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CRIMINAL PROCEDURE LAW

LECTURE NOTES

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Criminal procedure law

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CHAPTER 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 (hereinafter referred to as: 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. 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.

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. §)

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 basic principles regulated in the CPC can be divided into two main groups:

Basic principles prevailing in the entire criminal procedure	Basic principles prevailing only in the judicial phase
• presumption of innocence in a narrower sense (1. §) • protection of basic rights (2. §) • principle of defence (3. §) • foundation and obstacles of criminal procedure (4. §) • division of procedural duties (5. §) • prohibition of self-incrimination (7. § (3) sect.) • principle of substantive evaluation of criminal liability (7. § (5) sect.) • language of the criminal procedure and the right to use language (8. §)	• foundation of adjudication and commitment to indictment (6. §) • burden of proof (7. § (1)-(2) sect.) • principle of in dubio pro reo (7. § (4) sect.) • free evaluation of evidence (167. §) • publicity of the trial (436. §)

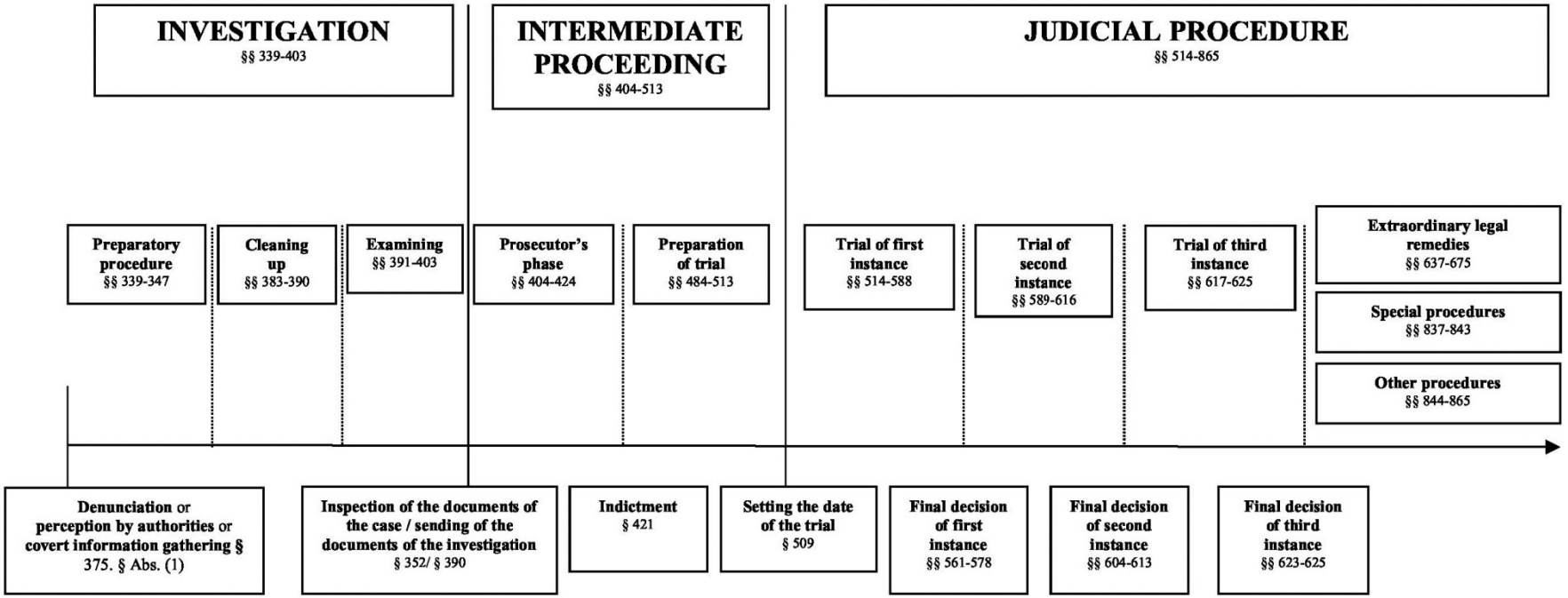
The remaining static rules relate primarily to the subjects of the procedure (authorities and participants) and the procedural actions (evidence, coercive measures).

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):

PREPARATORY PROCEDURE perception by authorities/denunciation/covert information gathering order of preparatory procedure carrying out of the preparatory procedure (covert instruments and data collecting activity) order of investigation/terminate of the preparatory procedure
CLEANING UP commencing cleaning up carrying out cleaning up coercive measures/covert instruments/data collecting activity/evidence sending the cleaning up's documents
EXAMINING commencing examining carrying out examining coercive measures/specific rules of evidence suspension/terminate of procedure
PROSECUTOR'S PHASE mediation procedure/conditional suspension by prosecutor/suspension of procedure due to cooperation of suspect or rejection of the denunciation/plea bargain/indictment
PREPARATION OF TRIAL 12 main questions emphasised role of preparatory session (pleading guilty/not guilty/arrangement) specific rules (penalty order/private prosecution/substitute private prosecution/arraignment)
JUDICIAL PROCEDURE OF FIRST INSTANCE opening of the trial commencement of the trial taking evidence pleadings adoption of the final decision announcement of the final decision + specific procedures of first instance (criminal procedure against juvenile offenders/ military criminal procedure/immunity/private prosecution/substitute private prosecution/ arraignment/in absentia procedures/procedure in case of arrangement/repeated procedure/military criminal procedure/trial in the retrial)
JUDICIAL PROCEDURE OF SECOND INSTANCE panel session/public session/trial of second instance
JUDICIAL PROCEDURE OF THIRD INSTANCE panel session/public session of third instance
EXTRAORDINARY LEGAL REMEDIES retrial/ judicial review/ constitutional complaint/appeal on legal grounds/ procedure for the uniformity of the law/simplified review/application for justification
SPECIAL AND OTHER PROCEDURES

Collating these dynamic rules, the progression of the criminal procedure can be viewed as follows:

THE COURSE OF THE CRIMINAL PROCEDURE



CHAPTER II: THE INVESTIGATIVE PHASE

2.1. The subjects of the investigation

The circle of the criminal procedure's subjects consists of authorities, natural or legal persons, respectively organisations without legal entity, that in some quality partake in the procedure. The circle of subjects can principally be divided into two main groups:

Subject of the investigation		
Authorities	***Participants***	
	Main person	*Subsidiary person*
1. investigating authority 2. prosecutor 3. court 4. other organisations	1. defendant 2. defence counsel 3. victim (private prosecutor/substitute private prosecutor, private party) 4. representative of victim	1. relatives (e.g. of the defendant) 2. contributories in taking evidence (witness, expert) 3. interested parties: during criminal procedure and based on the decision and person that has become a participant in the procedure (e.g. party aggrieved by the investigation) 4. initiator of procedure (the denouncer)

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2.1.1. Authorities proceeding during the investigation

2.1.1.1. The investigating authority

During the preparatory procedure and the cleaning up the investigating authority proceeds independently, during the examining phase under governance of the prosecutor's office (§ 31. Subsection 2). The head of the investigating authority is responsible for compliance with the prosecutor's office's instructions.

During investigation, we can differentiate general investigating authorities and special investigating authorities:

- The general investigating authority is the police. The police proceeds in all cases unless stipulated otherwise by legislative provisions.
- Special investigating authorities can only proceed in case of particular crimes determined in the law. Such extraordinary investigating authorities are:
    - National Tax and Customs Office (e.g. tax fraud, violation of accounting order, bankruptcy fraud) which can also proceed as secondary investigating authority (i.e. crimes committed within its competence such as forgery of official documents, use of fake private documents, money laundering);
    - the captain of a vessel (aircraft) on a commercial vessel with Hungarian nationality insignia abroad or on a civilian aircraft can proceed in case of a crime under Hungarian jurisdiction;
    - military commander: if the investigation is not carried out by the prosecutor's office, the commanding officer can be the investigating authority (§ 701.

Subsection 1), by way of the investigating body or the representing investigating officer.

Based on agreement between the heads, and with the approval of the prosecutor's office, more investigating authorities can cooperate in the investigation in a case or in a group of cases.

A separate law determines which of the investigating authorities can proceed (e.g. local (urban or district) police station, district (provincial or metropolitan) police headquarters and National Police Headquarters) in a given case. In case of jurisdiction issues between the police and the National Tax and Customs Office the proceeding prosecutor's office freely appoints the proceeding investigating authority. With the consent of the prosecutor's office, the investigating authorities can also carry out the investigation together.

2.1.1.2. The prosecutor's office

The prosecutor does not only carry out classic public prosecutor's tasks in the criminal procedure but also the following:

a) it carries out preparatory procedures and investigates;
b) it supervises, directs and instructs;
c) carries out prosecution representation tasks.

Of these functions the first two are connected to the investigation:

ad a) In certain cases the prosecutor carries out the preparatory procedure. The prosecutor also investigates:

- the prosecutor can take over investigation in any case (§ 26. § Subsection 5, § 349.),
- in certain cases only the prosecutor can investigate (crimes that fall under the scope of investigative competences of the prosecutor's office such as certain crimes committed by or affecting certain judicial employees; cases in connection with immunity; certain crimes of corruption, etc. § 30.).

ad b) In certain investigative phases, the prosecutor's supervision-direction-instruction scope of activities are governed differently in the CPC:

- during cleaning up the prosecutor overviews the legitimacy (§ 25. § Subsection 2); within this framework it controls the legitimacy of the proceedings of the investigating authority; it can reverse unlawful decrees; it can call upon the investigating authority to amend the breach of the law and adjudge legal remedy requests, etc. (§ 26. Subsection 2);
- during the examining the prosecutor does not only supervise anymore, but directs too (§ 25 Subsection 2): it can carry out all the supervisional measures. In addition it can specifically instruct or forbid the investigating authority to carry out procedural measures; it can change the investigating authority's decision and oblige the investigating authority to come to a decision, or to give report, etc. (§ 26. Subsection 3);
- apart from the above mentioned the prosecutor also has the right to instruct, if the prosecutor carries out the investigation himself: in this case the prosecutor can instruct whichever investigating authority to carry out procedural measures within its field of jurisdiction, the crime prevention and counter terrorism units (CTU) can be requested

to carry out procedural measures (§ 349. Subsection 2).

The investigative jurisdiction and competence of the prosecutor is determined in separate legislation and highest prosecutor's normative instructions.

ad c) Tasks related to representation of the charge shall be discussed in the chapter relating to evidence of the judicial procedure.

In three separate procedures we can observe specific rules for the prosecutor:

- there is only place for criminal procedure against juveniles by way of public indictment. The prosecutor appointed by the principal prosecutor's office (§ 681) proceeds in the investigation in private prosecution cases (§ 678.);
- there is no place for private prosecution in military criminal procedure. The prosecutor's tasks are carried out by the prosecutor's office appointed by the Supreme Prosecutor (military prosecutor or the public prosecutor appointed by the Supreme Prosecutor for military criminal procedures); in practically all instances, the prosecutor carries out the investigation (§ 700.) with the exception of cases against non soldiers. The prosecutor can even proceed in cases concerning non-military criminal procedures;
- in a private prosecution procedure, the prosecutor is entitled to gain knowledge of the content of documents of the case (§ 764.), and if the representation of charges was taken over before the subpoena for personal hearing was issued the prosecutor can order an investigation (§ 767.).

2.1.1.3. The investigating judge

According to CPC § 11. it is the main task of the court to provide justice (i.e. ruling in criminal cases and decisions on the criminal liability). At the same time the court also carries out other tasks determined in the CPC in connection with criminal proceedings.

During investigation (before indictment) the investigating judge decides in questions that were referred into the jurisdiction of the court. This is the local court judge that is appointed by the head of the tribunal court (§ 463.). In case of military criminal procedures, this is the military judge of the tribunal court (§ 713.).

The investigating judge's decision can have two forms (§§ 464-467.):

1. Session for priority questions:
   - ordainment of coercive measures bound to judicial consent concerning personal freedom (except if a milder measure than the earlier one is motioned);
   - prolonging detention (based on new circumstances or following 6 months);
   - ordainment of monitoring of mental state;
   - ordainment of continuation of procedure due to breach of cooperation (except if the person breaching cooperation resides in an unknown place or if the prosecutor does not motion for a session);

2. Passes decision based on the documents in the all other questions referred to its jurisdiction:
   - excluding the defence counsel;
   - special protection of witness;
   - obliging the person that denies testimony to disclose the identity of the person

providing information;

- issue and recall of European and international arrest warrants;
- judging motions of revision;
- changing a fine into incarceration;
- ordainment of the continuation of a terminated procedure (except if a session is to be held);
- tasks regarding the application of covert instruments which are bound to judicial permissions;

The investigating judge proceeds in prosecutor's procedures under the area of competence of the court of justice (in case more local courts have been appointed, they determine the competence of each and every one of them).

If the court session, the time for the session is determined with consideration for the termination time of the incidental arrest (detention) of the defendant. If the motion is submitted by the prosecutor's office, the prosecutor shall hand over the investigative brief together with the submittance of the motion and the prosecutor shall send its motion to the defendant and the defence counsel. In this case the defence can look over the documents that form the base of the motion (up until at least one hour before the session).

In case the motion was put forward by the prosecutor, it shall ensure the presence of the defendatnt at the sitting and subpoenas or notices the defence counsel (depending whether his presence is mandatory), and ensures the presence of an interpreter or other persons.

The legal representative and of-age guardians of juveniles shall be informed about session concerning procedures for coercive measures with judicial consent which touch upon personal freedom. They have the right to speak and the decision will be communicated to them (689. §).

The presence of the following is mandatory at the session:

- prosecutor (junior prosecutor);
- defendant: at the mandatory sessions (except in case of breach of cooperation, if residing at an unknown location);
- defence counsel: monitoring of mental state, when ordering preliminary involuntary treatment in a mental institution, and in case of the absent defendant that breached cooperation;
- the motioner (if he/she does not appear, it shall be considered as a withdrawal of the motion).

At the session the motioner presents the motion verbally and delineates the evidences that form the base for those present. The investigating judge investigates whether

- the legal preconditions of the motion and the session are present,
- there is no obstacles for the criminal procedure, and
- there have been no rational doubts for the grounds of the motion.

In case there are no obstacles for the judging of the motion the court decides by non-conclusive order in which it sustains, partially sustains or rejects the motion. The decree has to be made public by way of announcement (if the investigating judge decided based on the documents, this shall take place within 8 days. Following putting in writing, the decision shall be serviced forthwith).

2.1.1.4. Other bodies proceeding during investigation

During the preparatory procedure and investigation, next to the investigating authority, the prosecutor and the investigating judge, the following bodies can proceed:

- during preparatory procedure: bodies authorised to apply covert instruments (§ 36. Subsection 1);
- within the management of criminal assets, the body responsible for the handling of corpus delicti and criminal assets (§ 36. Subsection 2);
- before indictment and upon request of the prosecutor's office (investigating authority) the body of the investigating authority responsible for the recovery of assets carries out the procedure for the reconnaissance and insurance of objects seized (§§ 353-354.).

2.1.1.5. Exclusion of members of proceeding authorities

Based on § 5. the prosecution, defence and sentencing separate in the criminal procedure. The legal institution of exclusion serves this basic principle and the empowering of the unbiased proceeding of the authorities.

The exclusion rules can be divided into two main groups:

1. The general conditions for exclusion are valid for all authorities. These are usually conditions that ensure unbiased proceedings. That is why as a member of the investigating authority, the prosecutor or judge cannot proceed the subject of defence (or relative) on either the side of the defendant or the victim. He/she cannot be a member of the authority that takes or has taken part in the case as a witness or expert. Those of whom no unbiased assessment of the case can be expected for other reasons cannot proceed either (relative exclusion grounds). From the general exclusion grounds it is only the defence counsel that is excluded from the members of the authorities tied to the principle of contradictorium.

2. The special exclusion grounds can be linked to certain authorities, e.g.

- the person that proceeded in the case as a judge (and relatives) cannot proceed as a member of the investigating authority or prosecutor and vice versa;
- the member of the investigating authority or prosecutor's office who proceeded in the main proceedings is excluded from investigation for retrial;
- the member of the investigating authority who proceeded in the main proceedings is excluded from investigation in crimes against justice;
- who acted lower level as a judge in the case or is a relative of a judge acting or having acted in the case (also included, with the exception of the relative, the decision on permission for covert data collection).

The exclusion grounds against the head of the investigating authority and the prosecutor's office usually affects all members of the body. The general rule is that in case of exclusion grounds reported by other parties, the member of the authority can proceed in the case until his exclusion is arranged.

The body deciding on the exclusion:

- head of the investigating authority on the exclusion of a member of the investigating authority, the head of the superior investigating authority on the head of the

investigating authority, the proceeding prosecutor on the head of investigating authority with national jurisdiction;

- the County Prosecutor General decides concerning the exclusion of prosecutors and head prosecutor of the local prosecutor's office and prosecutors of county prosecutor general's office, in all other cases the Supreme Prosecutor decides;
- in case of judges, the proceeding judge is appointed in administrative jurisdiction (if the judge himself reported the ground for exclusion), or another single judge of the court decides based on the documents (in case he/she is also concerned by the exclusion, the high court decides).

2.1.2. The participants

2.1.2.1. The defendant

Based on § 38. § Subsection 1 the defendant is the person against whom a criminal procedure is in progress. According to CPC the accused

- is the suspect during investigation,
- is the accused after indecment,
- is the convict after legally binding sanctions.

The denounced, detained and the sententially acquitted have a specific legal status.

The criminal capacity of the defendant is governed by § 68. According to this, the defendant can proceed independently from the capacity according to civil law, in person in a criminal procedure or (if the CPC does not order personal procedural obligation) by way of authorised representation.

From the point of view of becoming the defendant, age at the time of committing the crime has great significance:

- childhood: childhood is an excluding factor for punishment, i.e. if the defendant is under 14 when committing a crime in the majority of cases, and in certain cases under 12 (see Criminal Code § 16.: homicide, voluntary manslaughter, battery, acts of terrorism, robbery and plundering, if the child having the capacity to understand the nature and consequences of his acts), cannot be punished and can at most be a witness in the criminal procedure;
- juvenile: criminal procedures against juveniles can be carried out against the person that can make the above mentioned distinction and is over 14./12. years of age but under eighteen (§ 678.);
- adult: the defendant that when committing the crime was over the age of eighteen (also if there are more criminal procedures pending and one of those was committed as a juvenile, but was eighteen when committing at least one of the crimes).

The defendant in a military criminal procedure has a specific legal status. Military criminal procedures can not only be carried out against soldiers (§ 696.), but the following too:

- factual member of Hungarian Home Defence personnel: whichever crime committed;
- permanent staff member of police (Guard of the Parliament, penal institution, official disaster control service, civil national security services): if
    - the defendant commits a military crime during actual service, respectively
    - committed a crime in connection with service or at the place of service;

- member of allied armed forces: if domestic, a crime is committed under Hungarian penal authorities' jurisdiction;
- correlation: if the defendant (the crime) falls under military criminal procedure, other crimes committed by the defendant (the other defendant in a crime) generally fall under this if separation is not possible.

The legal status of the defendant opens up following the pronouncement of the reasonable grounds to suspect (questioning), i.e. obviously the procedural rights can be best exercised during the examining stage. According to the CPC the pronouncement of the reasonable grounds to suspect and the questioning of the defendant belongs under the cleaning up stage (the last phase), and, that is why the major rules regarding the defendant need to be discussed here (obviously this is authoritative for the defence counsel too).

Certain rights of the defendant open up before pronouncement of the suspicion (in the cleaning up phase). Based on § 386, before pronouncement of the suspicion, the captured (subpoenaed, wanted, under arrest warrant, arraigned) person has the right to

- receive information on criminal procedural rights,
- commission defence counsel (motion for appointment of defence counsel),
- confer with defence counsel without supervision.

Article XXVIII. Subsection 2 of the constitution states, that „ Everyone who has been charged shall be presumed innocent until proved guilty by final court decision according to law". This provision is in fact repeated by CPC § 1., indicating that this is one of the most basic principles in criminal procedure. The presumption of innocence (praesumptio boni viri), however, does not mean that the defendant only has rights and no obligations in the criminal procedure. It only means that in the criminal procedure, the defendant cannot be treated as guilty (e.g. an detentioned defendant has more rights than a convict serving his prison sentence; the certificate of good conduct of the person under the criminal procedure does not appear as convict; the defendant cannot suffer other disadvantageous legal consequences that are connected to conviction, etc.). When evaluating evidence, we shall discuss two further components of the presumption of innocence (onus probandi – burden of proof; in dubio pro reo – facts not proven beyond a reasonable doubt may not be contemplated to the detriment of the defendant).

The rights and obligations of the defendant are summarised in §§ 3. and 39.:

Rights of the defendant	Obligations of the defendant
• the right to have defence (§ 3.; § 39. Subsession 1 point d-e) • right to learn about the case (§ 39. Subsession 1 point a and j) • right to get prepared for defence (§ 39. Subsession 1 point b) • the right to enlightening (§ 39. Subsession 1 point c) • the right to give or refuse to give testimony (§ 39. Subsession 1 point f) • the right to motion, comment, speak and pose questions (§ 39. Subsession 1 point g, h and k) • right to be present (§ 39. Subsession 1 point h) • right to legal remedies (§ 39. Subsession 1 point i) • other (information and contact) rights of detained defendant (§ 39. Subsession 2)	• presence (§ 39. Subsession 3 point a) • obligation of notification (§ 39. Subsession 2 point b)

Of the above mentioned rights of the defendant we shall touch upon the following in more detail: right to learn about the case, motion, comment, speak and question.

The right to learn about the case entails that the defendant has the right to learn the subject of the suspicion and indictment. If an investigation is started against him, the reasonably suspicion is conveyed and it is concretely indicated for what crime the procedure of investigation is started against him. The indictment shall also contain the essence of the actions that are the object of the indictment. Based on § 39. Subsession 1 point a), changes in the suspicion (indictment) shall also be made known to the defendant (i.e. if for example based on the expert opinion the actions that are the object of the indictment have changed, the prosecutor cannot wait until the prosecution argument for the alteration of the indictment, but shall convey this fact immediately to the accused).

The right of the defendant to learn about the case also includes the right to get to know the full volume of the procedural documents. The CPC can make an exception in the latter case, e.g. in the investigation phase the suspect can only get to know the documents that are specifically allowed by the CPC, and the rest only if this does not interfere with the investigative interests. In case of an arraignment, it shall be ensured that the defendant will get to know the documents the latest by the start of the court trial (§ 726. Subsession 6).

During the criminal procedure, the defendant can bring forward a number of motions. The most significant (which has the biggest effect on the case) is the motion to present evidence. This can consist of the defendant himself presenting evidence or the motion to taking evidence. The law emphasises the rights to motion, the arrangement, the measures of the prosecutor or the projection of a provision.

The defendant can make observations during the entire procedure and pose questions at the trial and at the session in the subject of coercive measures bound to judicial consent and touching upon personal freedom. The right to the last word gives the defendant a possibility to speak too.

Based on § 39. Subsession 2 the detained defendant has the right to

- get to know the reason for his detention (or changes herein),

- that the authorities inform a person chosen by the detained about his detention,
- make contact with his defence counsel (consular representative), and to maintain contact without supervision,
- keep supervised personal contact with the person he appointed and by post or electronic means also under control.

2.1.2.2. Legal person under procedure and its representation

Penal measures against legal persons are governed in Act CIV of 2001. According to § 2. of this law measures against legal persons for deliberately committing a crime can be applied with the following conditions:

1. committing the crime was aimed at (or resulted in) gaining advantages for the legal person, or
2. the crime was committed by using the legal person

and

- the crime was committed by the leading official, representative, etc. within the scope of activities of the legal person;
- the crime was committed by a member or an employee within this scope and the leading officer (etc.) could have prevented this;
- in certain cases it is sufficient if the leading officer (etc.) only had knowledge of the above mentioned crime being committed.

The following measures can be imposed against legal persons:

- liquidation of the legal person (only independently),
- limiting the activities of the legal person 1-3 years,
- a minimum of 500.000 Ft. (but with a maximum of three times the amount of the financial gain) fine (the last two together as well).

In case the application of measures against a legal person during the criminal procedure is possible, the application of the measures shall be decided upon within the criminal procedure against the defendant (§ 7.). A commissioned or assigned lawyer shall proceed on behalf of the legal person. This shall be appointed by the authority if the legal person does not commission one (the defendant and the defence cannot commission one). The defence counsel cannot proceed as a representative of the legal person as well. For the right of the representative to be present and to see the files the rights of the defence counsel are authoritative.

2.1.2.3. The defence counsel

§ 3. of CPC records the right to have defence on a basic principle level. This basic principle consists of the following parts:

1. the right to have an efficient defence (in all stages of the procedure);
2. the right to personal defence;
3. the right to optional defence (cooperation of defence counsel can be utilised at any time);
4. the authorities have to ensure the use of defence counsel;
5. the right to preparation time for defence;
6. the right to defend oneself freely (as a main rule);

7. material defence (the authorities are obligated ex officio to convey and observe justificatory and extenuating circumstances in criminal liability with regards to the defendant).

As a commissioned or appointed defencecounsel may proceed a lawyer (§ 41.), but a paralegal can also proceed as replacement or beside (unlimited during investigation and in local court, but in a tribunal court the paralegal cannot plead, and in a court cannot represent a juvenile).

More than one defence councel can proceed in the benefit of the defence of the defendant and one lawyer can defend multiple defendants. If there are more lawyers defending the defendant, the lawyer that presented the commissioning first, shall be viewed as the counsel of record (if the defendant did not specify otherwise), if there are doubts, the court shall appoint one. The counsel of record is entitled to plead, and, if present at the procedural actions, to hand in statement of legal remedy.

The legal status of the defence counsel complies with the defendant (except for those rights that are solely connected to the person of the defendant). In addition

- in cases as determined in CPC, the lawyer can be present at such procedural actions, where the defendant cannot be present (or his presence is limitable);
- can carry out data acquisition and collection (even with the use of a private investigator);
- has numerous obligations:
    - contact with defendant without delay;
    - all legal defence instruments and methods used in due time in the interest of the defendant;
    - information the defendant concerning her/his legal status;
    - urging the justificatory and extenuating circumstances of the defendant;
    - in case of encumberment, ensuring replacement;
    - no encumbrance of the quick carrying out of the procedure;
- the presence of defence counsel is mandatory before indictment as well if a juvenile
    - is being questioned as a suspect,
    - is at a confrontation,
    - is at presentation for identification,
    - is being questioned on the scene,
    - is at a reconstruction, and
    - at the session in the subject of coercive measures bound to judicial consent and touching upon personal freedom.

As the defence counsel's rights align with the rights of the defendant so, in general, they start with the pronouncement of the reasonably suspicion. At the same time (due to the fact that defence counsel can be commissioned prior to this) the defence counsel is entitled to contact the person whom he defends before the pronouncement of the suspicion. He is also entitled to confer with him without supervision (§ 386. Subsession 2).

Reasons for exclusion of defence counsel (§ 43.) are similar to reasons for exclusion of authorities but that person cannot be defence counsel too that bears a conduct or has interests that are contrary to the interests of the defendant. The court determines on the matter of exclusion of defence counsel.

§ 44. (and in other parts) of the CPC states that in certain cases, the participation of

defence counsel is mandatory. These obligatory cases can be divided in a number of groups:

In entire procedure	During certain procedures	During certain procedural stages
➢ the offence sentenced by imprisonment of 5 years or longer in accordance with the law ➢ the defendant is hearing impaired, deafblind, blind, speech impaired, or unable to communicate for other reasons (limited in a severe degree), mentally disabled (regardless of his legal responsibility) ➢ the defendant does not speak the Hungarian language ➢ the defendant is unable to defend himself personally for any other reasons ➢ for other reasons, the authority has appointed defence	➢ criminal procedures against juveniles ➢ in a procedure of arraignment ➢ in a procedure where the defendant is absent ➢ in substitute private prosecution procedures ➢ procedures aimed at arrangement (also in judicial procedures) ➢ procedure for crime in connection with the border barrier ➢ depositing security procedure	➢ during court procedure of third instance ➢ in case of certain extraordinary remedies (judicial review, appeal on legal grounds)

The defence counsel can be commissioned by the defendant, the legal representative or adult relative of the defendant, in case of a foreign national defendant the consular officer of his home country (§ 45.). In this case, the defence counsel can proceed after handing in the commission to the authority. The defendant can withdraw the commission at any given time (even when it was not him that commissioned the defence counsel). The effect of the commission (and appointment) extends to the basic procedure, the extraordinary remedies, and the separate (special) procedures.

When in a case where defence is mandatory and the defendant does not have a determined defence counsel, the authority appoints defence counsel to him by way of decision. The person of the proceeding defence counsel is not designated by the authority but by the attorney's chamber of the area (with the operation of an information system, while ensuring immediateness and actual availability).

From the designated defence counsel can be deviated in three instances (designation of another defence counsel):

- the defendant (with justification) can motion for the appointment of another defence counsel;
- the appointed defence counsel can motion for dismissal from the appointment (also in motivated cases);
- the investigating authority (prosecutor's office) can appoint another counsel before the indictment and in the judicial phase the court can do so, in the case that the attorney's chamber fails to do so within an hour or in the case that an excluded defence counsel is appointed or the appointed defence counsel by the chamber is not reachable (and if

the execution of procedural actions cannot be omitted).

Likewise, the authority appoints counsel if

- the defence is not mandatory, but is necessary for the interest of effective defence, or
- in case the defendant cannot ensure defence counsel due to his financial circumstances and requests for the appointment of defence counsel.

If the defence counsel commissioned by the defendant hands in his commission in a manner as determined in the CPC, the appointment shall lapse. In this case, the commissioned defence counsel shall immediately inform the previously proceeding appointed defence counsel that he shall proceed as the commissioned defence counsel in the criminal procedure, and that the defence counsel is obliged to inform him on the procedure up until then, and to hand over the documents of the case.

Finally on the replacement defence counsel that is appointed by the authority when the defence counsel does not appear at the procedural actions even though duly subpoenaed and when the procedural actions can be carried out and not omitted. The replacement defence counsel can also be appointed if the defence counsel excused himself but did not organise a replacement, and the postponement of the procedural actions would otherwise be compromised (it would significantly delay the procedure). The replacement defence counsel has the right to all defence counsel activities. However, in the judicial procedure the course of taking evidence cannot conclude and he cannot carry out the defence argument.

2.1.2.4. The victim, the private prosecutor, the substitute private prosecutor and the private party

The victim is the natural or non-natural person whose right or legitimate interest is directly breached or endangered by the crime (§ 50.).

The victim can have multiple roles during the criminal procedure (even jointly, this is when we speak of multifunctionality):
a) victim;
b) witness;
c) private party;
d) private prosecutor;
e) recriminator;
f) substitute private prosecutor.

ad a) Bound to the victim's legal status and based on § 51, the victim has the following rights and obligations:

The victim's rights	The victim's obligations
• the right to motion, comment, speak and limited right to pose questions • the right to speak at the trial • limited right to be present • the right to enlightening • limited right to legal remedies • right to use an aide • the right to act as private party, private prosecutor or substitute private prosecutor • the right to give statement on the crime and the guilt of the defendant • desisting from exercising his rights (and withdrawal of this) • the right to information (concerning the release of the detained)	• presence during the procedural actions • to appear at expert examination and to subject himself to it (with the exclusion of surgery) • to notify on address changes

The CPC does not make it possible for the victim to have legal remedy against the final decision (only in case of private prosecution and substitute private prosecution if he represents the prosecution). The limited right to appeal on legal grounds only allows legal remedies in cases of decisions that are related to him (e.g. disciplinary penalty).

ad b) In criminal procedures, the victim is generally interrogated as a witness. In many cases it is the witness that can provide the most information in connection with the case („primus inter testes", first among witnesses). Rights and obligations of the victim in connection with testimony shall be discussed under the legal status of the witness.

ad c) The private party is the victim who exercises its civil claim in a judicial procedure (§ 55.). Certain provisions of the code of civil procedure ought to be applied when exercising the civil claim rights. Herefore, there are four conditions of the exercising the civil claim:

1. victim entitled to the claim;
2. needs to originate from the crime that is the object of the procedure;
3. there is a direct causal relation between the crime and the claim;
4. there can only be certain claims enforceable by judicial way (compensation, issue of things or payment of money).

ad d) The private prosecutor is the victim that represents the prosecution in case of the simple battery, invasion of privacy, mail fraud, defamation, slander, desecration or production of sound or video recording of a defamatory nature providing that the perpetrator can be punished by private motion (§ 53). Slander and defamation should be dealt with as public prosecution if these have been committed to the detriment of a judge, a prosecutor or a member of law enforcement, during its official proceedings, respectively committed because of this.

The private prosecutor has the rights of the victim and the rights of representation of the prosecution. His scope of obligations extend to the fact that the proof of guilt of the accused burdens him.

No private prosecution can be held against juvenils and soldier (§ 762.).

ad e) In case of procedure commenced by one injured party due to mutually committed simple battery, defamation or slander, the other injured party motioning private motion shall

recriminate (in case of a strong personal and objective correlation between the actions). If this motion is submitted within the specified time frame for the private motion, then we speak of independent recrimination (otherwise it shares the faith of private motion: if it is dropped, it cannot be further represented).

ad) f) The substitute private prosecutor is the victim who represents the prosecution as determined in the CPC in case of public prosecution crimes. The following conditions apply to proceeding as a substitute private prosecutor (§ 787.):

Alternative conditions for substitute private prosecution	Excluding reasons for substitute private prosecution
• rejection of the denunciation • termination of the procedure (prosecutor or investigating authority) • dropping the charge	• against juvenile • against soldier • against undercover agent, co-operator, arrangement maker • in case of certain reasons excluding punishability (minor age, insanity) • in case of harm to indirect rights/interests • in case of victim that exercise state or executive power

In procedures with substitute private prosecution legal representation for the victim and the defence counsel is mandatory. In substitute private prosecution cases, the victim can submit his civil claim at the latest in the motion for prosecution. The substitute private prosecutor cannot partake in mediation procedures.

Within the procedure, the prosecutor's office can take over the representation of the indictment from the substitute private prosecutor once. In this case the substitute private prosecutor has the same rights as the victim.

2.1.2.5. The financially interested party and other interested party

The financially interested party is a natural or non-natural person, who or that

- is the owner of forfeiturable (seized) goods (has part ownership rights),
- has the right to dispose over property that falls under confiscation of property;
- has the right to dispose over electronic data that is made inaccessible definitely.

The financially interested party can exercise a part of the victim's rights (§ 57.) and is obligated to appear when summoned by the authorities.

Other interested party in a criminal procedure are natural or non-natural person who or that

- the decision during the criminal procedure has an indirect effect on his legal interests or rights, or
- disposes over rights or obligations as determined in the CPC connected to the procedural actions that concern him.

Such other interested parties are the denouncer, the witness, the person involved in search or body search, the person involved in data gathering activities, expert examination, inspection and presentation for identification, the aide, the expert and the consultant (§ 58.), and bodies involved in crimes that are detrimental to the budget and the state.

2.1.2.6. Aides, supporters and the proctor

For the representation (defence of its person) of the defendant, victim, financially interested party and other interested party, numerous helping parties can take part in the criminal procedure in the interest of advancing the exercising of rights and obligations (§ 59.). These can be for example legal representative, adult relative, commissioned representative, consular functionary, agent for service of process and supporter.

The legal representative of the defendant takes part in the criminal procedure as an aide. The rights of the defence counsel concerning presence, observation, enlightening, motion, getting to know the documents and legal remedies are normative (§ 72.). If the defendant does not have legal representative (conflict of interest, hindered in exercising his rights, etc.), the authority shall appoint a lawyer or lawyer office as proctor. These generally have the same rights as the legal representative (§ 73.).

The aide is entitled to receive information on criminal procedure rights and obligations of himself and the person helped by him from the proceeding authority. E.g. the commissioned representative of the defendant is entitled to receive documents or even depositing bail (§ 64.).

Here we need to mention the supporter who is commissioned by the guardianship authority to the victim, the financially interested party, and other interested party (supported person) to further supported decision-making that does not touch upon capacities as determined in the law. The supporter may be present at the procedural actions in which supporters participate, he can coordinate with him, but may not provide statement instead of the supported person.

2.1.2.6. Other regulations concerning the participants

The CPC contains numerous regulations, that in a given case shall be applied to any of the participants. We emphasise three of these:
a) the right to use one's native language,
b) priority procedures and
c) ensuring special treatment.

ad a) The language of the criminal procedure is Hungarian (i.e. the investigative and judicial actions are carried out in the Hungarian language), but everyone is entitled to use one's native language. Lack of knowledge of the Hungarian language cannot be detrimental to anyone. This is also the case for the hearing impaired and deafblind persons (§ 8.).

If the participant of a criminal procedure wishes to use his non-Hungarian mother tongue (ethnic or other native language), an interpreter with sufficient knowledge of legal terminology needs to be utilised (§ 78.). The interpreted language can be

- the participant's native language,
- another language known by the participant (in the case that use of his native language causes disproportionate problems),
- sign language (if the participant is hearing impaired, deafblind or for any other reason cannot communicate).

In addition, testimony can also be given in writing (in case of hearing or speech impaired persons).

The right to use one's native language does not only mean that the given person needs to be questioned in this language, but also that the decree issuing authority (issuer of brief) shall ensure that the to be delivered documents (in accordance with CPC) are translated, except if the addressed person specifically waives this.

ad b) Generally the criminal procedure ought to be carried out as swiftly as possible. Numerous other legal institutions try to further the acceleration of the procedure (e.g. arrangement, penalty order, arraignment). There are cases where swifter proceedings are necessary. For this there is the legal institution of priority procedure. The criminal procedure (observing the following order) needs to be carried out as a priority procedure (§ 79.):

- if the defendant is under coercive measures that are bound to judicial permission and touch upon personal freedom,
- if the participating victim or defendant is under 18 years old,
- in repeated procedure,
- during the mass immigration crisis, in criminal procedures for crime in connection with the border barrier.

