

The Historical Development of the Hungarian Plea Bargain

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ABSTRACT The new Criminal Procedure Code entered into force on 1 July 2018. Based on the experience of the last four years, the settlement has not been popular, but confession at the preparatory session has become favoured. Hungarian academic literature considers the settlement to be the institution closest to the American plea bargain. In addition to the two new legal institutions, the Criminal Procedure Code contains several simplifier options. Both the previous and the current Criminal Procedure Code provide successful simplifier tools (e.g., penalty order), however, neither the settlement nor its predecessor — the waiver of trial — could break through. In my PhD study I am looking for the answer to why the Hungarian plea bargain cannot break through, for which purpose I examine the antecedents of the settlement from a historical point of view. A fundamental shortcoming can be observed: similarly, to German criminal procedure law, the principle of consensus as a legitimizing principle is missing from Hungarian criminal procedure. It would be worthwhile to examine the results that the introduction of the consensus principle would lead to. In addition, it would be important to examine the different simplifier institutions in relation to each other, i.e., to which groups of cases and how they are applied. It is possible that the aim of speeding up procedures may be reached more conveniently by the authorities by other simplifier solutions.

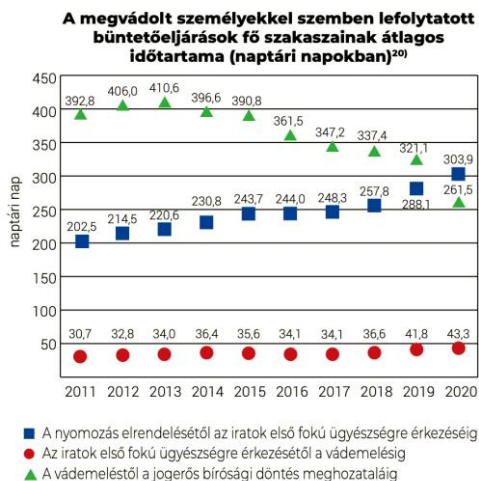
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The new Criminal Procedure Act (Act XC of 2017) entered into force on July 1, 2018. Based on the experience since its entry into force, one of the reformulated legal institutions of procedural law, the agreement, has not brought breakthrough success, but the confession at the preparatory session has become popular. Hungarian academic literature regards the agreement as the institution being closest to the plea bargain. In addition to the two new legal institutions, Criminal Procedure Law also contains several simplification and acceleration options. In both the previous and current criminal procedural law codes, we find successful simplification and acceleration tools (e.g., penal court decision), but neither the agreement, nor its predecessor - the waiver of trial - was able to make a breakthrough in the dispensation of justice.

According to the ministerial explanation of the law, "The basic concept of the law is that, in addition to providing the guarantees that are the elements of a fair procedure, it creates an opportunity to simplify and speed up the procedures. To this end, the law created a complex system of cooperation with the defendant, one form of which fits into the framework of the investigation and is related to the prosecutor's activity "Agreement on confession of guilt" (Chapter LXV). However, the agreement between the prosecutor and the accused can only be established for the purpose of conducting a specific procedure according to this chapter (Chapter XCIX), since the final decision is based on the approval of this agreement and only the court is authorized to do so.¹

The need for simplification and acceleration arose earlier, as already Act XXXIII of 1896 on the Code of Criminal Procedure (I. Bp.) contained the penal order, which was regulated by Legislative Decree 8 of 1962 (I. Be.) as the imposition of a fine by non-trial procedure and then Act IV of 1987 shortened the name of the institution to non-trial procedure, after that Act XIX of 1998 renamed the 'non-trial procedure' as 'penal order' and the currently operative Be. knows it as 'penal court decision'.

The graph published by the Hungarian Prosecutor's Office shows that since the Be. entered into force, the duration of the court phase has decreased (green triangle), while the length of the investigative phase has increased (blue square). The reduction in the duration of the court stage may be justified by the introduction of confession at the preparatory session. A direct cause-and-effect relationship cannot be drawn between the duration of the investigation phase and the failure of the settlement, but it can be assumed that if the settlement were a more frequently used legal institution, the duration of the investigation phase would also be shortened.



