prosecutor's office shall bring charges by reason of the findings of fact and the classification in the arrangement included in the protocol (§ 424.). In that case the prosecutor's office shall make a motion within the indictment (supplemented by the protocol) for the court

- to affirm the arrangement,
- what punishment it should impose (what measure it should order) in accordance with the contents of the arrangement,
- what other provisions it should apply in correspondence with the arrangement.

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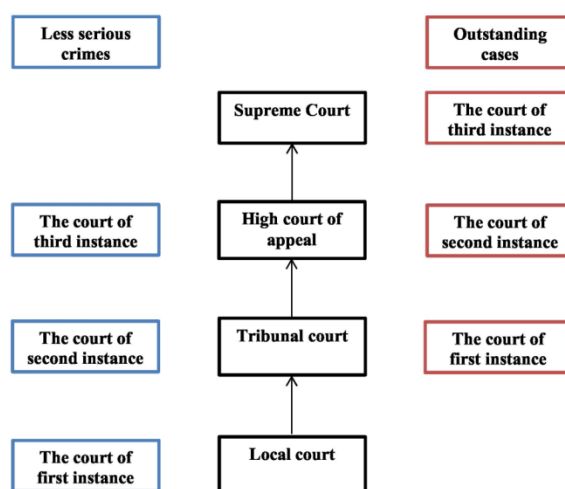
<sup>19</sup> Barabás A. Tünde: Börtön helyett egyezség? Mediáció és más alternatív szankciók Európában. Budapest, 2004. 243 p.; Görgényi Ilona: Kárjótétel a büntetőjogban, mediáció a büntetőügyekben. Budapest, 2006. 237 p.



### 3.2. The pre-trial

During the pre-trial the court shall make a decision on the arraignment, whether a factual or legal obstacle of the judicial procedure obtains on the basis of the filed charge. While in the Anglo-Saxon law arraignment is effectuated by the grand jury, which in its number and composition is different from the jury passing the judgement, in continental law this is generally the duty of the court. In several countries this is another court different from the trial court, but it is a predominant solution that the same court carries out arraignment as the one adjudicating in it, which is the case in Hungary and other countries as well.

The competence of the proceeding courts is illustrated in the following diagram:



The local court disposes of the general competence of first instance (§ 19.). As the diagram shows clearly the tribunal court proceeds in the first instance in outstanding cases. The definition of the court of first instance appoints the court proceeding in the second, and contingently, in the third instance, and there is no departure from that (prohibition against secession).

The court with competence and jurisdiction in the case shall examine within 1 month of the receipt of the documents by the court (beyond this time limit if the hearing of the prosecutor, the accused, the defence counsel<sup>20</sup> or the victim<sup>21</sup> seems to be necessary for making a decision with the exception of coercive measures) the following issues (§ 484.):

<sup>20</sup> Kádár András: Without defense. Recommendations for the reform of the Hungarian ex officio appointment system in criminal matters. Budapest, 2007. 142 p.

<sup>21</sup> Kratochwill Ferenc: A sértett jogi helyzete a magyar büntetőeljárásiban. Budapest, 1990.

<b>What issue is examined?</b>	<b>In what form of decision?</b>	<b>What legal remedy is admissible against the decision?</b>
a) Transfer (§ 485.)	The presiding judge (the court secretary as well)	Determined by general rules
b) Consolidation, severance (§ 486.)	The presiding judge (the court secretary as well)	Determined by general rules
c) Suspension of the procedure (§§ 487-491.)	The presiding judge (in certain cases the court secretary as well)	In certain cases it is excluded (e.g., the accused residing at an unknown place, measure for procedural action, order of the continuation of the procedure)
d) Termination of the procedure (§ 492.)	Council	Determined by general rules
e) The request of the prosecutor's office to correct the deficiencies of the indictment (§ 493.)	The presiding judge (the court secretary as well)	Appeal is inadmissible
f) Decision on coercive measures (§ 494.)	Council	Determined by general rules
g) Establishment of a classification departing from the charge (§ 495.)	The presiding judge	Determined by general rules
h) Remittance of the case to the council of the court (§ 496.)	The presiding judge	Determined by general rules
i) Disclosure of the indictment (§ 497.)	The presiding judge (the court secretary as well)	Determined by general rules
j) Measure for procedural action (§ 498.)	The presiding judge (the court secretary as well)	Determined by general rules