Apart from the priority procedure, the CPC decrees in a number of cases that in certain issues, priority decisions shall be taken. In such cases it is not the entire case that shall be prioritised before other cases, but within the procedure urgent proceeding shall be maintained:

- concerning exclusion, the court decides in priority (§ 18 Subsession 4);
- the ordainment of sequestration (for the judging of motion of review sequestration) (§ 476. Subsession 5);
- the court (prosecutor's office) adjudges motions concerning securities out of turn (§ 757. Subsession 6).

Following warning for motions suitable for delaying the procedure, the repeated submittance of these motions can be punished with a disciplinary penalty (§ 80.). This also serves the acceleration of the procedure.

ad c) The natural person (victim, witness, in certain cases the defendant, the defence counsel regarding the defence, the expert, etc.) is qualified as a person that requires special treatment (§§ 81. and 96.), if his personal characteristics or the nature and circumstances of the crime that is the subject of the procedure hinder

- his understanding, something getting across,
- him in exercising his rights or performing his obligations,
- him in efficiently taking part in the procedure.

The application of special treatment shall be investigated from the moment of contact with the person concerned. It can be determined based especially on age, mental, physical and health state, the especially violent character of the crime, respectively the relationship of the person concerned with another participant of the procedure.

The application of special treatment is generally ordered by decree. However, in certain cases (person under the age of 18, person with disabilities, the victim of a crime against sexual freedom or morality), the person can be qualified as a person requiring special treatment without a separate decision (§ 82.).

The following especially belong to the scope of special treatment: (§ 85.)

- furthering the exercising of one's rights and the fulfilment of one's obligations (even with aide);

- increased discretion with a certain person (keeping contact, consideration for private life, avoiding meeting other participants, if needed, in separated areas, use of telecommunications tools, exclusion of publicity, etc.);
- increased data protection;
- immediate procedure that does not require repetition (if needed, sound and video recordings to ensure this);
- ensuring protection.

The law contains special provisions for participants under the age of 18 and 14 (e.g. the first excludes the use of a polygraph, the latter excludes confrontation as well) and for victims of sexual crimes (§§ 87-88.).

Finally, we would like to mention special provisions concerning witness protection. The CPC also orders this for persons requiring special treatment:

1. Specially protected witness (§§ 90-93.):
   - conditions: if the witness' testimony concerns significant circumstances in a case with prominent weight, the evidence expected from his testimony cannot be replaced with other evidence and in the case that the exposure of identity (that he was heard as a witness), the witness' (its relative) life (physical integrity, personal freedom) would be gravely endangered, the witness that requires special treatment can be declared a specially protected witness by the court after the motion of the prosecutor's office.;
   - outside persons (especially subjects of the defence) cannot take part in procedural actions where the participation of a specially protected witness is required. In this case, the court generally hears the witness by way of delegated judge or requested court, or by way of telecommunications tools;
   - of the procedural action that needs the participation of a specially protected witness a written protocol shall be drawn up, which shall be treated confidentially. An excerpt is made from the protocol, which shall only contain the name of the members of the authority, the fact that the witnessed is declared specially protected and the description of the procedural actions. Only this excerpt shall be placed with the public documents.

2. Personal protection (§ 94.): the authority ex officio or in 8 days after the motion of the person requiring special treatment can motion for personal protection for the person requiring special treatment (with respect her/him to another person).

3. Protection Programme (§ 95.): the authority ex officio or in 3 days after the motion of the person requiring special treatment can motion for participation in the Protection Programme. The witness participating in the Protection Programme shall assume a new identity. This is the reason why
   - all documents in connection with this participation shall be handled confidentially,
   - the participant shall be subpoenaed (informed) through the body that ensures the protection,
   - the participant of the procedure appears with his original natural personal identification data, the new personal data of the person shall be handled confidentially,
   - the participant can refuse to give testimony regarding data that can lead to the deduction of his new personal identification details (new address, notification address, factual place of residence).

4. Confidential handling of personal data (§ 99.): by motion of the defence person or in case

of a person requiring special treatment ex officio, the authority shall order the confidential handling of the victim's (financially interested party's, other interested party's or aide's of these) personal data.

2.2. Preparatory procedure

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 based on

- observation by the authority,
- denunciation or
- the result of covert data collection.

The preparatory procedure can be carried out by the following bodies (§ 339. Subsession 2-3):

- the prosecutor's office,
- the investigating authority,
- the internal crime prevention and forensics body of the police,
- 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).

Generally, the preparatory procedure can last up to 6 months (in case of crimes where covert instruments bound to judicial permission are applied, this term is 9 months). If the preparatory procedure is not carried out by the prosecutor's office, the body that does shall inform the prosecutor's office within 24 hours of the ordering of the preparatory procedure indicating

- data that form the base for the necessity of the preparatory procedure,
- the covert instruments desired to be applied and
- the planned procedural actions

After this, the prosecutor's office shall be notified at least bi-monthly.

If, based on the data gathered during the preparatory procedure, suspicion of a crime can be determined, investigation ought to be ordered. In this case, the documents and data shall without delay be handed over to the competent investigating authority or prosecutor's

office. The application of covert instruments bound to judicial (prosecutorial) permission can pursue without new permissions.

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.

2.3. The investigation

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 decides on the closure of the investigation (termination of the procedure or indictment).

2.3.1. Initiating of the investigation

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 victim (if known) shall be informed of the ordering of the investigation.

In cases that cannot be delayed, any investigating authority can carry out procedural actions. He is obligated however to immediately inform the authoritative investigating authority about this fact.

2.3.1.1. Criminal procedure from ex officio

§ 4. Subsession 1 determines on a base principle level that the prosecutor's office and the investigating authority will start criminal proceedings ex officio if they have acquired knowledge of a prosecutable crime.

Accordingly, based on § 375. Subsession 1 the investigation can also be instituted based on acquired knowledge of data by the prosecutor's office's or investigating authorities scope of jurisdiction furthermore the member of the prosecutor's office or investigating authority in its official qualification. Accordingly, no denunciation is necessary for the initiating of a criminal procedure.

2.3.1.2. The denunciation

In a criminal procedure, there is a general denunciation right. Anyone can denounce a crime indicted by the public prosecutor, but

- in private prosecution cases, only the person entitled to private motion may denounce;
- criminal procedures concerning abuse of qualified data can be only denounced by the body (person) that carried out the qualification (Criminal Code § 266.);
- perjury, until the main proceeding in which perjury has been committed is concluded, only initiatable by the denunciation of the proceeding authority of the main proceeding (Criminal Code § 274.).

Generally there is no obligation to denounce but

- the member of the authority, the official functionary and the public body (if the law commends this) are obligated to denounce prosecutable crimes of which they have gained knowledge within their scopes of authority (however, after legal power, they do not have to denounce, but inform the prosecutor's office who collaborates with the court deciding the permissibility of retrial, and the Prosecutor General in case of judicial reviews, § 639. Subsession 6 and § 651. Subesession 4);
- in certain cases as determined in the Criminal Code everyone is obligated to denounce a crime.

A crime can be denounced to any authority. If

- done at the investigating authority or prosecutor's office with jurisdiction and competence, he shall proceed;
- done at the investigating authority or prosecutor's office without jurisdiction or competence, he shall transfer the procedure (the case however shall immediately be registered);
- not done at the prosecutor's office or investigating authority, then the authority registering the denunciation (e.g. court, notary, etc.) shall send the denunciation to the investigating authority or prosecutor's office with jurisdiction and competence (in case crimes within the exclusive investigative scope of authority of the prosecutor's office, the denunciation shall be sent to the prosecutor's office).

The following actions can be taken within 3 days of reception of the denunciation (in case there is no need for transfer or sending):

a) rejection of the denunciation,
b) completion of the denunciation or
c) order of the investigation.

ad a) The denunciation can be rejected if there is an obstacle for the conduction of the criminal procedure. This obstacle can be one of the classic procedural obstacles (such as absence of crime, lack of evidence or culpability, res iudicata) but there are numerous other reasons for rejection of a denunciation.

Based on § 381., reasons for rejection of the denunciation can be divided into three main groups:

Simple reasons for rejection of denunciation	Combined reasons for rejection of denunciation	Specific reasons for rejection of denunciation
No further proceedings initiated with the rejection of the denunciation: • the action is not a crime; • lack of the suspicion of a crime; • apart from the necessity for involuntary treatment in a mental institution, there is ground for exemption from punishability; • simple grounds of the reason for ceasing the punishability (death, statute of limitation, clemency); • res iudicata, • procedural obstacles that cannot be overcome (absence of private motion, denunciation or decree by Prosecutor General), • the case does not fall under the jurisdiction of Hungarian law;	Further proceedings initiated with the rejection of the denunciation: • the denunciated action is not indicted by the public prosecutor (the victim shall be sent the decree of rejection with the addition that he shall have 1 month to act as a private prosecutor); • the rejection by decree (in case the denunciated action is only a misdemeanour, the appropriate authorities shall be informed by sending the documents);	• concerning a cooperative person, or • concerning an undercover agent.

Res iudicata as an excluding reason for procedure appears as a basic principle in the CPC. According to § 4. Subsessions 3-5 and 7 the criminal procedure cannot be initiated (the already initiated criminal procedure shall be terminated), if the action of the perpetrator (defendant) has already been adjudicated (exception: extraordinary remedy procedures and certain special procedures), even when

- the action effectuates multiple crimes, but the court (in accordance with the indictment qualification) does not determine the defendant's guilt due to all the crimes as determined by the finding of facts of the indictment;
- the defendant's responsibility is determined as misdemeanor;
- adjudication shall take place in another member state of the European Union.

In case of a crime pursued to private motion, the case can only be initiated or continued by the entitled person. This needs to be motioned within 1 month from the day that the person entitled to private motion acquired knowledge of the crime. If it comes to the attention that the crime is punishable following the actuation of the criminal procedure only upon private motion, the person entitled to advancing the private motion shall provide a statement. From calling upon this, there is a term of 1 month available for this (§ 378.).

ad b) The prosecutor's office or the investigating authority shall order completion of the denunciation if based on the available data, it is not possible to order investigation, to rejection of the denunciation or the transfer of the case (§ 380. Subsession 1). For completion of the denunciation the following can be requested within 1 month:

- providing information,
- providing documents and data,
- notification of the damage (substantial value, decrease of tax revenue, decrease of customs revenue, committing value); and
- acquisition of permission by General Prosecutor for crimes committed abroad by non-Hungarian citizens.

ad c) If the denunciation cannot be rejected, and a decision can be made concerning the order of the investigation (i.e. the completion of the denunciation is not required), the prosecutor's office or the investigating authority shall order the investigation. The investigation can last 2 years from the moment of questioning of the suspect. In case of juveniles this is 1 year if the procedure is in progress for a crime that cannot be punished with a prison sentence of more than 5 years.

2.3.1.3.Gathering covert information

Criminal procedure can be ordained based on data from covert information gathering. In this case covert information gathering is ordered by other laws (laws on the prosecutor's office, the police, the National Tax and Customs Office or the national security services), but its results shall be used within the framework of the criminal procedure (§§ 256-258.).

The result of covert information gathering that is bound to judicial/external permission can be used as evidence in a criminal procedure when the body entitled to initiate criminal proceedings decides within 3 days based on the covert data gathering on the initiation of a criminal procedure, or the use of it in an ongoing criminal procedure. In this case, the application of covert instruments needs to be permitted newly. The document attesting the legitimacy of the ordering and execution of the covert information gathering shall also be enclosed. The fact of the ordering is attested by president of the tribunal court.

The result of covert information gathering can be used in a criminal procedure as evidence if

- it is used for proving a crime, for which the application of covert instruments bound to judicial permission could be possible (according to CPC);
- the body carrying out covert information gathering initiated the initiating of the criminal procedure within 8 days (national security service, counter terrorism unit: within 30 days, in exceptional cases: within 1 year) of acquiring the data.

The result of covert information gathering that is bound to external permission may exclusively used for the proof of guilt of the person mention therein. If no person involved is determined, it can be used against anyone.

2.3.2. Cleaning up

The first main phase of investigation is cleaning up. The following main questions should be emphasised:
a) general provisions;
b) coercive measures;
c) application of covert instruments;
d) data gathering activities;
e) evidentiary actions during cleaning up;
f) sending the investigative documents.

2.3.2.1. General provisions in connection with the cleaning up

According to § 351. the investigation shall be carried out in a short a time frame as possible. If since the ordering of the investigation 6 months have come to pass the investigating authority presents the documents of the investigation to the prosecutor's office (after this half-yearly) and shall report on the standing of the investigation.

During cleaning up, the prosecutor's office and the investigating authority create a written protocol on the procedural actions. In some cases continuous audio and video recording are made, and notes on the taken measures.

§ 362. records which investigative actions the prosecutor's office and the investigating authority have to adopt decision. These can be formal issues (such as transfer) or substantive decisions (e.g. rejection of denunciation, suspension or termination of the procedure) and decisions on coercive measures and the adjudication of complaints.

During cleaning up, the principal of limited publicity is valid, i.e. during the procedural actions, only the persons summed up by the law can participate:

- the prosecutor, the member of the investigating authority and the keeper of minutes in all cases;
- the victim (and one adult person specified by the victim) can be present at the hearing of the expert in connection with the crime committed to his detriment, at the inspection, reconstruction and the presentation for identification;
- the consular functionary of the foreign national defendant, victim or witness at the questioning of the given person and other procedural actions with his participation.

The victim can report his intention to enforcement of civil claim during cleaning up. Befor the indictment he can report at any time to withdraw this as well (§ 355.). The temporary measures as determined in § 557. can be motioned simultaneously (if the victim is removed from the property due to extortion, fraud or usury, he can request temporary reinstation).

2.3.2.2. Coercive measures during cleaning up

2.3.2.2.1. Term and division of coercive measures

According to § 2. CPC human dignity shall be respected during criminal procedure and the right to freedom and personal safety shall be ensured. There are four conditions for limitation of fundamental rights:

- only in procedures determined in CPC,
- only due to reasons determined in CPC,
- only in a manner as determined in CPC and
- only in the degree as determined in CPC.

Basic principle as recorded in § 2. and § 271. on general provisions for the application of coercive measures record that one has to strive that the given coercive measure limits the fundamental rights of the involved person only to the most necessary extent and time. Accordingly, a graver coercive measure can only be ordained if the intended aims cannot be ensured with lesser coercive measures or other procedural actions.

The coercive measures can be gruped by
a) procedural law aims,
b) the limitation of human rights due to the measure.

Division of the coercive measures according to
c) subjects and
d) attachment to the decision.

ad a) According to procedural law aims, coercive measures can be directed at:

- ensuring the presence of the participants of the criminal procedure or other persons (e.g. apprehension, arrest),
- ensuring the absence of the participants of the criminal procedure or other persons (e.g. restraining order, leading out or expulsion from trial),
- for the acquisition of means of evidence (e.g. search, body search, seizure),
- to ensure the unperturbed execution of evidentiary actions (e.g. application of bodily force),
- maintenance of the procedural order (e.g. disciplinary penalty),
- prevention of delay of procedure (e.g. obligation to pay the resulting costs),
- to ensure the execution of punishment decisions (e.g. preliminary involuntary treatment in a mental institution, sequestration).

ad b) Regarding the limitation of human rights, there are coercive measures limiting or not limiting personal freedom. The limited other human rights are for example the following:

- property right (e.g. seizure, sequestration),
- human dignity (e.g. body search),
- inviolability of private residence (e.g. search) or
- inviolability of letters (e.g. seizure).

ad c) According to subjects: there are active subjects (persons applying coercive measures) and passive subjects (persons concerned by coercive measures):

- Coercive measures are usually applied by the authorities. Certain measures can be ordered by any authority (e.g. search), other ones only by certain authorities (e.g. detention only by the court). The only criminal procedural coercive measure applicable by anyone is the capture of the person caught in the act (§ 273.).
- The majority of coercive measures (resulting from the character of the criminal procedure) concern the defendant. Certain coercive measures can only be ordered for the defendant (see: gravest coercive measures limiting personal freedom), but numerous coercive measures can be applied to other participants (or entirely outside person), such as search, removal from the place of investigation or disciplinary penalty.

ad d) 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).

§ 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;
- 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). Based on the previous, the most important coercive measures can be grouped as follows:

When can the coercive measure be ordained?	*Coercive measure limiting personal freedom*	*Coercive measures against property*
Also during cleaning up	• capture of a perpetrator caught in the act (§ 273.) • apprehension (§ 118.) • custody (§§ 274-275.) • application of bodily force (§ 129.)	• search (§§ 302-305.) • body search (§§ 306-307.) • seizure (§§ 308-323.) • sequestration (§§ 324-332.) • temporary rendering electronic information inaccessible (§§ 335-338.) • disciplinary penalty (§§ 127-128.)
In examining phase (following cleaning up)	• accompany (§ 117.) • restraining order (§ 280.) • criminal supervision (§ 281.) • technical tool for tracking the defendant's movement (§ 283.) • bail (§§ 284-288.) • detention (§§ 296-300.) • preliminary involuntary treatment in a mental institution (§ 301.)	

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.

2.3.2.2.2. Coercive measures limiting personal freedom that can be ordered in the cleaning up phase

The following coercive measures can be ordained in the cleaning up phase:
a) capture of a perpetrator caught in the act;
b) apprehension;
c) custody;
d) application of bodily force.

ad a) Anyone can capture a perpetrator caught in the act committing a crime. Caught in the act means that the perpetrator is apprehended while committing a crime, if someone is disturbed in committing a crime and fleas the crime scene but is apprehended as a result of continual pursuit.

If the given person is not caught in the act by an authority, then the person

apprehending is obliged to hand over the perpetrator to the investigating authority (if there is no possibility for this, the police shall be informed).

ad b) The person (e.g.) that through own fault defaults to appear even though shall be arraigned, which is the temporary cessation of personal freedom in order to

- bring the defence person before the authority or
- to ensure his presence at the procedural actions.

Apprehension can be ordered by a separate decree and is generally carried out by the police. The decree can contain that it is sufficient to order the person to make his way, i.e. it is not necessary to accompany him before the authority. It can also be ordered that the person shall be arraigned immediately on the given day. Apprehension of soldier is possible by way of his superior.

ad c) According to § 274. custody is the temporary cessation of personal freedom of the defendant or the person that can be reasonably suspected of having committed a crime. If we speak of the custody of the defendant, obviously the ordainment of it takes place in the examining phase. However, it can happen that a person is taken into custody to whom reasonable suspicion has not been conveyed yet, or has not been questioned yet. In these cases the custody takes place at the very end of the cleaning up.

The condition for custody is that reasonable suspicion of a crime punishable by a imprisonment is present towards the given person. There are four cases of criminal procedure custody:

- caught in the act: if the identity of the person caught in the act cannot be established;
- if against the to be detained person coercive measures bound to judicial permission and touching upon personal freedom can be expected;
- if the defendant causes disorderly conduct at the court trial;
- if the conditions for arraignment are in place, custody can be ordered to serve this aim as well (§ 725.).

Custody can last maximum 72 hours (respectively until ordainment of the coercive measure bound to judicial permission and touching upon personal freedom), in which the authoritative custody prior to ordainment of the custody shall be included. The execution of the custody generally takes place in the police detention-room.

Following ordainment of custody, the authority shall take the following measures:

Information obligation	Actions obligation
• within 8 hours of custody an adult person determined by the defendant shall be informed about the fact and the place of the detainment (if this person should endanger the procedure, another person shall be determined by the defendant) • in case of custody of soldoer, the superior	• placement of the underage child and cared person who are left without supervision • assets (house) that are left without supervision shall be looked after • if the custody of soldier is not ordered by military investigating authority, the defendant shall be transferred to the authoritative prosecutor's office

In procedure for crime in connection with the border barrier there are some special rules when ordering custody (§ 830.):

- juveniles arriving together with the defendant shall not be unnecessarily parted from their relatives;
- custody can also be executed within establishments serving the placement, tending and custody of persons under the force of the law on asylum (in these cases relatives should not be divided).

ad d) If reasonably assumable that application of bodily force is required to ensure or execute procedural actions, the authority ordering or carrying out the procedural action shall dispose over

- the defendant,
- the victim,
- the witness,
- the person obstructing the procedure.

Decree on application of bodily force is only compulsory if the person suffering the application of bodily force motions for this within 3 days.

2.3.2.2.3. Coercive measures for assets that can be ordained during cleaning up

All of the under mentioned coercive measures can be ordained during cleaning up:
a) search;
b) body search;
c) seizure;
d) sequestration;
e) temporary rendering electronic information inaccessible;
f) disciplinary penalty.

ad a) The search usually limits the right of inviolability of private residence. Search can be ordained by any authority (notary and lawyer offices only by court) against anyone for the successful conduct of the criminal procedure if it can reasonably assumed that it will lead to

1. apprehension of the perpetrator who committed the crime,
2. clarification of traces of the crime,
3. finding mean of evidence,
4. finding object of forfeiture (confiscation of property) or
5. inspection of an information system (data recorder).

The object of the search can be:

- the apartment,
- other spaces,
- enclosed area,
- the vehicle,
- the information system (data recorder).

The search of the property (vehicle, data recorder) shall be carried out in the presence of the owner, proprietor or user (and their defence counsel, representative or proxy). If there is no such person present, an adult that is not interested in the case shall proceed for the protection of the interests of the concerned person (there is no exception to this).

The progression of the search is as follows:

- prior to the search, the decision that orders the search shall be made known (if possible, it should be served there too);
- if the search is for a determined person (object), the concerned person shall be told to convey the whereabouts; if he does, generally the search is discontinued (only if it can be reasonably assumed that it can lead to the finding of other relevant objects);
- in the course of the search, the general provisions for coercive measures are authoritative (humane treatment of concerned person, if possible during daytime, without causing unnecessary damage, etc.).

ad b) Based on § 306. Subsession 3 body search can be ordered of any person by the prosecutor's office or investigating authority. If it is the aim to find mean of evidence or object of forfeiture (confiscation of property) by examining the clothing and body of the person that is being searched, because it can be reasonably assumed that the person has such objects on him. Body search limits the statutory rights to human dignity and personal inviolability.

If the body search is aimed at finding a determined object, the concerned person shall be summoned to surrender the searched object voluntarily (contrary to search, body search cannot be continued after the object of the summon has been fulfilled).

Apart from non-delayable cases, body search of a person can only be carried out by a person of the same gender and only a person of the same gender may be present (dual gender rule). Examination of body cavities may only be performed by a doctor (health care employee may be present), the dual gender rule does not apply to them.

ad c) Seizure can generally be ordered against anyone by any authority (in notary and lawyer's offices only by the court; non-delivered consignments and press materials during investigation by the prosecutor's office, during judicial phase by the court). It limits proprietary rights. Its aim is to ensure mean of evidence or object of forfeiture (confiscation of property) for the effective conduct of the criminal procedure. The object of seizure can be

1. goods,
2. account money,
3. electronic money or
4. electronic data.

At the same time, § 310. excludes certain things from seizability (e.g. information between the defendant and his defence counsel, between the defendant and the person entitled to refuse testimony, notes of the defence counsel, certain guarded objects of the person entitled to refuse testimony).

According to § 311. seizure can be carried out in the following ways:

- occupation;
- ensuring preservation in other way;
- leaving with the defence person;
- seizure of electronic data.

Seizure can only be carried out by leaving it with the defence person or ensuring preservation in other way if

- the object is not suitable for occupation,
- the proprietor's (operator's) interest is intertwined with its use, or
- other important reasons justify this.

In these cases, the object can only be passed on with the permission of the authority that ordained the seizure.

If during the procedure there is no need for the original of a document (cannot be forfeitured, does not carry traces of the crime, etc.), a copy of it shall be made within the shortest period of time (maximum 2 months). The document shall only be seized until the copy has been made.

Electronic data shall be seized by means of

- creating a copy (generally) or
- transfer of the electronic data,
- exceptionally by seizure of the data carrier (if it is evidence or object os forfeiture, or if it carries too much data).

A period of 3 months the preservation obligation of electronic data can be decreed to further the clarification of the crime or respectively for the interest of evidence (§ 316.). This limits the right to dispose over the electronic data of the person concerned. He shall be obliged to preserve and not alter the electronic data and shall only provide information to others upon permission of the authority that decreed.

If the object that is seized during the procedure is not of any use anymore in the interest of evidence, it needs to be examined immediately ex officio whether

1. there is place for the termination of the seizure or
2. the seized objects are sellable.

ad 1. If in the interest of the procedure seizure is not necessary anymore:

- termination of the seizure and return of the seized object shall be organised immediately (also when the procedure is terminated or the investigation term is expired);
- forfeiture of the seized object shall be motioned;
- if the seizure of an object took place solely for the interest of confiscation of property, during the investigation the prosecutor's office (after that the court) may permit the redemption of the seized object.

ad 2. If in the interest of evidence there is no further need for the seized object but there is no place for the termination of the seizure, the seized object may be sold if nobody has motioned a grounded claim with regards to this object (or contributed to the sale of the object), and the object

- perishes quickly,
- is not suitable for long-term storage,
- treatment (storage, guarding) would mean disproportionate and considerate costs, or
- the value would greatly diminish due to the anticipated time of the seizure of it.

Counter value of the sale or redemption of the seized object shall step into the place of the seized object. If the seized object has no value and nobody claims it, it shall be destroyed following termination of seizure. Otherwise it shall be released to:

- principally to the person that was the owner of the object at the time of the crime and there are no reasonable doubts considering his proprietary rights;
- if there is no such person, the person that motions a grounded claim,
- if there is no such person, to the person of whom it was seized.

The object that is to be released to the defendant can be withheld as a security for financial obligations that shall be determined. In case of a civil claim the execution or the motion of security measure shall be attested within 2 months, or otherwise it shall be released.

ad d) Sequestration (for the purpose of confiscation of property or civil claim, in the letter case motioned by private party) serves the limitation of disposal right over the sequestrated object, if it can be reasonably assumed that the appeasement of this shall be thwarted. If there is place for the sequestration of property, a decree is mandatory.

Generally, sequestration can be ordained by any authority. However, only the court can do so if

- ensuring a civil claim is the aim,
- a non-sequestrable asset needs to be temporarily (maximum 3 months) sequestrated until the seclusion, or
- the sequestrated object's value is more than 100 million forints.

The object of sequestration can be:

- goods,
- account or electronic money,
- financial tools,
- rights of property value, or
- property claim (collectively: possessions).

If there is no public register in which sequestrated possessions are registered, an entity shall be appointed that is able to exercise cessation of the right of disposal over the possessions and the implementation of the sequestration.

The redemption of possessions can be permitted by the prosecutor's office (until indictment) or (after the indictment) by the court. The redemption shall only be ordained with the contribution of the private party in the case of sequestration to ensure civil claims and maximum up until the rate of the civil claim.

Sequestration is ceased with reconstitution. The reconstitution shall take place when

- the reason for ordering has ceased, the criminal procedure is terminated or the term of the investigation has expired (unless initiated civil proceedings to uphold the claim within 2 months thereafter);
- the sequestrated property has been redeemed;
- the proceeding has been concluded without applying confiscation of property, or the civil claim has been dismissed;
- upon winning a civil claim, the private party failed to request execution within 2 months following the expiry of the agreed date of performance;
- after the civil claim has been referred to other legal ways, the prosecutor or the private party fails to prove the initiation of the enforcement of their claim within 2 months;
- the private party has recalled his civil claim, and has not attested his enforcement of claim within 2 months;
- the victim has declared not to enforce his civil claim (and there is no other reason to maintain the sequestration).

ad e) The temporary rendering electronic information inaccessible is ordained by the court when the procedure is in progress because of a crime indicted by the public prosecutor in which there is place for making data permanently inaccessible, and this is necessary for the discontinuation of the crime.

Coercive measures consist of two main types:

- temporary restriction to the right of disposal over data made public by way of electronic newscaster network (temporary removal of data): the hosting service provider shall remove the data within 1 working day (if permanent inaccessibility is not ordained, the data shall be restored);
- temporary obstruction of access to data: this can be ordained in emphasised drugs cases, crimes against the state or in connection with terrorism, if e.g. the removal is not carried out, or when it cannot be ascertained who should be removing the data (and in certain legal assistance cases); when the data is removed, or when the procedure has terminated, the coercive measure will cease.

Prior to ordering the temporary inaccessibility of data, the media content provider or hosting services provider can be called upon to voluntarily remove the electronic data (not mandatory to do so).

ad f) In order to maintain the procedural order and due to offences against procedural obligations, a disciplinary penalty can be imposed by any authority in cases as determined in the CPC. The amount of the disciplinary penalty:

- non natural persons: 20.000,- to 1,5 million forints,
- defence counsel (legal representative), expert (interpreter, expert body, experts' institute): 20.000,- to 1 million forints,
- anyone else: 5.000,- to 1 million forints.

If the conduct that gave reason for imposing the disciplinary penalty causes a delay of more than 1 month, it is mandatory to impose a disciplinary penalty.

Legal remedies against the imposing of the disciplinary penalty shall have delaying effect.

A disciplinary penalty imposed on a natural person which is not paid, will be changed per 5.000,- forints by the court to 1 day of imprisonment each (with a maximum of 100 days), except for disciplinary penalties due to obviously baseless excluding denunciation.

2.3.2.3. Application of covert instruments during cleaning up

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.

There are usually three conditions for the application of covert instruments:

1. reasonable assumption that it is indispensible and not attainable via other means,
2. application does not result in a disproportionate limitation of basic rights in comparison to the law enforcement aims that are to be secured,
3. application shall presumably result in the acquisition of information (evidence)

connected to crime.

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:
a) those that are not bound to prosecutorial or judicial permission;
b) those that are bound to prosecutorial permission;
c) those that are bound to judicial permission:

Covert instruments not bound to prosecutorial or judicial permission (§ 215.)	**Covert instruments bound to prosecutorial permission (§§ 216-230.)**	**Covert instruments bound to judicial permission (§§ 231-242.)**
• use of covertly cooperating person • covert information gathering, control • applying a trap • replacement of victim or other person • covert surveillance • conveying false or deceptive information	• monitoring payment actions • prospect of evasion of criminal liability • surveillance with permission • false purchase • application of covert investigator • application of a member of a body entitled to apply covert instruments or a covertly cooperating person for false purchase • use of cover documents, cover institution and cover data	• covert surveillance of information system • covert search • covert surveillance of place • covert cognition of consignment • wire-tapping

ad a) The main aim of covert instruments that are not bound to prosecutorial or judicial permission:

- discontinuation of an ongoing crime,
- identification of the perpetrator of the crime and
- proof.

The covertly cooperating person can also be used for covert surveillance and conveying false or deceptive information.

During covert surveillance, the body entitled to apply covert instruments may covertly observe

- persons, houses (other spaces, enclosed areas, public spaces), vehicles, or
- objective of physical evidence

that can be connected to the crime, may collect information on the happenings and may record these with technical devices.

In connection with instruments that are not bound to prosecutorial or judicial permission it is to be mentioned that conveying false or deceptive information

- cannot be applied during questioning of victim or witness and during evidentiary actions,
- may not contain promises that are uncombinable with the law, and
- cannot achieve threats or abetting, cannot guide the person involved towards the committing of a more serious crime than the one the person originally planned to commit.

ad b) Based on the motion of the leader of the body commissioned by the prosecutor's office to apply covert instruments, permission for the application of covert instruments shall be decided on within 72 hours of the motion's arrival at the prosecutor's office (§ 228.). If there would be a danger in delaying, the application of covert instruments can be commenced before the prosecutor's office's decision. In this case, the posterior permission also needs to be requested within 72 hours, for which the prosecutor's office has 120 hours. Otherwise, data acquired with covert instruments cannot be used as evidence.

The main rules for covert instruments with prosecutorial permission are regulated in §§ 216-227.:

- monitoring payment actions: within a specified time-frame, financial services register, keep and forward data in connection with payment procedures for a term of maximum 3 months. In certain cases the execution of payment procedures is discontinued (domestically for maximum 2, abroad for 4 days);
- prospect of evasion of criminal liability: no criminal procedure is initiated against the assumed perpetrator (the criminal procedure in progress is terminated), if he provides information and evidence concerning the cleaning up and evidence of the case/other criminal procedure, and the national security or law enforcement interests that can be attained with the arrangement are more significant than the interest connected to the criminal liability of the defendant (restitution of damages can be imposed under any circumstance);
- surveillance with permission: surveillance of a house or vehicle for a period of maximum 45 days with technical instruments and the registration thereof in case of usury, domestic violence, harassment and other crimes involving threats, with the victim's (in case of a call to commit a crime, the addressee (striving to influence) of the call) written contribution;
- false purchase: acquisition of an object (sample) that can be presumably connected to the crime or the use of a service; it is also false purchase if it serves the aim to strengthen the trust of the seller, to catch the perpetrator or to ensure material evidence;
- application of covert investigator: the entitled body uses a member belonging to the body whose identity is kept covert permanently, and who is employed to specifically cater for this task (prolongable with multiple periods of 6 months), infiltration into criminal organisations or terrorist groups, false purchase, covert surveillance, acquisition of information and evidence connected to crime, etc.; the covert investigator can usually not be punished for crimes, misdemeanours committed during his application (but may not commit crimes against life, crimes that are more serious than the crime originally intended to be exposed, etc);
- application of a member of a body entitled to apply covert instruments or a covertly cooperating person for false purchase: a covertly cooperating person can be applied for false purchase if the aim cannot be reached with the cooperation of a covert investigator

or the member of the body (or only with significant delay);

- use of cover documents, cover institution and cover data: in the interest of cleaning up (proving) a crime, a document is created (used) containing false data, facts or statements, a cover institute is created, and for the protection of these, false data are recorded in the registers.

ad c) During the investigation the covert instruments bound to judicial permit are to be used against based on the data of the criminal procedure suspect or suspectable persons (or against a person who directly or indirectly keeps a criminal contact with such a person, except if he is the defence counsel or the person entitled to secrecy).

The following covert instruments with judicial permission can be applied in the criminal procedure:

- covert surveillance of information system: with the aid of technical instruments placed within a house (other spaces, enclosed areas) and vehicle, furtively cognition (and search) of data managed within an information system, and the registration of the findings;
- covert search: furtively cognition a house (other spaces, enclosed areas), vehicle and objects placed at the person concerned and the registration of the findings;
- covert surveillance of place: happenings within a house (other spaces, enclosed areas) and vehicle, furtively surveyed with technical instruments and the registration of the findings;
- covert cognition of consignment: opening of post (and other closed) consignments, cognition of the content, control and registration;
- wire-tapping: covert cognition and registration of content of communication by way of electronic communications network (instrument) or information system.

Electronic data and technical instruments used during the application of covert instruments bound to judicial permission shall be removed without delay following termination of its application.

Covert instruments bound to judicial permission can be applied

- in case of a crime that is committed intentionally and punishable with 5 years of imprisonment or more;
- exceptionally also in case of crimes punishable with 3 years, e.g. crime committed on a commercial scale or in criminal association, certain sexual and corruption crimes;
- in some cases, there is no culpability limit set by the CPC (e.g. abuse of authority), and can also be ordained during preparation of these.

Based on prosecutorial motion, the investigating judge shall decide on the permission of use of covert instruments bound to judicial permission within 72 hours (here there is also a possibility for posterior permission within 120 hours in case of danger due to delay). The permission is for 90 days (which can be prolonged by 90 days per occasion). The permitted application can be expanded by the court to other instruments or places.

Upon court summon, the body entitled to the application of covert instruments shall present the acquired data within 8 days.

In the following cases, the application of covert instruments must be discontinued:

- no result can be expected from further application,
- the application of the covert instrument is no longer executable within the borders set by the permission,

- it has reached the goal as determined in the permission,
- its term expired,
- the motion for posterior permission was dismissed by the court or prosecutor's office,
- the court has withdrawn the permission or prohibited the use of certain covert instruments,
- the term of the preparatory procedure in which the application of covert instruments was ordained, has expired and no investigation was ordered,
- the procedure was terminated (investigation term expired).

The results of the application of covert instruments bound to judicial permission can be used for proving that crime and that person involved, against whom and because why the application was permitted by the court (dual aim commitment, § 252.), but

- the result of the judicially permitted application of covert instruments against a person can also be used for proving a crime of this person which has not been determined in the permit if the conditions for the application of this instrument also exist regarding this crime;
- for proving a crime for which the court permitted the application of the instrument, the result of the application can be used against all perpetrators,

providing that within 30 days of discontinuation of the application of covert instruments the preparatory procedure or the investigation is decreed (initiated) because of the given crime.

2.3.2.4. Data collecting activities

As referred to in the preparatory procedure, data collecting activities can be carried out during the investigation. Data collecting activities consist of four main types:
a) data request,
b) data request with contribution,
c) data acquisition and
d) other data collecting activities.

ad a) During investigation, data supply can be requested from whichever body or legal person (organisation not having legal personality). In these cases, data, electronic data or documents in relation with the criminal procedure shall be forwarded or information shall be provided. Data from certain bodies can only be requested with the permission of the prosecutor's office (e.g. tax authority, electronic communications and postal services, banks, healthcare institutions). The request shall be complied without any delay (in maximum 30 days).The domestic and foreign criminal records of the suspect shall be acquired during the investigation as well (§ 389.).

ad b) In case of certain determined conditions arising, the prosecutor's office (the investigating authority generally with its permission) can request data supply for a period of 3 months (prolongable with periods of 3 months at a time up until maximum 1 year) from state, local (nationality) governmental bodies, budgetary bodies or public bodies. The request for data request with contribution shall contain the condition in case of which the data provision has to be executed. Consequently, the prosecutor's office can for example request the local government, that if the given person hands in a request for an operating licence, this fact should immediately be reported to him.

ad c) The prosecutor's office and in general the investigating authority may carry out data acquisition to establish or clarify the suspicion of a crime, whether there are any means of evidence and where these can be located. For this, data can be gathered from registers, public data set (from source), clarification, selection of person or object (identification) can be requested (e.g. based on a photograph) and the crime scene can be investigated. Communications registered in notes of the data acquisition can be used as testimony if the concerned defendant or witness upholds this during his questioning.

ad d) During other data collecting activities a warrant of caption of object can be issued for evidentiary instruments (objects under forfeiture or confiscation of property), a warrant for caption of a person can be issued for a witness or suspect whose identification and whereabouts are unknown, or a dead body. Request for the forwarding of data from the register of biometric data, the use of facial recognition activities and the placement of warning signals for covert control the Schengen Information System and the use of a professional consultant also fall under the scope of other data collecting activities.