Source: Website of Hungarian Prosecutor's Office

¹ Ministerial justification for the Criminal Procedure Act, 264.

In my PhD thesis, I am looking for the answer to why the agreement is not more widely used: as a sub-study for this research, I am examining the antecedents of the plea agreement from a historical point of view.

1. Waiver of trial

“The preparation of the new criminal procedure code began in 1991, one of the basic objectives of which was to increase citizens' trust in efficient justice, which is easier to achieve with simple and quick procedures.”²

The waiver of the trial is a consensual procedure which was incorporated into the Criminal Procedure Act I of 1973 by Act CX of 1999. At the end of the 90s and the beginning of the 2000s, the institution of waiving the trial was the closest to the American plea bargain and, also, to its type of sentence bargaining, as it showed several similarities: the accused waived his right to a trial ensured in Section 57 (1) of the Hungarian Constitution and in Section 3 of Be., and where appropriate, also undertook to limit his right of appeal, for which in return he could participate in a specific simplifier procedure enriched with guarantees, during which the penalty range was reduced.

1.1 International antecedents

Recommendation No. R (87) 18 of the Committee of Ministers of the Council of Europe³ serves as a precedent to the introduction of the waiver of trial, which was designed to simplify criminal justice in the participating member states.⁴ The current regulation of Be. corresponds to the recommendation published by the Council of Europe in 1981, which urged the introduction of simplifying legal institutions based on the principle of opportunity. Recommendation No. R (87) 18 on the simplification of the criminal procedure was adopted by the Committee of Ministers on September 10, 1987 at the 410th meeting of the ministerial commissioners.⁵ The Recommendation proposed decriminalization, the use of summary procedures and the introduction of plea agreements with regard to minor and mass crimes.⁶ Both in the European Union and outside the borders of the Union at the time, including in our country, simplification procedures had already been known and applied before the recommendation. Act XCII of 1994 on the Amendment of Criminal Procedure introduced modifications regarding the Convention.

² Andrea Czédli-Deák, “A beismerő vallomás szerepének változása,” *De iurisprudentia et iure publico* 14, no. 1 (2015): 12.

³ Recommendation No. R (87) 18 on the simplification of criminal justice.

⁴ Attila Szilvágyi, “Vádalku jellegű jogintézmények a büntetőeljárásban,” in *Büntetőjogi Tanulmányok IV*, ed. Frigyes Kahler (MTA Veszprémi Területi Bizottsága: Veszprém, 2004), 77.

⁵ European Council Homepage: [http://www.europatanacs.hu/pdf/CmRec\(87\)18.pdf](http://www.europatanacs.hu/pdf/CmRec(87)18.pdf).

⁶ Noémi Mészáros Molnárné, “Gondolatok a tárgyalás mellőzéséről,” *Büntetőjogi Szemle*, no. 1 (2014): 21.

Article 14.3 c) of the International Covenant on Civil and Political Rights should be mentioned as another source of international law, according to which the states parties to the covenant are obliged to provide everyone with a full and equal right to a trial without undue delay in the event of an accusation. In Hungary, the treaty entered into force on March 23, 1976. It was incorporated into Hungarian law by Law-Decree 8 of 1976.

The international antecedents also include Article 6 of the European Convention on Human Rights, which provides for guarantees in judicial proceedings under the right to a fair trial, and in this context highlights the requirement of reasonable time in point 1. The European Court of Human Rights (ECHR) has a mature jurisprudence regarding the observance of the requirement of reasonable time and has also condemned Hungary countless times for violating this requirement. In proceedings before the ECHR, violations of reasonable time are most often cited, which the Court finds to be well-founded in the majority of cases. As a result, simplifying and speeding up the procedures is of concern to both the profession and politics.⁷ In Hungary, the Convention has been applied since November 5, 1992. It was ratified by Act XXXI of 1993.

1.2 The idea of the summary procedure

First, the idea of a so-called summary procedure was raised by Árpád Erdei in his study 'The reign of the dethroned queen, or the sacred cow of proof' published in the 4th issue of *Magyar Jog*⁸ in 1991, which idea was understood by several critics. The proposal served to fulfil the Recommendation of the Council of Europe, which aimed to introduce confession-based procedures in points 7 and 8.