There is a separate procedure (the procedure with penalty order) in which the court (or even the court secretary) at the motion of the prosecutor's office or ex officio adjudges the case (on the basis of the documents of the case) on the merits without holding a trial (or in several cases without a preparatory session) (§ 739.). The private prosecutor and the substitute private prosecutor may not motion for the conduct of the procedure directed at passing a penalty order (§§ 786. and 817.). The penalty order is a final decision

Passing a penalty order has objective and subjective conditions:

<b>Objective conditions</b>	<b>Subjective conditions</b>
<ul style="list-style-type: none"> <li>• crime to be punished not more stringently than 3 years' (in case of confession 5 years') imprisonment</li> <li>• the accused is at liberty or is detained by reason of another case (in procedure for crime in connection with the border barrier may be under criminal supervision)</li> <li>• within one month as of the receipt of the case/in procedure of private prosecution as of personal hearing (in procedure for crime in connection with the border barrier within 5 days)</li> </ul>	<ul style="list-style-type: none"> <li>• the adjudication of the case is simple</li> <li>• the goal of the punishment can be achieved without a trial</li> </ul>

In normal procedure an important phase of the pre-trial is the preparatory session. The preparatory session is held publicly in the interest of the pre-trial within 3 months as of the service of the indictment, during which, preceding the trial, the

accused and the defence counsel may expound their viewpoint related to the charge, and partake in shaping the further course of the criminal procedure (§ 499.)<sup>22</sup>.

In the subpoena to the preparatory session the court shall remind the accused that

- at the preparatory session he may make a confession concerning the crime he is charged with, and in the scope of his confession he may renounce his right to a trial,
- if the court accepts the statement of confession of culpability, it shall not examine the reasonability of the findings of fact in the indictment or the matter of culpability,
- if the accused does not admit his culpability corresponding to the charge, at the preparatory session he may present the facts substantiating his defence and their evidences, and may motion for the conduct of the evidentiary procedure or the exclusion of evidence,
- following the preparatory session, the court may reject the motion not necessary for the clarification of the facts of the case without justification on the merits, or may impose a disciplinary penalty by reason of the presentation of a motion necessary for the clarification of the facts of the case which is capable of delaying the procedure.

In case the accused admits his culpability and renounces his right to trial in the scope of the confession, the court shall decide in an order whether it accepts the statement of the admission of culpability by the accused on the basis of this fact, the documents of the procedure and the interrogation of the accused (§ 504.).

There are two possibilities following the acceptance of the statement of confession:

- the court does not find an obstacle to the settlement of the case at the preparatory session: it shall interrogate the accused in the circumstances of the imposition of penalty, then the prosecutor and the defence counsel may plead, and the court may make the judgment;
- if the case cannot be settled at the preparatory session: the accused and the defence counsel may motion for the conduct of an evidentiary procedure not concerning the reasonability of the findings of fact in the indictment and the issue of culpability and for other procedural actions as well as the exclusion of evidence with the designation of the cause and the purpose, which the prosecutor may comment on (and present a similar motion).

If the accused did not admit his culpability, he may make the following statements:

- the accused may denominate the facts in the indictment the reality of which he accepts,
- the accused and the defence counsel may present the facts substantiating the defence and their evidences,
- the accused and the defence counsel may present a motion for the conduct of the evidentiary procedure and other procedural actions,
- the accused and the defence counsel may make a motion for the exclusion of

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<sup>22</sup> Fenyvesi Csaba: A védőügyvéd. A védő büntetőeljárás szerepéről és jogállásáról. Dialóg Campus Kiadó, Budapest-Pécs, 2002.

evidence (with the denomination of the cause and the purpose).

The prosecutor may comment on these motions and may make such motions himself, and within 15 days he shall denominate the facts presented by the accused and the defence counsel, the authenticity of which he accepts.

On the basis of the statement of the accused and after hearing the prosecutor's comment, the court may immediately schedule the trial and can

- hold it,
- define the framework and the scope of evidence and the order of taking evidence,
- neglect the proof in the facts accepted by the prosecutor, the accused and the defence counsel as authentic and with regard to the less significant crime.

If the conditions of the approval of the arrangement exist and the denial of the approval is inadmissible, the court shall affirm the arrangement in its non-appealable order made at the preparatory session, and it shall conduct the preparatory session pursuant to valid rules in case of the admission of culpability with the clause that

- the culpability of the accused shall be founded on the admission of culpability, the approval of the arrangement and the documents,
- in the judgement the court may not depart from the findings of fact, the classification and other provisions included in the indictment,
- it may not reject the civil claim,
- in the justification of the judgement (beyond the personal circumstances of the accused, the findings of fact and the denomination of the reasons for the rejection of the motions) it suffices to refer to the indictment based on the arrangement, the approval of the arrangement and the applied statutes<sup>23</sup>.

