



Hungarian Helsinki Committee

MAIN CHANGES IN THE HUNGARIAN CRIMINAL PROCEDURE DUE TO COVID-19

1 JUNE 2020

On 31 March 2020, Government Decree 74/2020. (III. 31.) on Procedural Measures Applied in the State of Danger was issued, and most of its provisions entered into force on the same day.¹ This government decree overrode various Acts of Parliament, including Act XC of 2017 on the Code of Criminal Procedures (CCP). Rules of the Hungarian criminal procedure were further amended by Government Decree 188/2020. (V. 7.), in force as of 8 May 2020, and by Government Decree 229/2020. (V. 25.), in force as of 1 June 2020.

Below, we summarize the main changes introduced to the Hungarian criminal procedure due to COVID-19, as in force as of 1 June 2020.² Rules no longer applicable as of 1 June 2020 are indicated with *[italics in brackets]*.

- **Presence at procedural acts** (this covers any kind of procedural act, including interrogations, confrontations, trial hearings, etc.):
 - If a person's presence at a procedural act would violate the rules of epidemiological isolation, observation, quarantine or monitoring ordered, the procedural act shall be **postponed** as a main rule.
 - If the procedural act cannot be postponed, attendance of participants shall be ensured through a telecommunication device, i.e. the procedural act shall be held as a remote hearing. (In practice, this means that hearings are conducted e.g. through Skype.)
 - Even if personal participation at a procedural act would not violate the rules of epidemiological isolation, observation, quarantine or monitoring ordered, **the authorities shall, as a main rule, conduct a remote hearing.** *[Rules applicable between 31 March and 1 June 2020 set out not only that procedural acts shall be primarily conducted remotely, but also that authorities shall allow **testifying in a written form, or use the audio-visual or sound recording of previous procedural acts** if that would allow for the person concerned not attending.]*³
 - *[Rules no longer applicable as of 1 June 2020: If the court, the prosecutor's office or the investigating authority (primarily the police) made an audio-visual or sound recording about a procedural act involving a **victim or witness** earlier in the procedure, the court may, ex officio or upon a motion, refrain from hearing them personally. In this event, the testimony provided by the victim or witness during the investigation may be used as means of evidence by the court. However, as of 8 May 2020, the prosecutor, the defendant and the*

¹ The full text of the government decree is available here in English (as in force on 31 March 2020):

http://njt.hu/translated/doc/J2020R0074K_20200331_FIN.pdf. The Government of Hungary declared a state of danger on 11 March 2020. Act XII of 2020 on the Containment of the Coronavirus, adopted by the Hungarian Parliament on 30 March 2020, provided the Hungarian Government with a *carte blanche* mandate without any sunset clause to suspend the application of Acts of Parliament, derogate from the provisions of Acts, and take other extraordinary measures until the state of danger is in place.

² For the rules applicable between 8 May and 1 June 2020, see the Hungarian Helsinki Committee's summary here: https://www.helsinki.hu/wp-content/uploads/HHC_changes_in_Hun_crim_proc_COVID-19_08052020.pdf.

³ Article 50 of Government Decree 74/2020. (III. 31.)

defence counsel can motion for hearing the witness personally in these instances. The motion will be decided on by the court.^{4]}