After explaining the non-trial procedure (previously a penal order, now penal court decision), the author discusses the details of the proposal in section III of the study. Instead of the felony and misdemeanour proceedings at that time, he would have considered it justified to distinguish between ordinary and summary proceedings. The condition for a summary procedure is the factual and legal simplicity of the case, as well as the confession of the accused. The summary procedure combines the elements of bringing to judgment and non-trial. The summary procedure makes it possible to avoid lengthy court proceedings, the written accusation is simplified and the material of the file created during the investigation is also narrower. The prosecution brings charges based on the incriminating confession made during the investigation phase and other evidence. At the hearing before the court, the representative of the prosecution presents the charge, and then the court warns the accused of the consequences of the confession, which is followed by the statement of the accused. If the accused repeats the testimony of the previous confession, the

⁷ Dániel Antali, "Az ésszerű időn belüli tárgyaláshoz való jog és az új büntetőeljárás törvény külön eljárásai," *Eljárásjogi Szemle*, no. 3 (2018): 23.

⁸ Hungarian Law Journal.

evidentiary procedure is cancelled and the court basically establishes the criminal liability of the accused based on the confession and imposes a reduced sentence. Before a sanction is imposed, the trial judge hears the representatives of the prosecution and the defense. Based on the hearing and the contents of the investigative documents, an immediate penalty is possible. In terms of legal remedies, in addition to the relative prohibition of aggravation, the second-instance court has reformatory decision-making powers, while in the third-instance court, in addition to the absolute prohibition of aggravation, reformatory powers only apply to questions of law. Based on the proposal, reversal could only take place in the absence of the conditions for a summary procedure or a serious procedural error. This practicably means that the judgment can only be contested in the scope of the punishment.

Árpád Erdei formulated several criticisms of his own proposal, in which he drew attention to the fact that "the continental legal tradition finds it difficult to accept the application of very serious consequences in a very simple procedure. This is not even helped by the various simplification interests and guarantees provided to the defendant. It is likely that giving up consistency of thought offers a sensible compromise."⁹

Regarding the point of the Recommendation that the introduction of confession-based procedures is recommended if the constitutional and legal traditions allow this, he saw no obstacle, which was also supported by the later practice of the Constitutional Court.

The proposal has been criticised several times. In 1992, Péter Kántás expressed his concerns about the proposal in his work "Question marks of a simplification experiment" published in the 8th issue of the journal "Magyar Jog" [Hungarian Law]:

- a) confession would require strong motivation,
- b) for the new form of procedure, it should be known what content, what group of offenders and what categories of crimes it would be applicable to,
- c) it is not enough to change the law to reach an agreement, as the profession insists on the principle of legality.

In 1992, the lawyer Péter Balla came up with an idea different from the proposal described above in the 11th issue of "Magyar Jog" entitled 'Penal order instead of prosecution'¹⁰: he saw the solution to meet the needs of the Council of Europe in the further development of the penal order. Against the idea of a summary procedure, he argued that the solution introduced in the Italian criminal procedure code did not fulfil the hopes attached to it, "because the material foundations of their application were not taken care of."¹¹ He compared Árpád Erdei's summary procedure to the solution of the Italian criminal procedure, which he called a "carrot-method" solution, since the guilty plea is not motivated by the promise of a reduced sentence. He also pointed out

⁹ Árpád Erdei, "A trónfosztott királynő uralkodása, avagy a bizonyításelmélet szent tehene," *Magyar Jog*, no. 4 (1991): 98.

¹⁰ Péter Balla, "Vádalku helyett büntetőparancs," *Magyar Jog*, no. 11 (1992): 669–671.

¹¹ Balla, "Vádalku helyett büntetőparancs," 669.

that instead of the 2-to-8-year sentence for robbery, the judge starts with a sentence of 2-5.5 years in the case of a confession. Based on judicial practice, the punishment is found to be below average, and even in the case of failure to confess, they do not usually impose a punishment more severe than 3-4 years.