At the latest within one month as of the closure of the preparatory session the court shall

- examine the motions for evidence,
- set the trial (in case of the width of the evidentiary procedure several or continuous closing dates), and
- secure the conditions of holding a trial, the subpoenas and the notices (§ 509.).

#### **IV. The Judicial Procedure**

Pursuant to § 425. the judicial procedure has four major forms:

- trial: if evidence is taken to establish the criminal liability of the accused;
- public session: a judgement is made on the merits as well, but without proof;
- session: a decision is made, but usually not on the merits (but e.g. the preparatory session may be expressly a form of decision on the merits);
- panel session: exclusively the members of the council and the court reporter attend (the publicity is mostly (completely) excluded), this may be on the merits or not on the merits.

##### **4.1. The procedure in the first instance**

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<sup>23</sup> Herke Csongor: Megállapodások a büntetőperben. Pécs, 2008. 226 p.

The trial of first instance has six major stages:

- a) opening the trial (§§ 514-516.);
- b) commencement of the trial (§ 517.);
- c) taking evidence (§§ 163-167. and 519-540.);
- d) pleadings (§§ 541-548.);
- e) adoption of the decision (§ 549. Subsession 1-2);
- f) announcement of the final decision (§ 549. Subsession 3-4., §§ 550-553.).

During adjudication the court clarifies the findings of fact within the bounds of the charge (§ 163.). Accordingly, the prosecutor is obligated to motion the evidentiary process necessary for the proof of the charge, and otherwise, the court is obligated to taking evidence concerning the facts which necessitate this only on the basis of a motion (§ 164.).

The accelerated procedure in Hungary is the arraignment. In case of arraignment no indictment is drafted, but the prosecutor presents the charge orally. Before the commencement of the trial, the prosecutor's office shall transfer to the court (if this has not happened so far)

- the memorandum of the accusation,
- the documents of the investigation and
- other physical evidence.

We distinguish two major forms of the procedure with arraignment:

<b>Arraignment in case if the defendant was caught in the act (§ 723.)</b>	<b>Arraignment in case of confession (§ 724)</b>
<ul style="list-style-type: none"> <li>• the crime is punishable by imprisonment of not more than ten years                             <ul style="list-style-type: none"> <li>• the judgement of the case is simple</li> <li>• the evidences are available</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>• within 15 days as of the commission of the crime</li> <li>• the defendant was caught in the act</li> </ul>	<ul style="list-style-type: none"> <li>• within one month as of the interrogation of the person as suspect (within 15 days in case of procedure for crime in connection with the border barrier)</li> <li>• the defendant admitted the commission of the crime</li> </ul>

During the judicial procedure the following decisions may be made:

<b>Final decisions</b>		<b>Orders</b>	<b>Non-conclusive orders</b>	<b>Judicial measures not requiring decisions form</b>
<b>Sentences</b>				
<i>Verdict of acquittal</i>	<i>Guilty sentence</i>			
The court acquits the accused from the charge, if the culpability of the accused cannot be established and does not terminate the procedure.	The court finds the accused guilty, if it established that the accused committed a crime and is punishable	<ul style="list-style-type: none"> <li>• ruling terminating the procedure</li> <li>• penalty order</li> </ul>	Decisions that do not include provisions on the merits of the case	

Appeals (appeal and secondary appeal) are the most general legal remedies against court decisions. The final decision of the court of first instance may always be

appealed at the court of second instance (§ 579.).

It is specific to the circle of those entitled to announce an appeal (§ 581.) that the CPC distinguishes, on the one hand, the direction of the appeal (for the benefit or detriment of the accused), and, on the other hand, the authority (in its full scope of authority or only in certain cases) (§ 583.):

	<b>For the benefit of the accused</b>	<b>To the detriment of the accused</b>
<b>In full scope</b>	<ul style="list-style-type: none"> <li>• accused</li> <li>• public prosecutor</li> <li>• defence counsel</li> <li>• legal representative of the juvenile accused<sup>24</sup></li> </ul>	<ul style="list-style-type: none"> <li>• public prosecutor</li> <li>• private prosecutor</li> <li>• substitute private prosecutor</li> <li>• legal representative of the substitute private prosecutor (with the approval of substitute private prosecutor)</li> </ul>
<b>Partially</b>	<ul style="list-style-type: none"> <li>• heir of the accused (against decisions admitting civil claims)</li> <li>• spouse or domestic partner of the accused (against the order of involuntary treatment in a mental institution)</li> </ul>	<ul style="list-style-type: none"> <li>• private party (against the provision adjudging the civil claim on merits)</li> </ul>
	<ul style="list-style-type: none"> <li>• financially interested party (against the provision concerning him)</li> </ul>	