2.3.2.5. Proof during cleaning up

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.

§ 7. contains the basic provisions of the burden of proof. Concordantly, the proof of the indictment is the obligation of the prosecutor. During the cleaning up the prosecutor's office and the investigating authority are obliged to acquire evidences (in fact, we do not speak of burden of proof but more so of an obligation of proof). In compliance with this

- the defendant (indicted person) cannot be obliged to proof his innocence;
- prohibition of self-incrimination is in effect, i.e. nobody can be obligated to give self-burdening testimony or the provide evidence against himself;
- non-proven facts that exclude all doubt shall be valued in the benefit of the defendant (in dubio pro reo).

Criminal liability is adjudged independently. The authorities are not bound by decisions in other (such as disciplinary) procedures or the statement of the facts thereof.

In the application of the criminal and criminal procedural rules (except for cases in which circumstantial questions are adjudged) the main rules for proof extend to significant facts.

Evidences are divided into two main groups by the CPC:

Means of evidence	**Evidentiary actions**
• witness testimony • defendant testimony • expert opinion • opinion of probation officer • physical evidences (document, record) • electronic data	• inspection • questioning on the scene • reconstruction • presentation for identification • confrontation • control of testimony with instruments

2.3.2.5.1. Witness testimony

A person who could have knowledge of a provable fact can be questioned as a witness (§ 168.). It is mandatory for the witness to appear upon regulatory subpoena and to provide testimony (except if there is an obstacle for giving witness testimony). If the witness does not comply with his obligation to provide witness testimony, he shall be imposed a disciplinary penalty and be obligated to pay the resulting costs (§ 182.), even a criminal procedure can be initiated against him:

- firstly, if it can be proven that he had knowledge of the given fact and failed to give testimony, he commits the crime perjury (§ 272. of the Criminal Code);
- secondly, if only that fact can be determined that he refused to give testimony before court without authorisation, that constitutes a crime too (unlawful refusal to give testimony, § 277. of the Criminal Code).

A commissioned lawyer may proceed in the interest of the witness. Among the witness' rights we emphasise the so-called right to witness fee: upon motion of the witness, costs for the witness to appear shall be determined and restituted.

The process of witness questioning is as follows:

1. First, identification of the witness shall be determined.

2. Following this, obstacles for witnessing shall be clarified, as will circumstances concerning bias (interest) of the witness. It is mandatory for the witness to answer these questions.

Obstacles for witness testimony can be divided into two main groups:

- testimonial prohibitions: if this is the case, the witness cannot give testimony, even if he should like to;
- testimonial exemptions: the witness can decide whether he wishes to give testimony (if he does not wish to, and the right of refusal is present, he cannot be obligated to give testimony).

Obstacles for the witness giving testimony shall be taken into consideration, even when these exist during perpetration and during questioning. In case of breach of the provisions for testimony and the obstacles thereof (as well as the absence of testimonial warnings or the registration of the answer to the warning) the testimony of the questioned witness cannot be considered an mean of evidence, except if the witness maintains his testimony after having been warned.

Testimonial obstacles can be summarised as follows:

Testimonial prohibitions	Testimonial exemptions
• defense councel's secrecy • religious confidentiality • physical or mental state • obligation of confidentiality concerning classified data	• relative of the defendant • prohibition of self-incrimination: the person that would incriminate himself or his relative with committing a crime (in questions related to this) • professional secrecy • public mandate secrecy • provider of media content (in questions aimed at revealing the identity of informants)

The defense councel's secrecy falls under prohibition (i.e. the defence counsel cannot give testimony on knowledge gained as defence counsel, not even at a later stage), while lawyer secrecy is an exemption (so, everything the lawyer knows but did not gain knowledge of as defence counsel can be told but is not mandatory).

In case of obligation of confidentiality, two types of rules prevail: in case of classified information (regarding classified data) the witness cannot give testimony until he is released from under the classification. In case of privacy (professional/public mandate) the witness can decide whether he wishes to give testimony or not (if released from confidentiality, the witness shall give testimony in both classified information as privacy).

In case of self-incrimination we note, that in certain cases exemption does not prevail (i.e. the witness has to give testimony, e.g. cooperation, conditional prosecutorial suspension, arrangement). In these cases, the CPC excludes the possibility of retrial based on the new testimony.

In case of a crime that can be punished with 3 years or more imprisonment, the provider of media content is obligated to reveal the person of the informant, if the assumed evidence cannot be replaced by anything else and the interest in clarification of the crime is significant (supersedes the interest of the protection of the informant).

3. The witness shall be informed on his rights concerning the questioning. The CPC emphasis four warnings: the witness shall be warned

- about the right to refuse testimony (if clarified that it prevails);
- about the obligation to tell the truth;
- about the consequences of bearing false witness and the unauthorised refusal of giving witness testimony before the court;
- about the fact that may he wish to testify, his testimony can be used as evidence (even when he refuses to testify at a later stage).

4. Following this, testimony is given:

- the witness presents his testimony in a coherent way (with permission of the authority, written testimony can be given following, or instead of verbal questioning),
- following this, the witness shall answer questions (are excluded questions that include the answer, questions that contain promises that are incompatible with the law or questions that contain statement of false facts),
- it needs clarification in what manner the witness has gained knowledge of the things he has told, and
- if the witness' testimony deviates from a previously given testimony, the reason for this.

5. Following (respectively continually) testimony the protocol of the testimony is drawn up within the investigative phase, which is signed by the witness.

2.3.2.5.2. The expert opinion

If the establishment or evaluation of a fact to be proven requires special knowledge an expert shall be employed (§ 188.).

The application of an expert usually takes place by assignment. However, if an urgent partial examination is necessary for the preparation of the expert opinion, this examination can also be carried out without assignment but by verbal decree of the authority (this shall be set down in writing within 15 days).

In accordance with § 201. of the CPC and § 4. of the Act XXIX of 2016 on forensic experts, the following persons can proceed as experts:

- forensic expert (natural person),
- economic entity and service provider,
- forensic expert institute and forensic expert establishment,
- forensic expert body,
- state body, institute, establishment and organisation entitled by separate law,
- according to separate law: Performance Certification Expert Board,
- interpreter (in compliance with conditions determined in the law, or other person with due language knowledge).

If it is not a forensic expert that is assigned, the chef of the body shall inform the authorities on the person of the commissioned proceeding expert or the members of the ad hoc commission within 8 days.

The proceeding authority can release the assigned expert from his commission by decree.

The deadline for submitting the expert opinion cannot be more than 2 months (upon request of the expert this term can be prolonged with a further 1 month).

The defendant and the defence counsel can request the assigntment of an expert. The person of the expert can be appointed in the request. If the authority does not assign (that specific) expert the defence can commission the expert (maximum once for the same expert question) to prepare a private expert opinion.

The legal standing of the expert is characterised by duality:

Authoritative rights of the expert (iudex facti)	**Expert's rights concerning witness (expert witness)**
• a part of the conditions for exclusion as mentioned in § 191. complies with the provisions for exclusion of members of the authorities; • during expert examination, the expert can be present at procedural actions and view documents; • the defendant, the victim and the witness are obligated to subject himself to expert examination/intervention, etc.	• provisions concerning obstacles for the witness giving testimony are authoritative for the expert too; • the expert can request restitution of his work fee and his costs, etc.

If the expert opinion cannot be duly accepted due to deficiencies (e.g. unambiguous, contradictory, etc.), this shall be mended in accordance with the following:

- upon request by the authority, the expert shall provide clarification,
- the expert completes the expert opinion,
- another expert is assigned,
- the experts are heard in each other's presence,
- another expert is assigned (if from the point of view of deciding in the case, there still are irresolvable discrepancies in significant expert issues).

The expert be required to pay disciplinary penalty and the resulting costs if:

- he unjustly refuses to cooperate or give opinion (following warning of the consequences of refusal),
- defaults the deadline for submitting the expert opinion, or
- violates other obligations resulting in the delay of the procedure.

2.3.2.5.3. Physical evidence

Physical evidence can be objects (document, record), that prove the to be proven fact (§ 204.), especially

- objects that carry traces of the crime or the perpetrator,
- objects that have come to existence through the crime (producta sceleris),
- objects that were used to commit a crime (instrumenta sceleris),
- objects for which the crime was committed.

We shall emphasise the documents and records from the physical evidences. Documents can be paper-based or electronic and record data via technical, chemical or other procedure (text, drawing, illustration). A record is a document that is to prove facts, data and the taking place of events or the proof of a statement and is suitable for this.

2.3.2.5.4. Electronic data

Electronic data are all information, facts or notions that appear in a form that makes them suitable for processing by an information system (§ 205.).

The programme that ensures the execution of a certain function by the information is also considered electronic data.

2.3.2.5.5. Inspection

The inspection is an evidentiary action typically carried out during cleaning up. It is ordered (and carried out) by the authority if for the determination and cognition of a provable fact it is necessary to

- view a person, object or location, respectively
- survey an object or location (§ 207.).

The following activities are carried out during the inspection:

- physical evidence is tracked down, gathered and kept;
- significant circumstances for evidentiary proceedings are registered (the course,

manner, place and condition of the tracking down and gathering of the object of the inspection).

In order to maintain controllability of the procedural rules the inspection is recorded (video, sound or both). Also, drawings and sketches are enclosed with the protocol.

The inspection is generally identical to the inspection on location, which is mostly an undelayable and not repeatable evidentiary action. In some cases the inspection is held before the authorities or even the court (e.g. survey of inspection object). During inspection an expert can be applied.

2.3.2.5.6. Questioning on the scene

In accordance with § 208. the authority can question the witness on the scene (the defendant generally during the investigation or in a later phase of the procedure). This may be necessary so the witness (defendant) can give testimony on the scene to show

- the place of the crime (or other places connected to the crime),
- physical evidence, respectively
- the course of the act.

Before being questioned on the scene, the witness (defendant) shall be heard on under what circumstances he perceived and recognised the place in question (act, physical evidence).

2.3.2.5.7. Reconstruction

The authority decrees and carries out a reconstruction if it needs determination or control whether the event or phenomenon could have taken place within a determined place, time-frame and circumstances (§ 209.).

If possible, the reconstruction needs to be carried out under the same circumstances as under which the examined event or phenomenon had (could have) taken place.

2.3.2.5.8. Presentation for identification

The authority decrees a presentation for identification, if this is necessary for the identification of a person or an object (§ 210.). The main conditions for presentation for identification are as follows:

- at least 3 persons or objects shall be presented;
- if there is no other possibility, a recording can be shown too (video, sound recording or both);
- the objects, persons presented for identification should look similar;
- in case of multiple persons identifying, they shall do so separately from each other;
- protection of the person identifying can be ensured (e.g. the person that has been identified cannot see the person identifying).

Prior to presentation for identification, the person who can be expected to identify, shall be heard in detail about

- under what circumstances the person (object) in question was perceived,
- what his connection to it is,

- what characteristics he has knowledge of.

2.3.2.5.9. The defendant testimony. Questioning of the suspect

The final substantive procedural action during cleaning up is the questioning of the suspect. The investigating authority or prosecutor's office shall question the suspect if, based on the available data (means of evidence) the defendant can be suspected on reasonable grounds that has committed a crime (§ 385.).

The time of when suspect questioning takes place is based on criminal tactical rules. In case of a too early questioning, there will be insufficient data at the disposal to control the truth content of the testimony. In case of a too late questioning, there will be insufficient time to control new elements provided in the testimony, etc. The CPC contains one concrete rule for the time of questioning of the suspect: in case of custody, the suspect shall be questioned within 24 hours of taking into custody.

If the defendant commissions defence counsel or one is appointed to him, the defence counsel shall immediately be informed on the matter of questioning and they shall wait for the arrival of the defence counsel (at least 2 hours should be provided for this). Questioning can only be commenced if the defence counsel has not arrived within the specified time-frame, or if, following consultation with the defence counsel, the defendant contributes to the commencement of his questioning.

Concerning the questioning of non-Hungarian (with no registered address in Hungary) suspects for crimes in connection with the border barrier, the immigration (asylum seekers) services shall be informed on the first questioning (§ 831.).

The course of questioning of the suspect is the following:
a) verification of his/her identity;
b) suspect (Miranda) warning;
c) pronouncement of the reasonable grounded suspicion;
d) the factual testimony.

ad a) Questioning of the defendant begins with determination and control of identity and contact details (§ 184.). The defendant shall in all cases declare basic personal details (name, birth data, mother's name, nationality, personal identification document number, domicile, notification address, phone number, etc.) respectively the authority shall determine these based on e.g. personal documents of the defendant or from official registers.

ad b) In each procedural phase (investigation, court procedure of first and second instance) before the first questioning the defendant must be warned the following:

The defendant has the right to remain silent (Miranda-warning)	Procedure continues without testimony	Prohibiton of false accusation
1. is not obligated to testify, 2. during questioning testimony can be refused (respond any question) at any given time, 3. can decide at any given time to give testimony, even when refused earlier, 4. when giving testimony, all that is said (makes available), can be used as evidence	refusal to give testimony shall not obstruct the procedure, and does not influence the defendant's right to pose questions, make observations and proposals	1. the defendant shall not accuse falsely others of the perpetration of a criminal offence in the testimony, 2. the integrity of a deceased person cannot be impaired with statement of false facts

The warning and the answer to the warning shall be recorded in the protocol. Otherwise, the testimony of the defendant cannot be used as evidence (except if he maintains earlier testimony following a later warning). In follow-up questionings, the warnings and answers need not be protocolled if the defendant has a defence counsel (§ 185.).

ad c) During questioning and following the warnings, the act that is made the object of the indictment and the qualification according to the Criminal Code shall be conveyed to the suspect (§ 388.). Next, the suspect and the defence counsel are informed that they can complain against the suspicion.

ad d) If, following the Miranda-warning, the defendant decides to give testimony, there are three main stages of the questioning:

1. first, the defendant shall be asked about further personal details (occupation, place of work, education, family conditions, state of health, income and financial status, military rank, etc.);
2. then the defendant can give his testimony in a coherent manner;
3. finally, questions can be asked of the defendant (the questions shall not contain any implications or promises that are incompatible with the law, etc.).

The warnings show, that the defendant is not obligated to answer questions concerning his personal details or the posed questions (or a part of those).

In the criminal procedure the testimony of the defendant can be evaluated in a certain case, but also the testimony given in another case as a witness or even as the defendant, providing that the adequate warnings and answers to these warnings were recorded in a protocol.

In case the prosecutor's office wishes to arraign the defendant, this fact shall be conveyed to the suspect by the investigating authority or the prosecutor's office following questioning and a defence counsel shall be appointed without delay in case the suspect does not wish to commission a defence counsel (§ 726.).

2.3.2.6. Investigation in the absence of the defendant

The fact that the defendant or the person that can be suspected beyond a reasonable doubt of having committed a crime (hereinafter referred to as: the defendant) becomes unattainable does not form an obstacle for the execution of the criminal procedure (§ 747.). Concordantly, the suspicion is no condition for the procedure in absence.

There are three conditions for the procedure in absence of the defendant:

During the procedure, the defendant escaped or hid or it can be reasonably assumed that he made himself unattainable in any other way to avoid the criminal procedure.	Measures taken to search the defendant have not led to results within a reasonable time: • evidence is recorded/data is gathered/covert instruments were applied • the authorities have issued apprehension or a warrant of arrest • apprehension or warrant of arrest has not led to result within 15 days	The objective weight of the crime or the adjudication of the case requires this.

If the conditions are in place for the procedure, the prosecutor's office shall qualify the person that is suspected beyond reasonable doubt of having committed the crime or the suspect as an absent defendant. This decision (and incidental suspension or termination decision, and information on the indictment) shall be delivered to the defendant. All other decisions shall be delivered to the defence counsel (the participation of defence counsel in cases with absent defendant is mandatory).

2.3.2.7. Sending of the investigative files

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.

2.3.3. 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 general, all procedural actions can be carried out during examining as during cleaning up. At the same time, there are certain coercive measures and evidences that are principally or exclusively characteristic to the examining. Following the general provisions, we shall deal with these and shall also touch upon temporary or definitive obstacles for investigation and the legal remedies that are at the disposal during investigation.

2.3.3.1. General provisions of examining

Following the questioning of the suspect, the prosecutor's office examines the files of the investigation and shall decree upon the continuation of the case as follows:

- there can be place for severance, consolidation or transfer (non-substantive decision);
- procedural actions need to be carried out within the framework of the examining;
- there can be a possibility for a „diversion"; the procedure is not continued in the traditional way (envisage prosecutorial measure or decision, initiation of arrangement, suspension of the procedure in the benefit of a mediation procedure, conditional prosecutorial suspension);
- the procedure has to be terminated;
- indictment has to take place.

The term of the investigation is 2 years from the questioning of the suspect (§ 351.), which can be prolonged by the prosecutor's office (in a decision that cannot be contested with legal remedies) with a maximum of 6 months. The defence shall have the possibility to view the files during investigation in order to be able to influence the course of the procedure. The CPC decrees that the possibility to view the files shall be ensured at least 1 month before the closure of investigation (the defence can give up this right). In procedures for crime in connection with the border barrier, the disposable term can be shortened or omitted (§ 828.).

If the court or prosecutor that takes over representation of the indictment orders investigation in private prosecution cases, then the court (prosecutor's office) shall determine the term in a maximum of 2 months (which can be prolonged twice with 2 months).

During investigation, the CPC governs the right to be present at procedural actions in a broader sense. Because reasonable suspicion has been conveyed and the suspect has been questioned, the presence rights of the defence become activated:

- the suspect and his defence counsel can be present at the hearing of experts, the inspection, reconstruction and presentation for recognition;
- the defence counsel can be present at the questioning of a witness that was motioned by him (through the suspect defended by him) and during evidentiary action with participation of such a witness.

Even in these cases, the defence does not need to be informed if urgency or other important interests (such as e.g. the protection of the witness) warrants this. However, the defence shall be informed on the procedural action within 8 days.

The CPC makes electronic contact widely available (mandatory). This concerns primarily the defence counsel and that is the reason for its significance in the course of the examining.

The Law on E-administration (Axt CCXXII of 2015) § 17. Subsession 1 regularizes the conformity of declarations of electronic administration. There are two conditions:

- electronic identification of the declarant is done adequately (with electronic identification service, adequate electronic identification instruments (eIDAS) or by electronic identification service that is pronounced suitable by the body ensuring electronic administration) and
- it is ensured that the delivered electronic document complies with the document approved by the declarant.

Electronic contact can have the following forms:

Facultative electronic contact (§ 149.)	• a non obligated participant or his/her representative that is not qualified as a legal representative undertake it • suitability of electronic declarations • contact must with authority via electronic way and vica versa • if the authorities deliver in paper, they will inform the addressee on the electronic possibility • motion presented without declaration: the authority shall warn the person electronically that contact shall be kept electronically in the future
Mandatory electronic contact (§ 150.)	• mandatory participants shall present all petitions electronically to the authority and the authority shall deliver electronically too • the person whose right to electronic contact is suspended is exempt from electronic administration
Electronic contact with the expert (§ 151.)	• usually concerns the expert whose electronic contact is mandatory • the expert that is not obligated can choose for electronic contact: o by registering in the forensic expert database o experts not in this database: registering with the authorities • the expert with mandatory electronic contact (and the one that chooses for this) can present his expert opinion (and other files) electronically to the authority/the authority shall send all files electronically to the expert • the expert that proceeds paper-based can be summoned to submit the expert opinion on a data carrier if this needs to be delivered electronically
Electronic contact among the authorities and between other bodies (§ 152.)	• the authorities are in electronic contact with each other/bodies ensuring electronic administration by law/bodies appointed by the government that perform public tasks

In case of electronic contact by the commissioned defence counsel and legal representative, the electronic or digitalised commission shall be enclosed to the first submitted motion (except if his commission is recorded in the disposal register). The authority can summon the above-mentioned to submit the original commission (in order to determine uniformity). The represented participant that has no mandatory electronic administration can submit a paper-based commission withdrawal (and declares whether there will further be a defence counsel or legal representative; if yes, the commission shall be enclosed too).

In case of paper-based documents and electronic contact exists, the participant himself shall ensure of digitalisation and of safe-guarding of the paper-based documents. If this does not take place, the authority shall digitalise this within 10 working days. However, if a paper-based document needs to be presented, it does not need to be submitted electronically.

In connection with electronic contact, the forwarding of documents at the disposal in electronic form to the e-mail address shall be mentioned. The participant can motion for this, if the document is available at the authority. In this case, the document shall be forwarded in electronic form, electronic document or electronic copy of a paper-based document (§ 159.).

2.3.3.2. Specific rules for the application of coercive measures during examining

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 cleaining up can also be ordained during the examining phase.

2.3.3.2.1. Warrant of arrest and accompany

The most severe coercive measures are in many cases applied following the decree of a warrant of arrest. Any authority is entitled to do so, but only in cases of crimes punishable with imprisonment, and only in the interest of the ordainment of the custody of the defendant (the person suspected beyond reasonable doubt of having committed the crime) if (§ 119.)

- in the interest of ensuring the aims of coercive measures bound to judicial permission and touching upon personal freedom, apprehension and custody is motivated (known or unknown place of residence) or
- the person held detained abroad is handed over to Hungary (extradition) is based on an motivated and grounded European (international) warrant of arrest.

An apprehended person shall be held in custody and shall be brought before the investigating authority/prosecutor's office within 24 hours, and before the court within 72 hours.

If the defendant shows up voluntarily, the warrant of arrest shall be recalled and custody shall only be ordered if it is deemed necessary in the interest of ensuring the aims of coercive measures bound to judicial permission and touching upon personal freedom.

Another coercive measure (touching upon personal freedom) that can be ordained against the defendant is accompany. Its aim is to ensure presence of the defendant at the procedural actions (§ 117.). Accompany can be ordered by the the prosecutor's office and the investigating authority, when the conditions for subpoena of the defendant are present, but ensuring presence by way of subpoena is not practical for the interests of the procedure. Accompany is usually initiated by the police (the superior if the defendant is a soldier). The costs for the warrant of arrest is considered criminal cost, accompany is not (accompany's cost paid by the state).

2.3.3.2.2. Common rules for coercive measures bound to judicial permission and touching upon personal freedom

Coercive measures bound to judicial permission and touching upon personal freedom can only be ordained following the pronouncement of reasonably 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 (§ 276 Subsession 1 point a)	**In case of (danger of) collusion** (§ 276 Subsession 1 point b)	**To prevention reoffending** (§ 276 Subsession 1 point c)
Restraining order		X	X (referring to the victim)
Criminal supervision	X	X	X
Bail	X		
Detention	X	X	X
Preliminary involuntary treatment in a mental institution			X (if involuntary treatment in a mental institution is to be expected)

Under collusion we usually mean the encumberment or the abortion of proof, which can manifestate itself in the threatening of a person, the destruction (falsifying, hiding) of an object and other conducts that endanger proof. Under danger of collusion we mean that the defendant has not executed this conduct, but based on the evidence (data) it can be assumed that he will.

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). 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.

The term of coercive measures bound to judicial permission and touching upon personal freedom is governed by the CPC per procedural stage and in concrete periods of time.

In the examining stage the regulation per procedural stage is simpler: the gravest coercive measures ordained/maintained before the indictment shall take until the decision taken during the pre-trial of the court of first instance (except: coercive measures bound to judicial permission and touching upon personal freedom ordained before arraignment. This lasts until the end of the trial on the day of arraignment (§ 725. Subsession 2).

Concerning the concrete periods of time, there is great deviation between certain coercive measures during examining:

- restraining order and criminal supervision can only be ordained for 4 months, the investigating judge can prolong this with a maximum of 4 months per occasion;
- detention can last for a maximum of 1 month, the court can prolong this to 1 year measured from the ordainment of the detention with periods of a maximum of 3 months per occasion, following this, the court can prolong this with periods with a maximum of 2 months; the CPC also determines a final period of time (except if the final decision of first instance has already been taken or if the committed crime can be punished with life-long imprisonment), and this final period complies with the threat of imprisonment of the committed crime: if the threat of imprisonment is a maximum of
    - 3 years: the final period of detention is 1 year;

- 5 years: the final period of detention is 2 years;
- 10 years: the final period of detention is 4 years;
- more than 10 years: the final period of detention is 4 years;
- in case of juveniles of under 14 years at the moment of committing a crime a maximum of 1 year, otherwise in case of juvenile offenders the maximum can be 2 years (except if this is incidentally 1 year);

- preliminary involuntary treatment in a mental institution can be ordered for a maximum period of 6 months, which can be prolonged by the investigating judge with a maximum of another 6 months.

In certain cases coercive measures bound to judicial permission and touching upon personal freedom will expire without decision, in some cases these will have to (can) specifically be terminated (§ 279.):

Expiry	**Termination**	
	Mandatory	***Possible***
• the term expired • the term of the investigation expired (no indictment) • the procedure was terminated • the procedure was suspended • the procedure was finished with final decree	• reason for ordering ceased • other coercive measures were ordained • the defendant was detentioned in another case/preliminary involuntary treatment in a mental institution was ordered	• the defendant is imprisoned, detentioned or in a youth custody centre • restraining order, criminal supervision: if ordered in another case and sufficient for reaching the aims

During examining the court and (except restraining order ordered based on motion by victim) the prosecutor's office are entitled to terminate.

In case of restraining order and criminal supervision, when significant changes in circumstances occur, the rules of conduct may be altered (temporary partial dissolution, or, in case of persisting cases, alteration, § 292.).

2.3.3.2.3. Restraining order

Restraining order limits the right of the defendant to freely keep contact, free movement and the free choice of his domicile (place of residence) (§ 280.).

In the decision ordaining restraining order the following rules of conduct can be ordered to prevent contact with a specific person:

- leaving a specific residence (staying away from there);
- restraining order of the person from the concerned person's actual residence (workplace, other regularly visited places such as educational and health care institutions, etc.).

2.3.3.2.4. Criminal supervision

Criminal supervision limits the right of free movement of the defendant and the free choice of domicile (residence) (§ 281.).

During criminal supervision can be ordered that the defendant

- the determined place (flat, institution) shall only be left with permission and because of reasons determined in the order;
- not to visit certain determined public places;
- to present himself at the police station at determined times and manner;
- to comply with other rules of conduct.

If the defendant violates the rules of conduct of the restraining order or criminal supervision he

- can be ordered disciplinary penalty,
- can be taken into custody in repeated or serious cases, and
    - the application of a technical tool for tracking movement can be ordered,
    - more disadvantageous or other rules of conduct can be determined,
    - graver coercive measures can be ordered.

2.3.3.2.5. Technical tool for tracking the defendant's movement

The court may ordain that the police applies a technical tool for tracking the defendant's movement in the interest of compliance with the restraining order's (criminal supervision's) rules of conduct (§ 283.). Mandatory application shall be ordained if the criminal supervision is ordered because the maximum time limit of detention has elapsed.

2.3.3.2.6. Bail

Bail is an amount of money determined by the court with the aim to support compliance with the rules of conduct of the restraining order (criminal surveillance) ordered by the court and the presence of the defendant at procedural actions (§ 284.).

In case of ordering bail, lighter coercive measure(s) may be ordered concurrently. Accordingly, the severity order of coercive measures is: detention, criminal supervision, restraining order (or in case of criminal supervision the particular rules of conduct may also be mitigated).

The object of bail may be a minimum of 500 thousand HUF which may be deposited by the defendant or his defence counsel within 3 months of becoming final of the decision on the bail. The amount is determined by the court with regard to

- the objective severity of the crime,
- the individual circumstances of the defendant and
- the financial situation of the defendant.

Bail shall be forfeited if the detention of the defendant is ordered due to violation of the rules of conduct (or it is not ordered only due to the inaccessibility of the defendant). Otherwise, bail shall be reimbursed following the termination of the procedure or the termination of the necessity of the coercive measure.

2.3.3.2.7. Detention

Detention means the deprival of personal freedom of the defendant by the court prior to the sententially decision (§ 296.). Detention is ordered in CPC only after the other coercive measures requiring judicial decision because detention may only be ordered if the set goals

cannot be achieved by means of other coercive measures.

Juveniles may only be detentioned if it is required due to the special objective severity of the crime (§ 688.), i.e. the scope of the general conditions is extended. In case of a soldier the reasons for detention shall be supplemented: the detention of a soldier during his military service may also be ordered if a procedure is conducted versus him by reason of military crime or another crime committed at the place of service (in the context of service) to be punished by imprisonment and the defendant may not be left at liberty due to a cause related to service or discipline (§ 705.).

The detention shall generally be enforced in a penal institution, however, upon the provisions of the prosecutor's office the detention may be implemented in police detention-room for at most 60 days if carrying out the investigative actions justifies this. In case of juveniles, the court shall make a decision on the place of the enforcement of the detention upon the motion of the prosecution, with regard to the personality of the juvenile and the nature of the crime imputed to him but he may be detained temporarily if he is over 14 years of age and only upon the ruling of the court (§ 688.). During procedures for crime in connection with the border barrier the detention may be enforced in facilities for the accommodation, catering and detention of persons subject to the act on asylum even devoid of the separation of relatives and the place of enforcement may also be the police detention-room without limitations (§ 830.).

2.3.3.2.8. The monitoring of mental state and preliminary coercive treatment in a mental institution

Albeit the monitoring of the mental state is circumscribed among the evidences by the CPC, it is substantially a coercive measure (at least the examination under coercion of the conditions of preliminary coercive treatment in a mental institution). The investigating judge shall order the monitoring of mental state upon the motion of the prosecution if, according to the opinion of the expert, a longer observation of the mental state of the defendant by an expert is required (§ 195.). In such cases the detained defendant shall be referred to a forensic psychiatric and mental institution; the defendant at liberty shall be hospitalised in an in-patient psychiatric ward as defined by law. The observation may last for 1 month (the court may prolong it by 1 month).

In general, based on data obtained during the monitoring of mental state, preliminary coercive treatment in a mental institution of the defendant may ensue, which means the judicial deprival of personal freedom of the insanity defendant prior to making the sententially final decision (§ 301.). Accordingly, the conditions of the coercive measure conform to the conditions of involuntary treatment in a mental institution:

- insanity,
- violent crime against persons or crime causing public danger,
- required to prevent crime,
- in case of punishability punishment exceeding 1 year imprisonment should be passed.

The rules of detention shall duly apply to preliminary coercive treatment in a mental institution with the clause that the spouse or domestic partner of the defendant is entitled to appeal against the decisions and they are also entitled to motion for termination.

The institution implementing the preliminary coercive treatment in a mental institution is the National Forensic Psychiatric and Mental Institution (IMEI) which shall inform the prosecution during the investigation without delay if the termination of preliminary coercive treatment in a mental institution is justified.

2.3.3.2.9. Preventive patronage

Preventive patronage is a specific coercive measure applied against juvenils not pertaining to the parental right of custody. Pursuant to § 68/D. of Act XXXI. of 1997 the guardianship authority shall contact the probation supervision service in order to obtain a study of living conditions and risk analysis of threats to the child from the viewpoint of crime prevention following the indication of the investigating authority in the procedure designed to provide protection conducted due to crime or alongside the already subsisting provision of protection.

Based on the risk analysis the guardianship authority may take the following measures:

- in case of a high degree of threat from the viewpoint of crime prevention preventive patronage shall be ordered. The juvenile and his legal representative shall be obligated to cooperate with the preventive probation officer, to meet him in person at regular occasions determined by the preventive probation officer and observe the defined rules of conduct;
- in case of a medium degree of threat the measures above may be ordered (though not mandatory) at the request of the legal representative or upon the recommendation of the children's welfare centre;
- in case of a low degree of threat the measures above shall not be taken.

If the preventive patronage is neglected the guardianship authority shall review its decision within 6 months ex officio, and if it discerns that the risk of repetition of crime has changed unfavourably, it may contact the probation supervision service in order to carry out a repeated risk analysis again.

In case of preventive patronage the following may be determined:

- who the juvenile may keep in contact with,
- where and with what activities the juvenile may spend his free time and
- from the viewpoint of the usual conduct of the juvenile what changes are justified and what assignments shall be set to effectuate them.

The guardianship authority shall review the justification of the uphold of preventive patronage (at request at any time or at least annually ex officio).

2.3.3.3. Evidence during the examining

The general statement at the beginning of the chapter 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, 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). 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.

2.3.3.3.1. Opinion of the probation officer

Exclusively the court and the prosecutor's office may order the obtainment of the opinion of the probation officer (§ 202.). As the opinion of the probation officer concerns the defendant it may be obtained only in the examining stage. It may have three goals:

- imposition of punishment or application of measure,
- application of conditional prosecutorial suspension or
- remittance to mediation procedure.

The opinion of the probation officer is prepared by the probation officer and in order to do so he may obtain the files of the case and may request the authority, the involved parties and the witnesses to provide information.

The opinion of the probation officer shall include the facts and circumstances specific to the personality and living conditions of the defendant:

- family circumstances,
- state of health, incidental harmful habits,
- housing conditions,
- education, profession,
- workplace, in lieu of a workplace employment data,
- incomes and financial circumstances,
- furthermore, the opinion of the probation officer shall present the relationship of the revealed facts and circumstances to the perpetration of the crime, the risks of repeated delinquency and the needs of the defendant.

In the opinion the probation officer shall
a) provide information about the employment opportunities appropriate for the skills of the defendant, the possibilities of provision in healthcare and social institutions,
b) recommend the order of a unique rules of conduct or obligation vis-a-vis the defendant and the application of interventions mitigating the effect of the risks of repeated delinquency,
c) expound (if the court or the prosecutor's office requests so)

- whether the defendant will undertake and will be able to comply with the expected rules of conduct or obligations,
- whether the victim will consent to the reparation to be provided for him.

2.3.3.3.2. Confrontation

The authority shall clarify the contradiction between the particular testimonies by confrontation if required (§ 211.). A contradiction may exist between

1. the testimonies of the defendants;
2. the testimonies of the defendant and the witness or
3. the testimonies of witnesses

(in the third case confrontation may ensue in the cleaning up stage as well, though it is not typical).

During confrontation the confronted persons shall first present their testimonies verbally to each other. Subsequently, they may address questions to each other.

If regard for refraining from treating harshly the concerned person or protection of the victim or the defendant necessitates it, confrontation shall be omitted.

2.3.3.3.3. Control of testimony with instruments

The prosecution or the investigating authority may control the testimonies of the witness or the suspect instrumentally (polygraph) during the investigation (§ 212.). The application of the control necessitates the consent of the witness (suspect).

A consultant shall be involved in the control of testimony with instruments, who may later be heard as witness on his proceedings and statements.

Only the witness may be instrumentally tested for testimony in the cleaning up stage.

2.3.3.3.4. Specific rules of proof in the criminal procedure against juvenile offenders

The CPC contains several specific means of evidence related to juveniles. They are mainly related to the defendant, therefore, it is reasonable to review them within the scope of examining (instead of cleaning up).

Proof in the criminal procedure against juvenile offenders encompasses the examination of the circumstances relevant to familiarisation with the specific needs and the surroundings of the juvenile (individual evaluation of the juvenile) as well (§ 683.). The major means of the individual evaluation are as follows:

a) study of living conditions,
b) the opinion of the probation officer (summative opinion of the probation officer),
c) the expert opinion,
d) testimony of the probation officer,
e) testimony of the legal representative of the juvenile (testimony of another person providing for the juvenile).

The legal representative of the juvenile (another person providing for the juvenile) is obligated to cooperate during the individual evaluation of the juvenile. Prior to the adoption of the final decision the individual evaluation of the juvenile shall be carried out again if data of significant changes of the circumstances arise or, if the individual evaluation of the juvenile was based on means of evidence obtained more than 2 years before.

ad a) The probation officer shall make the study of living conditions, which shall include the major substantial elements (requisites defined by law, see §§ 13-16/B. of Decree 8/2013. (VI. 29.) KIM) as below:

- Part I: data concerning the order and the juvenile;
- Part II: data concerning the drafting;
- Part III: professional statement of facts and risk assessment of the examined factors related to the juvenile;
- Part IV: experiences of preventive patronage in progress and the former (previous) preventive patronage, past record of the juvenile;
- Part V: the motivation for change of the juvenile and his intention related to reparation or mediation;
- Part VI: the degree of threat to the juvenile from the viewpoint of crime prevention (high, medium or low) and the justification of the risk ranking and the recommendation of according measures.

The study of living conditions shall contain data from the examination of the circumstances relevant to the familiarisation with the specific needs and the surroundings of the juvenile as well.

The probation officer shall make the study of living conditions based on the following: he

- is obligated and entitled to familiarise himself with the required data;
- may hold hearings (the juvenile, the legal representative of the juvenile or another person providing for the juvenile);
- shall obtain pedagogical opinion;
- shall reveal the antecedents of child welfare;
- may familiarise himself with the files of the case;
- may request the involved parties and the authorities to provide information;
- may have recourse to the assistance of the police established to attend to general policing tasks.

In procedures for crime in connection with the border barrier drafting the study of living conditions concerning a non-native Hungarian juvenile with no residence in Hungary shall not be required (§ 834.). Nevertheless, if the study of living conditions is required, it does not need to include risk assessment.

ad b) Pursuant to §§ 7-10. of Decree 8/2013. (VI. 29.) KIM the opinion of the probation officer consists of four major parts:

- Part I: data concerning the case and the defendant;
- Part II: the procedure and method of examination;
- Part III: professional statements of facts specific to the personality, conduct, life conditions and way of life of the defendant;
- Part IV: responses and recommendations to the questions of the authority ordering opinion of the probation.