Regarding the adoption of the plea bargain, he took the position that the entire legal system would have to be reformed and legal roles redefined, so he did not see a realistic chance for the successful introduction of the plea bargain in the near future.

In comparison, the non-trial procedure was a successful legal institution¹², so he saw in this a solution in accordance with European standards. He would have extended the application of the non-trial procedure to all cases, since at that time it could only be used during misdemeanor proceedings.

1.3 Government Decision of 1994

After the regime change, in the mid-1990s - as a result of the amendments - the criminal procedure law was transformed, however, Act I of 1973 still carried socialist features, so the development of a new criminal procedure law began.¹³ The objectives of the new code are set out in Government Decision 2002/1994. (I.17.), which included, among other things, the establishment of simplified procedures and the stronger enforcement of the parties' right to disposition.

After the government decision was adopted, a Codification Committee was established to create the new code, which submitted its bill to the Minister of Justice in the summer of 1997. The Act XIX of 1998 on criminal procedure was adopted by the Parliament in March 1998, however, it had to wait until July 1, 2003 for its entry into force due to the different ideas of the new government established in 1998.¹⁴

This is how it happened that, prior to entering into force, the finished law was revised based on Parliament Decision 102/1999 (XII.18). The bill was implemented by Act I of 2002 on the amendment of Act XIX of 1998 on criminal procedure, which changed the original concept with reference to speeding up the procedure, among other things. The Criminal Procedure Act underwent numerous amendments after that as well.¹⁵

The institution of waiving the trial was introduced into Act I of 1973 by Section 131 of Act CX of 1999, which entered into force on March 1, 2000. Act CX of 1999 reflected the objectives of Government Decision 2002/1994.

After the later entry into force of the code, the legal institution was regulated by chapter XXVI of the 1998 Law. Based on the reasoning of the legislator, the

¹² In 1991, 52,512 cases were concluded with final court decisions, of which 11,136 were decided without a trial. In: Balla, "Vádalku helyett büntetőparancs," 670.

¹³ András Kristóf Kádár, "A tisztességes eljáráshoz és a védelemhez való jog húsz éve Magyarországon," *Fundamentum*, no. 4 (2009): 69.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

introduction of the waiver of trial was carried out in order to speed up the proceedings and relieve the court.

1.4 More important court decisions

Prior to the introduction of the legal institution of the waiver of trial, several court decisions were made that laid the groundwork for the subsequent installation, settled legal theoretical issues and can be considered guiding principles to this day.

The Constitutional Court in its Decision 9/1992. (I.30.) dealt with the issue of procedural justice for the first time. As the main function of the court proceedings, it indicated the establishment of the formal truth and not that of the material truth, which was in force at the time and which should be kept in mind even now. The decision is significant because it declared that the disclosure of the material truth does not appear as an inalienable right in the Constitution, since "there are no corrective techniques that can adequately solve the limitations of legal discovery, which is a necessary element of it. The Constitution gives the right to a procedure that is necessary for the enforcement of material justice and is suitable in the majority of cases."¹⁶ It should be noted that the Constitutional Court decision was not included in the 1998 Act, as to clarify the factual situation in accordance with reality is the task of the courts, not their obligation.¹⁷

Constitutional Court Decision 49/1998 (XI.27.) examined the issue of simplification and acceleration in relation to the constitutional guarantees and came to the conclusion that the constitutional guarantees take precedence over the constitutional interests related to the need for simplification and acceleration, so fundamental rights of the person subject to criminal proceedings and procedural guarantees must be prioritized.

One of the most important guarantee elements of fair trial is the right to a trial, however, in criminal proceedings based on an agreement, as a general rule, the court decides at the preparatory session whether the criminal liability of the accused can be established, so a trial does not take place.