- The court may, ex officio or upon a motion, decide to share or read out the essence of a witness testimony made earlier in the procedure at the trial hearing if in the court's view it is not necessary to hear the witness in person, and hearing the witness is not motioned for by the prosecution or the defence either.⁵
- Before the commencement of a procedural act, authorities shall examine ex officio whether, with a view to the rules of epidemiological isolation, observation, quarantine or monitoring ordered, or (as of 8 May 2020) with a view to others reason related to the epidemic, the procedural act may be held or not. If not, the procedural act shall be postponed. If the authorities are of the view that the procedural act may be held, they **may still order special individual rules on how to conduct the procedural act**. As of 8 May, the rules explicitly list some examples for such rules and measures: they may concern the required physical distance between those present, or wearing the protective equipment the persons present possess or are provided with by the authorities.⁶
- **Persons over 65 years of age shall be considered "persons requiring special treatment" automatically.**⁷
- *[Rules no longer applicable as of 1 June 2020: Inspecting case files at the courts or making copies of case files is not possible, and authorities are allowed to provide information on the content of case files (i.e. allow **access to the case files**) **only in ways that do not require personal presence in court buildings**. As of 8 May 2020, the rules specifically set out that this means that accessing case files shall be ensured primarily by sending the copies or extracts of the case files electronically to those who request them.^{8]}*
- **Summons and notifications** shall be primarily sent **via e-mail or to another electronic address, or via electronic means ensuring voice transmission.**⁹ With the exception of in-merit judgments, authorities shall deliver other official documents via e-mail or using another electronic address as well.¹⁰
- **Public nature of trials:**
 - The **court shall order a closed trial** (or order that a part of a trial is closed) ex officio if the participation of the public at the trial is not possible with a view to epidemiological rules.
 - The **court may order a closed trial** ex officio or upon a motion if the presence of the audience or journalists at the trial would endanger the limb or health of the participants of the procedure.
 - If the court orders a closed trial, it **shall, upon request, allow the defendant or the defence counsel to record the trial hearing with their own electronic device**, provided that it does not disturb the order or the dignity of the trial. As of 8 May 2020, the defence shall not be allowed to make its own recording if the court itself records the trial hearing. The recordings made by the court shall be made available to the defence afterwards.¹¹
 - Instead of holding so-called "public sessions", second instance courts shall hold "panel sessions", where only the judges are present, provided that the data necessary for the adjudication of the case may be acquired from a written statement by the person concerned; that the written documents acquired for the adjudication of the appeal shows that there is

⁴ Article 49 of Government Decree 74/2020. (III. 31.), as amended by Government Decree 188/2020. (V. 7.)

⁵ Article 79(1) of Government Decree 74/2020. (III. 31.)

⁶ Article 51 of Government Decree 74/2020. (III. 31.), as amended by Government Decree 188/2020. (V. 7.)

⁷ Article 48 of Government Decree 74/2020. (III. 31.). Under the general rules of the CCP, persons qualify as requiring special treatment if on the basis of their personal characteristics or on the basis of the nature and circumstances of the criminal offence they are impeded from (a) understanding or being understood; (b) exercising their rights or fulfilling their obligations; or (c) participating in the criminal procedure effectively. In their case, special procedural safeguards apply.

⁸ Article 53 of Government Decree 74/2020. (III. 31.), as amended by Government Decree 188/2020. (V. 7.)

⁹ Article 54 of Government Decree 74/2020. (III. 31.)

¹⁰ Article 57(1) of Government Decree 74/2020. (III. 31.)

¹¹ Article 71 of Government Decree 74/2020. (III. 31.), as amended by Government Decree 188/2020. (V. 7.)

no obstacle to deciding the case at a panel session; and that the defence or the prosecution do not motion for a public session.¹² Similar rules apply to the Kúria (Hungary's Supreme Court).¹³

- The rules applicable in the state of danger **provide for additional instances when courts may issue** a so-called **penal order, meaning that the case is decided without a trial hearing**, only on the basis of the case files and the evidence acquired in the course of the investigation. Under the ordinary rules, a penal order may be issued if (a) the offence is punishable by a maximum of three years of imprisonment, the case is simple, and the aim of the sanction may be achieved also without holding a trial; or if (b) the previous conditions prevail, but the offence is punishable by a maximum of five years of imprisonment, and the defendant confesses to committing the offence.¹⁴