If preventive patronage was ordered against the juvenile in the scope of his protection, then prior to the indictment the public prosecutor (after the indictment the court) shall order the obtainment of the summative opinion of the probation officer (§ 685.), which shall include the summative statements related to the result of the enforcement of preventive patronage ordered against the juvenile by the guardianship authority too. In the summative opinion of the probation officer, the probation officer shall

- make a recommendation to order individual rules of conduct or obligations against the defendant;
- expound whether the defendant will undertake and will be able to comply with the envisaged rules of conduct or obligation,
- provide information whether the victim will consent to the reparation to be provided for him.

ad c) In case of juveniles the general provisions related to the expert's opinion shall be supplemented by the examination of accountability for his own actions:

- subsequently to the communication of the substantiated suspicion an expert shall be appointed without delay in order to examine the accountability of the juvenile (aged between 12-14 upon the commission of the crime) necessary to recognise the consequences of the crime; the experts shall make a joint expert's opinion (§ 686.);

- the authority may order the expert's examination of the maturity or mental development of the juvenile over the age of 14 at the time of the commission of the crime (§ 683.).

ad d) The probation officer carrying out the preventive patronage of the juvenile may be questioned as witness (§ 685.). If the summative opinion of the probation officer was made by the probation officer of the preventive patronage, he shall not be questioned as witness but shall be heard as expert pursuant § 196 Subsession 2.

ad e) The testimony of the legal representative of the juvenile (the person providing for the juvenile) may be of outstanding significance since the data required for the individual evaluation may be revealed on these grounds.

2.3.3.4. Suspension of the procedure

The procedure shall be suspended in case of a temporary obstacle, i.e. when the data of the procedure suggest that the obstacle is likely to cease sooner or later and the procedure may be continued.

The suspension of the procedure generally first ensues in the examining stage. However, certain causes of suspension can be conceptually construed only in the cleaning up stage (since, for example, the perpetrator could not be identified during the investigation, the presumed defendant could not be interrogated, therefore, the case could not enter the examining stage).

The reasons for suspension may be either mandatory or possible, in certain cases only the prosecutor is entitled to effect the suspension, for other reasons the investigating authority can too. Accordingly, the reasons for suspension are included in the table below (§ 394. and §§ 719-720.):

	Only the prosecutor may suspend the procedure	The investigating authority may also suspend the procedure
Mandatory reason for suspension	• in order to conduct the mediation procedure (if its conditions are in effect) • upon filing motion for suspension of the (international) right of immunity	• the perpetrator could not be identified during the investigation • protracting, severe illness of defendant or mental illness befalling subsequently to the crime
Possible reason for suspension	• in order to implement an agreement concluded in the mediation procedure • conditional prosecutorial suspension is in effect • EU consultation procedure commences • transfer (extradition) was postponed on the basis of international (European) arrest warrant • the international criminal court contacted the Hungarian authorities in order to transfer a criminal procedure • recognition of verdict made abroad (cross-compliance of member states) was initiated and the procedure cannot be continued without it	• the perpetrator resides at an unknown location or abroad • request of legal assistance is required • decision made on interlocutory matter needs to be obtained • judicial procedure is in progress against the suspect due to crime

The procedure may be suspended via mediation procedure and conditional prosecutorial suspension only once. Following the suspension of the procedure, procedural action directly concerning the defendant may not be carried out, except if the suspect resides at an unknown location or abroad.

In certain cases the CPC also determines the maximum length of the suspension of the procedure (e.g., if the suspect resides abroad the procedure may be suspended for a maximum of 6 months and this may be extended with a maximum of 2 months).

The prosecutor's office and (if the procedure is not suspended by the prosecutor) the investigating authority shall order the continuation of the procedure if

- the cause of suspension ceased,
- the law related to the international criminal court prescribes the continuation of the procedure,
- they deem the continuation of the suspended procedure necessary (in relation to reasons for suspension deemed possible by the investigating authority, the consultation procedure, international or European arrest warrant).

The length of the suspension is not included in the term of the investigation (§ 397.).

2.3.3.5. Termination of the procedure

The procedure shall be suspended due to temporary obstacles. In case of permanent obstacles the procedure shall be terminated. Upon the suspension of the procedure if the obstacle disappears, the procedure shall be continued. If the procedure is terminated, as a main rule, the procedure may only be continued in exceptional cases.

In certain cases the investigating authority is also entitled to terminate the procedure in the investigation stage but there are reasons upon which only the prosecutor's office may establish grounds for the decision of termination:

The prosecutor's office as well as the investigating authority may terminate the procedure (§ 398. Subsession 1)	**Only the prosecution may terminate the procedure (§ 398. Subsession 2, § 719. Subesssion 4)**
• the action is not a crime • the crime was not committed by the suspect • the commission of the crime cannot be established • ground for exemption from punishability of the perpetrator/of the act • some grounds of the reason for ceasing the punishability (death, statute of limitation or clemency) • the act has been adjudicated finally (res iudicata) • lack of denunciation/provision by Supreme Prosecutor • lack of private motion (incorrectable) • the crime is not subject to the public prosecutor • the case is not subject to Hungarian penal jurisdiction	• the fact that the crime was committed by the suspect cannot be established • owing to the transfer of the criminal procedure/consultation procedure the criminal procedure will be conducted by the authority of another state • other grounds of the reason for ceasing the punishability (e.g., active repentance, conditional prosecutorial suspension) • termination with warning • less significant crime • versus a cooperative person • motion rejected by the party entitled to suspend the right of immunity

If the defendant objects to the application of reprimand in his complaint submitted against the decision terminating the procedure, and no other reason for the termination of the procedure is in effect, the procedure shall be continued. Furthermore, by reference to less significant crime the procedure may be terminated if the given crime does not have significance from the viewpoint of impeachment alongside the preponderance of a significant crime.

The prosecutor's office may terminate the procedure against the cooperative person if he, by contributing to the detection and evidence of the case (or other criminal case) is cooperative to an extent that the interest of national security or prosecution related to cooperation is more significant than the interest related to the establishment of criminal liability. The procedure may not be terminated if the cooperative person can be suspected beyond reasonable doubt to have committed a crime of premeditated murder of another person (permanent disability or serious health impairment).

Following the termination of the procedure, the continuation of the procedure may be ordered by the prosecutor's office (in case of the termination of cleaning up the investigating

authority too) if a complaint was submitted to terminate the procedure (in case of termination ex officio within 1 month). If no complaint to the decision on termination was submitted, only the investigating judge may order the continuation of the procedure (at the motion of the prosecutor's office). If the investigating judge rejected the motion, the continuation of the procedure may not be motioned for on the same grounds.

The decision terminating the procedure and the decision ordering the continuation of the procedure shall generally be served to the suspect, the defence counsel, the victim, the denouncer and the person filing the private motion (§ 401.).

2.3.4. Specific rules of the investigation in military criminal procedure

The investigation in military criminal procedure shall be controlled and supervised by the commanding officer; the investigating officer shall proceed upon the instructions of the commanding officer (§ 707.). The rights of the (head of the) investigating authority shall be exercised by the power of the commanding officer, including not only the rights of decision on the merits (rejection of the denunciation, suspension or termination of procedure, decision on exclusions, etc.) but also the decision on coercive measures not requiring court decision.

A specific method of diversion is the adjudication of the crime in a disciplinary procedure (§§ 710-711.). In such cases the prosecution rejects the denunciation or terminates the procedure and serves the files to the disciplinary power if by reason of the military misdemeanour the aim of the punishment can be achieved by disciplinary punishment. A complaint may be submitted against the instruction to conduct a disciplinary procedure. In such cases an investigation is ordered (the procedure is continued) if there is no other reason for the rejection of the denunciation (termination of the procedure).

If the prosecution remitted the adjudication of the crime to a disciplinary procedure, the disciplinary power may impose specific disciplinary punishment in the relevant procedure stipulated under the provisions of the law regulating military service, and this decision shall be served to the prosecution too.

The chastised person or his defence counsel may motion for the judicial review of the decision or command imposing disciplinary punishment within 3 days following its communication. The motion shall be filed to the disciplinary power passing the punishment, which shall serve the motion along with the files to the military council of the territorially competent tribunal court within 1 day.

2.3.5. Procedure for deprival of property

The conditions of the procedure directed at the deprival of property or object related to a crime or at rendering data inaccessible (procedure for deprival of property) are as follows (§ 819.):

Conditions of procedure for deprival of property prior to legal power	**Conditions of procedure for deprival of property posterior to legal power**
Forfeiture, confiscation of property, irreversibly rendering electronic information inaccessible or nationalisation of seized object (financial liability) are required and • investigation is not commenced (with the exception: the action is not a crime) • the criminal procedure is terminated (with the exception: the action is not a crime) • the criminal procedure was suspended for certain reasons: o the defendant resides at an unknown location or abroad o protracting, severe illness of defendant or mental illness befalling subsequently to the crime o the perpetrator could not be identified during the investigation	If simplified review procedure is not admissible and • in the interest of the retrieval of property from the commission of a crime (for 5 years subsequently to taking legal power) • Posterior order of forfeiture, confiscation of property, irreversibly rendering electronic information is required

The prosecutor's office or the investigating authority (posterior to legal power only the prosecutor's office) shall order the search for property, object or data related to the crime or the clarification of the right of proprietorship of the seized object (search for property) in the cases as such:

a) Prior to legal power:
- if the investigation has not commenced or
- based on the data of the procedure no point of view can be assumed concerning the subject-matter of financial liability.

b) Posterior to legal power: if it can be presumed that the aim of the procedure directed at the deprival of property can be achieved and
- in the interest of the retrieval of property if in case of the confiscation of property ordered sententially in an express amount of money, the enforcement of the confiscation of property was not effective, or, if the property of the defendant subject to confiscation of property prior to the sententially decision could not be secured,
- the posterior application of forfeiture, confiscation of property, irreversibly rendering electronic information may be admissible.

The search for property shall be conducted by the investigating authority or the prosecutor's office prior to the legal power and posterior to legal power by the body of property retrieval of the investigating authority. During the search for property
- data gathering activity,
- gathering of means of evidence, carrying out evidentiary action,
- coercive measure not concerning personal freedom,
- the application of covert instruments in the interest of retrieval of property proceeding from the commission of a crime

may be ordered.

If the financially interested party is unknown, resides at an unknown location or does not speak Hungarian, a proctor shall be appointed to him. The search for property may last for at most 2 years following its order.

2.3.6. Investigation for retrial

A few specific provisions (§ 641.) pertain to the investigation ordered during retrial:

- during the investigation for retrial detention, preliminary involuntary treatment in a mental institution and criminal supervision may not be ordered;
- covert instruments may also be applied during the investigation for retrial; however, if covert instrument bound to judicial permission against the concerned person was used during the base case, the periods of time of the application of covert instruments shall be added up.

Otherwise the rules of investigation for retrial are dependent on whether it is ordered by the prosecutor's office or the court:

a) If the investigation for retrial is ordered by the prosecutor's office, the general provisions pertaining to investigation shall appropriately apply.

b) If the investigation for retrial is ordered by the court, the rules of investigation shall be applied with the following departures:

- the court shall serve the ruling ordering the investigation and the files to the general investigating authority,
- the court shall exercise the power of control during the investigation for retrial,
- the deadline of the investigation for retrial shall be 2 months, which may be extended on two occasions by the court by at most 2 months per occasion,
- the court may not instruct the general investigating authority to apply covert instrument bound to judicial permission,
- the general investigating authority shall return the files to the court following the investigation for retrial.

2.3.7. Legal remedy during investigation

During the investigation the following instances of legal remedy obtain:
a) complaint,
b) proposal for over-review,
c) appeal against the decision of the investigating judge,
d) presentation of the head of the investigating authority,
e) motion for release,
f) application for justification,
g) objection.

ad a) The following persons may present a complaint against the decision of the prosecutor's office (investigating authority) at the authority making the decision within 8 days following its communication (§ 369.):

Comprehensive	Partially
• suspect • defence counsel • victim	• denouncer (against the rejection of the denunciation) • financially or other interested parties (concerning the provision of the decision directly related to him)

The prosecutor's office (investigating authority) (investigating authority) making the decision shall examine the complaint within 8 days following its receipt and if it

- finds the complaint substantiated, it shall reverse or modify the decision,
- finds the complaint unsubstantiated, it shall file the documents with its statement related to the complaint at the prosecutor's office adjudging the complaint.

The superior prosecutor's office adjudge the complaint against the decision of the prosecutor's office and the prosecutor's office shall adjudge the complaint against the decision of the investigating authority within 15 days following the receipt of the files, in case of a decision terminating the procedure within 1 month. The prosecutor's office adjudging the complaint may make three types of decision: if

- it finds the complaint substantiated, it shall reverse or modify the decision,
- the complaint is unsubstantiated, it shall reject it,
- the situation objected by the complaint ceased independently from filing the complaint, the prosecutor's office may disregard the adjudication of the complaint.

Slightly different rules shall apply to the complaint against innuendo or the change of innuendo in comparison with the complaint against a decision (§ 372.). Exclusively the suspect and the defence counsel may lodge a complaint against innuendo upon its communication (if the defence counsel is not present, within 8 days following the questioning).

If reasonably suspicion of the crime could not be conveyed to the suspect upon communicating the innuendo, in the decision adjudging the complaint the prosecution shall state that the legal conditions of the innuendo did not exist and the qualification of the suspect as such shall terminate upon making the decision adjudging the complaint.

The adjudication of the complaint filed against the innuendo communicated by the investigating authority shall be disregarded if the prosecutor's office files a motion for the order of coercive measure bound to judicial consent concerning personal freedom of the defendant in custody based on the facts of the case corresponding to the incrimination and the classification by the Criminal Code.

The provisions concerning the complaint against the decision shall apply to the complaint filed during the mediation procedure (§ 373.).

The complaint is not admissible:

- against the decision adjudging the complaint,
- against the decision excluding the prosecutor,
- against the decision on the transfer of the case,
- against the decision on the detainment of the suspect in a police detention-room,
- against the decision on correction in general,
- against the decision extending the 2-year period of the investigation versus the suspect,
- against the decision of the supreme prosecutors' office,
- against the decision on the continuation of the procedure subsequently to suspension,

- against the decision on the continuation of the procedure following termination,
- against the decision on the request for deferral (payment in instalments),
- against the decision declaring the suspect an absent defendant,
- against indictment (submission of the indictment),
- against the termination of the procedure for deprival of property.

ad b) Two copies of the proposal for over-review (§ 374.) shall be presented at the investigating judge within 8 days following the service of the decision. The decision at which the proposal for over-review is directed and the cause and aim of filing the motion shall be designated in the proposal for over-review.

The causes of the proposal for over-review can be divided into two major groups:

Against the provision related to coercive measure	**Against the decision rejecting the complaint**
• the rejection of the motion for partial release of the rules of conduct related to the restraining order/ criminal supervision • the order of seizure applied in interest of forfeiture/confiscation of property • sale of an object sequestered/seizure upon the order of the prosecutor's office/investigating authority	• search • body search • seizure of mail not delivered/of electronic mail not forwarded to addressee • seizure in the editorial office of media-content provider • restriction of familiarization with documents • rejection of complaint related to criminal costs in case of active repentance (conditional prosecutorial suspension, warning)

ad c) The decision of the investigating judge may be appealed by:
- the prosecutor's office,
- the motioner,
- the person upon whom the decision contains provision,
- against the decision communicated to the suspect the defence counsel too (§ 480.).

The deadline of the appeal against the decision of the investigating judge shall be dependent on whether the investigating judge made the decision at the session or based on the documents and whether the person entitled to appeal was present at the session or not:

	Decision communicated at session	**Decision based on the documents**
Person entitled to appeal is present	Immediately	Within 3 days following service
Person entitled to appeal is not present	Within 3 days following the session	

The appeal shall not generally have delaying effect with the exception of:
- the appeal by the prosecutor announced by reason of the termination of coercive measure bound to judicial consent concerning personal freedom (if the termination was not motioned for by the prosecution),
- the appeal against the mandatory decision to reveal the identity of the informant.

The council of second instance of the tribunal court shall adjudicate the appeal against

the decision of the investigating judge at a panel session, or, if it finds it necessary, at a session. A session shall be held in case of the rejection of the motion for the order of detention and an appeal against the order of criminal supervision or of restraint order instead of detention if they are motioned for by the prosecutor's office, the defendant or the defence counsel.

Appeal is not admissible against decisions

- related to the search and seizure carried out in the notary public's or lawyers' office and in the residence of the person entitled to decline testimony,
- related to the application of covert instrument bound to judicial permission (except: related to the non-designated crime of the person not designated in the permission),
- providing for the change of the disciplinary penalty,
- made on the declaration of the witness as specially protected,
- providing for the continuation of the terminated procedure,
- made on the adjudication of the proposal for over-review.

ad d) Should the head of the investigating authority recognise the unlawfulness of the instruction of the prosecutor's office, he shall notify the head of the prosecutor's office without delay (§ 31. Subsession 7). This reminder is not an explicit legal remedy, however, it can be regarded as such considering its legal effect because subsequently the head of the prosecutor's office shall make a statement whether he will sustain the instruction (if he does, the statement shall be put in writing upon request).

The head of the investigating authority by way of its superior body may submit a motion against the instruction of the prosecutor's office to the superior prosecutor's office. On the basis of the motion the superior prosecutor's office shall examine the documents upon their submission and shall inform the motioner about his legal viewpoint in writing within 15 days following the receipt of the motion.

ad e) The motion for release shall not be an express legal remedy as well. This is regulated by the CPC as "motion for the termination of detention" (§ 300.). The prosecutor's office, the defendant and the defence counsel may file a motion for the termination of the detention or the order of the lighter coercive measure bound to judicial consent concerning personal freedom. The repeated motion for termination of the detention with the same content may be rejected without justification on the merits if less than 3 months have passed since the order (extension, uphold) of the detention.

ad f) The application for justification (§ 139.) shall also admissible during the investigation. Its rules are expounded in detail within the scope of extraordinary legal remedy.

ad g) The defendant, the defence counsel, the victim, the financially interested party and the other interested party (and the prosecutor's office in the judicial procedure) may file an objection because of the protraction of the procedure (§ 143.) if

- a deadline is determined for the authority to conduct the procedure, to carry out the procedural action or make a decision but the deadline has passed ineffectively, or
- a deadline is set by the authority to carry out the procedural action but the deadline has passed ineffectively and the authority did not apply the measures applicable by law against the defaulting party.

The objection may be filed in writing at the presumably defaulting authority, requesting

- the statement of the fact of failure and that
- the defaulting authority should carry out the omitted procedural action (make the omitted decision), respectively take the most effective measure in the given case.

The person filing the objection may withdraw it as long as it has not been adjudicated on the merits. The withdrawn objection may not be filed repeatedly.

Pursuant to § 144. the deadlines for the settlement of the objection are as such:

- the authority proceeding in the case shall examine the objection within 8 days following its receipt;
- if the authority proceeding in the case deems the objection substantiated, it shall take the required measures in the interest of the termination of the objected situation (it shall notify the party filing the objection) within 8 days prior to the indictment and within 1 month following the indictment;
- if the authority does not deem the objection substantiated, it shall submit the dociments along with its statement related to the objection to the prosecutor's office (court) adjudicating the objection within the above deadline. The prosecutor's office (court) shall either sustain the objection (and shall instruct to take the appropriate measure) or shall reject the objection non-contestable by means of legal remedy.

CHAPTER 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 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.

It is by no accident that the CPC prioritises the opportunity for measures expediting the procedure. The goal is to avoid lengthy investigation and the subsequent not too brief judicial procedure in case of cooperative suspects admitting the crime because following the due examination of the threat of the crime and of danger the defendant represents to society, the prosecutor's office disposes of several options from not submitting the act of accusation to the court to submitting the act of accusation in a simplified way so that a simplified judicial procedure should ensue.

Pursuant to § 404., the prosecutor's office may inform the suspect at any time about what measure it may take or what decision it may expect if the suspect admits to committing the crime. These measures may be taken even if the defendant did not admit committing the crime before but confesses at the request of the prosecutor's office.

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;
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 above measures or decisions shall be effectuated under the following conditions:

	Binding to cooperation in detection, proof of the case/other criminal case	**Binding to meeting the civil claim to be enforced**	**Binding to the settlement of other obligations**
Remittance to mediation procedure	X		X
Conditional prosecutorial suspension	X	X	
Termination of the procedure /rejection of the denunciation owing to cooperation		X	X
Motion for arraignment /procedure with a penalty order	X		X

The prosecutor's office shall inform the suspect about the above (even included in the protocol of the interrogation of the suspect).

During the interrogation of the suspect, he will be made to declare whether he accepts the measure or decision and their conditions envisaged by the prosecution (§ 406.). It is not mandatory for the prosecutor's office to take the envisaged measure accepted by the suspect or make a decision if the suspect fails to fulfil the undertaken conditions or makes a false confession.

However, these measures (decisions) may not only be motioned by the prosecutor's office ex officio but, any time during the investigation, the suspect and the defence counsel may inform the prosecutor's office or the investigating authority that the suspect will confess to the commission of the crime in the interest of the above. If the prosecutor's office does not agree with the motion, it shall inform the suspect and the defence counsel; otherwise it shall conduct the given procedure (make the decision).

The rules of taking the above measures and making the above decisions and the main provisions related to formal indictment are expounded as follows.

3.1.1. The mediation procedure

Mediation is a procedure designed to promote the agreement of the suspect and the victim, the reparation of the consequences of the crime and the prospective law-abiding conduct of the suspect motioned by the suspect or the victim or applicable with their voluntary consent (§ 412.). The § 2. Subsession 1 of Act CXXIII. of 2006 on mediation applicable in criminal cases specifies the mediation procedure even more precisely. Its conceptual elements are the following:

- mediation is a procedure for the settlement of the conflict entailed by the commission of the crime,

- the aim of mediation is to enter into a written agreement independently from the court (the prosecutor) conducting the criminal procedure by involving a third party (mediator),
- resolution of the settlement of the conflict between the victim and the defendant,
- mediation shall promote the reparation of the consequences of the crime and the prospective law-abiding conduct of the suspect,
- written agreement shall be created.

The conditions of the mediation procedure are contained partly by the CPC and partly by the Criminal Code:

Positive conditions *(§ 412. CPC, § 29. Subsessions 1-2 of Criminal Code)*	**Negative conditions** *(§ 712. CPC, § 29. Subsession 3 of Criminal Code)*
1. In case of any of the six types of crime: • against against life, limb and health (Chapter XV. of Criminal Code), • against personal freedom (Chapter 18 of Criminal Code), • against human dignity and fundamental rights (Chapter XXI. of Criminal Code), • crime against traffic regulations (Chapter XXII. of Criminal Code), • against property (Chapter XXXVI. of Criminal Code), • against intellectual property rights (Chapter XXXVII. of Criminal Code) 2. The crime punishable with imprisonment not exceeding five years. 3. Motioned by/with the consent of the suspect and the victim. 4. The suspect has made a confession to the crime before the indictment. 5. Reparation of the consequences of the crime is expected (with regard to the nature of the crime, method of perpetration and the identity of the suspect) and the conduct of the judicial procedure is omissible / the mediation procedure is not contrary to the principles of the imposition of the punishment.	1. the defendant is repeat offender or habitual recidivist; 2. perpetration in criminal organization; 3. the crime caused death; 4. intentional perpetration during probation/ conditional sentence/conditional prosecutorial suspension 5. participation in mediation procedure within two years 6. crime committed to the detriment military body in military criminal procedure

Partial or full voluntary compensation for damages (substantial value, commission value) caused by the crime committed by the suspect and the reparation of the injury caused by the crime in the way and to the extent accepted by the victim shall not be an obstacle to the suspension of the procedure for the purpose of mediation.

If the suspect or the victim motions for the conduct of the mediation procedure, the prosecutor's office shall provide for the obtainment of the statement concerning the consent of the other party.

For the purpose of the conduct of the mediation procedure, the prosecutor's office may suspend the procedure on one occasion for 6 months, which shall be communicated to the probation officers' service with powers and competence for the conduct of the mediation procedure.

The statement of the suspect and the victim made during the mediation procedure shall not be used as evidence in the case. The result of the mediation procedure may not be evaluated to the detriment of the suspect.

If the agreement has been concluded between the victim and the suspect during mediation procedure, the mediator shall serve the agreement to the prosecutor's office (§ 415.). In these case there are 3 possibilities:

- the suspect compensated for the damage (etc.) and the crime punishable with imprisonment not exceeding three years: the prosecutor's office terminates the procedure;
- the suspect compensated for the damage (etc.) and the crime punishable with imprisonment exceeding three years but not exceeding five years: the prosecutor's office raises charges but the penalty may be reduced without limitation;
- if the obligation included in the agreement may not be fulfilled during the suspension of the procedure, the prosecutor's office may extend the period of suspension at most by 18 months.

If the mediation procedure was completed during the period of the suspension of the procedure, and the termination of the procedure or its suspension for any other reason are not admissible, the prosecutor's office shall order the continuation of the procedure.

3.1.2. Conditional prosecutorial suspension

The prosecutor's office may suspend the procedure with respect to the future conduct of the suspect in order to terminate the procedure at a later time under the following conditions (§ 416):

Specific reasons for the conditional prosecutorial suspension **(§ 416. Subsession 2, § 690. Subsession 1)**	**Reasons excluding conditional prosecutorial suspension** **(§ 416. Subsession 3)**
• threat of imprisonment of at most 3 years (in exceptional circumstances: 5 years), threat of imprisonment of at most 8 years in case of a juvenile • favourable change of conduct of the suspect is expected with regard to character of the crime, the method of perpetration and identity of the suspect	• repeat offender • criminal organization • the crime caused death • intentional perpetration during probation/ conditional sentence/conditional prosecutorial suspension

The length of the conditional prosecutorial suspension shall be determined in years (and months); it may be at least 1 year and it may range at most to the threat of the length of imprisonment owing to the crime (in case of a juvenile at most 3 years).

If the law regulates the conduct of the defendant as ground of the reason for ceasing the punishability, the procedure shall be suspended for 1 year.

The prosecutor's office may prescribe rules or obligations of conduct concurrently with the conditional prosecutorial suspension and for the purpose of the clarification of

circumstances, the prosecutor's office may order the obtainment of the opinion of the probation officer (§ 418.), which is obligatory if the defendant is juvenile (§ 690).

The following table shows the aim and content of the rules of conduct:

The aim of the rules of conduct	**The content of the rules of conduct**
To clarify whether • the suspect is able to comply with the planned rule (obligation) of conduct • the suspect consents to the planned psychiatric treatment (treatment of alcohol addiction) • the victim consents to the reparation if the possibility of reparation sustains	The suspect shall • compensate for damages (substantial value, etc.) (if the amount can be stated, the suspect shall generally be obligated to compensate) • provide for the reparation in favour of the victim in another way • effect financial compensation for a determined purpose or do community service (if the defendant is at least 16 years of age when the decision is made) • participate in psychiatric (alcohol addiction) treatment (with preliminary consent)

The prosecutor's office may state several or other rules of conduct (may prescribe other obligations) and concurrently with the conditional prosecutorial suspension, the prosecutor's office may order the probation with supervision of the suspect.

The defendant shall not be punishable for a crime substantiating the conditional prosecutorial suspension if he complied with the prescribed conduct or the period of the conditional prosecutorial suspension has passed effectively (then the prosecutor's office terminates the procedure); otherwise (or if the defendant lodged a complaint against the conditional prosecutorial suspension), the prosecuton's office shall order the continuation of the procedure.

3.1.3. Cooperation of the suspect

If the person who may be reasonably suspected to have committed a criminal act co-operates by contributing to the detection of the case (or other criminal case), or to the presentation of evidence to such an extent that the interests of national security or criminal prosecution related to cooperation takes priority over the interest of establishing the criminal liability of the person reasonably suspected to have committed a crime, depending on the stage of the proceeding, the prosecutor's office shall

1. reject the denunciation (§ 382.) or
2. terminate the procedure (§ 399.).

Cooperation shall be excluded if the object of incrimination is a crime which

- intentionally causes the death of another person,
- causes permanent disability or
- intentionally causes serious health impairment.

In case of cooperation the state shall compensate for damages (compensation for immaterial injuries) which the defendant is liable to effect pursuant to civil law (if it is not indemnified in any other way).

If a decision is made on the compensation for damages (compensation for immaterial

injuries) in a civil procedure, the legal grounds of this claim shall be protected and the state shall be represented by the Minister of Justice in the civil procedure. The statement in the civil procedure may not encompass facts according to which the identity of the defendant and the reasons for cooperation may be deducted.

3.1.4. Plea bargain

The arrangement regulated under the CPC is a form of plea bargain in a broader sense. However, in a narrower sense it may be called only a plea bargain-like arrangement because no agreement is concluded related to the facts of the case but only related to certain legal issues.

Before the indictment the prosecutor's office and the defendant may conclude an arrangement in relation to the crime committed by the defendant on the admission of culpability and its consequences (§ 407.). The private prosecutor may not conclude an arrangement with the accused (§ 786.). The conclusion of the arrangement may be initiated by the defendant, the defence counsel and the prosecutor's office alike (the prosecutor's office even during the interrogation of the defendant). The participation of the defence counsel in the procedure directed at the conclusion of the arrangement is mandatory.

In the interest of the conclusion of an arrangement the prosecutor's office, the defendant and the defence counsel (with the consent of the defendant only the prosecutor's office and the defence counsel) may conciliate concerning the admission of culpability and the substantial elements of the arrangement (except for the findings of fact and the classification of the crime according to the Criminal Code). If the prosecutor's office and the defendant have agreed in the purport of the arrangement, the prosecutor's office shall warn the defendant of the consequences of the planned arrangement during the interrogation of the defendant as suspect, and the arrangement shall be included in the protocol of the interrogation of the suspect. The protocol shall be signed jointly by the prosecutor, the defendant and the defence counsel.

If the prosecutor's office and the defendant did not conclude an arrangement, the initiation and the related documents may not be used as evidence and the prosecutor's office may not inform the court about the motion for the conclusion of the arrangement either.

In the arrangement the defendant may confess to his culpability in relation to all or only certain crimes substantiating the criminal procedure (§ 410.).

The purport of the arrangement:

Mandatory substantial elements of the arrangement	Potential substantial elements of the arrangement
• the findings of fact and classification of the crime according to the Criminal Code (established by the prosecutor's office) • statement of the defendant admitting culpability and his intention to make a testimony • type, degree and length of punishment (independently imposed measures) (even by consideration of the mitigating §)	• additional penalty • measure imposed in addition to the penalty or measure • termination of the procedure (rejection of denunciation) in relation to specific crimes (e.g., less significant crime, cooperation) • (partial) dispensation from cost of criminal proceedings • other obligations undertaken by the defendant (cooperation, compensation for the damages of the victim, participation in mediation, other obligations may be prescribed within conditional prosecutorial suspension)
The object of the arrangement may not be: • involuntary treatment in a mental institution • forfeiture • confiscation of property • irreversibly rendering electronic information inaccessible	

3.1.5. Indictment

Charge implies the demand of the state for punishment enforced by the entitled person or body (the accuser) versus a specific person (the accused) before the court because the suspicion is reasonably that certain conduct of the specific person performed the findings of fact of a crime.

The indictment has two major forms. In case of public accusation the public prosecutor and in case of private prosecution the private prosecutor (generally the victim) is entitled to the rights of the representation of accusation. The form of public accusation is the indictment or the memorandum and the form of private prosecution is the motion for prosecution (in case of substitute private prosecution) or the denunciation (in case of private prosecution).

Four forms of private prosecution shall be differentiated:

a) main private prosecution: the victim is entitled to the representation of accusation without the consent of the prosecutor (private prosecution is in essence such pursuant to the CPC);

b) subsidiary private prosecution: the representation of the accusation by the victim or harmed party implemented accessorily or relatively independently and concurrently with the prosecutor (in Hungary the private party is similar to the accessory private prosecutor, who enforces the civil claim as the victim);

c) substitute private prosecution: the representation of accusation by the victim instead of the prosecutor if the prosecutor omits the formal accusation, drops the charge or does not appeal against the verdict of acquittal, etc. (substitute private prosecution is enforced within limitations in Hungary, however, in case of the absence of appeal, for example, it is not enforced);

d) finally, the counter charge: in case of certain mutually committed criminal acts subject to private prosecution, the accused may also bring charges versus the private prosecutor.

3.1.5.1. The indictment

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.).

The indictment has legal and other elements under the CPC (§ 422.):

The legal elements of the indictment	**Other elements of the indictment**
• identifiable denomination of the accused, • accurate description of the act as an object of the accusation, • classification of the act as an object of the accusation under the CC, • motion for the imposition of penalty (order of measure) or for the acquittal of the accused not punishable by reason of his mental incapacity (if the accused makes a confession at the preparatory session, for the specific degree as well).	• denomination of the means of evidence, • motions for proof, • denomination of the statutes pertaining to the competence and the jurisdiction of the court and the prosecutor's office, • statements of the prosecutor's office, • further motions of the prosecutor's office, • motion for the maintenance of the coercive measure bound to judicial consent concerning personal freedom

The prosecutor's office may motion in the indictment the termination of the parental right of custody of the accused ex officio or at initiation. The presentation of the motion for the termination of the parental right of custody may be motioned for by the child of the accused or the other parent. If the prosecutor's office does not agree with the initiation, it shall send the initiation to the guardianship authority in the interest of the consideration of the institution of action for the termination of the parental custodial right and it shall also inform the motioner about that (§ 572.).

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.

If the indictment is submitted in the absence of the accused, in a given case even the innuendo may be omitted before the submission of the indictment. At the same time, the indictment should contain the enumeration of the circumstances concerning the conditions of the proceedings in the absence of the accused (§ 748. Subsession 4).

3.1.5.2.The memorandum

Another form of public accusation besides the indictment is the memorandum to be submitted in a special procedure with arraignment (§ 726.).

We distinguish two major forms of the procedure with arraignment:

Arraignment in case if the defendant was caught in the act (§ 723.)	**Arraignment in case of confession (§ 724)**
• the crime is punishable by imprisonment of not more than ten years • the judgement of the case is simple • the evidences are available	
• within 15 days as of the commission of the crime • the defendant was caught in the act	• 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) • the defendant admitted the commission of the crime

The contents of the memorandum:

- personal data of the suspect valid for identification
- description of the act constituting the object of arraignment
- classification of the act under the Criminal Code
- enumeration of the means of evidence

3.1.5.3. The denunciation

The private prosecution (counter charge) procedure commences upon a denunciation (§ 765.). In the denunciation it needs to be presented that

- versus who,
- by reason of what act and
- on the basis of what evidence

the institution of the criminal procedure is requested by the victim.

In a private prosecution procedure the prosecution is represented by the victim. If the person with international immunity proceeds as a private prosecutor, the court shall suspend the procedure concurrently with the passing of the case from the minister of justice to the minister of foreign affairs until the decision on immunity based on international law is made (and if immunity exists, the procedure shall be terminated).

The denunciation must be made at the court, but in such a case the charge may not be based on the address of the victim (his residence).

If the denunciation was rejected (or the procedure was terminated) because the act is not a crime to be persecuted by public prosecution, the prosecutor's office in its decision shall inform the victim that by reason of the obtainment of a crime to be persecuted by private prosecution, the charge needs to be made by a private prosecutor. The victim may take action as a private prosecutor within one month as of the receipt of the decision rejecting his complaint, and in the absence of a private motion, he may supplement his statement within this deadline (§ 371.).

The denunciation shall be examined by the court, and if transfer, suspension or termination of the procedure is inadmissible, the court

- shall send the denunciation and the documents of the procedure to the prosecutor's office, if the act needs to be punished by public prosecution or it must be taken into consideration whether the representation of accusation should be taken over by prosecutor's office (concerning this the prosecutor's office needs to make a declaration within 8 days),
- may request the victim to specify the denunciation in writing,
- may order investigation if the identity of the denounced person or the crime cannot be established on the basis of the denunciation (if the identity of the unknown perpetrator cannot be established on the basis of the data of the investigation either, the court shall terminate the procedure), or if means of evidence need to be detected.

The prosecutor's office may take over once the representation of the accusation from the private prosecutor, who in this case is endowed with the rights of the victim and burdened by the obligations of the victim. While the private prosecutor may drop the charge at any time, the prosecutor's office may only withdraw from the representation of the accusation, in such a case the right of the private prosecutor to prosecution renascences.

3.1.5.4. The motion for prosecution and the written announcement

In a substitute private prosecution the victim may take action as prosecutor, therefore, substitute private prosecution is admissible only in case of those criminal acts which have a victim. In substitute private prosecution the provisions concerning international immunity are directive (§ 721.).

The conditions of proceeding as a substitute private prosecutor are summarised in the following table:

<table>
<tr><th>In case of the rejection of the denunciation</th><th>In case of the termination of the procedure</th><th>In case of dropping the charge</th></tr>
<tr><td>The reason for rejection of the denunciation
• the act does not qualify as crime
• the suspicion of a crime is absent
• ground for exemption from punishability or culpability</td><td>The reason for termination of the procedure:
• the act does not qualify as crime
• the crime was not committed by the suspect
• the commission of a crime cannot be established
• ground for exemption from punishability or culpability</td><td rowspan="2">• the victim may take action within 15 days as of the receipt of the court notification about dropping the charge
• no cause for the exclusion of a substitute private prosecution exists (except for: an undercover agent, a cooperative defendant, an arrangement)</td></tr>
<tr><td colspan="2">• the victim filed a complaint rejected by the prosecutor versus the rejection of the denunciation/the termination of the procedure (may take action within two months)
• no cause excluding the substitute private prosecution obtains</td></tr>
</table>

Formal accusation in the substitute private prosecution takes the form of a motion for prosecution (in case of dropping the charge the written announcement of the victim about his intention to take action as a substitute private prosecutor).

The grounds for exemption of the substitute private prosecution are stipulated under § 787. Subsession 3 as follows:

- the denounced person (the defendant) is juvenile,
- ground for exemption from punishability or culpability is minor age or insanity,
- the crime did not injure or threaten the rights or rightful interests of the victim directly,
- the victim is the state or a body exercising public authority,
- rejection of the denunciation (termination of the procedure) against an undercover agent, a member of a body entitled to apply covert instruments or a covertly cooperating person,
- rejection of the denunciation (termination of the procedure) by reason of an arrangement with the defendant,
- termination of the procedure in the case of a less significant crime within the framework of an arrangement.