In its Decision 422/B/1999/AB, the Constitutional Court dealt with the issue of the right to a fair trial. The legal institution of waiving the trial was contested before it entered into force, with reference to the violation of the right to a public trial, in view of the fact that, based on the rules of Criminal Law¹⁸, a lighter sanction must be imposed upon the accused who has waived his or her right to a trial than upon a person who, exercising his or her right guaranteed by the Constitution, has not waived his or her right to a trial, which leads to the voiding of the fundamental right. The Constitutional Court rejected the motion, which was justified by the fact that the waiver of the trial does not violate

¹⁶ 9/1992. (I.30.) AB határozat.

¹⁷ Viktor Bérces, *A büntetőeljárás reformja és a bizonyítás alapkérdései* (Budapest: ELTE Eötvös Kiadó, 2021), 44.

¹⁸ Criminal Law.

Section 57 (1) of the Constitution, as the accused does not waive the right to have the charges brought against him judged before an independent and impartial court, the accused merely waives that the court should decide on the charge based on the conduct of the full evidentiary procedure, after evaluating the pieces of evidence individually and as a whole. Accordingly, the accused waives his right to complete proof, which is not one of the absolute basic constitutional rights, such as the presumption of innocence or the right to a fair trial.

In its Decision 14/2004 (V.7.) the Constitutional Court dealt with the requirement of a reasonable time, in the framework of which it examined the simplification procedures. During the investigation, the Court took the position that the state's constitutional obligation to society is the enforcement of the criminal law claim without delay, which can be derived from the normative content of the rule of law and the right to a fair trial.

1.5 The 2003 amendment

There were several problems with the application of the institution of the waiver of trial. To solve one of these problems, Act II of 2003 repealed Section 72 and Section 87/C a) and b) of the Criminal Code, with a view to the promotion of the legal institution.

Based on Section 72 of Criminal Code, probation could not be used during the special procedure for waiving the trial, which was justified by the legislator by the fact that even in the case of a crime punishable by no more serious than 3 years' imprisonment, probation is a sanction that can only be used in cases that deserve special consideration, so he did not consider reasonable extension of the application of the measure. Due to a similar argument, based on Section 87/C points a) and b) of the Criminal Code a suspended prison sentence could not be imposed. It is obvious that if the application of a suspended prison sentence or probation is ruled out, then waiving the trial cannot be more favourable for the defendant. In response to the legal anomaly, the Hajdú-Bihar County Court, as a court of second-instance, filed a motion to amend the law in a specific case, since the number of crimes affected by the contradiction was high.¹⁹

1.6 The 2009 amendment

Due to the unpopularity of the waiver of trial, the legislator reconsidered the rules of the legal institution: compared to the original ideas, the institution of waiver of trial was changed and its regulations were broadened in the summer of 2009.²⁰ The change was based on Section 47 of Draft Law T/9553 and the new rules were enacted by Act LXXXIII of 2009 in order to improve the

¹⁹ Ágnes Pápai-Tarr, "A vádalku – az amerikai és a magyar valóság" 17., *Jogelméleti Szemle*'s Homepage: <http://jesz.ajk.elte.hu/papai45.html>.2011.

²⁰ Ádám Békés, "Az egyezség közelről," in *Tanulmányok Bánáti János 75. születésnapjának tiszteletére*, ed. Zsolt Gábor (Budapest: HVG-Orac, 2019), 18–31.

timeliness of criminal proceedings. Academic literature believed in the success of the modified legal institution, but a breakthrough did not take place even then. The use of waiving the trial continued to show a result of less than 1% across the country.²¹

During the re-regulation in 2009, the legislator kept the original concept of waiving the trial, to which he added a new rule: the requirement of a written agreement between the parties. The agreement not only had to be in writing but based on Section 534 (1) of the Act on Criminal Proceedings, it also had mandatory content elements. Among the mandatory content elements was the description of the act admitted by the defendant, its classification according to the Criminal Code, the statement of the prosecutor and the accused about the type, duration and extent of the punishment as well as measures, which the court was to take note of. The lower and upper limits of the punishment, as well as the extent and duration of the measure, had to be fixed.²² As a result, in contrast to the previous regulation, during the imposition of the penalty, the court was no longer able to decide within the framework of the penalty range set by law, but on the basis of the range included in the settlement - which was proposed by the prosecution in the indictment. However, the accused could still receive material legal benefits. An important innovation was that it was not only possible to agree on the scope of the sanction, but the prosecutor and the accused could also agree on the facts and the legal classification of the act.²³

The 2009 regulation also added that the application of the waiver of trial is excluded if the crime was committed in a criminal organization or caused death. At that time, the obligatory decision within the framework of the legal institution about civil action within criminal proceedings was also introduced, which supports the victim.