#### 4.2. The procedure in the second instance

The court of second instance may proceed in three forms of decision-making:

a) Panel session (§ 598.): only members of the court and the court reporter may attend this session. The panel session of the court of second instance usually makes formal decisions based on the documents (decisions are rarely made on the merits of the case at the panel session).

b) Public session (§ 599.): it may be attended by the public prosecutor (not compulsory), the defendant, the defence counsel and anybody (as the session is public). The public session is a much simpler procedure than the trial; even the presentation of the case may be omitted<sup>25</sup>.

c) Trial (§§ 600-601.): trials of second instance are generally held if evidence is taken (which occurs rarely).

The cases subject to the panel session may be adjudged in public sessions and trials (this is not so vice versa). Issues within the scope of the panel session, the public session and the trial of second instance are shown in the following table:

<sup>24</sup> Bogár Péter – Margitán Éva – Vaskuti András: Kiskorúak a büntető igazságszolgáltatásban. Budapest, 2005. 230 p.

<sup>25</sup> Herke Csongor: Súlyosítási tilalom a büntetőeljárásban. PTE ÁJK Pécs, 2010. 285 p.

Issues examinable at the panel session of second instance	Issues examinable at the public session of second instance	Issues examinable at the trial of second instance
<ul style="list-style-type: none"> <li>• affirmative decisions (e.g. rejection of appeal for formal reasons)</li> <li>• decisions on the merits (acquittal of the accused/accused not concerned by the appeal /termination of procedure)</li> <li>• repeal (in absolute procedural infraction)</li> <li>• review of termination in final order</li> <li>• appeal against the justification of sanction, additional question or of verdict of acquittal (ruling terminating the procedure)</li> <li>• review of non-conclusive ruling (if proof is not required)</li> <li>• no appeal is lodged to the detriment of the accused</li> <li>• the appeal to the detriment of the accused has bearing only on the justification of the sanction or the verdict of acquittal (ruling terminating the procedure) and no one requested public session (trial)</li> </ul>	<ul style="list-style-type: none"> <li>• all issues within the scope of panel session may be examined</li> <li>• changes may be made to the detriment and for the benefit of the defendant on the merits (but no proof may be conducted)</li> </ul>	<ul style="list-style-type: none"> <li>• all issues within the scope of panel session and public session may be examined</li> <li>• changes may be made to the detriment and for the benefit of the defendant on the merits (with taking evidence as well)</li> </ul>

### 4.3. The procedure of third instance

The appeal against the judgement of second instance filed at the court of third instance is admissible in case the decision of second instance is contrary to that of the court of first instance (§ 615.). Therefore, the CPC designates the legal remedy against the verdict of second instance as appeal too, that is why hereinafter for the purpose of differentiation we designate it “secondary appeal”.

From the point of view of secondary appeal, three types of final decisions can be denominated “contrary decisions”: if the court of second instance

- stated the culpability of an accused (ordered his involuntary treatment in a mental institution) who was acquitted by the court of first instance (terminated the procedure against him),
- acquitted the accused (terminated the procedure against him) convicted in first instance,
- stated the culpability of the accused in a crime in re the court of first instance did not provide.

### 4.4. Extraordinary legal remedies

Judgements with legal power may be modified only on grounds of extraordinary legal remedies or in special procedures. However, whereas as a result of extraordinary remedies the entire procedure may be re-instituted, in special procedures only certain parts (generally pertaining to the sanction) may be modified.

The CPC regulates several possibilities of extraordinary legal remedy in case of factual and legal errors:

- a) retrial,
- b) judicial review,
- c) constitutional complaint<sup>26</sup>,
- d) appeal on legal grounds,
- e) procedure for the uniformity of the law,
- f) simplified review and
- g) application for justification.

Whereas in the majority of cases retrial is designed to eliminate the factual errors of the decision with legal power (except for injury of the res iudicata, decision made in the absence of defendant, clemency), the rest of the extraordinary legal remedies deal with the errors in jure of decisions with legal power on the merit.

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<sup>26</sup> Tóth Mihály: A magyar büntetőeljárás az Alkotmánybíróság és az európai emberjogi ítélkezés tükrében, PTE ÁJK Pécs, 2003.