In the substitute private prosecution procedure the presence of the legal representative of the victim as well as of the defence counsel are mandatory. In the substitute private prosecution procedure the victim files his civil claim in the motion for prosecution at the latest and a mediation proceeding is admissible only if the prosecutor's office has taken over the representation of accusation (namely, this may ensue on one occasion).

From a certain point of view the motion for prosecution has less content-based elements than the indictment (it does not include motion for the sanctions, no motions for evidence are necessary, nor does it refer to competence and jurisdiction etc.), whereas its mandatory element is e.g., the denomination of the civil claim (if any) and the scope of testimonies to be read out. The motion for prosecution and the written announcement shall be signed by the victim and the legal representative too. Substitute private prosecution may not be instituted at the court competent in re the residence of the victim as well.

The court shall reject the motion for prosecution (written announcement) under a non-conclusive order:

Reasons for the rejection of the motion for prosecution	**Reasons for the rejection of the written announcement**
• expiry of the deadline determined by law, • the victim does not have a legal representative (this may be substituted within 15 days as of the service of the order), • taking action as a substitute private prosecutor is inadmissible, • the motion for prosecution /written announcement does not include the legal accessories (this may be substituted within 15 days)	
• the party entitled to suspend the immunity rejected the suspension of the immunity	

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.

3.2.1. The competence, the jurisdiction and the composition of the court

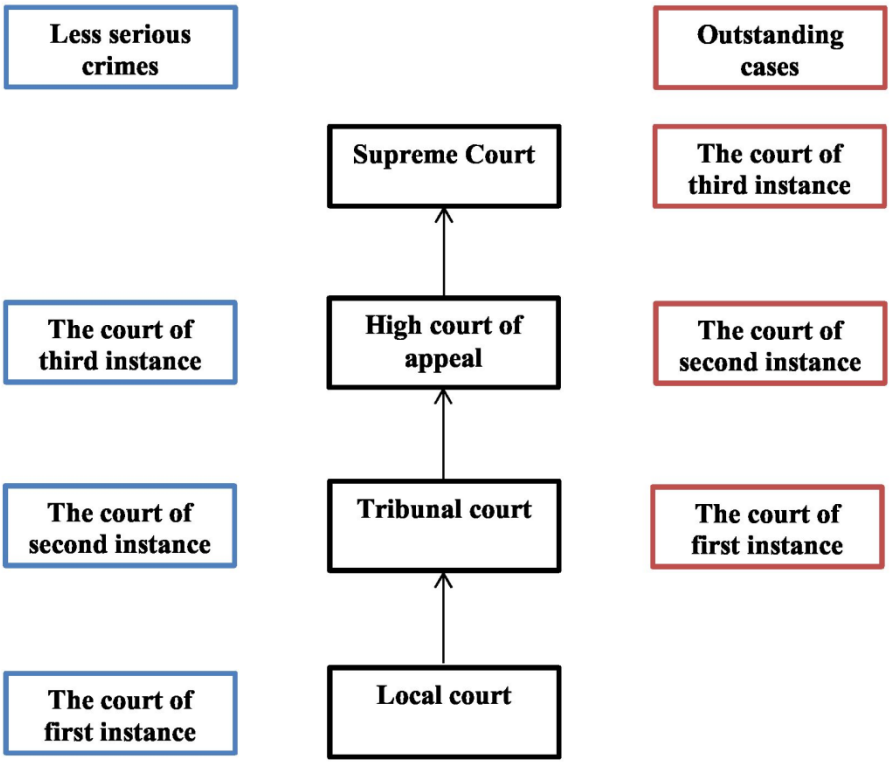
In the course of the pre-trial the court with the same competence and jurisdiction shall proceed as the one which later makes a decision on the merits of the case. The court entitled to proceed is defined in three aspects:

- legal authority: the Hungarian courts can proceed in cases falling under Hungarian authority which rules are determined by § 3 of the CC;
- competence: subsequently to legal authority (that is, if a Hungarian court may proceed in the case), it needs to be clarified what organisationally structured court should proceed (local court, tribunal court, high court of appeal or the Supreme Court);
- jurisdiction (territorial competence): finally, if the question of competence has been clarified, the last question is that out of the courts with the same organisational structure (that is, more than 100 local courts, exactly 20 tribunal courts and 5 high courts of appeal) which should proceed.

The court always examines the competence and the jurisdiction ex officio.

3.2.1.1. The competence of the court

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 criminal acts subject to the first instance competence of the tribunal court can be classified into several groups:

1. the most serious crimes: crimes punishable by imprisonment for a term up to 15 years or life imprisonment by the law,
2. outstanding criminal acts: crimes against humanity, war crimes, crimes against the state etc., (negligence of reporting) kidnapping, trafficking of people, terrorist acts and related crimes, money-laundering,
3. crime threatening life or causing death: preparations for murder, negligent homicide, murder committed in the heat of passion, physical injury creating a substantial risk of death or causing death,
4. crime related to corruption,
5. violent cases of crime against property (e.g., gravely classified case of plundering) or non-violent crime against property classified the most gravely (e.g., theft of especially high value);
6. certain crimes with international element: e.g. criminal offence against the administration of justice at an international court, breach of international embargo etc,
7. crime related to public administration: e.g., criminal offences against the order of elections or referenda, crime against the order of European civil initiative, crime against classified data and national data stock,
8. criminal offences subjected to military law: in such a case one of the military councils of the 5 appointed tribunal courts (Budapest, Győr, Debrecen, Szeged, Kaposvár) shall proceed (in the second instance the military council of the Metropolitan High Court of Appeal shall proceed),
9. other cases: some healthcare crimes, prison riots, infringement of certain rights related to copyright and economic and business related offenses.

If the defendant committed crimes subject to the competent of different courts, the tribunal court shall proceed as court of first instance.

3.2.1.2. The jurisdiction of the court

Out of the court procedural degrees, the jurisdiction in the second and third instance is simpler, since that court of second or third instance shall proceed, the lower court in the territory of which passed the decision of first or second instance.

In comparison with the remedial procedures the jurisdiction of the court of first instance shall be established in a more complex manner, which can be

a) general,
b) exclusive and
c) special.

ad a) As indicated by general jurisdiction, the court of jurisdiction shall be the court having exclusive control over the geographical area where the criminal offence was committed (§ 21). Besides, the CPC stipulates so-called dispositive rules:

- precedence: if the crime was committed in the territory of several courts or the scene of

commission cannot be identified, out of the courts with the same jurisdiction that one shall proceed, which took measures for the first time. An exception to that is, if the scene of commission becomes known before setting the trial and the prosecutor's office (defendant, defense counsel, substitute private prosecutor, private prosecutor) motions for the procedure according to the scene of commission, in that case the court shall proceed where the criminal offence was committed;

- actual residence: the court may proceed in the territory of which the address or the actual residence of the defendant or victim obtains, if the prosecutor's office raises charge there (this is not applicable in private prosecution procedure, substitute private prosecution procedure or in military criminal procedure);
- several accused: the court with jurisdiction in re one of the accused may proceed versus the other accused persons, if this does not surpass its competence (if the procedure was initiated before several courts, the principle of precedence applies);

ad b) The so-called seat courts (local courts located in the seat of the tribunal court or in The Central District Court of Pest) in their exclusive jurisdiction shall proceed with jurisdiction pertaining to the county (the capital) in case of the following crimes:

- certain endangering crimes or crimes causing danger (certain cases of public endangerment and interference with works of public concern);
- certain crimes related to the utilisation of nuclear energy (misappropriation of radioactive materials, illegal operation of nuclear installation, crimes in connection with nuclear energy);
- economic crimes (economic fraud, certain cases of information system fraud, economic and business related offenses etc.);
- certain crimes damaging the budget;
- certain cases of counterfeiting currency and forgery of stamps;
- procedures for crime in connection with the border barrier (§ 828.);
- other crimes (e.g., failure to comply with the reporting obligation related to money laundering, illicit access to data etc.)

If the defendant committed crimes subject to the jurisdiction of different courts, the court with exclusive jurisdiction shall proceed.

ad c) Finally, grounds for special jurisdiction exist in cases of culpable acts subject to Hungarian legal authority, when the crime was committed by the defendant beyond the borders of Hungary. For the adjudication of this crime the court shall have jurisdiction, to the area of which the address or the actual residence of the defendant belongs (in case of a procedure in absentia the last address or actual residence shall ground jurisdiction). In a military criminal procedure the military council of the Metropolitan Tribunal Court shall have jurisdiction in case of a crime committed abroad, § 699.).

If the jurisdiction cannot be established in a case subject to the competence of a local court, the Central District Court of Pest shall proceed. In a cases subject to the competence of a tribunal court, the Metropolitan Court of Justice shall proceed. The territorial competence of the military council of the court of justice appointed for military criminal procedure is stipulated under a separate law.

If the jurisdiction of a court cannot be established in a procedure for deprival of property, the court shall proceed, in the jurisdiction of which the authority discerned the circumstance substantiating the institution of the procedure for deprival of property (§ 823.).

3.2.1.3. The examination of competence and jurisdiction, the designation

The court shall examine its competence and jurisdiction

- before the commencement of the trial ex officio (§ 23.),
- after the commencement of the trial only in the case if the adjudication of the case overreaches the competence of the court, or the case is subject to military criminal procedure or exclusive jurisdiction (§ 536).

The following table demonstrates the cases of the designation of the proceeding court:

	Cases	**The court authorised to designate**
Mandatory designation (§ 24.)	• conflict of competence or jurisdiction, • if the court may not proceed by reason of exclusion	• conflict of competence/jurisdiction: the closest common superior court (tribunal court or high court of appeal; if that does not exist, the Supreme Court) • exclusion: the court adjudging the issue of exclusion
Potential designation (§ 611.)	• in the second instance it may be ordered that the case shall be trial by another council of the court of first instance / by another court	• the court of second instance

3.2.1.4. The composition of the proceeding court

The court adjudicates in the first instance on the merits as a single judge or in council, while in a legal remedy procedure always in council (§ 13.):

In the first instance	**In the second and third instance**
• single judge (generally) • three professional judges (if the single judge remitted the case to the council of the court) • special council (economic and business case, criminal procedure against juvenile offenders, military criminal procedure)	• small council (3 professional judges) • large council (5 professional judges)

As the table shows, the court of first instance proceeds in a specially composed council in three cases:

1. in case of an outstanding crime related to economic and business, one of three professional judges in a council shall be the appointed judge of the council of economic and business (in lieu of that civil) law of the tribunal court;
2. in a criminal procedure against juvenile offenders (§ 680.) the council consists of one professional judge (appointed by the President of the National Administrative Office of the Courts) and two associate judges (this is possible not only in case the single judge remitted the case to the council, and but this is mandatory in all cases (except for a procedure for crime in connection with the border barrier), if the law stipulates the imposition of a penalty ranging to eight or more years' imprisonment for the crime);
3. in the same cases the military council of the tribunal court proceeds in the first instance and in the majority of the cases subject to the first instance competence of the tribunal court (§ 698.). This council may consist of one military judge and two military associate judges (not only of three professional judges). The military associate

judges cannot be of lower rank than the accused (except if the accused is a general).

In the criminal procedure against juvenile offenders exclusively a teacher, psychologist or a person working (formerly) in a position requiring a university or college degree in family protection or guardianship administration etc. may work as associate judge.

The courts of second or third instance may remit the case by reason of outstanding crime related to economic and business to a large council (the council of the court consisting of five professional judges), if that is necessitated by:

- the complexity of the case,
- the breadth of the documents of the procedure,
- the number of the persons participating in the criminal procedure,
- any other reason.

In cases subject to the competence of the courts of first instance, instead of the single judge (the presiding judge) the court secretary may also proceed in cases stipulated under the CPC (§ 426., e.g. related to the appointment of the defence counsel or the expert, the correction or supplementation of its decision, measure related to cost of criminal proceedings or reduced costs etc.) and in cases determined by statute, out of trial the court administrator may proceed under the direction and the supervision of the judge.

3.2.2. General issues examined during the pre-trial

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 or the victim seems to be necessary for making a decision with the exception of coercive measures) the following issues (§ 484.):

What issue is examined?	In what form of decision?	What legal remedy is admissible against the decision?
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

ad a) If the court does not have competence (jurisdiction) to adjudge the case, it shall be remitted to the court that has competence and jurisdiction (§ 485.).

ad b) If by reason of crime committed during probation, a new procedure shall be instituted against the person on probation, or, if against the person on probation a procedure was instituted during probation by reason of a crime committed before the probation, the cases shall be consolidated and the court with competence and jurisdiction of the new case is entitled to the adjudication (§ 486.). If in the new procedure the culpability of the accused is not established by the court, or the time of probation expired before the joint adjudication of the cases, the court shall sever the consolidated cases. These rules are also applicable in case of the formerly suspended, then reinstituted criminal procedure.

ad c) We can distinguish three groups of reasons for the suspension of the procedure in the stage of the pre-trial:

Reasons for mandatory suspension	Reasons for optional suspension	
• The steadfast, grievous illness of the accused • mental incapacity of the accused ensuing after the commission of the crime • the motion of the procedure of the Constitutional Court (by reason of contrariness to the Fundamental Law) • motion for the procedure of the Supreme Court (review of a decree of a local government) • motion for the preparatory decision-making procedure of the Court of the European Union	*For an unlimited time*	*For at most one year*
	• accused residing at an unknown place or abroad • for the purpose of the correction of the deficiencies of the indictment • the court took measures for the implementation of procedural action • request for legal aid • the decision made in an interlocutory matter needs to be obtained (in procedure for crime in connection with the border barrier: an issue of asylum) • an European Union consultation procedure commences • transfer (extradition) was deferred on the basis of an international (European) arrest warrant • the Hungarian authority was requested by the international criminal court • motioned for the recognition of the judgement passed abroad (for harmonisation with the law of the member state) • the foreign judicial authority deferred the enforcement of the extradition (transfer)	• pursuant to the Particular Part of the CC the termination of the punishability of the accused may be expected due to his conduct following the institution of the procedure

Following cessation of the reason or expiry of the time limit, the court orders continuation of the procedure.

ad d) In the course of the pre-trial the termination of the procedure may be effected pursuant to a final order or non-conclusive order. The significance of this is that the termination under a final order entails legal power, i.e. a new procedure in the case may not be instituted:

Termination of the procedure under a final order	Termination of the procedure under a non-conclusive order
• the act as an object of the accusation is not a criminal act • minor age as a ground for exemption from punishability • death, statute of limitation, clemency or other reason stipulated by law as a ground of the reason for ceasing the punishability • res iudicata • dropping the charge (and (substitute) private prosecution is inadmissible) • the remittance of a criminal procedure / the result of the procedure of consultation • the case is not subject to Hungarian legal authority • less significant crime	• absence of denunciation / of Supreme Prosecutor's provision • (incorrectable) absence of a private motion • the charge was not raised by the entitled party • the indictment does not or deficiently contains the legal or potential elements • preceding the decision of first instance in a procedure for crime in connection with the border barrier subject to at most 5 years' imprisonment: the non-Hungarian defendant with no address in Hungary resides at an unknown location.

ad e) If the indictment does not contain or only deficiently contains the legal elements, the court with the denomination of the deficiencies in an order shall request ex officio or at motion (if it does not contain the potential elements, the court may request) the prosecutor's office to correct the deficiencies of the indictment (§ 493.), which the prosecution may effectuate within two months (otherwise the court shall terminate the procedure in compliance with the contents of the point above).

ad f) During the pre-trial the court shall make a decision ex officio or at motion (§ 494.)

- on the basis of the documents: on the maintenance (generally) or the termination of the coercive measure bound to judicial consent concerning personal freedom;
- in a session: on the order of a coercive measure bound to judicial consent concerning personal freedom and on its maintenance in case of reference to new circumstances.

ad g) The court shall establish in its order how the act as an object of the accusation may be classified apart from the indictment (§ 495.) if the following supposition is reasonably:

- the act as an object of the charge may be appropriate to establish another crime or further crime departing from the classification in the indictment;
- the crime classified in the indictment may be classified more lightly or stringently.

If the court establishes that the act as an object of the accusation is a crime to be persecuted by the private prosecutor, the statement of the prosecution concerning the admission of the charge does not need to be obtained.

ad h) The court remits the case to the council of the court consisting of three professional judges until the completion of the preparatory session (§ 496.) by reason of:

- the complexity of the case,
- the breadth of the documents of the procedure, or
- the number of the persons participating in the criminal procedure, or
- for any other reason if necessary.

In the procedure for crime in connection with the border barrier the single judge may

remit the case to the council of the court if the procedure for crime in connection with the border barrier is conducted along with other crimes (§ 828.).

ad i) The court shall service the indictment to the accused and the defence counsel within one month as of reception of the documents by the court, and requests the accused and the defence counsel to make their motion for the conduct of the evidentiary procedure or for the exclusion of the evidence in the preparatory session at the latest (§ 497.).

ad j) The court shall

- arrange ex officio or at the motion of the entitled parties that the means of evidence indicated in the motion for evidence are at disposal at the trial and for that purpose it may request the prosecutor's office with the deadline of at most 2 months';
- obtain the data from the criminal records and the central infraction records office concerning the accused;
- obtain ex officio the data concerning the accused or the crime from other authentic public records registered under a statute, and secure the harmonisation of the judgement of a member state or the recognition of a foreign judgement (§ 498.).

3.2.3. Conduct of the procedure directed at passing a penalty order

The penalty order is a final decision 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.).

Passing a penalty order has objective and subjective conditions:

Objective conditions	Subjective conditions
• crime to be punished not more stringently than 3 years' (in case of confession 5 years') imprisonment • 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) • 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)	• the adjudication of the case is simple • the goal of the punishment can be achieved without a trial

Under a penalty order the following provisions can be applied:

- punishments: conditionally suspended imprisonment, community service, fine, suspension of licence to practice, driving ban, prohibition from residing in a particular area, ban from visiting sport events, expulsion,
- measures: work performed in amends, conditional sentence, warning,
- other provisions: e.g., sanctiones imposed in addition to the penalty or measure (probation with supervision, forfeiture, confiscation of property, irreversibly rendering electronic information inaccessible), civil claim, consolidation, severance, suspension or termination

of the procedure etc.,
- specific sanctions versus a soldier: loss of military rank, dishonorable discharge, demotion, extension of the waiting time.

Appeal against the penalty order is inadmissible, but a motion for holding a trial may be submitted within 8 days as of the service of the penalty order by the following parties (§§ 742., 786. and 817.):

Holding a trial can be motioned in all issues	Motion for holding a trial is admitted only in additional questions
• the prosecutor (if it was motioned by him, just for the reason for passing such a ruling is not admitted), • the private prosecutor, • the accused, • the defence counsel, • the legal representative of juvenile	• the private party (only if related to the provision adjudging the civil claim), • financially interested party and other interested party (only related to the provision of the penalty order that concerns him).

The motion for holding a trial has a delaying effect.

3.2.4. 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.).

If within 3 working days as of the receipt of the indictment the defence counsel motions for this, the court schedules the closing day of the preparatory session beyond one month as of the service of the indictment provided that the defence counsel did not participate in the investigation or could not familiarise itself with the documents of the investigation through no fault of his own.

At the preparatory session the presence of the prosecutor, the accused and the defence counsel (if any) is obligatory. The victim shall be notified about it. In case of an absent defendant (§ 749.) and in a procedure for deprival of property (§ 823.), no preparatory session is possible.

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.

If there are no obstacle for a preparatory session, following the commencement of the preparatory session at the request of the court the prosecutor

- shall present the essence of the charge (this may be omitted at the motion or consent of the accused),
- shall designate the means of evidence underlying the charge,
- may motion for the degree (length) of the penalty or the measure, in case the accused confesses of committing the crime at the preparatory session.

Next, the court interrogate the accused. After the warnings the court poses the question to the accused whether he pleads guilty in the crime as an object of the charge.

Subsequently questions may be addressed:

- to the prosecutor, the accused and in case of a civil claim to the private party by the members of the court,
- to the accused by the prosecutor, the defence counsel, and in case of a civil claim the private party,
- to the prosecutor, which may be motioned by the accused or the defence counsel.

If the accused has not admitted his culpability in all the crimes contained by the indictment, the court shall adjudge the charge univocally on the basis of a trial, but in the interest of the pronouncement of the verdict, the case in which the accused admitted his culpability may be separated.

If a final decision is adopted at the preparatory session, in case of a juvenile the study of living conditions, the probation officer's report and the overall probation officer's report must be presented at the preparatory session (§ 693.).

3.2.4.1. Procedure in case of the admission of culpability

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.). No appeal can be submitted against the order of acceptance.

The conditions of the acceptance of the statement of admission of culpability are as follows:

1. the accused has understood the nature of his statement and the consequences of his approval,
2. no reasonable doubt concerning the legal responsibility of the accused and the voluntariness of his confession manifests itself,
3. the statement of the accused admitting his culpability is unambiguous and it is substantiated by the documents of the procedure.

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).

In the latter case (if the case cannot be settled at the preparatory session) the court may hold the trial without delay.

3.2.4.2. Procedure in case of the non-admission of culpability

If the accused did not make a confession at the preparatory session, he may admit his culpability at any time later during the procedure (§ 506.). The legal consequences related to the non-admission of culpability supervene in four cases:

- the accused does not admit his culpability,
- the court declines the acceptance of the statement admitting culpability made by the accused,
- the accused declines to respond in the issue of the admission of culpability,
- the accused admitted his culpability but has not renounced his right to trial in the scope of the confession.

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 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.

The court ex officio or at motion shall exclude the evidence (even following its examination), if it can be established unequivocally from the documents that its utilisation is in collision with the CPC. The excluded evidence (the document which contains it) shall be treated confidentially among the documents.

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.

3.2.4.3. The rules of the preparatory session in case of legal remedy against a penalty order

On the basis of the motion for holding a trial submitted against a penalty order, or if the penalty order could not be delivered to the accused, the court shall hold a preparatory session (§ 743.).

The motioner may withdraw his motion for holding a trial until the commencement of the preparatory session. The presence of the person motioning for holding a trial is obligatory at the preparatory session (his absence without an excuse will be regarded as withdrawal of the motion).

Before the commencement of the preparatory session the court has the motioner state whether he sustains his motion for holding a trial. If so, the court shall present the essence of the penalty order and the motion for holding a trial. If the motion for holding a trial pertains merely to additional questions, the court shall only adjudge this matter (the main issue became effective formerly).

The court shall reverse the penalty order at the preparatory session (no appeal is admissible against this). During decision-making at the preparatory session specific prohibition of reformation in peius prevails (§ 746. Subsession 5).

3.2.4.4. The preparatory session in case of an arrangement

The attendance by the defence counsel of the judicial procedure conducted on the basis of the arrangement is mandatory (§ 731.).

At the preparatory session the prosecutor shall present

- the essence of the charge,
- the motion for the penalty (measure),
- the motion for other provisions.

Subsequently the court shall inform the accused on the consequences of his consent to the arrangement, especially about the inadmissibility of an appeal against

- the ruling affirming the arrangement,
- the statement of culpability,
- the findings of fact and the classification in compliance with the accusation,
- the character and degree (length) of the penalty (measure) corresponding to the contents of the arrangement, and
- other provision corresponding to the contents of the arrangement.

Following the information, the court requests the accused to make a statement (perhaps after consultation with the defence counsel) concerning his admission of culpability and his renouncement of the right to trial in compliance with the arrangement.

Before the decision-making on the approval of the arrangement, the prosecutor and the defence counsel may plead.

The court then decides on

a) the approval of the arrangement or
b) its denial.

The conditions of the approval of the arrangement	The cases of denial of the approval of the arrangement
1. the conclusion of the arrangement was in conformity with the rules 2. the arrangement includes the legal requirements 3. the accused has understood the nature of the arrangement and the consequences of its approval 4. there is no reasonable doubt concerning the legal responsibility of the accused and the voluntariness of his confession 5. the statement of the admission of culpability by the accused is unequivocal and substantiated by the documents	1. the indictment or the prosecutor's motions depart from the arrangement 2. the accused did not admit his culpability in compliance with the arrangement at the preparatory session or did not renounce his right to trial 3. the conditions of the approval of the arrangement are not in place 4. the accused did not fulfil his accepted obligations 5. a classification departing from the indictment seems ascertainable

ad a) 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.

ad b) No appeal is admissible against the ruling of the court denying the approval of the arrangement either. If the court denied the affirmation of the arrangement, it shall continue the preparatory session pursuant to the rules applicable in the case of the non-admission of culpability. In this case neither the prosecutor nor the defendant is bound by the arrangement.

3.2.5. Other rules pertaining to the pre-trial

3.2.5.1. Setting the trial

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.).

In case of necessity the court may carry out the actions related to the pre-trial after setting the trial and may postpone the already scheduled trial.

3.2.5.2. Subpoenas and notices for the trial

The court shall issue the subpoenas and the notices at the end of the pre-trial, at least 8 days before the trial (trial time interval) (§ 510.):

The parties to be subpoenaed to the trial	The parties to be notified of the trial
• whose presence is obligatory	• the prosecutor's office • the expert • whose presence at the trial is facilitated under the CPC • the guardianship authority and the other parent (in case of a motion for the termination of the parental right of custody of the accused)

Concurrently with the subpoenas (notices) the court shall inform the prosecutor's office, the accused and the defence counsel about what evidence is going to be took on the scheduled day.

3.2.5.3. The pre-trial with a private prosecutor (personal hearing)

In the procedure of private prosecution the personal hearing may ensue in three ways:

- directly on the basis of the denunciation of the private prosecutor or
- on the basis of the denunciation the court orders investigation and subsequently or
- on the basis of the revealed evidence in a procedure of public prosecution, since it turns out that the case is to be punished only under private prosecution.

Presence at the personal hearing is described in the following table (§ 768.):

Obligated to be present at the personal hearing	May be present at the personal hearing
• all victims, • the denounced, • the prosecutor, if prosecution has been taken over by the prosecutor's office	• the representative of the victim • the defence counsel • the consular official of the state of the denounced foreign national

If by reason of simple battery, defamation or slander both concerned persons have filed a denunciation (counter charge), at the personal hearing both concerned parties shall be present as victim and denounced.

If the victim does not appear at the personal hearing, and did not excuse himself with a well-founded reason in advance and without delay or he has become inaccessible, he case shall be regarded as having withdrawn the report (implied dropping of charge).

The personal hearing has two major stages:

1. Conciliation: upon the commencement of the personal hearing the court
    - identifies the victim and the denounced,
    - presents the essence of the denunciation,
    - reminds the denounced of the opportunity of counter charge (if its conditions are in place),

- makes an attempt at the reconciliation of the victim and the denounced,
- if the conciliation is effectual, terminates the procedure.

2. Pre-trial: if conciliation is ineffective. In this case the court
    - asks the accused whether he admits the contents of the indictment and what means of evidence he designates to support his defence,
    - in case of counter charge, hears the private prosecutor as accused as well,
    - may request the prosecutor (the prosecutors in case of a counter charge) within a 15 day deadline to denominate the means of evidence and what facts may be substantiated by the specific means of evidence,
    - carries out the tasks related to the pre-trial.

In a procedure of private prosecution holding a preparatory session is inadmissible (§ 773.).

3.2.5.4. The pre-trial in the procedure of substitute private prosecution

In the procedure of substitute private prosecution the presence of the substitute private prosecutor and his representative is mandatory at the preparatory session (§ 801.). If
- the legal representative does not appear (without a preliminary excuse) at the preparatory session, the court shall postpone the preparatory session at the expense of the legal representative, and may impose a disciplinary penalty on the legal representative;
- at the preparatory session neither the substitute private prosecutor nor his legal representative appears (without preliminary excuse or the substitute private prosecutor has not announced the change of his address), the charge shall be regarded as dropped by the substitute private prosecutor (implied dropping of charge).

At the preparatory session the members of the court, the accused and the defence counsel may address questions to the substitute private prosecutor as well.

3.2.5.5. The pre-trial in case of arraignment

In case of arraignment the prosecutor's office informs the court about its intention to arraign the suspect (§ 727.). The court shall set the trial without delay. In that case it is not the court that attends to the tasks related to the pre-trial, but the prosecutor's office:
- it shall subpoena and notice the persons who must or may be present at the trial,
- it secures that the means of evidence shall be available at the trial,
- it ensures that the defence counsel may consult the detained suspect before the trial.

The private prosecutor and the substitute private prosecutor may not arraign the suspect (§§ 786. and 817.).

CHAPTER IV.: THE JUDICIAL PROCEDURE

4.1. General rules of the judicial procedure

4.1.1. Presence in 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.

The rules concerning presence are differentiated according to the procedural form of the court, or in case of a trial, according to the publicity of the trial (§§ 427-435.):

	Panel session	Session	Public Session	Trial	
				Closed trial	Public trial
Members of the council (single judge) and the court reporter	mandatory	mandatory	mandatory	mandatory (exception: announcement of the final decision)	mandatory (exception: announcement of the final decision)
Public prosecutor	may not be present	mandatory	may be present	mandatory	mandatory
Accused	may not be present	mandatory	may be present	mandatory, if did not renounce the right to presence / is obligated by the court	mandatory, if did not renounce the right to presence / is obligated by the court
Defence counsel	may not be present	mandatory	mandatory in procedure of statutory defence / tribunal court / absent accused	mandatory in procedure of statutory defence / tribunal court / absent accused	mandatory in procedure of statutory defence / tribunal court / absent accused
The consular agent of the accused, victim or witness	may not be present	may be present	may be present	may be present	may be present

If the presence of the accused is mandatory, however, the accused fails to appear before the court, the following measures may be taken (§ 432.):

- apprehension,
- the issue of warrant of arrest (in case of crime to be punished by imprisonment),
- if the apprehension or accompany based on the warrant of arrest cannot be against the accused, because the accused has left for an unknown place from his/her domicile or actual residence, the court shall proceed pursuant to the procedural rules concerning the absent defendant,
- besides the issue of an warrant of arrest, lodging a procedure with the view to the extradition or transfer of the accused on grounds of a European arrest warrant, if the prosecutor presented a motion for the imposition of imprisonment and the accused fails to appear despite the legal subpoena issued to the foreign residence of the accused (if this is impossible or rejected, the transfer of the criminal procedure shall be motioned).

After the charge the accused may renounce his right to be present at the trial verbally before the court or in a document with an attorney’s signature of endorsement the defence counsel any time, if the accused

- has a defence counsel and
- endows the defence counsel with the attendance to the tasks of mailing agent (§ 430.).

Before the announcement of the final decision the accused may announce that the accused intends to be present at the trial. The presence of a juvenile is mandatory at a trial (§ 693.).

The court may obligate the accused having renounced his right to presence at the trial to attend the trial, if

- this is necessitated by carrying out an evidentiary act or the hearing of an expert, or
- the mailing agent of the accused has announced that the performance of his task is unavoidably hindered because of no fault of his own.

The trial may be held in absentia of the accused (§ 429.) even if

- the procedure is conducted against several accused and the specific stage of the trial doesn't concern her/him (in that case the defence counsel doesn't need to be present either);
- during the procedure involuntary treatment in a mental institution of the accused may be ordered and by reason of the accused's state the accused cannot appear at the trial or is incapable of exercising his/her rights;
- the accused at liberty doesn't appear despite regular subpoena (however, the evidentiary procedure may be closed only in case of acquittal or termination of the procedure).

At the district court trial instead of the prosecutor, the prosecutor's office may be represented by

- the deputy prosecutor,
- the draftsman of the prosecutor's office (with the exception if the criminal offence is punishable by 5 or more than 5 years' of imprisonment, the accused is detained or mentally disabled).

In a criminal procedure against juvenile offenders the prosecutor's office cannot be represented by the deputy prosecutor or the draftsman of the prosecutor's office (§ 692.).

For the person obligated or entitled to be present at the procedural action, his presence can be secured via telecommunications devices (§ 120.). Upon such an occasion the directness and mutuality of the connection between the locus of the procedural action and the other scene (secluded scene) can be secured via the transfer of picture and sound recordings or continuous sound recording (interrogation or hearing of witness, interpreter, expert in case of an investigation or defendant).

The use of a telecommunications device

- is mandatorily ordered in case of an victim needing special treatment and a detained (under personal protection or participating in a Protection Program) witness or accused (with the exception if the goal can be secured in another way or the personal attendance of the defence person is indispensable),

- can be ordered exclusively with the approval of the defendant at the session or preparatory session held in the order of coercive measure bound to judicial consent concerning personal freedom (to secure the presence of the defendant).

In case of the use of a telecommunications device it needs to be secured that the persons present at the procedural action should see and hear the persons present at a secluded location, whereas the latter should be able to follow the procedural action. If the defendant and the defence counsel are at different locations, their consultation shall be enabled electronically securing at least audio connection.

4.1.2. The publicity of the trial

The court trial shall be public (§ 436.) unless the presiding judge determines the number of people present at the trial or the court excludes the publicity:

The partial exclusion of the publicity from the trial (The presiding judge may order)	**Closed trial (The court may order)**
• may determine the scope of audience in the interest of the conduct of the trial according to the rules/ of the dignity and safety of the trial/ in case of lack of space • no person under the age of 14 can attend the trial as a listener • the person under the age of 18 can be excluded from the audience • conduct of a stage of the trial in absentia of a juvenile • any person or member of the audience interfering with the order or orderly course of the trial may be expelled or removed from the trial	• for moral reasons • for the purpose of the protection of the person needing special treatment • for the purpose of the protection of classified and other data • in the interest of the juvenile (even the defendant can be excluded)

The non-appealable decision made in the subject of closed trial shall be pronounced by the court at an open trial. The court shall publicly pronounce both the operative part of the decision made at the trial in its full length and its reasoning with the exception of the part concerning the injury of the protected interest, even if it excluded the publicity from the trial (§ 438.).

In case of a juvenile, the court may rule that the part of the trial which may detrimentally affect the proper development of the juvenile shall be held in absentia of the juvenile. The juvenile shall be familiarised with the essence of the trial conducted so before the evidentiary procedure is declared concluded at the latest (§ 691.).

The basic principle of publicity can be violated in two ways:

- the publicity is not excluded from the trial despite the obtainment of a legal reason (this may incur disciplinary or even penal legal consequences in case of the violation of confidentiality);

- the publicity is excluded from the trial by the court in lieu of a legal reason (this constitutes a procedural infraction incurring a relative reason for reverse, see § 609.).

4.1.3. Conduct of the trial, the preservation of its dignity and the maintenance of its order

The trial shall be conducted by the single judge (the presiding judge), who shall determine the order of the actions to be carried out within the scope of the CPC (§ 439.). The maintenance of the order of the trial shall also be subject to the authority of the single judge (the presiding judge) (§ 440.).

The following measures may be taken within the scope of the conduct of the trial, the preservation of its dignity and the maintenance of its order:

<table>
<tr><th>Measures in the scope of the conduct of the trial and the preservation of its dignity</th><th>Measures in the interest of the maintenance of the order of the trial</th></tr>
<tr><td>• ensures the observation of the provisions of CPC
• ensures that the persons concerned in the criminal procedure may exercise their rights,
• ensures the preservation of the dignity of the trial also by removal</td><td>• orders to leave (except for the defence counsel)
• removes (except for the defence counsel)
• excludes the audience
• adjourns (in case of the disorderly conduct of the defence counsel at his expense, if she/he cannot be replaced instantly)
• informs (the concerned authority or the disciplinary power about the disorderly conduct at the trial, which substantiates criminal or disciplinary procedure)</td></tr>
<tr><td colspan="2">• call to order
• imposition of a disciplinary penalty (except versus the prosecutor)</td></tr>
</table>

4.1.4. Decisions on the most serious coercive measures in the judicial stage

The order or upholding of the most serious coercive measures (criminal supervision, restraining order, detention) may ensue during the pre-trial or subsequently, these may be effected at the following times (§§ 291. and 297.):

- at the end of each procedural stage (upon the pre-trial, passing the final decision of first, second or third instance, if the procedure was not concluded sententially);
- the court of first instance if the court of first instance has not passed a final decision and six months have passed since upholding or ordering by the court of first instance;
- the court of second of third instance (it depends which is conducting the procedure) at least every 6 months if one year has passed since the upholding or ordering.

These 6 months' deadlines need to be calculated with respect to the last order or uphold.

However, the detention ordered or upheld subsequently to the announcement of the final decision of the court of first or second instance may last at most for the period of imprisonment imposed by a non sententially sentence.

During arraignment if the court returns the files to the prosecutor's office or adjourns the trial, it shall adjudge the uphold, order or termination of coercive measure bound to judicial consent concerning personal freedom pursuant to general rules (§ 725.).

4.1.5. The continuity of the trial

According to the principle of concentration (as a part of the principle of directness) the court trial shall be conducted within the least possible time without interruption. Accordingly, § 518. provides for the continuity of the trial as follows:

- if possible the court shall not disrupt the commenced trial before the conclusion of the case;
- if necessary by reason of the breadth of the case or for other reason, the presiding judge may disrupt the commenced trial for at most eight days;
- the court may adjourn the trial in the interest of the evidentiary procedure or for other important reason:
    - trial within six months: the trial can be continued without repetition;
    - if six months has passed since the former trial: at the motion of the prosecutor or the defence the trial shall be repeated.

The repetition of the trial takes place with the presentation of the essence of the former material of the trial, after which the court shall remind the prosecutor and the defence of:

- they may make observations on and
- motion the supplementation of the presentation or
- the remanded conduct of the procedural action.

4.2. The procedure in the first instance

4.2.1. The course of the trial of first instance

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.).

So far as continuous trial is conducted, it shall always commence with opening the trial, then it continues with the procedural stage, where the previous trial was completed.