1.7 The 2011 amendment

Act LXXXIX of 2011 entered into force on July 13, 2011, and changed the institution of waiver of trial again, which meant a significant step back. Pursuant to Section 534 (1)-(2) of the Act on Criminal Proceedings, the written settlement remained necessary only in the case of the cooperating defendant. In all other cases, the court could impose a penalty based on the facts and classification matching the indictment, taking into account the rules for reducing the lower limit of the penalty, which it had the option to do anyway. In contrast to the 2009 amendment to the Act, the 2011 amendment no longer included the fact that the lower and upper limits of the sanction must be determined by the parties entering into the agreement.²⁴

²¹ Boglárka Juhász Miskolcziné: "Gondolatok a tárgyalásról lemondás intézményéről," *Büntetőjogi Szemle*, no.1 (2017): 63–68.

²² Pápai-Tarr, "A vádalku – az amerikai és a magyar valóság," 18.

²³ Czédli-Deák, "A beismerő vallomás szerepének változása," 14.

²⁴ Czédli-Deák, "A beismerő vallomás szerepének változása," 14.

2. Agreement

The waiver of trial was not taken over by Act XC of 2017 on criminal procedure. Instead, the Act introduced a new legal institution: the agreement. The concept of an agreement is similar but not identical to the legal institution of a waiver of trial.

Act XC of 2017 generally provides the defendant with the right to waive the trial, which creates the possibility for the court to decide on his criminal liability already at the preparatory session. In the event of an agreement, the procedure is a specific procedure based on the defendant's commission and waiver of the right to a trial. It is possible to enter into an agreement until the charge, after filing the indictment it is excluded according to the law. If an agreement is reached between the parties during the investigation phase, the prosecution will press charges in addition to the agreement and the accused will also plead guilty and waive trial at the preparatory session held according to the rules for the special procedure. There are no restrictions regarding the type of case or crime, an agreement can be made in the case of any crime. The subject of the agreement is the confession of guilt and its consequences. In order to reach an agreement, the agreement of the accused, the defense and the prosecutor is necessary, since the initiative of either party must be accepted by the representative of the other side and the agreement included in the suspect interrogation report must be countersigned by all three parties. The court is bound by the facts and classification determined by the prosecutor, as well as the legal consequences determined by the parties. As a result, the legal remedy that can be filed against the decision of the first-instance court's decision is also limited.

The agreement is usually called 'plea bargain' but it is not the same as a plea bargain, despite the fact that it shows similarities in several points. In contrast to the American plea bargain, the settlement can only be concluded until the filing of the indictment with the court, and the participation of the court is excluded. Another difference is that the facts and classification cannot be the subject of the agreement, only the legal consequences can be negotiated. A confession is definitely necessary for an agreement - and in Anglo-Saxon plea bargains, not only pleading guilty but also 'nolo contendere' can serve as a basis for the plea bargain.

2.1 BH.2020.353. (BT.515/2020/5)

At the preparatory session of the first-instance court, the representative of the prosecution used a 'sentencing motion' in the case of the defendant's confession, in which he proposed a prison term of six months. The accused admitted the crime in accordance with the indictment and waived his right to a trial. The trial court affirmed the defendant's criminal liability and sentenced him to three months in prison. Against the verdict, the prosecutor filed an

appeal at the defendant's expense - for an increase in the length of the prison sentence, and the defendant filed for a reduction.

The second-instance court changed the verdict of the first-instance court and increased the term of imprisonment imposed on the defendant to ten months.

The chief prosecutor filed for legal remedy against the court's verdict in the interests of legality. The Supreme Court of Hungary²⁵ found the legal remedy request well-founded, with reference to Section 565 (2) of Be.: if the court accepted the guilty plea at the preparatory session, it may not impose a more severe penalty or apply a more severe measure than that contained in the indictment or the sentencing motion presented at the preparatory session.