According to the rules applicable in the state of danger, a penal order **may** (before 8 May 2020, shall) **be issued in the case of offences punishable by a maximum of eight years of imprisonment (instead of three or five)**, and a penal order may be issued in the case of juvenile defendants with regard to any criminal offence (if the other conditions prevail). As of 8 May, the rules set out that it is not necessary for the defendant to confess to committing the criminal offence for a penal order to be issued.¹⁵ However, the ordinary rule remained that both the defence and the prosecution may request a trial after a penal order is issued.¹⁶

- **Changes affecting the length of the procedure:**
 - The investigating authority, the prosecution and the court **shall suspend the procedure for a period of up to six months if an insurmountable obstacle prevents the continuation** of the proceeding, with a view to the rules of an epidemiological isolation, observation, quarantine or monitoring ordered, and, as of 8 May 2020, with a view to other reasons related to the epidemic. However, the procedure **may not be suspended if the defendant is under a coercive measure restricting their liberty** ordered by a judge (pre-trial detention, criminal supervision, etc.).¹⁷
 - The **two-year time limit for investigations** (counted from the defendant's interrogation) **may be extended by maximum six month.**¹⁸ *[Between 31 March and 1 June 2020, the rules set out that the time limit can be extended not only once, but any number of times.]* As of 8 May 2020, the time limits for investigations for the cases of juvenile defendants may also be extended by up to three months, twice maximum.¹⁹
 - The rules applicable in the state of danger **extend various procedural deadlines**, e.g.: the court shall forward indictments to the defence counsel and the defendant within three months instead of one.²⁰ *[As of 1 June 2020, some of the provisions extending deadlines are no longer applicable, e.g. that reports of criminal offences shall be administered within five working days instead of three; that preparatory court sessions shall be held within six months instead of three; and that trial hearings shall be held within three months instead of one.]*
- *[Rules no longer applicable as of 1 June 2020: Private prosecution cases (which have to be initiated by the victim, and concern criminal offences like violation of privacy, defamation, libel, or minor bodily harm) shall be suspended for the period of the state of danger, and no such cases may be initiated in the period of the state of danger either.²¹ The same applies to substitute private prosecution cases (where the victim files the indictment because the police or the prosecution would drop the case).²²]*

¹² Article 82(1)-(2) of Government Decree 74/2020. (III. 31.)

¹³ Article 83 of Government Decree 74/2020. (III. 31.)

¹⁴ Article 740 of the CCP

¹⁵ Article 87 and Article 89(2) of Government Decree 74/2020. (III. 31.)

¹⁶ Article 742 of the CCP

¹⁷ Article 68(1)-(2) and Article 74(1)-(2) of Government Decree 74/2020. (III. 31.), as amended by Government Decree 188/2020. (V. 7.)

¹⁸ Article 66(1) of Government Decree 74/2020. (III. 31.)

¹⁹ Article 66(2) of Government Decree 74/2020. (III. 31.)

²⁰ Article 75 of Government Decree 74/2020. (III. 31.)

²¹ Article 91 of Government Decree 74/2020. (III. 31.)

²² Article 92 of Government Decree 74/2020. (III. 31.)

- *[Under the general rules, participants of the procedure may submit a **complaint/objection when the criminal procedure becomes protracted**, i.e. if authorities do not comply with deadlines set by law or do not take adequate steps when others do not comply with deadlines set by the authorities.²³ Between 31 March and 1 June 2020, submitting such objections was **excluded** under the respective government decrees.²⁴]*
- *[Similarly, between 31 March and 1 June 2020, **no claims for compensations** could be submitted **for the unfounded restriction of liberty** in the period of the state of danger.²⁵]*
- First instance courts shall proceed as single judges, so no decisions are issued by a panel any more, changing the composition of the court e.g. in procedures against juveniles, military procedures, or procedures concerning economic criminal offences.²⁶

²³ Article 143 of the CCP

²⁴ Article 59 of Government Decree 74/2020. (III. 31.)

²⁵ Article 94 of Government Decree 74/2020. (III. 31.)

²⁶ Article 45 of Government Decree 74/2020. (III. 31.)