4.2.1.1. Opening the trial

Opening the trial is an administrative stage. In its course the presiding judge (single judge)

- at the first trial:
  - designates the object of the charge;
  - warns the audience to maintain order and of the consequences of disorderly conduct;
  - discloses the names of the members of the court, of the court reporter, of the prosecutor and of the defence counsel.
- both at the first trial and at the continuous trial:
  - takes account of those present and examines whether the trial can be held;
  - may order an apprehension (defendant, witness) or demand presence (prosecutor, expert);
  - if the trial can be held: orders the witnesses (except for the victim) to leave the courtroom and warns them of the consequences of unjustified absence;
  - adjudges the motions of the prosecutor, the accused, the defence counsel and the victim (transfer, consolidation, severance, exclusion etc.).

4.2.1.2. Commencement of the trial

The commencement of the trial is the stage related to the first trial on the merits. This consists in the presentation of the essence of the charge and of the civil claim.

4.2.1.2.1. Presentation of the essence of the charge

The trial commences with the presentation of the essence of the charge. This may be omitted in the following cases:

- if it was presented at the preparatory session, it may ensue at the trial exclusively at the motion of the victim, who was not present at the preparatory session,
- at the motion of the accused or (with the consent of the accused) the defence counsel,
- if the court accepted the statement of confession at the preparatory session, the essence of the according ruling shall be presented instead of the presentation of the charge.

4.2.1.2.2. Presentation of the civil claim

The victim (private party) may file a civil claim at the court of first instance at the latest upon that procedural action, at which she/he could be present pursuant to the CPC (§ 556.). In case of the omission of the deadline no justification is admissible.

The civil claim shall include the designation of the defendant, a definite petition directed at the ruling of the court, especially the amount or quantity of the claim, the right to be enforced and the substantiating facts, as well as the method and location of the settlement.

The private party may withdraw the filed civil claim at any time during the procedure without the consent of the defendant. For the purpose of enforcing and arranging the civil claim the court shall apply the provisions of the act on the civil procedure pertaining to the

legal effect related to filing the claim of claim and to the operative date of the legal effects of filing a case with the clause that referring, but the directing the enforcement of a civil claim to other legal means or its withdrawal shall not entail legal power effect from the viewpoint of civil law, if the private party enforces his claim lawfully within one month.

In case of specific crime (extortion, fraud, usury), if the civil claim pertains to the right of the disposal of estate (the right of its proprietorship), the private party in his motion may request as precautionary measure the evacuation of the property and its seizure by himself/herself (§ 557.).

4.2.1.2.3. Legal consequences related to the commencement of the trial

The commencement of the trial is an important point of the criminal procedure with several legal consequences:

- partiality as a reason for exclusion may be referred to only in a restricted manner (§ 15 Subsession 4);
- if the place of commission is revealed before the commencement of the trial, the procedure needs to be conducted there, after the commencement this may not be motioned any longer (§ 21. Subsession 2);
- the prosecutor, the accused, the defence counsel and the victim may make certain motions only before the commencement of the trial: transfer, consolidation, severance, exclusion, designation of obstacles to the trial (§ 516.);
- the petition for judicial review by reason of disciplinary punishment may be withdrawn before the commencement of the trial (§ 711. Subsession 2);
- in case of arraignment the familiarisation with the documents may be ensured until the commencement of the trial (§ 726. Subsession 6);
- specific rules prevail in the procedure absent defendant, if the defendant becomes available before the commencement of the trial (§ 750. Subsession 1).

4.2.1.3. Taking evidence

4.2.1.3.1. The concept of evidence and systems of evidence

The evidentiary procedure in criminal cases is a specific part of human inspection, in the course of which unique and past events, human behaviour and the related external and internal circumstances need to be proved. By reason of its uniqueness, the criminal evidentiary procedure is close to ordinary cognition and it differs from theoretical and scientific justification, which basically endeavours to explore general rules, not to present factual evidence.

On this basis, according to Tremmel the evidentiary procedure is a cognitive process directed at the statement by the proceeding authority, eventually by the court of the mostly preceding findings of fact, which are adequate with reality and have penal legal relevance in a specific case and which is realised in an activity related to gathering, examination and deliberation of evidence. Evidence is information rising from the means of evidence or the evidentiary action, which refers to the fact (substantive element) necessary for the statement of the facts of the case with relevance under penal law and originates in a source permitted by law (formal requirement).

According to the defined order of the means, methods and evaluation of evidence, four evidentiary systems have evolved throughout history:

- In case of a *positively bounded evidentiary system* the law taxatively defines the evidence with its evidentiary force (e.g. testimony of an eye-witness 1/2, testimony of a hearsay witness 1/4, confession of culpability by the accused 1/1), this system is based on the principle of the "maximum of evidence". If the quantity and quality of evidence prescribed by law obtains (1/1), the accused has to be convicted.
- *The negatively bounded evidentiary system* is based on the principle of the "minimum of evidence". The law defines the bottom limit of proved culpability, but this is not mandatory for the judge: if the judge (court) isn't convinced about the doubtless proving force of the evidence at disposal, she/he may acquit the accused.
- The *completely unbounded evidentiary system* does not recognise any boundary. For the establishment of the culpability of the accused the law does not prescribe rules, so during taking evidence all data from any source substantiating the culpability or innocence of the accused may be used.
- In the *not completely unbounded evidentiary system* the proceeding authorities may conduct the evidentiary procedure within the scope of the stipulated provisions of the law. Such basic limitation is that evidence may only originate in legal source, furthermore, the decision related to the establishment of culpability needs to be justified in a detailed manner.

The evidentiary system in the Hungarian criminal procedure is not completely unbounded, since

- in the criminal procedure all means of evidence stipulated by law may be freely used, and all evidentiary action may be freely applied,
- the evidence doesn't have proving force prescribed by law,
- the court freely evaluates each evidence in itself and in total and establishes the outcome of proof according to its evolved certitude (§ 167.).

On this basis our evidentiary system could be completely unbounded. The reason why it is not completely unbounded is that

- the law may prescribe recourse to certain means of evidence;
- the fact originating in a means of evidence which has been obtained by the authority via crime or other prohibited means, or, via the essential injury of the rights of the parties to the criminal procedure, cannot be evaluated as evidence;
- during taking evidence the principle of the legality of the evidentiary procedure needs to be taken into consideration, namely, during the detection, gathering, securing and the use of the means of evidence the provisions of CPC and other separate statute need to be observed (§§ 166-167.).

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 prosecutor's office may modify the charge before making the final decision at the latest (§ 538.) according to the following:

- amends the charge, if it suspects that the accused is guilty in other crime or the classification in the indictment needs to be modified (at that point the trial may be adjourned at the motion of the prosecutor or the defence),
- expands the charge, if it suspects that the accused is guilty in other crime besides the one she/he is charged (at that point the trial needs to be adjourned at the motion of the defence for at least eight days, unless the procedure with respect to the expanded crime is severanced).

The prosecutor may dropping the charge (before adoption of the final decision at the latest, § 539.), if

- the object of the charge is not a crime,
- the crime wasn't committed by the accused, or
- the crime is not indicted by the public prosecutor.

In the case of dropping the charge the victim may take action as substitute private prosecutor (in the third case only if the act is subject to private prosecution), the court shall adjourn the trial and shall service for the victim the statement of the prosecutor's office about the dropping the charge within 15 days, and shall inform the victim about the possibility and the conditions of taking action as a substitute private prosecutor (private prosecutor), as well as about the rights and obligations of the substitute private prosecutor. The victim may take action as a private prosecutor within one month after the receipt of the information, and if the private motion is missing, the declaration can be submitted within this time.

4.2.1.3.2. Main provisions pertaining to evidentiary motions

During the evidentiary procedure the prosecutor's office, the accused, the defence, the victim and in the latter's scope the financially interested parties and other interested parties may make motions and comments. The proof motioned by the prosecutor generally precedes that of the defence (§ 519.).

This main rule suggests that essentially a decision needs to be made about each motion for proof. In comparison, CPC contains several cases when the motion for evidence or for its exclusion may be rejected (§ 520.) or needs to be rejected (§ 521.) without examination on the merits:

The motion for evidence may be rejected without an examination on the merits		**The motion for evidence needs to be rejected**
Within the purview of CPC the given fact does not need to be proved	*The prosecutor or the defence did not present it at the preparatory session (the victim or the financially interested party at the first trial she/he has attended or may have attended.)*	*If the court accepted the statement of confession in its order, further proof cannot be concerning the grounded nature of the findings of fact of the indictment and the question of culpability.*
• common knowledge, • official knowledge, • facts admitted by the	With the exception if • the evidence was produced subsequently,	With the exception if the order is reversed because it was not admitted.

prosecutor and the defence, • less significant crime.	• through no fault of his own got acquainted with it subsequently, • certain evidence may be disproved only via this. (it needs to be presented within 15 days)	Then the accused and the defence counsel may present their motions within 15 days without limitations.

If the findings of fact cannot be clarified without the motioned evidentiary procedure, the court shall admit the motion otherwise to be rejected, but in case of the motion of the prosecutor's office the chief of the prosecutor's office may be informed, otherwise a disciplinary penalty may be imposed on the motion maker.

4.2.1.3.3. Defendant testimony

The defendant testimony has an outstanding role in the criminal procedure. Although the former criminal procedure codes suggested that it is merely one out of the other equivalent evidence, the defendant testimony has always had great significance. This is manifest in the fact that the confession of the defendant is (at least an expressly alternative) prerogative of certain special procedures, but the confession can also significantly expedite the procedure since the conduct of the complete evidentiary procedure is omissible.

In the judicial stage two kinds of defendant testimony may be taken into consideration:
a) interrogation of the accused at the trial,
b) reading out former testimonies made as a defendant.

ad a) The evidentiary procedure commences with interrogation of the accused with the exception if the accused made a testimony at the preparatory session, since in that case the interrogation of the accused is dispensable (§ 522.). The accused needs to be interrogated in absentia his not-yet-interrogated co-accused and in the interest of the protection of the accused, the already interrogated co-accused may be removed from the courtroom for the time of the interrogation.

The order of the interrogation of the accused at the trial is as follows:
1. checking personal particulars (the verification of the data recorded in the former stage of the procedure may be carried out by the draftsman of the court, the court secretary or the court executive out-of-trial, in these case only its fact and the changes need to be recorded).
2. warnings:
   - warnings concerning the defendant,
   - during the evidentiary procedure the accused may address questions to the interrogated persons, may make motions and comments,
   - if the accused does not make a confession, the essence of his former testimony made as a defendant can be presented or read out;
3. if the accused makes a testimony, the presiding judge shall ask the accused whether admits his culpability;
4. the coherent testimony of the accused;
5. questions (their order: the members of the court, the prosecutor, the defence counsel, the

victim, and in the concerned group the financially interested party and the expert).

The presiding judge:

- shall prohibit the answer if the question is precluded under CPC,
- may prohibit the answer, if it is directed repeatedly at the same fact,
- ensures that the method of questioning does not offend the human dignity of the accused.

If the accused admits his culpability in the crime as an object of the accusation at the trial, the court needs to proceed as if the confession was made at the preparatory session. At that point the accused may be interrogated with respect to the sentencing circumstances and the evidentiary procedure may be declared concluded (§ 524.).

ad b) The presiding judge presents ex officio, or at the motion of the prosecutor or the defence may read out (or have the court reporter read out) the essence of the testimony of the accused made during the investigation and at the preparatory session

- in absentia the duly summoned accused at liberty, who has not appeared (§ 429. Subsession 3),
- if the accused does not wish to make testimony at the trial,
- if the accused is residing at an unknown place,
- if the testimony of the accused made at the trial differs from his former testimony, and questions have been addressed to the accused concerning the facts and circumstances included in the presentation, or concerning those the accused has already interrogated at the trial (§ 525.).

If the court omitted the questioning of the accused because the accused had interrogated at the preparatory session, the testimony made at the preparatory session needs to be presented at the motion of the prosecutor or the defence.

4.2.1.3.4. Testimony of the Witness

The provisions pertaining to
a) the witness interrogated at the trial and
b) reading out of previous testimony of the witness
need to be observed concerning the testimony of the witness.

ad a) With some departures the rules concerning the investigation are governing the order of testifying and the applicable warnings.

At the trial the victim shall normally be interrogated first out of the witnesses (§ 526.). The reason for this is that the victim will be able to exercise his rights only after his/her questioning, since during the questioning of the witness the not-yet-interrogated witnesses cannot be present. In the interest of the protection of the witness in need of special treatment the person (even the accused!), whose presence would insult the witness in need of special treatment during his questioning, may not be present either.

Following the questioning of the witness, the same persons in the same order may address questions to the witness as to the accused, and addressing questions may be restricted for the same reason.

ad b) The presiding judge shall ex officio present or read out (or have the court reporter read out) the essence of the previous testimony of the witness at the motion of the

prosecutor or the defence (§ 527.), if

- the witness cannot be interrogated at the trial,
- questioning of the witness is impossible because of his/her protracting stay abroad,
- the witness unlawfully or as the relative of the defendant declines testimony (his testimony formerly made as a defendant following the Miranda-warning may be read out),
- the trial needs to be repeated since six months have passed since the former closing date, and the prosecutor or the defence made an according motion, and
- certain parts of the witness' former testimony can be presented if the witness does not remember those, or, if a contradiction obtains between the testimony made at the trial and the former testimony on condition that the witness was addressed questions concerning these facts, or the witness testified concerning these facts at the trial.

Concerning the witness the CPC circumscribes cases when the former testimony needs to be read out as well, if the court does not deem the questioning of the witness at the trial necessary, and it is not motioned by the defence either.

4.2.1.3.5. Hearing the expert and the presentation of the expert opinion

Just as the accused and the witness may be interrogated or the record made at the former interrogation may be read out, it may ensue that the expert presents his opinion orally or the written opinion is read out. Accordingly, we distinguish
a) the hearing of the expert and
b) the presentation of the expert opinion.

ad a) While the accused and the defendant are interrogated, the expert is heard, since he does not make a statement concerning obtaining knowledge, but states his opinion. Before hearing the expert, he needs to be warned about the consequences giving a false opinion. The warning and the response of the expert to the warning shall be recorded (§ 196. Subsession 2). Subsequently, the expert shall be heard according to the meaning of the provisions pertaining to the questioning of the witness (§ 529.), supplemented by the following: the expert during his hearing may

- have recourse to his filed written expert opinion and
- his notices, and
- apply visual aid.

ad b) Pursuant to § 530. the presiding judge shall present the essence of the submitted written expert opinion or read it out (have the court reporter read it out) at the motion of the prosecutor or the defence.

Subsequently the trial shall be adjourned in two cases and the expert shall be summoned to the appointed trial (i.e. the presentation of the written expert opinion shall not suffice):

- if the expert opinion by reason of its deficiency cannot be accepted without concern (lack of mandatory elements, not unambiguous, contradictory, its appropriateness is emphatically doubtable) and this can be clarified only by hearing the expert,
- if the prosecutor, the accused, the defence counsel or the victim wishes to address questions to the expert.

4.2.1.3.6. Other proof at the trial

During taking evidence all other means of evidence are applicable or evidentiary action may be carried out. Out of these the CPC highlights the following:
1. presentation and reading out the essence of documents (§ 531.): the presiding judge shall present the essence of the documents, or, instead of this at a motion (of the prosecutor or the defence) the presiding judge may order reading out of specific parts of the documents; the documents submitted at the trial shall be enclosed to the record of the trial by the presiding judge;
2. utilisation of the record of a procedural action (§ 532.): the presiding judge may present the visual, audio or audio-visual recording of a procedural action at the trial, if this includes the testimony of the defendant or the witness, the provisions concerning the use of the former testimony of the defendant or the witness are applicable;
3. court inspection (§ 533.): at the trial the presiding judge shall demonstrate the physical evidence, if this is not applicable, its photo and its description shall be presented, the court inspection shall be held by the court or its delegated member;
4. taking evidence by way of delegated judge or the requested court (§ 534.): if the proof cannot be carried out at the trial or it is extraordinarily encumbered:
- a delegated judge (the single judge or a member of the council) or
- another requested court with the same competence shall proceed within one month.

The record of the proceedings of the delegated judge or the requested court shall be read out at the trial.

Subsequently to carrying out the evidentiary procedure, unless a motion for evidence has been made, or it has been rejected by the court, the presiding judge shall declare the evidentiary procedure concluded and advises those entitled to make an argument in the court of law and address the meeting (§ 540.).

4.2.1.4. Pleadings

The CPC precisely prescribes the order of pleadings in a broader scope (prosecution argument, defence argument, addresses, last word) made at the trial (§§ 541-546.):
1. The prosecution argument: pleadings commence with the presentation of the prosecutor (public prosecutor, substitute private prosecutor, private prosecutor). The prosecution argument may basically have three directions:
- if the prosecutor deems that the culpability of the accused can be established, in his presentation with the indication of statutes, it may make a motion for the findings of fac to be determined by the court, for what its legal classification should be, and what sanction should be applied (the prosecutor may not move for the specific degree and in case of a defendant admitting culpability at the preparatory session, it may not move for more serious sanction), for what other measures the court should take;
- the prosecutor moves for the acquittal of the accused in case of the lack of evidence and of certain obstacles to criminal liability (minor age, insanity, coercion, threat, mistake, justifiable defense, means of last resort); or
- the prosecutor dropps the charge (see, the act is not a crime, is commissed not by the accused or not to be persecuted via public prosecution).

2. Address by the victim:

- the victim may expound its viewpoint concerning the object of the charge and
- may state whether it wishes the establishment of the culpability and punishment of the accused, and
- if several representatives proceed in the interest of the victim (financially interested party), the address shall be held by one of them according to their agreement.

3. Address by the private party:
- may make a motion in the scope of a civil claim,
- may reason the civil claim,
- in his absence the submitted civil claim shall be read out from the documents.

4. Address by the financially interested party: may make a motion in the direct scope of his right or lawful interest.

5. Defence argument:

- the defence argument does not have legal requirements similar to the prosecution argument,
- if the defence counsel is not present at the trial, the defence argument may be presented by the accused,
- in case of several accused, the order of the defence arguments shall be determined by the presiding judge.

6. Rebuttals:
- subsequently to the pleadings and addresses, rebuttals in an according order are admissible,
- rebuttals may prompt further rebuttals,
- finally, the defence counsel or the accused may rebuttal.

7. Last word: before making the final decision, the last word is the legal right of the accused.

Pleadings may be submitted to the court in writing as well, which need to be serviced to the prosecutor's office, the accused and the defence counsel. In this case upon the oral presentation of the pleading the presentation of the essence of the pleading shall suffice.

During the pleadings in a broader scope speech may not be withdrawn, but
- if it is directed at the protraction of the procedure, the presiding judge shall worn the person concerní,
- in a repeated case speech may be withdrawn, and
- if the pleading includes a phrase which qualifies as crime or causes disorderly conduct, the speaker may be interrupted.

On the basis of the content of the pleadings in a broader scope the court may
- reopen the evidentiary procedure before making the final decision (§ 547.),
- adjourn the trial in the interest of the preparation of the defence, if it establishes that the classified act as an object of the indictment may qualify differently (§ 548.).

4.2.1.5. Adoption of the decision

Subsequently to the pleadings the court shall withdraw in order to make a final decision (§ 549). If the court proceeds in a council, it shall make its decision after consultation with a majority vote by secret ballot. At this consultation exclusively the members of the court and the court reporter are present (§ 550.). The sentencing shall ensue in the following order:

1. the court establishes the findings of fact,
2. on this basis, it establishes whether the accused is guilty,
3. if the accused is guilty, it establishes in what crime (classification),
4. the court makes a decision on the sanction and other provisions.

During decision-making the operative part of the decision shall be written and signed by the members of the court. The signed, original copy of the operative part of the decision made at the trial shall be attached to the court records (§ 549. Subsession 2).

The questions which are not on the merits arising at the trial may be adjudged in low-tone consultation at the trial.

4.2.1.6. The announcement of the final decision

The decision needs to be communicated to the party that is affected by its provision (§ 454.), namely, via announcement to those present, otherwise via service (§ 455.).

The final decision needs to be announced immediately after it is made (§ 549. Subsession 2). If the complexity of the case, the length of the decision or other important reason requires that, the trial can be adjourned by 8 days (exceptionally by 15 days) for making and announcing the decision (§ 550.). If the accused (defence counsel) has not appeared at the trial despite a regular subpoena, the decision may be announced in their absence.

The order of the announcement is the following:

- the (written) operative part of the final decision shall be read out by the presiding judge while standing up and those present shall listen to it standing up (with the exception if somebody's state of health does not allow that);
- then the presiding judge discloses the essence of the justification (this is casual and everybody listens to it sitting down);
- after the announcement the presiding judge serves the operative part of the final decision to the persons present entitled to appeal (the official copy of the judgement including the justification needs to be served later to the prosecutor, the accused, the defence counsel and the victim, if the operative part of the decision has been disclosed to them via announcement (§ 455. Subsession 4);
- then the presiding judge has the persons present entitled to appeal declare whether
    - she/he acknowledges the judgement,
    - she/he gives notice of an appeal, or
    - she/he reserves the right to 3 work days' deadline for making a statement;
- then those entitled to appeal make a statement (in the following order: the prosecutor, the private party, the financially interested party, the accused, the defence counsel).

The court dismisses the coercive measure bound to judicial consent concerning personal freedom and immediately proceeds to release the accused, if

- the court hasn’t imposed enforceable imprisonment or placement in a reformatory institution on the accused,
- their length doesn’t exceed the length of the appealable imprisonment, or
- in case of acquittal, involuntary treatment in a mental institution has not been ordered.

Two possibilities obtain depending on the notices of appeal:

- if the final decision does not become effective upon its announcement (since not all the entitled parties have acknowledged the decision upon its announcement), the court shall immediately decide on the coercive measure bound to judicial consent concerning personal freedom; in that case detention may be ordered even if with regard to the length of imprisonment imposed in the judgement the escape or hiding of the accused may be feared (§ 552.).
- if the final decision takes effect upon its announcement, the court shall conduct the concurrent sentence procedure (since the court of first instance proceeding in the last concluded case is entitled to that), if the procedures were conducted by courts with the same competence, or this is the court with superior competence (§ 839.).

Subsequently to the statements on remedies and making the decision on coercive measures the presiding judge shall close the trial (§ 553.).

Subsequently to become effective of the final decision, the presiding judge may adjudge (§ 554.)

- the translation of the decision to be service,
- the correction of the decision or
- release the sequestration.

4.2.2. Decisions of the first instance

During the judicial procedure the following decisions may be made:

Final decisions			***Non-conclusive orders***	***Judicial measures not requiring decisions form***
Sentences		**Orders**		
Verdict of acquittal	*Guilty sentence*		Decisions that do not include provisions on the merits of the case	
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	• ruling terminating the procedure • penalty order		

4.2.2.1. Final decisions

4.2.2.1.1. The sentence

The CPC stipulates the principle of the constraint by the charge (§ 6.):

- the court shall adjudicate on the basis of the charge (the charge is the condition sine qua non, that is, indispensable condition of the judicial procedure).
- the court shall adjudge the charge (the charge constitutes the positive framework of the judicial procedure, the so-called obligation to exhaust the charges) and
- the court may not surpass the breadth of the charge (the charge also constitutes the negative framework of the judicial procedure, the so-called prohibition of going beyond the charges).

The court shall adjudge the charge within a sentence, it either finds the accused guilty or acquits the accused (§ 563.):

a) Guilty sentence (§ 564.): the court finds the accused guilty, if it establishes that she/he committed a crime and is culpable. If the court accepted the statement of pleading guilty at the preparatory session, it may not apply a more serious sanction than the one which the indictment (the filed motion) includes.

b) Verdict of acquittal (§ 566.): the court clears the accused of the charges pursuant to those classical procedural obstacles which are not reasons for the termination of the procedure (the act is not a crime or it was not committed by the accused or these cannot be proved, grounds for exemption from punishability of the accused or the culpability of the act).

4.2.2.1.2. The ruling terminating the procedure

The reasons for the termination of the procedure shall take precedence over the reasons for acquittal at all times. This is indicated on the one hand by the fact that upon the discernment of these reasons, the court terminate the procedure without delay (this holds true for the non-conclusive ruling terminating the procedure, as well), on the other hand if the death of the accused or his clemency rises to notice subsequently to the announcement of the sentence, but before it becomes effective, the court shall terminate the procedure, even if no appeal has been filed against the decision (§ 567. Subsessions 3 and 7).

The court shall terminate the procedure by its final order in the following cases (§ 567.

Subsession 1 and § 573. Subsession 3).

a) grounds of the reason for ceasing the punishability (death, statute of limitation, clemency, other ground defined by law),
b) the act has been adjudicated finally (res iudicata),
c) the prosecutor has dropped the charge and private prosecution (substitute private prosecution) is inadmissible, or the victim has not filed a (substitute) private prosecution (or the dropping of charge could not be serviced to him because of his unknown residence),
d) on grounds of the remittance of the criminal procedure or of the result of the European Union consultation procedure, the criminal procedure will be conducted by the authority of another state,
e) the case is not subject to Hungarian legal authority,
f) by reason of less significant crime or infraction (which does not have significance from the viewpoint of impeachment alongside the preponderance of a significant crime as an object of the charge).

4.2.2.1.3. Other provisions of the final decision

Several other provisions can be passed within the final decisions:

a) Provision on the enforcement of irreversibly rendering electronic information inaccessible via the final hindrance of access (§ 570.): the court orders this ex officio or at the motion of the prosecutor's office, if the temporary rendering electronic information inaccessible was ordered and the further hindrance of access is justified.

b) Adjudication of civil claim (§§ 560. and 571.): the court can basically pass two kinds of decisions on the civil claim. If the court deems that on the basis of the procedure a decision on the merits can be made concerning the entitlement of the victim to compensation versus the accused, then it passes in the sentence (whether it awards or declines it or it only partially awards it). In all other cases the court refers the enforcement of the civil claim to other legal action.

There are two aspects of the adjudication of the civil claim on the merits (§ 571.):

- the adjudication of the legal grounds of the civil claim is admissible if the findings of fact established by the court includes all the facts (presented by the private party) that serve as a basis of the law enforced under a civil claim (and this can be separated from the amount);
- the court may adjudge the amount of the civil claim on the merits, if in its judgement it establishes the damage caused by the crime (substantial value, committing value), but this amount cannot be exceeded.

If the civil claim cannot be adjudged on the merits, the court refers it to other legal action. This may basically have the following reasons (§ 560.):

- the criminal or infraction liability of the defendant is not established;
- the enforcement of the civil claim is precluded by the CPC or other circumstance, or it is belated;
- the civil claim has been filed along with the petition for precautionary measure;
- the private party has filed a notification of grounds for exclusion versus the court pursuant to the civil procedure code;

- the civil claim cannot be adjudged pursuant to the civil procedure code (e.g., for lack of legal capacity in private procedure);
- the civil claim has not been filed by the victim or it does not include legal requisites;
- the adjudication of the civil claim on the merits would significantly delay the closure of the criminal procedure or it is precluded by another circumstance.

c) Termination of the parental right of custody (§ 572.): the court at the prosecutor's motion terminates the parental right of custody of the accused, if it pronounces the accused guilty in premeditated crime committed to the injury of his child.

The court may refer the enforcement of the claim for the termination of the parental right of custody to other legal action, if the adjudication of the motion would delay the closure of the criminal procedure significantly, or if other circumstance precludes the adjudication of the motion in the scope of the criminal procedure.

d) Adjudication of the infraction (§ 573.): if the court with respect to the result of the trial deems that the act as the object of the charge constitutes an infraction and therefore acquits the accused, it shall adjudicate the infraction. In such a case the court may order forfeiture and it may adjudge the civil claim on the merits.

e) Bear the cost of criminal proceedings: the court shall generally obligate the accused to bear the cost of criminal proceedings, if she/he is found guilty or his liability for the commission of the infraction is established. The CPC includes some exceptions from this rule:

- the accused cannot be held liable for the cost of criminal proceedings, which have been unnecessarily incurred (not by reason of his negligence),
- the accused cannot be held liable for costs, which need to be borne by others pursuant to the CPC (e.g. the distinguishable costs in case of several accused),
- the court may exempt the accused from liability for a part of the disproportionately high cost of criminal proceedings with respect to the objective severity of the crime,
- in case of the acquittal of the accused or the termination of the procedure, the accused shall be held liable for the costs, which were incurred by his negligence,
- in case of the termination of the procedure, the accused can be held liable for (a part of) the cost of criminal proceedings, if the procedure has been terminated by a ground of the reason for ceasing the punishability depending on her/his conduct.

The costs incurred in the criminal procedure, which no one can be held liable for, shall be borne by the state. If the charge was represented by the public prosecutor's office and the court acquits the accused (except for insanity), or if the procedure is terminated by reason of dropping the charge by the prosecutor, the state shall reimburse the expenses of the accused, the fee and the expenses of the assigned defence counsel within one month as of becoming effective of the final decision. If the accusation was represented by a private prosecutor or a substitute private prosecutor, she/he shall be liable for the cost of criminal proceedings which otherwise the state should bear in case of an acquittal or dismissal of the procedure (and in case of an acquittal she/he shall bear the costs of the defence counsel, §§ 782. and § 813.). In case of a substitute private prosecution this provision pertains merely to the cost of criminal proceedings incurred after the intervention of the substitute private prosecutor and only that part of the cost of criminal proceedings, which was incurred due to the motion for prosecution or filing the written announcement (with respect to the appeal or secondary appeal).

4.2.2.1.4. The structure of the final decision

The final decision of the court consists of four main parts (§§ 451. and 561.):

Introductory part

- designation of the court,
- number of case,
- the place of the judicial procedure,
- the form of the judicial procedure,
- the trial days,
- the publicity of the trial,
- was the trial public?,
- the place and time of passing the decision

Operative part

- the data concerning the preliminary detainment of the accused,
- the personal particulars of the accused,
- pronouncement of the accused guilty or his acquittal (reference to the termination of the procedure),
- designation of the crime,
- in a guilty sentence the definition of the sanction or the omission of the imposition of punishment by the court,
- other provisions,
- provision pertaining to the cost of criminal proceedings

Justification

- reference to the charge,
- the personal circumstances of the accused,
- the findings of fact,
- the evaluation of evidence,
- classification,
- the justification of other provisions (the sanction in a guilty sentence) with reference to a pertaining statute / in case of acquittal or termination of the procedure indication of the grounds which guided the court in passing the judgement

Closing part

- date,
- signature,
- perhaps clause of legal power

The justification may be brief in certain cases and it does not need to include the evaluation of the evidence (§ 562.):

- if nobody filed an appeal against the final decision;
- if the appeal is limited to the rejection of the sanction;
- with regard to the crime not subject to the appeal, if the final decision provides for several criminal acts;

- if the court has accepted the pleading guilty of the accused and established the culpability of the defendant on these grounds;
- if the appeal is directed merely at the question constituting the object of the simplified review, at the civil claim or the terminating of parental right of custody under the sentence.

4.2.2.2. Non-conclusive decisions

The non-conclusive decisions include all the decisions of the court, when it does not adjudicate criminal liability and the sanctions. The following decisions are regarded as such:

a) Suspension of the procedure (§ 535.): the suspension of the procedure is admissible subsequently to the commencement of the trial upon its reasons definited at pre-trial. Suspension of the procedure by reason of illnesses, mental incapacity, fugitive accused (staying abroad) does not impede specific pecuniary provisions (forfeiture, confiscation of property, irreversibly rendering electronic information inaccessible, nationalisation of seized goods).

b) Out-of-trial decisions (§ 537.): the court may pass decisions in other issues on the basis of documents (the council shall rule concerning transfer, consolidation, severance, suspension or termination of the procedure).

c) Out-of-trial decisions in council are also admissible pertaining to coercive measure bound to judicial consent concerning personal freedom, the ruling needs to be passed in a session (§ 537.). The length of these coercive measures is stipulated under the CPC as follows:
- in case of a ruling (upholding) following charge they are applicable until the announcement of the final decision of the court of first instance,
- upon ruling (upholdin) subsequently they are applicable until the conclusion of the procedure of the court of second instance,
- upon ruling (upholdin) subsequently to the announcement of the final decision of the court of second instance they are applicable until the conclusion of the procedure of the court of third instance,
- in case of a ruling (upholding) under an reverse decision (cassation) they are applicable until the court ordered to renew the procedure makes a decision during the pre-trial of the renewed procedure.

d) Non-conclusive rulings (§ 449. Subsession 3): these include especially the exclusion of a judge, the assignment or exoneration of a defence counsel or an expert, the order of an accompany or an apprehension, issue, withdrawal or modification of a warrant of arrest, obligation of the accused to be present at the trial, authorisation of the accused to repeatedly decline his presence at the trial, the order of closed trial.

e) Interlocutory orders (§ 449. Subsession 4): non-conclusive decisions which determine the order of the proceedings directed at the preparation or implementation of the procedural action subsequently to the receipt of the case by the court. They include remittance of the case to trial or council, setting, postponement, adjournment, interruption, subpoena and notification, consolidation and severance, order in the conduct and the maintenance of the order of the trial (with the exception of disciplinary penalty, order to bear costs, arrest), the establishment of a classification departing from the charge and an order in the object of the

evidentiary motion.

f) The non-conclusive ruling terminating the procedure (§ 567. Subsession 2 and § 719. Subsession 4): in certain cases the procedure may be terminated by the non-conclusive ruling of the court:

- impediment of the procedure (denunciation, the order of the Supreme Prosecutor and the absence of a private motion),
- if the charge was not raised by the entitled party,
- if the indictment fails to or insufficiently includes the legal elements, and
- if the motion was rejected by the party entitled to suspend immunity.

4.2.2.3. Putting in writing and correction of the decision

The CPC stipulates 3 deadlines for putting down into writing the decision not included in the minutes (§ 452.):

- the complete decision with its justification generally needs to be put down in writing within one month as of its passing (announcement or the expiry of the date for remedy);
- if it needs longer justification, 2 months are at disposal;
- this deadline may be lengthened on one occasion by the chief of the court by at most 2 months.

In case the decision contains clerical or calculation errors, the court may order the correction of the decision at motion or ex officio. The correction may not modify the meaning of the corrected decision (§ 453.). An appeal versus the decision made in the correction is only admissible if it pertains to the operative part. The court of second instance may also correct the decision of the court of first instance in its decision adjudging the appeal on its merits.

4.2.3. Specific procedures of first instance

4.2.3.1. Procedure of private prosecution

The presence of the private prosecutor is mandatory at the trial in procedure of private prosecution and his representative shall be notified (§ 773.). Concurrently with the writ of subpoena (notification) the court shall inform the private prosecutor (his representative) what evidence is going to be taken at the closing date.

At the trial the essence of the charge (the counter charge) shall be presented by the representative of the private prosecutor (the defence counsel). If the private prosecutor does not have a representative (or is not present), or the accused does not have a defence counsel, the court shall present the charge (the counter charge).

At the trial of the private prosecution the court arranges taking the evidence: the court interrogates the accused, the witness and hears the expert (§ 775.). A further peculiarity is that if the questioning of the private prosecutor as witness is necessary, the evidentiary procedure shall not commence with questioning the accused, but the private prosecutor.

The private prosecutor may dropp the charge at any time and is not obligated to justify it (§ 776.). Furthermore, an implied dropping of charge is admissible not only at the personal

hearing, but also at the trial of the private prosecution, namely, in two ways:

- if the private prosecutor is absent from the trial and has not exempted himself with substantiated reason, preliminarily and without delay, thereby, he has become inaccessible, he is meant to have dropped the charge;
- in case of the disorderly conduct of the private prosecutor, he may not be ordered to leave (or to be removed from) the courtroom, but if he carries on with disorderly conduct and makes the trial in his presence impossible, this shall imply that he has dropped the charge.

In case of the (implied) dropping of the charge the court shall terminate the procedure.

Besides the dropping of the charge, we need to expatiate upon withdrawal from the prosecution. If the public prosecutor takes over the representation of charge in case of a private prosecution, then at the trial withdraws from the prosecution and the victim is present, the court shall continue the trial. Otherwise the court shall set a new trial date concurrently with the adjournment of the trial, and the court shall inform the victim that it shall represent prosecution again.

In a case of private prosecution, the decisions shall be disclosed to the private prosecutor, not the public prosecutor (with the exception if the public prosecutor has taken over prosecution).

4.2.3.2. Procedure of substitute private prosecution

Pursuant to § 802. in the judicial procedure the substitute private prosecutor shall exercise the rights of the victim as well as the rights of the prosecutor and attends to the tasks of the prosecutor's office:

- including the motion for the order of coercive measure bound to judicial consent concerning personal freedom of the accused and for the issue of a warrant of arrest, but
- may not make a motion for the termination of parental right of custody of the accused and may not expand the charge.

The presence of the substitute private prosecutor and his legal representative at the trial is mandatory and the court shall inform them about the taking of evidence scheduled for the closing date (just like in case of the private prosecution). If the legal representative of the substitute private prosecutor does not attend the trial without giving sufficient reasons therefore, the court may postpone the trial at the expense of the legal representative, and may impose a disciplinary penalty on the representative (§ 803.).

In a procedure of substitute private prosecution the termination of the procedure has three specific cases:

Implied dropping of charge	Extended right of dropping of charge	Termination of representation
• neither the substitute private prosecutor or his legal representative attends the trial (and they haven't excused themselves) • the substitute private prosecutor continues disorderly conduct and renders the trial impossible to be held in his presence	• the substitute private prosecutor may dropp the charge with an express statement without justification	• the legal representation of the substitute private prosecutor is terminated in the procedure and the substitute private prosecutor does not ensure his legal representation within 15 days as of the warning of the court

After the court admits the motion for prosecution or the recognises the actionf of the substitute private prosecutor, the procedure of substitute private prosecution in progress cannot be unified with other case of substitute private prosecution (§ 805.).

If the public prosecutor's office has taken over prosecution, but later withdraws from the prosecution, two possibilities obtain:

- if the victim and its representative are present, the court shall continue the trial,
- if they are not present, the court simultaneously with the adjournment of the trial sets the new trial, and informs the victim that it shall represent the prosecution again (§ 806.).

4.2.3.3. Arraignment

In case of arraignment the attendance of the defence counsel in the judicial procedure is mandatory (§ 728.). In such a case 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.