2.2 The 1st amendment

A significant part of the new Criminal Procedure Act, which entered into force on July 1, 2018, was changed by Act XLIII of 2020 on the amendment of criminal procedure and other related laws. Several issues arose in the application of the agreement, which were settled by the first amending Act.

Based on Chapter LXV 'Agreement on confession of guilt' of Be. and the prosecutor's reminder attached to Section 407 of Be.²⁶, the legal institution of the agreement was not applicable in the case of the defendant who had already admitted the crime. The first amendment clarified this question of law enforcement and Section 407 Section (1) was added to Be. with the following permissive rule: there is no obstacle reaching an agreement if the suspect has admitted to committing the crime. With this amendment, the previously disputed question of application became obvious, the law allows the agreement even in the case if the defendant admitted the crime before the initiation of the case. It should be noted that the amendment is inconsistent with the title of Chapter LXV.

The first amendment also expanded the scope of absolute procedural requirements' breach: if the first-instance court accepted the confession made at the preparatory session in the absence of the conditions specified in Section 504 (2), it is no longer a relative procedural requirement breach but an absolute procedural requirement breach according to the amendment, thus it leads to a cassation decision.

Section 271 point 99 of the amendment was reflected in the decision Bt.515/2020/5. of the Hungarian Supreme Court which pointed out that the scope of the term disadvantageous used in Section 565 Section (2) of Be. is wider than the prohibition of aggravation. Accordingly, the rule has been amended: if the court has accepted the declaration of guilt at the preparatory session, - with the exception contained in Subsection (3) - it cannot impose a more severe punishment or apply a more severe measure than that specified in

²⁵ The decisions of the Hungarian Supreme Court are to be separated from the Hungarian Constitutional Court decisions as in Hungary the two systems are not interwoven like in the United States of America, for example.

²⁶ Péter Polt, "Az egyezség," *Magyar Tudomány* 181, no. 5 (2020): 629-644.

the indictment or that the sentencing motion contains according to Section 502 (1) of Be. This rule applies if the defendant acknowledges his guilt and waives his right to a trial at the preparatory meeting. If the defendant confesses later, during the trial, the court is not bound by this rule.

2.3 More important court decisions

In the decision of the Constitutional Court 26/2021 (VIII.11.), the enforcement of the requirement of judicial impartiality was examined in relation to the defendant who admitted his guilt at the preparatory session, or who did not admit his guilt and was referred for trial.

In its decision, the Constitutional Court referred to the 25/2013. (X.4.) decision, which stated as a principle that "the requirement of impartiality appears on the one hand as a requirement concerning the behavior and attitude of the judge. On the other hand, however, it also sets a standard for the legal environment. According to this standard, the procedural rules must strive to avoid a situation that may raise legitimate doubts about the judge's impartiality. It means that in the specific case, the judge not only has to judge objectively, but also has the task of preserving the appearance of impartial judgment."

The Constitutional Court also referred to the practice of the European Court of Human Rights and quoted from the case *Delcourt v. Belgium* (2689/65), according to which external appearance also plays a significant role in the issue of judicial impartiality: "Accordingly, in those cases in which doubts arise regarding the judge's impartiality, the doubt of the person brought under the procedure is important, but the decisive factor is whether this doubt can be justified by objective criteria, i.e. whether the judge's impartiality appears doubtful."²⁷

Using an objective test, the Constitutional Court examined whether the judge performs several different functions during the same criminal proceedings, when he decides on the criminal liability of an accused who confesses at the preparatory session, and one who does not confess. The Constitutional Court came to the conclusion that the court does not fulfil several different roles in the case described above, so there is no objectively justifiable doubt regarding the impartiality of the judge. Based on the decision of the Constitutional Court, if the preparatory session and the trial were to be conducted by different judges, the legislative purpose of the preparatory session, namely, the concentrated preparation of the trial would not be enforced.