After the presentation of the charge, the court shall return the documents to the prosecutor's office, if

- the deadline for the arraignment has expired;
- the crime is punishable by imprisonment of more than ten years;
- the evidences are not available; or
- in case of the modify the charge the conditions for arraignment in the crime on the basis of the modified indictment do not obtain.

In case of arraignment the trial can be adjourned only once by at most 15 days (§ 729.). If the result of the evidentiary procedure conducted at the trial necessitates the detection

of further means of evidence, and therefore the trial cannot be continued within 15 days or without further adjournment, the court shall return the documents to the prosecutor's office.

No appeal is admissible by reason of the return of the documents to the prosecutor's office.

4.2.3.4. In absentia procedures

The CPC differentiates 4 forms of special procedures in the absence of the defendant (in absentia):
a) procedure against absent defendant,
b) procedure against the absent defendant staying abroad,
c) procedure in progress with the deposition of security,
d) procedure for deprival of property.

ad a) The court proceeds at the motion of the prosecutor's office against the absent defendant (§ 749.), the private prosecutor or the substitute private prosecutor may not file such a motion (§§ 786. and 817.).

The following cases of procedures may obtain against the absent accused (§ 750.):

- the prosecuton's office raises charge against the absent defendant from the outset (if meanwhile the residence of the accused is revealed before the commencement of the trial, the court shall inform the prosecuton's office about this fact);
- the accused becomes unavailable following the indictment: if the conditions of the conduct of the procedure against the absent defendant obtain, the court shall inform the prosecuton's office about this fact (if the prosecuton's office motions for the procedure within 15 days, it shall be conducted in the absence of the defendant; otherwise the procedure shall be suspended);
- the provisions above shall apply in the second and third instance as well.

If the procedure is conducted in the absence of the defendant but the defendant appears meanwhile, the consequences shall be different depending on the time of his availability:

When does the accused appear?	What are the consequences?
preceding the adoption of the final decision of the court of first instance	• the court continues the trial by presenting the material of the former trial • the evidentiary procedure is reopened if necessary
following the adoption of the final decision of the court of first instance	• the accused may file an appeal within the deadline open to appeal
in the judicial procedure of second instance	• the court of second instance settings a trial • interrogates the accused • presents the essence of the material of the trial held in the absence of the accused • if required, takes further evidence at the motion of the accused
in the judicial procedure of third instance	• the court of third instance reverses the sentence of second instance and instructs the court of second instance to conduct a new procedure (except for the case when due to procedural infraction the court of first instance needs to be instructed to conduct a new procedure)
upon the adjudication of remedy versus the revoking ruling of third instance	• the Supreme Court reverses the decision of the court of third instance and instructs the court of third instance to conduct a new procedure
adoption of the final decision	• a motion for retrial may be filed in favour of the accused

If the accused appears but during the repeated procedure departs for an unknown place again, the decision of the court based on the procedure against the absent accused remains in effect without an examination on the merits (§ 753.).

Preparatory session or trial may not be held in case of an absent juvenile.

ad b) The rules of procedure against absent defendant shall apply to procedures conducted in the procedure against the absent defendant staying abroad (§ 754.).

The conduct of the procedure in the absence of a defendant with known foreign residence is admissible in case of alternative and conjunctive conditions (§ 755.). Out of the alternative conditions at least one needs to prevail, whereas each of the conjunctive conditions shall be directive:

Alternative conditions	Conjunctive conditions
• The issue of a European (international) arrest warrant is not admissible / the prosecutor's office has not motioned for the imposition of executable imprisonment (the application of placement in a reformatory institution) and the defendant has not appeared despite a regular subpoena or is detained abroad • European (international) arrest warrant has been issued but subsequently to the capture of defendant o the transfer (extradition) of the defendant did not ensue within 12 months, o the transfer (extradition) of the defendant was rejected, o criminal proceedings have not been transferred or o postponed transfer (extradition) of the defendant was ordered	• the procedure in absentia is justified by the objective severity of the crime or the judgement of the case • the participation of the defendant via filing a request for international legal assistance in criminal matters (by means of a telecommunications device) may not be secured, or the application of this is not justified by objective severity of the crime or the judgement of the case

If the defendant is detained abroad, the conduct of the procedure following the indictment against the defendant staying abroad is admissible only with the consent of the defendant. If the defendant does not consent to the continuation of the procedure, the court shall suspend the procedure (§ 756.).

No preparatory session or trial shall be held in the case of juvenile either.

ad c) Preceding the charge the prosecutor's office, following the charge the court may permit the forthwith the deposit of security at the motion of the defendant habitually residing abroad (§ 757), if

- the crime is punishable by imprisonment of at most 5 years,
- presumably the imposition of a fine or confiscation of property shall be ordered against the defendant,
- the absence of the defendant from the trial and procedural actions does not violate the interests of the procedure,
- the defendant commissioned his defence counsel to carry out the tasks of a mailing agent and
- the crime did not cause death.

The motion for permission of the deposit of security may be filed by the defendant or his defence counsel at the proceeding court or the prosecutor's office. The motion shall contain the defendant's declaration that he will return to the territory of Hungary if it is necessary for the purpose of the enforcement of the imposed imprisonment or custodial arrest. The court or the prosecutor's office shall make a decision on the motion on the basis of the documents and, if necessary, it shall hear the defendant and his defence counsel (the court may even hear the prosecutor). The amount of the security shall be determined in the foreseeable extent of the fine and confiscation of property to be imposed as well as the

incurred cost of criminal proceedings.

If the deposit of the security has been permitted and the defendant has deposited the security, the procedural actions and the trial can be conducted in the absence of the defendant, and the court may closure the procedure against the defendant in absentia (§ 758.). The presence of the defence counsel is mandatory in the criminal procedure. If the defendant has deposited the security and left the territory of Hungary, the provisions of the procedure against the absent defendant (the absent defendant staying abroad) may not be applied in the criminal procedure, and the procedure may not be suspended for this reason either. If the object of the procedure changes (the defendant is accused of further crimes, the scope of the charge is extended etc.), and the deposit of the security is not admissible any longer, it needs to be refunded, and the defendant shall be present at the procedure.

The security shall devolve upon the state subsequently to the becoming effective of the final decision if the liability of the defendant is established (either in a guilty sentence or a penalty order, but even in a verdict of acquittal or a ruling terminating the procedure if the confiscation of property is ordered). If the court imposes a fine, applies the confiscation of property and obligates the defendant to pay cost of criminal proceedings or states the civil claim, the security devolving upon the state shall be spent on the enforcement of the above (§ 760.).

The security shall be reimbursed to the defendant

- fully: in case of acquittal, termination of procedure (if the confiscation of property was not ordered);
- partially: if the amount of security exceeds the extent of pecuniary obligation.

ad d) If on the basis of of the procedure directed at the deprival of property or object related to a crime or at rendering data inaccessible (procedure for deprival of property) the prosecutor files a motion for the court to order

- forfeiture,
- confiscation of property,
- irreversibly rendering electronic information inaccessible,
- transfer of seized object to the proprietorship of the state or
- the establishment whether specific property is subject to the effect of confiscation of property ordered by a final decision became effective.

The court shall make decisions based on the documents and shall hold a trial only if required (§ 823.). If the court holds a trial, holding a preparatory session is inadmissible. Suspension of the procedure is inadmissible in the judicial procedure.

Subsequently to the opening of the trial the presiding judge, if necessary, shall present the decision made in the base case, then the prosecutor shall present the essence of the motion.

The court may make two types of decision:

- provides for forfeiture (confiscation of property, irreversibly rendering electronic information inaccessible, transfer of seized object to the proprietorship of the state) if the motion is substantiated;
- rejects the motion in all other cases.

If the court made its decision on the basis of the documents, appeal against its final order is inadmissible, however, within 8 days following the service of the order the

prosecutor's office, other interested party, the defendant and his/her defence counsel may request holding a trial to which the provisions concerning the trial requested against the penalty order shall pertain.

4.2.3.5. Procedure in case of an agreement

If a trial needs to be held following the consent to the agreement, the court shall present the essence of the agreement following the commencement of the trial (§ 737.).

The court may reverse the order affirming the agreement following the obtainment of the statements of the prosecutor and the accused if it deems that compared to the result of evidentiary procedure the rejection of the agreement would have been admissible due to the change of the findings of fact or of the classification. In such cases

- the agreement shall not be binding for either the prosecutor's office or the defendant,
- the court shall make a decision (at the motion of the prosecutor's office, the accused or the defence counsel) on repeating the evidentiary procedure conducted in the absence of the accused, and
- the prosecutor, the accused and the defence counsel may file their motions within 15 days without restrictions.

4.2.3.6. Repeated procedure of first instance

The procedure shall be repeated if the decision of the court is reversed or it is annulled by the Constitutional Court (§ 632.). The justification of the revoking ruling shall contain

- the cause of repeal,
- directive pertaining to the repeated procedure, and
- another council or, exceptionally, another court may be ordered to conduct the trial.

In the repeated procedure the court shall take these reasons (directives) into consideration. At the same time, the court of second (third) instance shall not be bound by the reasons and causes expounded in the repeal decision during the review of the verdict made in the repeated procedure, even if the findings of fact remain unchanged.

In a repeated procedure holding a preparatory session is inadmissible (§ 633.).

In a repeated procedure after the commencement of the trial, the presiding judge shall present the essence of the following:

- revoking / annulling decision,
- repealed / annulled decision,
- if evidence is recorded in second instance, the record of the trial of second instance,
- indictment (if modified following the cassation, it shall be presented by the prosecutor), and
- if the accused does not make a testimony, the essence of his/her testimony made in the former trial may be presented (or read out), as well,
- instead of questioning the witness (or hearing the expert), the essence of the record of the former testimony (expert opinion) may be presented or read out (except for unsubstantial unfoundedness, if that caused unfoundedness).

4.2.3.7. Trial in military criminal procedure

Two specific trials are applicable in the military criminal procedure:
a) specific rules of trial in general in the military criminal procedure;
b) judicial review of a decision or command imposing disciplinary punishment.

ad a) In the military council the judge of lower rank shall vote before the judge of higher rank. In case of equal ranks, the officer having been promoted to the higher rank earlier shall cast his vote first. If the dates of promotion to the rank are identical, the younger member shall vote first. The presiding judge shall be the last to vote (§ 715.).

If compared to the outcome of the trial the court finds that the act as an object of the accusation is an infraction committed at the place of service (related to service), and because of this the court acquits the accused, it shall forward the documents (except for an infraction punishable by infraction custodial arrest) to the exerciser of disciplinary power in order to conduct the disciplinary procedure. If the military service of the soldier terminates preceding the forwarding of the documents to the exerciser of disciplinary power, the infraction shall be adjudged by the court.

ad b) If a motion for the judicial review of a decision or command imposing disciplinary punishment is filed, the court adjudges the motion at a trial as single judge (§ 711.). The motion may be withdrawn until the commencement of the trial.

The exerciser of disciplinary power and the prosecutor's office shall be notified about the time of trial. At the trial the exerciser of disciplinary power and the prosecutor may address or may submit a written statement preceding the commencement of the trial.

The court may adjudge the motion in a ruling in 3 ways:

- it affirm the decision or command if the motion is ungrounded,
- it reduces the degree of punishment or applies less stringent punishment,
- it annuls the decision or command imposing punishment if in case of adjudging the case in a criminal procedure a verdict of acquittal or terminating the procedure ought to be made.

Therefore, if the judicial review of a decision or command imposing disciplinary punishment ensues, the court can not make a less favourable decision for the defendant.

4.2.3.8. Trial by retrial

If the retrial has been ordered, a trial by retrial shall be conducted. Holding a preparatory session in the retrial procedure is not admissible (§ 646.).

During the adjudication of retrial the court may suspend or interrupt the enforcement of the sanction applied in the base case (the implementation of the conclusive final decision) or order the necessary coercive measure.

The court shall send the defendant the order pertaining to retrial along with the subpoena to appear in court.

At the trial the court shall present the essence of the verdict contested by retrial and the ruling ordering retrial, instead of the indictment. During the trial

- the scope of the evidentiary procedure is exclusively determined by the cause of retrial due to which the retrial has been ordered, and
- evidence resulting in a change to the detriment of the defendant may not be ordered if the

motion for retrial has been filed in favour of the defendant.

Based on the trial by retrial the following decisions may be made:

- if the retrial is substantiated, the court reverses the final decision (the part contested by retrial) made in the base case and passes a decision in compliance with the law;
- the court rejects the retrial if
    - it is ungrounded or
    - the defendant (residing abroad) has become inaccessible for the purpose of the procedure of retrial against the verdict passed in absentia of the defendant.

In the case of a substantiated retrial a new decision may be passed with respect to the civil claim and the termination of the parental right of custody as well.

According to the general rules legal remedies are admissible against the decisions passed following the order of retrial.

4.3. Main issues of legal remedies

4.3.1. The concept and division of legal remedy

Legal remedy is judicial remedy prevailing in the court stage: it is meant to eliminate the real or presumptive errors of the court under substantive law (error in jure), procedural law (error in procedendo) or factual errors (error in facto). Therefore, legal remedy is a narrower concept than judicial remedy: all legal remedies are judicial remedies but not all judicial remedies are legal remedies.

Legal remedy can be classified by four criteria:

a) legal remedy in a narrower or broader sense: legal remedy in a narrower sense is regarded as expressly legal remedy by the literature of law and judicature (e.g., appeals), whereas legal remedy in a broader sense has the character of judicial remedy, but it is scattered in other parts of the CPC (e.g., motion for holding a trial);

b) ordinary or extraordinary legal remedy: ordinary legal remedy ensues before becoming effective (e.g. appeals), extraordinary remedies can ensue subsequently (e.g., retrial);

c) devolutive or non-devolutive legal remedy: devolutive legal remedy is adjudged by a higher court than the court making the contested decision (e.g., appeal, secondary appeal), whereas in the case of non-devolutive legal remedy that court adjudges the legal remedy, the decision of which it is directed at (e.g., application for justification);

d) suspensive or non-suspensive legal remedy: suspensive legal remedy has a suspensory effect with respect to the enforcement of the decision (e.g., appeal), whereas the decision contested by a non-suspensive legal remedy can be enforced regardless of the legal remedy (e.g., review); in case of non-suspensive legal remedy the court adjudging the legal remedy can confer a suspensory effect onto the petition for legal remedy (which rarely ensues).

Specific legal remedies have the following features:

	In narrower or broader sense	Ordinary or extraordinary	Devolutive or non-devolutive	Suspensive or non-suspensive
Appeal	narrower	ordinary	devolutive	suspensive
Secondary appeal	narrower	ordinary	devolutive	suspensive
Retrial	narrower	extraordinary	not always devolutive	non-suspensive
Review, appeal on legal grounds, procedure for the uniformity of the law procedure	narrower	extraordinary	devolutive	non-suspensive
Simplified review	narrower	extraordinary	non-devolutive	non-suspensive
Motion for holding a trial	broader	ordinary	non-devolutive	suspensive
Application for justification	broader	extraordinary	non-devolutive	non-suspensive
Objection	broader	ordinary	devolutive	non-suspensive

Retrial is not always devolutive legal remedy because the court of second instance proceeding (or even not having proceeded) in the base case decides on the admissibility of retrial (§ 643.). That is, retrial is devolutive in case of the final decision having became effective in the first instance, in all other cases (decisions becoming effective in the second or third instance) it is non-devolutive. Motions for retrial against decisions becoming effective in the third instance are especially interesting in this respect when the legal remedy is adjudged by a court of lower instance than the court making the contested decision.

4.3.2. Legal power, finality and partial legal power

The majority of court decisions have at least simple binding power. That is, the court making the given decision may not modify its decision later (except for corrections), however, subsequently to filing an ordinary legal remedy other courts may modify (e.g., following the appeal against the sentence of first instance, the court of first instance may not modify its decision, but, the court of second instance may). Sometimes there are judicial decisions that do not even have simple binding power: thus, for example, following the rejection of the motion for taking an evidence, the court may admit the specific motion later if in comparison with the result of the trial it finds that contrary to its former position, the taking of this evidence may be necessary to clarify the findings of fact.

Compared to the simple binding power, the legal power (qualified binding power) implies a higher degree. The decision with legal power may not be reversed either by the court making the decision or by other courts on the basis of a petition for ordinary legal remedy. This legal power may be formal, which is the feature of decisions that do not make a decision on the case but may not be contested via ordinary legal remedy (e.g., sententially ruling revoking the judgment of the court), whereas material legal power means that the decision has a mandatory normative character with respect to the given issue.

With respect to the binding power the CPC regulates two legal institutions:

a) legal power in the case of final decisions,
b) finality of non-conclusive decisions
and mention must be made of
c) partial legal power, as well.

ad a) The final decision with legal power of the court is eventual and includes a final decision obligatory for everyone on

- the charge,
- the criminal liability of the defendant,
- the penal legal consequences or the lack of these (§ 456.).

In relation to the legal power three important issues arise:
a/1) the time of taking legal power;
a/2) the impacts of the legal power and
a/3) the reconstitution of the legal power.

ad a/1) The following table shows the time when final decisions at first, second and third instance and penalty orders take legal power (§ 458.):

	Final decision of first instance	**Final decision of second instance**	**Final decision of third instance**	**Penalty order**
day of adoption (announcement)	X (if appeal is precluded by CPC)	X (if the procedure of third instance is inadmissible)	X	
day of acknowledgement	X	X		X (the entitled parties declare that they do not motion holding a trial)
day of withdrawal of legal remedy	X	X		X
day of the expiry of the deadline without filing legal remedy	X	X		X
day of rejection of the legal remedy	X	X		
day of affirmation a contested decision	X	X		

The appeal suspends becoming effective of the final decision in that part, which is reviewed by the court proceeding by reason of the appeal. The final decision becomes

partially effective if it has a provision that is not reviewed by the court proceeding by reason of the appeal (§ 457.).

Subsequently to the time when the final decision takes legal power, the presiding judge certifies the fact and day of taking legal power of the final decision with a clause put down in the original copy of the decision (§ 459.).

ad a/2) The legal power can have several impacts (conclusive impact, probative force, etc.). The CPC highlights two of the impacts of legal power:

- ne bis in idem: if the final decision becomes effective, another criminal procedure may not be conducted against the defendant in the act adjudged under it (moreover, the prohibition of double procedure rule pursuant to § 4. Subesession 7 of CPC and § 28. Subsession 6 of the Fundamental Law prevails in a much broader scope circumscribed under international agreements and the legal act of the Eropean Union);
- perfectibility (enforceability): the enforcement of the sanction shall be commenced after the final decision has become effective (the legal consequences related to condemnation, acquittal or the termination of the procedure supervene; the enforcement may be suspended or interrupted by the court).

ad a/3) Subsequently to the supervening of legal power, the final decision binds every court and private person; it may not be contested and shall be enforced. Accordingly, pursuant to the CPC the legal power may be reconstituted only in extraordinary cases (§ 456. Subsession 1 and § 59. Subsession 11):

- by extraordinary legal remedy (including the application for justification as well),
- as a result of a special procedure or
- upon the reconstitution of the partial legal power.

ad b) Non-conclusive orders do not have legal power but becoming final. As for their impact, it is the same as that of legal power since pursuant to § 460. the non-conclusive orders usually cannot be reversed after they have become final. The great difference is that non-conclusive orders shall be implemented (enforced) regardless of their becoming final, except if the CPC stipulates the suspensive effect of the appeal, or the proceeding court suspends the implementation (enforcement) of the ruling.

The rules of the time of becoming final correspond to those regulating becoming effective of the final decision of first instance. However, only the following rulings shall be endorsed with clauses of finality:

- rulings coercive measure bound to judicial consent concerning personal freedom,
- rulings of the rejection of the motion for retrial,
- rulings of the rejection of the substitute private prosecution,
- rulings of the ruling revoking the final decision, and
- the rulings concerning which the suspensive effect of the appeal is stipulated under the CPC.

ad c) The scope of the review reveals to what extent the court of second instance is bound by the petition for legal remedy. If it was fully bound, the partial legal power could prevail very broadly, since in all the issues not contested by the petition for legal remedy, the court of second instance could not overrule the decision of first instance, therefore, these parts would become effective regardless of the appeal. Consequently, the errors of judgement cannot be corrected even if they could be easily precluded by the court of second instance. On the other hand, if the court of second instance can freely overrule, the procedure of second

instance becomes completely unpredictable, which may also have harmful impacts.

The CPC acknowledges the principle of complete review as a main rule, that is, the court of second instance reviews the appealed detrimental verdict along with the preceding judicial procedure (§ 590.). Within this scope usually

- the foundedness of the verdict,
- the establishment of culpability,
- the classification of the crime,
- the application of sanction,
- the correctness of the justification and
- the observation of the procedural rules

are reviewed by the court of second instance regardless of the fact who, and for what reason filed the appeal.

Despite the main rule (the principle of complete review) the partial legal power can prevail in several cases (that is, the court of second instance may not review certain parts) if:

- the appeal contests only the type and extent (length) of the sanction;
- the appellant contests merely the additional question of the verdict (the provision as an object of the simplified review procedure, the motion for termination of the parental right of custody, the provision adjudging the civil claim on the merits): in such cases the sanction can be overruled only if the court of second instance revises the issues of culpability or classification,
- the appeal contests the justification (reason for the decision) of the verdict of acquittal (the ruling terminating the procedure);
- the judgement of the court of first instance contains provisions on several criminal acts, whereas the court of second instance reviews only the part of the judgement regarding the criminal act contested by the appeal (with the exception: absolute procedural infractions, possibility of acquittal, classification, sanction);
- the provision of acquittal (terminating the procedure) of the verdict, which is not contested by the appeal, may not be revised;
- the verdict of the court of first instance contains provisions on several accused, the court of second instance shall only review the part of the judgement regarding the accused concerned by the appeal.

It may also occur that a part of the verdict becomes effective but this partial legal power is reconstituted at a later time. Pursuant to 590 §. Subsession 11 the court of second instance shall

- acquit the accused not concerned by the appeal,
- mitigate the unlawfully grave sanction due to the lighter classification of the crime with respect the acquit the accused not concerned by the appeal, or
- reverse the provision of the verdict of the court of first instance pertaining to the accused not concerned by the appeal, and terminate the procedure or orders the court of first instance to commence a new proceeding,

if the court makes the same decision in relation to the accused concerned by the appeal.

In such cases, although the verdict has become binding in relation to the accused not concerned by the appeal because no appeal obtains either to the benefit or to the detriment of the accused, this (partial) legal power shall be reconstituted in the interest of the accused.

The principle of complete review prevails in the procedure of third instance, as well. That is, the court of third instance shall review

- the adverse decision of the verdict of the court of second instance objected by appeal and the part which is adverse to the verdict of the court of first instance and
- the judicial procedures of first and second instance

regardless of the fact who and for what reason filed the appeal (§ 618.).

Besides, the court of third instance makes decisions on additional questions as well.

If the court of third instance finds the secondary appeal grounded, it shall review the the part related to the absolute procedural infractions, possibility of acquittal, classification and sanctions with respect to the criminal act not concerned by the secondary appeal, however, the non-appealed provision of the verdict concerning the acquittal or terminating the procedure may not be reviewed either.

4.3.3. Principle of boundedness to the findings of fact and unfoundedness

Based on the principle of boundedness to findings of fact, the court of second instance founds its decision on the findings of fact established by the court of first instance (§ 591.). This implies that, as a main rule, the court of second instance regards the findings of fact stated in the verdict of first instance as fact and draws its legal conclusions from it.

The CPC allows for two exceptions from the boundedness to the findings of fact:

- if the verdict of the court of first instance is unsubstantiated (but the unfoundedness cannot be examined if the appeal contested only the sanction, certain additional questions or the reasons of the acquitting verdict (ruling terminating the procedure) and with respect to the criminal act not concerned by the appeal), and
- the appeal stated a new fact or referred to new evidence, and, on this basis, the court of second instance institutes an evidentiary procedure.

Besides, proof can be instituted in the second instance in order to eliminate the procedural infraction as well (§ 594.).

Two degrees of unfoundedness obtain:

Complete (grave) unfoundedness	Partial unfoundedness
• the court of first instance did not state the findings of fact • the court of first instance predominantly did not state the findings of fact • the findings of fact is completely undetected • the findings of fact is predominantly undetected	• the court of first instance stated the findings of fact deficiently • the findings of fact in the first instance is partially undetected • contrariness of documents: the findings of fact in the first instance is contrary to the contents of the documents • incorrect factual conclusion: the court of first instance drew an incorrect conclusion from the stated facts to a further fact

The court of second instance disposes of three means to eliminate unfoundedness: it

can state the correct findings of fact based on the contents of the documents in the first instance, correct factual conclusion or evidence in the second instance, as well.

According to the above and pursuant to § 593. there are three ways of elimination of unfoundedness:

- the elimination of partial unfoundedness without limitations (for the benefit as well as to the detriment of the defendant): the court of second instance supplements (corrects) the findings of fact established in the first instance and it may have recourse to all the three means;
- the court of second instance can state the findings of fact departing from the one stated by the court of first instance in order to (partially) acquit the defendant or (partially) terminate the procedure by having recourse to all the three means of the elimination of unfoundedness;
- the court of second instance can state the culpability of the acquitted accused person by the statement of different findings of fact via evidence motioned by the prosecution, the contents of the documents and drawing correct factual conclusions (that is, it may not conduct an evidentiary procedure ex officio, but only at the motion of the prosecutor's office).

The court of second instance usually may not evaluate the evidence differently from the court of first instance. There are two exceptions:

- the court of second instance may depart from the deliberation of evidence if it recorded evidence for the given fact;
- based on any of the three means, the court of second instance may depart from the evaluation of evidence in the first instance in order to acquit the defendant (terminate the procedure).

An important rule is that if unfoundedness is due to the fact that the prosecutor has not obtained the evidence supporting the charge, or has not motioned for them, the consequences of unfoundedness are not applicable (§ 593. Subsession 4).

The principle of boundedness to the findings of fact prevails even more stringently in the procedure of third instance than in the procedure of second instance. Pursuant to § 619. the court of third instance founds its decision on the findings of fact on the basis of which the court of second instance made its verdict, except if the verdict of the court of second instance is unsubstantiated in the contrary decision objected by the appeal. Three limitations of the elimination of unfoundedness obtain in the third instance:

- the court of third instance may not conduct the evidentiary procedure, therefore, unfoundedness can be eliminated only based on the contents of the documents related to evidence recorded in the first and second instance and the correct factual conclusions drawn from them,
- only supplementation (correction) of the findings of fact can ensue in the third instance (the statement of departing findings of fact may not),
- the court of third instance may not examine the unfoundedness of the decision of second instance at all (that is, it shall found its decision on the findings of fact in the second instance) in two cases:
    - if the secondary appeal contests only that part of the verdict of second instance that is the result of the review in the contrary decision of the verdict of first instance;
    - with regard to the criminal act not concerned by the secondary appeal.

4.3.4. The prohibition of reformation in peius

In relation to the prohibition of reformation in peius it shall be examined whether the court proceeding in the legal remedy may make a more unfavourable decision for the defendant than the court passing the contested decision. The issue of the prohibition of mitigation does not arise, that is, a decision more favourable for the defendant may be made at any time. The prohibition of reformation in peius may supervene in
a) procedures of second and third instance,
b) repeated procedure,
c) certain separate procedures and
d) during certain extraordinary legal remedy.

ad a) So-called relative prohibition of reformation in peius obtains in Hungary. That is, the establishment of the culpability of the accused acquitted by the court of first instance or the aggravation of the sanction against the accused is admissible in the procedure of second instance if an appeal has been lodged to the detriment of the accused (§ 595.). Two conclusions can be drawn from this provision:

- the prohibition of reformation in peius supervenes only if the prosecutor (public prosecutor, private prosecutor, substitute private prosecutor) has not lodged an appeal to the detriment of the defendant (if an appeal was lodged to the detriment of the defendant, no limitation of legal consequence obtains);
- the prohibition of reformation in peius prohibits only certain changes applicable to the detriment of the defendant: the accused acquitted in the first instance may not be convicted in the second instance and the sanction may not be aggravated against the accused convicted in the first instance (however, e.g., the classification and the degree of sentence execution may be aggravated; the preliminary judicial impunity may be revoked, forfeiture, confiscation of property are applicable, etc.).

As the criterion of the supervention of the prohibition of reformation in peius is that an appeal has been lodged to the detriment of the defendant, therefore, it shall be examined when the prosecutor's appeal to the detriment of the accused can be regarded as submitted (as, e.g., the prosecutor may lodge an appeal for the benefit of the defendant; appeals lodged due to certain additional questions shall not be regarded as submitted to the detriment of the defendant, albeit it may result in unfavourable changes, etc.).

Pursuant to § 595. Subsession 2 there are three types of appeal that shall be regarded as submitted to the detriment of the accused: which

- has bearing on the statement of culpability of the (acquitted) accused,
- has bearing on a more serious classification of the criminal act,
- has bearing on the aggravation of the sanction against the (convicted) accused.

What is classified as an aggravated sanction from the point of view of the main rule of the prohibition of reformation in peius, or of the appeal to the detriment of the accused is regulated under § 595. Subsession 4. The basis of this is the enumeration of sanctions under the Criminal Code: penalties are always graver than measures and imprisonment is graver than any other penalty.

Pursuant to § 623. the prohibition of reformation in peius prevails appropriately in

procedure of third instance.

ad b) Identically, the prohibition of reformation in peius is the main rule in repeated procedure (§ 634.), that is, if the verdict of first instance is appealed only by the accused, but the decision of first instance is reversed by the court of second instance, which orders the court of first instance to commence a new procedure, then the accused acquitted in the base procedure may not be convicted in this repeated procedure of first instance, or the sanction against the convicted accused may not be aggravated.

However, whereas there is no exception to the main rule of the prohibition of reformation in peius in procedures of second instance, it can happen in the repeated procedure in several cases that albeit the initial verdict was appealed only for the benefit of the accused, a graver decision is passed in the new procedure of first instance (except if the procedure is remanded by reconstitution of the partial legal power):

- the repeal ensued by reason of the gravest procedural infraction, complete unfoundedness or dropping charges;
- based on the new evidence arising in the repeated procedure the court establishes a new fact due to which a graver penalty shall be imposed (if motioned by the prosecutor's office),
- due to the expand the charge by the prosecutor's office the culpability of the accused shall be established in other crimes as well,
- the repeal was made due to the motion for review filed to the detriment of the defendant.

ad c) Out of the separate procedures there are (peculiar) provisions on the prohibition of reformation in peius in the military criminal procedure and penalty order proceedings:

- in the military criminal procedure, if the crimes are adjudged in disciplinary procedures (§§ 710-711.), then a graver decision may not be passed in the judicial procedure motioned due to disciplinary punishment;
- the court may apply a more detrimental sanction in lieu of a petition to the detriment of the accused in penalty order proceedings if new evidence emerges in the trial and on this basis, the court states a new fact, and consequently, a graver classification or a much more detrimental sanction is applicable (§ 746. Subsession 5).

ad d) It is usually true of extraordinary legal remedy procedures that as a result of them no decision which is more detrimental than the binding verdict versus the defendant may be made if the extraordinary legal remedy was motioned for the benefit of the defendant. There are differences only in the wording:

- with regard to retrial, § 647. Subsession 4 unambiguously refers to the application of the rule of the prohibition of reformation in peius,
- the main rule of the prohibition of reformation in peius is literally reiterated when at the constitutional complaint (§ 634. Subsession 2),
- changes for the detriment of the defendant can be made only when a review is motioned to the detriment of the defendant (§ 662. Subsession 4),
- the result of the appeal on legal grounds (§ 669. Subsession 2) and the procedure for the uniformity of the law (§ 670. Subsession 3) usually does not affect the specific crime, however, acquittal or the termination of procedure (even a lighter sanction in case of appeal on legal grounds) may ensue (i.e., conclusive changes can be made merely for the benefit of the defendant).

4.3.5. Procedural infractions

As mentioned above, the final decision can be contested due to an infraction committed during the procedure (error in procedendo), as well. This error can be absolute (resulting in repeal without deliberation) or relative (when the contested verdict is repealed depending the impact of the infraction on the affected the judgement).

The following table shows the main differences between absolute and relative procedural infraction:

Absolute procedural infractions	**Relative procedural infractions**
1. non be considered	1. be considered
2. examinable in appeal panel session	2. non-examinable in appeal panel session
3. taxative itemisation	3. exemplificative itemisation
4. outcome is unconditional cassation	4. outcome is less often cassation

The CPC (§ 608.) itemises absolute procedural infraction, i.e., all the procedural infractions not itemised are regarded as relative procedural infraction. There are two groups of absolute procedural infractions:

a) the most serious procedural infractions (where even the prohibition of reformation in peius may not supervene in the repeated procedure):

- the court was not lawfully set up or the members of the council were not present for the entire time,
- the verdict was passed with the participation of an excluded judge pursuant to law,
- the court overrode its competence; it adjudged a case subject to the military criminal procedure or the exclusive jurisdiction of another court.

b) absolute procedural infraction construed within certain limitations:

- the trial was held in the absence of a person whose presence is compulsory pursuant to law: this usually refers to the defence counsel, however, the verdict does not need to be reversed due to the absence of the defence counsel in certain cases (e.g. if the result of the change in classification is the mandatory defence or the defendant was acquitted),
- out of the termination of procedures with violations only in certain cases: e.g., death, statute of limitation, clemency, res iudicata, lack of legal authority, reasons for termination of non-conclusive rulings (in these cases the procedure shall be terminated in the second instance if it was not considered by the court of first instance),
- the reasoning of the verdict of first instance is fully contrary to the operative part: being “fully contrary” is partially a matter of deliberation.

All other procedural infractions shall be regarded as relative. They lead to cassation only if they had basic effect on

- the conduct of the procedure,

- the statement of culpability,
- the classification of the crime or
- the application of the sanction.

As all procedural infractions are relative, which are non-absolute, therefore they cannot be itemised in a taxative manner. Pursuant to § 609. Subsession 2 of the CPC, the procedural infractions are relative if

- the provisions concerning the lawfulness of evidence were violated following the charge,
- the persons participating in the criminal procedure were not allowed to exercise their rights following the charge (they were restricted in doing so),
- the publicity was excluded from the trial without a lawful reason,
- the court of first instance did not or only partially fulfilled its obligation of justification in view of the relevant issues above,
- the court of first instance accepted the statement of confession in the absence of lawful conditions.

The provision of acquittal (terminating) does not need to be reversed due to a relative procedural infraction if it violated the rights of defence.

The procedural infraction shall be taken into account in procedures of third instance as well; they shall be examined in panel sessions (§ 621.).

4.4. The procedure of second instance

4.4.1. Announcement of an appeal

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.).

In case of other decisions the right to legal remedy is not so unambiguous:

a) The non-conclusive order may be appealed if it is not precluded under the CPC. Pursuant to the CPC appeals are precluded against the following decisions:

- order referring to other legal means (termination of the parental right of custody, civil claim);
- rejection of appeal filed following the acknowledgement of the verdict;
- final decision made in the absence of the accused (if the presence of the accused in the trial was not mandatory);
- interlocutory order;
- judicial measure not requiring a decision form;
- the establishment of culpability and findings of fact and classification corresponding to the charge if the court accepted the statement of confession by the accused in an order.

In these cases the party entitled to appeal against the final decision may object to the order (measure) of the court in an appeal against the final decision.

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.):

<table>
<tr><th></th><th>For the benefit
of the accused</th><th>To the detriment
of the accused</th></tr>
<tr><td>In full scope</td><td>• accused
• public prosecutor
• defence counsel
• legal representative of the juvenile accused</td><td>• public prosecutor
• private prosecutor
• substitute private prosecutor
• legal representative of the substitute private prosecutor (with the approval of substitute private prosecutor)</td></tr>
<tr><td>Partially</td><td>• heir of the accused (against decisions admitting civil claims)
• spouse or domestic partner of the accused (against the order of involuntary treatment in a mental institution)</td><td>• private party (against the provision adjudging the civil claim on merits)</td></tr>
<tr><td></td><td colspan="2">• financially interested party
(against the provision concerning him)</td></tr>
</table>

The deadline open to announce the appeal against the final decision depends on the way of the pronouncement of the final decision. If the disclosure is made via announcement, the parties present and entitled to appeal may acknowledge the decision, may announce the appeal immediately or may reserve a period of reflection of 3 workdays (in the latter case no justification is admissible (§ 582.). The deadline of submitting an appeal against the serviced judgement is 8 days following the receipt (this can be exempted with a request of justification).

The appeal shall include its (legal or factual) reason and purpose and it can be reasoned in detail (§ 583.). The appellant shall designate which provision of the judgement or which part of the reasoning is contested by the appeal and, in the case of several crimes, to which of them the appeal is related (§ 584.).

The contents of the appeal can be various:

- any provision of the judgement,
- only the reasoning of the judgement,
- type and extent (length) of the sanction,
- provision of the judgement as an object of the simplified review procedure,
- provision adjudging the motion for termination of the parental right of custody,

- provision adjudging the civil claim on its merits,
- reason of acquittal,
- reason of the termination of procedure.

The appeal may state new facts and may refer to new evidence only if

- the appellant seems to justify that the fact (means of evidence) as the basis of the appeal was produced following the announcement of the judgment; or
- the appellant took cognisance of these following the announcement of the judgment through no fault of his own and
- the court of first instance rejected the proof.

4.4.2. Submit an appeal and the pre-trial of the procedure of second instance

The court of first instance submits the appeal at the court of second instance as follows (§ 588.):

- the court of first instance rejects the appeal for formal reasons without examination on the merits if it is excluded, filed by an unauthorised person, or the appeal is delayed;
- if the deadline of appeal has expired for all the entitled parties, the presiding judge of the court of first instance submits the documents with no delay (via the prosecutor's office proceeding along with the court of second instance, directly in procedures of private prosecution or substitute private prosecution) at the court of second instance after it was put down in writing;
- if an appeal is based on the procedural infraction the circumstances of which are not clear from the documents, the presiding judge provides information about it upon submitting;
- the prosecutor's office working beside the court of second instance shall send the files along with its motion to the court of second instance within 1 month (in extremely complicated cases or cases having an extensive scope within 2 months, which can be extended by additional 1 month by the chief of the prosecutor's office).

The prosecutor's office (private prosecutor, substitute private prosecutor) and the defence counsel shall justify the appeal in writing at the latest until the 15th day preceding the panel session (trial) (§ 584. Subsession 6). If the prosecutor's office fails to do so the presiding judge shall inform the chief of the prosecutor's office about that, and in case of the negligence of the defence counsel, the court imposes a disciplinary penalty.

Those concerned by the appeal may make comments on the appeal at the court of first instance preceding the submitting of the documents, and following the submitting of the documents at the court of second instance (§ 586.). In doing so the prosecutor and the defence counsel may refer to reasons for termination of the procedure or to absolute procedural infraction even if they did not lodge an appeal.

The appellant may withdraw his appeal until making the decision adjudging the appeal by the court of second instance (§ 587.). It has two constraints:

- the appeal of the prosecutor's office may be withdrawn by the prosecutor's office working beside the court of second instance following submitting the documents;
- other appellant may only withdraw his appeal announced for the benefit of the accused with the approval of the accused (except for the prosecutor's office).

The pre-trial of second instance shall be made by the presiding judge of the court of

second instance following the receipt of the documents (§ 596.). In doing so he

- arranges the retrieval of missing documents, the supplementation of documents, obtainment of new documents or enlightening from the court of first instance,
- shall return the documents to the court of first instance if the appeals are withdrawn,
- shall service the appeal lodged by another party and the motion of the prosecutor's office working beside the court of second instance to the accused and the defence counsel,
- shall forward the reasoning of the appeal of the accused or the defence counsel to the prosecutor's office working beside the court of second instance, if it was filed at the court of second instance and it has not been sent directly to it,
- shall examine whether the presence of the prosecutor and the defence counsel is mandatory in the procedure of second instance,
- shall examine whether it is necessary to make decisions on coercive measure bound to judicial consent concerning personal freedom,
- shall set the date of a panel session, a public session or a trial to adjudge the appeal as soon as possible within 2 months following the receipt of the documents.

During the preparation the entire court of second instance may have assignments:

- the court of second instance may order a proof preceding the trial (the for this necessary measures shall be taken by the presiding judge),
- may reject the appeal if it is excluded, filed by an unauthorised person, or the appeal is delayed,
- shall order transfer in void of competence or jurisdiction.

4.4.3. Forms of decision-making of the court of 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). The presiding judge informs the prosecutor, the defence and the appellant about the scheduling and the date of the panel session, and also informs them that they are allowed to make comments on the appeal (motion, declaration) lodged by another party within 8 days, and may request the setting of a public session (trial) in certain cases. The private prosecutor may motion for the termination of the procedure before the final decision of second instance (contrary to the public prosecutor, who can only drop the charge in the judicial procedure of first instance, § 779.), in such a case, this declaration pertains to the accessory counter charge as well.

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.

c) Trial (S§ 600-601.): trials of second instance are generally held if evidence is taken (which occurs rarely). The order at the trial of second instance is similar to that of first instance (its main stages are completely the same), however, there are several differences:

- opening the trial: it may also be held in the absence of the duly summoned accused and the appeal may be adjudged even if no appeal has been lodged to the detriment of the accused;

- commencement of the trial: the case shall be presented by the appointed judge (not the prosecutor): he shall present the essence of the judgment of first instance, of the appeal and the comments, and all the necessary information (even at motion);
- taking evidence: following other motions and comments there is an evidentiary procedure with narrow scope (for which constraints on the presentation of evidentiary motions are valid): the evidentiary procedure is not complete, but only what is ordered in the second instance is conducted;
- pleadings: the appellant shall be the first to make an argument (not necessarily the prosecutor, only if he lodged an appeal);
- adoption of the decision: there is no difference.
- announcement of the final decision: secondary appeal is admissible against the final decision of second instance only in a limited scope.

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:

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**
• affirmative decisions • decisions on the merits (acquittal of the accused/accused not concerned by the appeal /termination of procedure) • repeal (in absolute procedural infraction) • review of termination in final order • appeal against the justification of sanction, additional question or of verdict of acquittal (ruling terminating the procedure) • review of non-conclusive ruling (if proof is not required) • no appeal is lodged to the detriment of the accused • 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)	• all issues within the scope of panel session may be examined • changes may be made to the detriment and for the benefit of the defendant on the merits (but no proof may be conducted)	• all issues within the scope of panel session and public session may be examined • changes may be made to the detriment and for the benefit of the defendant on the merits (with taking evidence as well)

Affirmative decisions within the scope of the panel session of second instance are as follows:

- rejection of appeal for formal reasons (delayed, excluded, lodged by unauthorised party);
- transfer;
- consolidation and severance;
- suspension of procedure for certain reasons.

The court of second instance may not conduct an evidentiary procedure preceding the decision-making at the public session but

- it may state the non-deficient (correct) findings of fact based on the contents of the documents and by way of correct factual conclusion in case of partial unfoundedness
- it may hear the accused in order to further elucidate the circumstances of the imposition of penalty.

4.4.4. Decisions of second instance

Upon modifying the judgement of the court of first instance, the court of second instance shall decide in the form of a judgement, otherwise by way of orders (§ 604.):

Orders of second instance	Verdict of second instance
a) upholding (affirmative decision) b) repeal (cessation decision): o termination of procedure o ordering the court of first instance to institute a new procedure	c) modifying (reformative decision)

ad a) The court of second instance upholds the verdict of first instance (§ 605.) if

- the appeal is not substantiated and otherwise the judgement needs not be repealed,
- the judgement of first instance does not need to be modified,
- the verdict of first instance may not be modified:
    - due to the prohibition of reformation in peius,
    - due to limitations of the scope of the review,
    - if the court of second instance did not supplement (did not correct) the findings of fact, a slighter change is inadmissible in the punishment within the sentence-limits permitted by law.

ad b) The court of second instance shall repeal the verdict of first instance due to reasons for termination of procedure subject to final order and non-conclusive order, and terminate the procedure (§ 607.) in the mentioned cases already during the pre-trial. In case of termination due to the termination of punishability, the court of second instance shall uphold the provision in the additional questions (e.g., forfeiture, civil claim).

Another instance of a repeal ruling is when the court of second instance remands the court of first instance to conduct a new procedure in its repeal ruling for 3 main reasons:

- unsubstantial (complete) unfoundedness;
- procedural infraction;
- in a military criminal procedure even if the military council of first instance proceeded in a case not falling within the scope of military criminal procedure.

In case of repeal the verdict and remanding the court of first instance to conduct a new procedure the court of second instance shall make a decision a repeal ruling on coercive measure bound to judicial consent concerning personal freedom. In such cases the coercive measures last until the decision made by court during the pre-trial in the repeated procedure of the court (§ 602.).

ad c) In case the court of first instance applied a statute inappropriately and its judgement does not need to be repealed, the court of second instance may overrule the verdict (even by the elimination of partial unfoundedness) and makes a lawful decision (§ 606).

This has two main constraints:

- if the judgement of first instance was based on the acceptance of the statement of confession of the accused, the court of second instance may modify the provision related to the statement of culpability, the findings of fact in compliance with the charge, and the classification in compliance with the classification of the charge if the acquittal of the defendant or termination of the procedure is admissible;
- if the appeal was announced in relation to the additional questions, the sanction may be modified only if the court of second instance modifies the provision pertaining to culpability or classification, and thus the sanction applied in first instance is unlawfully or exceedingly grave/slight.

If a secondary appeal is announced against the judgement of second instance, the court of second instance shall make a decision on coercive measure bound to judicial consent concerning personal freedom. In such cases the coercive measures last until the adoption of the final decision of third instance (§ 602.).

4.4.5. Settlement of appeals in case of agreement

Appeals in procedures based on agreement are inadmissible (§ 738-) due to

- the statement of guilt,
- the findings of fact and classification in compliance with the charge,
- type and extent (length) of penalty (measure) established pursuant to the agreement and
- other provisions of the judgement stated in harmony with the agreement.

The appeal may contain new facts and may refer to new evidence only within these constraints and evidence may be recorded in the second instance in accordance with this.

The court of second instance may make the following decisions in procedures based on agreement:

- modifying judgement: if it can be stated that the acquittal of the defendant or termination of procedure without holding a trial is admissible;
- cessation order: if the agreement ought to have been declined, the rules of the preparatory session were not observed or the acquittal of the accused (termination of the procedure) is admissible but a trial ought to be held for these;
- revoking ruling and ruling to send the documents to the prosecutor: if the prosecutor’s office motioned for the procedure in absence of legal prerequisites.

4.5. The procedure of third instance

4.5.1. The right of secondary appeal and constraints on secondary appeal

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.

Secondary appeal is admissible only against the provision of judgment of second instance which is the result of the review of the judgment contrary to the decision of the court of first instance, if

- appeal against the judgment of first instance was announced only by reason of the sanctions, certain additional questions or the justification of the acquitting (terminating) decision,
- the court of second instance reviewed the crime not concerned by appeal and reversed the judgment of first instance (due to the reason for termination or absolute procedural infraction), or reviewed provision establishing culpability (in the interest of acquittal or termination), the classification or the sanction.

To motion for proof, to state new facts or to refer to new evidence are excluded in the secondary appeal and only the contrary decision and the provision of second instance concerning the review of the judgement of first instance related to the contrary decision may be oppugned.

The scope of the entitled parties to file secondary appeal is also much narrower, since merely the following parties are entitled:

- the accused,
- the prosecutor’s office,
- the private prosecutor and the substitute private prosecutor (only to the detriment of the accused with further constraints),
- the defence counsel (even without the consent of the accused) and
- the spouse or domestic partner of the accused (against the order of involuntary treatment in a mental institution, again without the consent of the accused).

The constraint of secondary appeal in the procedure of private prosecution and substitute private prosecution is that if the private prosecutor or the substitute private prosecutor did not lodge an appeal against the final decision of the court of first instance to the detriment of the accused, he may file a secondary appeal merely against the final decision of the court of second instance by reason of the acquittal of the accused or the termination of the procedure (§ 779.). The private prosecutor or the substitute private prosecutor shall justify the secondary appeal in writing, and shall file the justification at the court of second instance before the deadline for appeal.

4.5.2. The main rules of procedure in the third instance

The court of third instance disposes of two main forms of decision-making (§ 620.):

Cases subject to the competence of the panel session of third instance	Cases subject to the scope of the public session of third instance
• secondary appeals cannot be adjudged due to the unfoundedness of appealed judgement • the court of first or second instance committed an absolute procedural infraction • no secondary appeal has been filed to detriment of accused (and neither the prosecution nor defence motioned for public session)	• in issues not pertaining to the panel session

The prosecutor and the defence counsel shall attend the public session.

4.5.3. Decisions in the third instance

As in the second instance, there are affirmative, reformative and cessation decisions in the third instance as well:

Affirmative decisions (§ 623.)	Reformative decisions (§ 624.)	Cassation decisions (§ 625.)
The court of third instance shall uphold of the verdict of second instance if • the appeal is ungrounded and otherwise the judgement does not need to be repealed • the judgement does not need to be or may not be modified (due to the prohibition of reformation in peius, limitations of the scope of the review or the prohibition of slighter change)	The court of third instance shall modify the verdict of second instance if • the court of second instance applied a statute erroneously and its verdict does not need to be repealed • the court of third instance eliminated the partial unfoundedness of the judgement of the court of second instance	The court of third instance • shall repeal the judgement of the court of second and first instance and shall terminate the procedure due to reasons of termination pertaining to final orders and non-conclusive orders • shall repeal the judgement of second instance and shall remand the court of second instance to conduct a new procedure if the court of second instance committed an absolute procedural infraction or violated the prohibition of reformation in peius • shall remand the court of first instance to conduct a new procedure if an absolute procedural infraction was committed by the court of first instance • shall remand the courts of first or second instance to conduct a new procedure in case of non-eliminable unfoundedness

In case of repeal, the court of third instance shall make a decision on coercive measure bound to judicial consent concerning personal freedom in the revoking ruling (§ 622.).

4.6. Appeal against revoking (cassation) ruling

An appeal against the ruling of repeal and remanding to conduct a new procedure (cassation) of the courts of second and third instance (except if the ruling was made by the Supreme Court) may take place (§ 627):

Due to the fault of repealed court	Due to the fault of repeal court
If the repeal ensues due to • the absolute procedural infraction or • the relative procedural infraction or • complete unfoundedness or • unfoundedness non-eliminable in the third instance	If the repeal court committed an absolute procedural infraction

The public prosecutor (private prosecutor, substitute private prosecutor), the accused and the defence counsel (even without the consent of the accused) may file an appeal against the cassation ruling, except if they request a repeal in the appeal against the contested decision for the very reason why it was made.

No appeal against the revoking ruling of the court of second instance is admissible in procedures based on agreement.

The presiding judge shall set a date for a panel session on the earliest day within 1 month following the receipt of the case to adjudge the appeal (§ 629.). The court adjudging the appeal shall in its non-conclusive order not contestable with further appeal

- accept the contested revoking ruling: if the appeal is not substantiated and the revoking ruling does not need to be repealed;
- repeal the contested revoking ruling and remand the court of second (third) instance to conduct the procedure or re-institute a new procedure: if the repeal was made via procedural infraction or unreasonably.

Following passing the decision the court entitled to adjudge the appeal makes a decision (if necessary) on coercive measure bound to judicial consent concerning personal freedom.

4.7. Extraordinary legal remedy

The judgement with legal power, as a main rule, may not be modified and contested, therefore, it shall be enforceable (it is to be enforced). Owing to the constitutional requirement of due process of law legal remedy against judgement with legal power may be petitioned for only very rarely and under strict conditions.

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,
d) appeal on legal grounds,
e) procedure for the uniformity of the law,
f) simplified review and
g) application for justification.

4.7.1. Retrial

Three main topics of the rules of retrial are expounded below:
a) conditions (causes) of retrial,
b) filing the motion for retrial and
c) stages of retrial.

ad a) The conditions of retrial are regulated under § 637. Accordingly, retrial ensue for

6 reasons in the criminal procedure, which prevail with certain restrictions (except for the adjudged matter):

<table>
<tr><td>1. New, conclusive evidence</td><td colspan="2">New evidence is brought up concerning the fact either emerged or not emerged in the base case, which makes it likely that
1. significant modification shall be made for the benefit of the defendant:
the convicted defendant shall be acquitted,
significantly lighter penalty shall be imposed
measure rather than penalty shall be applied
the criminal procedure shall be terminated
2. significant modification shall be made to the detriment of the defendant:
the culpability of the acquitted defendant shall be stated
significantly graver penalty shall be imposed
penalty rather than measure shall be imposed
the measure applied instead of the penalty shall be basically aggravated</td></tr>
<tr><td>2. Injury of res iudicata</td><td colspan="2">several judgements with legal power have been passed against the defendant for the same crime or
the defendant is registered in the final decision not with his real identity (and this cannot be remedied by correcting the decision)</td></tr>
<tr><td>3. False evidence</td><td>false or
falsified evidence was used in the base case</td><td rowspan="2">the condition of both:
judgement with legal power substantiates it (or it was not excluded by the lack of proof)
this crime affected the decision</td></tr>
<tr><td>4. Criminal act by the authority</td><td>in the base case a member of the authority breached his duty in collision with the Criminal Code</td></tr>
<tr><td>5. Procedure conducted in the absence of the defendant (staying abroad)</td><td>only if this ensued within a separate procedure
the stage of procedure shall be repeated which was conducted in his absence and only within 1 month following the cognisance of the defence about the decision becoming effective</td><td rowspan="2">prevails with both:
mandatory retrial
admissible only for the benefit of the defendant</td></tr>
<tr><td>6. Clemency</td><td>terminating decision of the President of the Republic due to a clemency</td></tr>
</table>

ad b) Motions for retrial for the benefit of the defendant may be submitted by several entities (prosecutor's office, defendant, defence counsel, legal representative of the defendant, spouse or domestic partner of the defendant, lineal relative/sibling/spouse/domestic partner following the defendant's death), whereas to his detriment only the prosecutor's office (private prosecutor (§ 783.) and substitute private prosecutor (§ 814.) exclusively in case of acquittal or termination of the procedure). Retrial to the detriment of the defendant is admissible only during his life and only within the term of statute of limitation.

In the issue of the admissibility of retrial

- the tribunal court shall make decisions if the base case was conducted by the local court in the first instance,
- the high court of appeal shall make decisions if the tribunal court proceeded in the first instance,

(the court authorised to retrial) namely, at a panel session (§ 643.).

ad c) The procedure of retrial consists of 3 stages:

1. The prosecution stage:
   - The motion shall be submitted (orally taken into record) to the prosecutor working beside the court authorised to retrial that - following an incidental investigation for retrial - shall send the motion along with his declaration to the court authorised to retrial within 1 month (the private prosecutor and the substitute private prosecutor shall submit their motions directly to the court authorised to retrial, § 642. and § 814.; in the case of the private prosecutor, the court shall forward the motion for retrial to the prosecutor's office if, on its basis, a crime seems to be delineated due to which the charge is represented by the prosecutor's office).
   - If the motion for retrial is submitted because the procedure was conducted in the absence of the defendant in lieu of lawful prerequisites, a procedure out of turn shall be conducted.

2. Panel session stage of the court:
   - In the issue of the admissibility of retrial (Does the reason for retrial obtain? Is the party entitled to motion the retrial? Did he submit the motion in time?), the court authorised to retrial makes a decision at a panel session (§ 643.).
   - The court authorised to retrial shall obtain the documents of the base case and (if it finds it necessary) in the interest of examination of the obtainment of retrial, it may order an investigation for retrial. The general rules of investigation are directive for the investigation for retrial, however, the most severe coercive measures may not be ordered.
   - If the court authorised to retrial finds at the panel session that the motion for retrial is grounded, it shall forward the case with a non-final decision to the court of first instance proceeding in the base case in order to conduct a repeated procedure (or it shall transfer the case to the court competent to proceed in the repeated procedure). Concurrently with the above provisions it may suspend or interrupt the enforcement of any provision made in the base case, or may order the required coercive measure.
   - The proper decision can be made already at the panel session in 2 cases:

- if retrial was motioned due to several verdicts, the court may terminate the base procedure by itself;
- it may make the decision in compliance with the law in the case of clemency.

- No appeal against the order to retrial is admissible. The motioner may appeal against the rejection of the motion, however, he may not adduce a new reason for retrial (§ 645.).

3. The trial stage of retrial:

If retrial is ordered, a trial of first instance shall be held (and the decision made may be appealed, i.e., procedures of second or even third instance may forth come). The general rules - allowing for a few departures expounded upon the description of the procedure of first instance (§§ 646-647.) - are directive to the trial.

4.7.2. The judicial review

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 — including the judicial review — deal with the errors in jure of decisions with legal power on the merit. The following main rules need to be discussed in the judicial review:
a) reasons for the judicial review,
b) presentation of the motion for judicial review,
c) stages of the judicial review procedure and
d) decisions made during judicial review procedure.

ad a) The reasons for the judicial review can be divided into 3 groups (§ 648.):

Mistake in substantial criminal law (violation of the CC) § 649. Subsession 1	**Mistake in procedural criminal law** (violation of the CPC) § 649. Subsession 2	**Ordered by another decision** § 649. Subsessions 3-5
1. Unlawful decision on guilt: • acquittal of the defendant or terminating the procedure • conviction of the defendant or involuntary treatment in a mental institution was ordered in a manner that the substantial criminal law was violated **2. Unlawful sanction:** due to unlawful classification of the crime or other criminal infraction • unlawful punishment was imposed • unlawful measure was taken execution of punishment was unlawfully suspended	**1. Lack of procedural conditions** • lack of legal authority • procedural obstacles • lack of lawful charge **2. Absolute procedural infractions** **3. Violation of the prohibition of reformation in peius**	**1. Pursuant to the decision of the Constitutional Court:** The Constitutional Court ordered the judicial review of the criminal procedure concluded with legal power **2. Pursuant to the decision of an international human rights organisation:** international human rights organisation (e.g., ECHR) established the injury of the international agreement

ad b) The judicial review is inadmissible

- in case of mistake in substantial criminal law if the final decision was made by a court of third instance,
- against the decision on the appeal on legal grounds, on the uniformity of the law and on the judicial review of the Supreme Court,
- if the violation of law can be redressed by way of procedure of simplified review,
- in cases requiring the application of exclusively non-criminal substantive law (civil claims, termination of the parental right of custody; however, a judicial review pursuant to the Code of Civil Procedure is admissible),
- versus the condemnation of ECHR if the condemnation is based on the violation of the principle of making a decision within reasonable time limit (since in case of a new judicial review procedure the case would be further prolonged),
- to the detriment of the defendant beyond 6 months,
- the private prosecutor and the substitute private prosecutor may not motion for judicial review.

The findings of fact stated in the final decision with legal power may not be contested in the motion for judicial review, therefore

- the repeated collation and
- departing evaluations of evidences, and
- taking evidence

is not admissible (§ 659.).

The scope of those entitled to submit the motion for judicial review actually coincides with the scope of those entitled to motion for retrial with the clause that the private prosecutor and the substitute private prosecutor may not submit a motion for judicial review to the

detriment of the defendant. In case of the decisions of the Constitutional Court and of an international human rights organisation, the Supreme Prosecutor shall submit the motion for judicial review ex officio. Each entitled party may submit a motion for judicial review only once (except if the new motion for judicial review is based on the decision of the Constitutional Court or an international human rights organisation).

The motion for judicial review shall be adjudged by

- the council of 3 judges of the Supreme Court at a panel session or public session.
- the council of 5 judges of the Supreme Court if the judicial review contests the decision of the Supreme Court (except for the motion is excluded by law, the motion of an unauthorised party or a delayed motion).

ad c) The judicial review procedure can be divided into 3 stages:

1. The stage of the court of first instance:
   - The procedure shall be initiated at the court of first instance proceeding in the base case with indicating the reason and the aim (but the motion may be filed at the court whose decision the motion objects to). The Supreme Prosecutor shall file his motion for judicial review – with the documents of the base case – at the Supreme Court.
   - The court shall file the motion for is judicial review with the documents to the Supreme Court within 1 month.

2. The stage of the procedure led by the presiding judge:
   - The presiding judge shall instruct the motioner to supplement the motion within 1 month if it cannot be elucidated why he objects to the decision (§ 656.).
   - The presiding judge shall examine the motion for formal reasons: he shall reject the motion is excluded by law, the motion of an unauthorised party, the delayed motion, the not supplemented motion or the motion submitted by an unavailable party.
   - During the judicial review the defence is mandatory, therefore, if the defendant has no defence counsel, then a defence counsel shall be appointed and the presiding judge shall, if needed, instruct him to draft the motion for judicial review.
   - The Supreme Court may omit decision making, thereby reject the motion re-submitted by the same entitled party or the motion with the same content as the former motion.
   - The motion for judicial review has no suspensory effect, however, the Supreme Court may suspend or interrupt execution until the motion has been adjudged.
   - If the rejection of the motion for judicial review is inadmissible and the charge in the base case was represented by the prosecutor's office, the Supreme Court shall send the motion with the documents of the base case to the Supreme Prosecutor's Office for making a statement (§ 657.), or in case of a (substitute) private prosecution to the (substitute) private prosecutor.
   - Within one month the prosecutor shall return his statement with the documents to the Supreme Court, which shall send it to the filing and the entitled parties with the clause they may make comments within 15 days of service. The motion submitted by another party and the statement shall be sent to the defendant and his defence counsel.
   - The Supreme Court shall inform the Constitutional Court about the commencement of the procedure of judicial review if a constitutional complaint has been submitted against the final decision with legal power or the statute substantiating the final decision (§ 658.).

3. Examining on the merits:

The motion for judicial review shall be adjudged at a public session or a panel session. The Supreme Court generally adjudges the motion for judicial review at a panel session (§ 660.). Public sessions are held if the motion for judicial review has been submitted to the detriment of the defendant and

- the defendant or the defence counsel motioned for it within 8 days following the service of the motion or,
- the presiding judge finds it necessary for some other reason.

Public sessions may not be held without the presence of the Supreme Prosecutor (private prosecutor, substitute private prosecutor and their legal representative) and the defence counsel. The defendant and those entitled to motion a judicial review shall be notified about the public session at least 8 days preceding the session.

Following the opening of the public session, the Supreme Court shall present the motion for judicial review, the contested decision and all of the contents of the documents that is required for adjudging the motion for judicial review. Following the presentation of the case the motioner of the judicial review, the prosecutor, the defence counsel and those entitled to file a motion for judicial review may address within the framework of the motion for judicial review. Following the addresses responses are admissible. Finally the defendant has the right for address.

ad d) The motion for judicial review shall be adjudged on the basis of statutes effective during making the contested decision, however, in case of the decision of the Constitutional Court (international organisation of human rights) the procedure shall be conducted by positing the decision of the Constitutional Court (international organisation of human rights) as a basis and disregarding the unconstitutional statute.

Basically, 4 types of decision may be differentiated on the basis of the motion for judicial review:

Cassation decision	Revoking decision	Reformative decision	Affirmative decision (non-conclusive order)
The Supreme Court reverses the contested decision and *remands the proceeding court to conduct a new procedure:* • the acquittal of the defendant (termination of procedure) ensued by the violation of substantive law • making a reformative decision based on documents is not possible • if the human rights organisation set up under an international agreement stated the breach of law, and the procedure needs to be repeated • absolute procedural infractions *sends the documents to the prosecutor:* • lack of lawful charge	*The Supreme Court reverses the contested decision and terminates the procedure:* • lack of legal authority • procedural obstacles	*The Supreme Court modifies the contested decision and makes a decision in compliance with law:* • the conviction has been effected by the violation of substantive law • the violation of the prohibition of reformation in peius • if the judicial review procedure has been conducted based on the decision of the Constitutional Court or a human rights organisation (ECHR)	*The Supreme Court upholds the contested decision:* • the contested decision is in compliance with the statutes • the procedural infraction did not significantly affect the judgment

4.7.3. The constitutional complaint

Pursuant to Article 24. Subsession 2 Points c) and d) of the Fundamental Law, the Constitutional Court shall review the compliance of not only the statute applied in a particular case, but of the particular judicial decisions with the Fundamental Law based on a constitutional complaint.

Pursuant to §§ 26-27. of the CLI. Act of 2011 on Constitutional Court (ACC) the conditions of constitutional complaints are as follows:

Application of an unconstitutional statute		Particular unconstitutional decision
injury of the right guaranteed under the Fundamental Law ensued	direct injury ensued due to the application or taking force of the provision of a statute without a judicial decision	the decision violates the right of the motioner guaranteed under the Fundamental Law
and the motioner has exhausted the legal remedies or no legal remedy is available		

Constitutional complaints may be submitted in writing within 60 days as of the service of the contested decision (its cognisance), or within 180 days as of taking force of the unconstitutional statute.

The court proceeding in the first instance shall send the constitutional complaint to the Constitutional Court without delay. Depending on which stage of the procedure is on-going, up to the judgement on the constitutional complaint

- the court proceeding in the on-going case shall suspend the procedure ex officio or due to the motion (§ 489.);
- in case of a final decision with legal power, its enforcement can be suspended or interrupted by the court proceeding in the case in the first instance until the conclusion of the proceeding of the Constitutional Court (§ 665.), or shall suspend or interrupt it pursuant to the instruction of the Constitutional Court.

Whereas the suspension of the procedure is mandatory in the first case, following the judgement with legal power the suspension or interruption of enforcement is mandatory only if the court is expressly instructed to do so by the Constitutional Court.

The Constitutional Court shall make a decision on the constitutional complaint within a reasonable time limit (§ 30. Subsession 5 ACC) with the clause that pursuant to Article 24. Subsession 2 Point b) of the Fundamental Law it shall review the compliance of the statute (to be applied in a particular case) with the Fundamental Law within 90 days at the latest.

If on the basis of a constitutional complaint or judicial motion the Constitutional Court has already made a decision on the compliance of the applied statute, statutory provision or particular court decision with the Fundamental Law, with reference to the same statute (statutory provision, particular decision) and on grounds of the same right guaranteed under the Fundamental Law and within the same constitutional context, no constitutional complaint designed to establish unconstitutionality and no examination directed at the establishment of the unconstitutionality of the judicial motion are admissible, if the circumstances have not altered fundamentally.

4.7.4. Appeal on legal grounds

The CPC regulates the rules of the settlement of appeal on legal grounds in chapter XCII. titled “Judicial remedy in interest of lawfulness”. Out of these the provisions on
a) the reasons,
b) the announcement and
c) the decisions (that can be made on the basis of the announcement)

of appeal on legal grounds need to be highlighted.

ad a) Pursuant to § 667. the appeal on legal grounds can be announced with the following conditions:

It can be announced by the **Supreme Prosecutor**	Against the decision of court **breaching the law** (not against the decision of the Supreme Court)	Only against **final decisions with legal power** or **final non-conclusive** orders	It can be enforced before the **Supreme Court**	Only if the decision **cannot** be contested by **other legal remedy**

ad b) The announcement of appeal on legal grounds is not bound to deadline. The appeal on legal grounds is settled in public sessions (if it needs not be rejected):

- the Supreme Prosecutor (in the procedure of private prosecution the private prosecutor; in the procedure of substitute private prosecution the substitute private prosecutor, and their legal representative), the defendant and his defence counsel (if there was no defence counsel in the base case, one shall be appointed) shall be notified about the public session,
- the defendant and the defence counsel may make comments on the motion for appeal on legal grounds,
- the public session may not be held in the absence of the Supreme Prosecutor (his representative),
- the Supreme Prosecutor (his representative), the defendant and his defence counsel may address and make certain motions.

ad c) Two types of decision can be made based on the appeal on legal grounds (§ 669.):

1. Judgment: if the Supreme Court finds the recourse announced in the interest of lawfulness substantiated, it shall state in its judgment that the contested decision is unlawful. In this case the Supreme Court
   - may acquit the defendant, may disregard the involuntary treatment in a mental institution and may terminate the procedure,
   - may impose a slighter penalty or may apply lighter measures and
   - may reverse the contested decision in order to make an according decision and, if needed, may instruct the proceeding court to institute a new procedure,
   - otherwise, its decision may state only the violation of the law.

2. Order: if the Supreme Court does not find grounded the appeal on legal grounds, it shall reject it in its order.

4.7.5. The procedure for the uniformity of the law

Out of the rules of the procedure for the uniformity of the law
a) the reasons,
b) the motioning and
c) the stages
are expounded below.

ad a) Pursuant to § 32. of the Act CLXI. of 2011. on the organisation and administration of courts, the procedure for the uniformity of the law is admissible:

In the interest of uniform judicature	**Demand for departing decision**
In order to further develop judicature or secure uniform judicature in principle it is necessary to • make decision for the uniformity of the law, • amendment of a former decision for the uniformity of the law or • repeal of a former decision for the uniformity of the law.	An adjudication panel of the Supreme Court intends to depart in a legal issue from • the decision of another adjudication panel of the Supreme Court issued in a matter of doctrine or • a published decision on the matter of doctrine. For this reason, the on-going procedure shall be suspended.

ad b) The procedure for the uniformity of the law shall be conducted mandatorily if it is motioned for by

- the President, the head of the criminal division or their deputies in the Supreme Court, the President of the High Court of Appeal,
- the Supreme Prosecutor or
- the presiding judge of the Supreme Court in case of departure from the decision of another adjudication panel of the Supreme Court.

The question of principle (the legal issue) to be adjudged and the recommendation of the motioner shall be designated in the motion for the procedure for the uniformity of the law. The copy of the court decisions concerned by the motion shall be attached to the motion.

The entitled parties to adjudge the motion for procedure for the uniformity of the law are:

- generally the council of 5 members of the Supreme Court,
- the council of 7 members of the Supreme Court when a so-called joint decision in the procedure for the uniformity of the law concerning several legal branches is made,
- the entire Division of the Supreme Court if the aim of the procedure for the uniformity of the law is to modifying (reverse) the former uniformity decision, or decide on the question of principle in order to further the development of judicature.

The President of the legal uniformity council is the President of the Supreme Court or his deputy, or the head of the criminal division or his deputy.

ad c) The procedure for the uniformity of the law shall be prepared by the presiding judge. In doing so, he shall appoint 1 or 2 presenter judges of the case, then the motion shall be sent to the Supreme Prosecutor (if the motioner is another party). The Supreme Prosecutor shall make a statement on the motion within 15 days.

Subsequently, the case is set for a session, which is not public; only the members of the legal uniformity council, the motioner, the Supreme Prosecutor and occasionally invited parties may attend it.

Based on the motion the legal uniformity council makes

- a uniformity decision in case of approval,
- otherwise, an order omitting decision-making.

The decision made in the legal uniformity procedure, as a main rule, may not affect the particular case, however, if the provision of the judicial decision with legal power concerned by the uniformity decision and stating the criminal liability of the defendant is unlawful, the legal uniformity council shall reverse the unlawful provision and acquit the defendant or terminate the procedure. If the defendant is detained, the detainment shall be terminated.

4.7.6. Simplified review

Simplified review procedures are admissible if the court did not make provisions on certain issues of the base case, despite the mandatory provision of the law (did not make a provision in compliance with the law) (§ 671.):

- provisions related to penalties (e.g., establishment of the the degree of the enforcement of imprisonment, provision on release on parole);
- provisions on measures (termination of probation, order of probation with supervision);
- other main provisions (e.g., defendant's classification as recidivist);
- additional provisions (e.g., inclusion of preliminary detainment, cost of criminal proceedings).

During the procedure of simplified review within one month of becoming effective of the final decision the court making the final decision with legal power, otherwise the court of first instance proceeding in the base case shall proceed ex officio, or at the motion of those entitled to legal remedies (§ 672.), but the private prosecutor and the substitute private prosecutor may not motion for simplified review procedures (§§ 785. and 816.). A simplified review procedure to the detriment of the defendant (financially or other interested party) may be instituted (motion may be filed) within 6 months following becoming effective, except if

- the possession of the object endangers public safety (contrary to a statute), or rendering the data accessible (release) constitutes a crime, therefore forfeiture or irreversibly rendering electronic information inaccessible is provided,
- a decision shall made on forfeiture (confiscation of property) in the context of the seizure or sequestration.

Court decisions can be of 3 types: the court shall

- generally make decisions on the basis of documents (even the court secretary may do it),
- hold public sessions if the prosecutor, the defendant or the defence counsel need to be heard (the hearing of the defendant is mandatory in certain cases, e.g., modification/termination of the parole or probation),
- hold trials if other evidence is taken (but no preparatory session obtains).

If the motioner was not present at the public session or the trial, his motion shall be regarded as withdrawn.

Based on the simplified review procedure the court in order

- makes decisions in compliance with the law (if necessary, besides repeal the unlawful provision of the decision made in the base case),
- rejects the motion if it is not substantiated or formally erroneous (delayed, excluded by law, not proceeding from an entitled party),
- terminate the procedure if in the procedure instituted ex officio it states that the conditions of initiating of procedure do not obtain (§ 674.).

Those entitled to submit a motion for the initiating of the procedure or those whose rights or obligations are concerned by the decision made in the special procedure (in the scope concerning him) may appeal against the decision of the court. Courts of third instance may not conduct in simplified review procedures.

4.7.7. Application for justification

If the defendant, the defence counsel, the victim, the financially or other interested party missed the deadline or closing date through no fault of their own, an extension is admissible (§ 139.).

The application for justification may be submitted within 8 days of the last day of the missed deadline (of the missed closing date), but at the latest within three months of the cessation of the obstacle. The application for justification shall include

- the cause of failure,
- the circumstances that make the guiltlessness of the failure likely,
- in case of missing the deadline, the deficiency shall be corrected along with the submission of application for justification.

There is no scope for justification in the following cases:

- due to missing the objective deadline of 3 months open for the submission of the service objection;
- due to the missing the deadline open for the submission of the private motion (except if the crime is indicted by the public prosecutor);
- due to the failure of attendance of the defendant (defence counsel) of the trial in case of a judgment announced in the absence of the accused not appearing despite a regular summons;
- if the victim does not present his civil claim at the first trial he attended (could attend);
- due to missing the deadline of 1 month open to enforce a civil claim by other legal means;
- due to missing the deadline of 3 days open for appeal;
- due to missing the deadline open to motion for setting the date of the public session or trial for appeal;
- due to failure of attending the trial of second instance;
- due to missing the deadline open to motion for setting the date of the public session of third instance.

The authority setting the deadline/closing date (in case of missing the deadline of legal remedy the body authorised to adjudge the legal remedy) shall make an equitable decision of the application for justification.

The authority shall reject applications for extension without reasoning on the merits if it is delayed, excluded by law or it has the same contents as formerly (it shall do the same in

case of missing the deadline if the applicant failed to correct the deficiency upon the submission of the application, albeit it was possible).

The application for justification has no suspensory effect on the continuation of the procedure or the fulfilment or the enforcement of the decision but the authority may suspend the procedure (fulfilment or enforcement of the decision).

Remedy is inadmissible against the decision sustaining the application for justification.

If the application for justification is sustained:

- the act substituted by the applicant for extension shall be regarded as performed within the missed deadline,
- the procedural act carried out on the missed closing date shall be repeated in the necessary scope.

4.8. Special and other procedures

The CPC regulates numerous special and other procedures. The common feature of each of them is that in their course decisions are not made on the merits of the case (in the issue of culpability). However, whereas during the special procedures (as specific cases of releasing the legal power) the part of the final decision on the merits (generally concerning the sanction) is modified, during other procedures decisions beyond the scope of these issues are made.

The CPC regulates the following special and other procedures:

Special procedures	Other procedures
• deferment of the earliest time of release on parole in the case of life imprisonment • procedure of the concurrent sentencing • procedure in case of probation • procedure in case of work performed in amends • postponement and permission of instalment payments in the case of the cost of criminal proceedings due to the state	• compensation for the limitation of freedom applied unfoundedly • reimbursement • the clemency procedure • moderation or waiver of the cost of criminal proceedings and of disciplinary penalty

Tartalom