The Constitutional Court added to its decision that in the event that the non-confessing accused believes, regardless of everything, that the trial judge cannot be expected to judge the case impartially for other reasons, based on Section 14 (1) point e) of Be. he can initiate the exclusion of the judge. In this case, the defendant has the opportunity to assert his right to an impartial court by

²⁷ Ágnes Czine, "Tükörkép a bírói függetlenségről és pártatlanságról az Alkotmánybíróság gyakorlatában," *AB Szemle*, no. 2 (2018): 7.

applying the subjective test of impartiality in the specific case or in the case of a constitutional complaint, both in a subjective and objective approach.

In its Decision 19/2021 (V.27), the Constitutional Court dealt with the ex officio extension of the review. The council of the second-instance court appealed to the Constitutional Court on the basis of Section 590 (5) of Be. and requested the declaration of unconstitutionality and annulment with respect to Section 607 Section (1) and Section 608 Section (1) of Be. The prosecution later commented on the appeal pronounced against the defendant, in which it explained that the court acting at first instance violated a procedural rule: according to the trial records of the testimony held on December 13, 2018, the defendant was not warned about Section 185 (1) of Be. and the court did not instruct him on the nature of the confession and its legal consequences. Thus, it was in the absence of the legal condition written in Section 504 (2) point a) of Be. that the court accepted the confession, and after that, it took the evidence in violation of Section 521 Section (1) of Be. According to Section 609 (2), points a) and e) of Be., these procedural violations are considered to be relative, however in regard to Section 590 (3) and Section (5) point a) of Be. they are outside the scope of review, so they cannot result in the annulment of the judgment. Procedural violations identified by the prosecutor affect the conduct of the procedure, the determination- and the classification of guilt, so they should lead to the setting aside of the decision.

Both the prosecutor's and the defense's appeals were aimed only at the imposition of the sentence, therefore based on Section 590 (3) of Be., the court of second instance could conduct only a limited review, during which the court did not have the opportunity to extend its procedure to relative procedural violations, since the Be. allowed this only in the case of absolute procedural rules.

As I mentioned in the analysis of the 1st amendment, the legislator has in the meantime widened the scope of absolute procedural violations, so if the court accepted the confession in the absence of the conditions listed in Section 504 Section (2), setting aside of the judgment shall follow. In the present case, however, the Constitutional Court examined several issues, so the interim amendment of the law did not render its proceedings irrelevant.

The Constitutional Court found that the challenged legal provision, Section 590 (5) Point a) "on the basis of Section 607 (1) and Section 608 (1)" of Be., by not allowing the ex officio extension of the review in the case of all procedural violations that may result in a significant and, secondarily, unavoidable error in the judgment, implements a disproportionate limitation of the right to a fair trial (point 99).

In view of the above, the Constitutional Court acting ex officio found: the Parliament caused an unconstitutionality manifesting itself in an omission by regulating Section 590 Section (5) of Be- against the constitutional requirements arising from Article XXVIII Section (1) of the Constitution (point 105).

2.4 The 2nd amendment

Act CXXXIV of 2021, the second major criminal amendment after the entry into force in 2018 was published on December 17, 2021, and the amendments on criminal procedure entered into force on March 1, 2022.²⁸ Regarding the matter, the most important amendment was the changing of Section 590. Constitutional Court Decision 19/2021 described above necessitated the further amendment of the Criminal Procedure Law. Since the Constitutional Court found Section 590 (5) incompatible with fair trial, the 2nd penal amendment changed Subsection (5) and inserted Subsection (5a). Pursuant to the amendment, from March 1, 2022, the ex officio examination will also cover the relative procedural violations, if such can be identified, without examining the unfoundedness of the judgment, if a non-absolute violation of procedural law that cannot be remedied in the second-instance proceedings occurred, which had a significant impact on the conduct of the proceedings, the question of guilt, the classification of the crime, imposing the penalty, and applying the measure.

3. Summary

The Hungarian plea bargain was first mentioned in the last century - at least from a comparative legal point of view. The penal order was introduced by the I. Bp., which was later renamed several times and is currently used successfully as a penal court decision. Despite the amendments, the waiver of trial was used no more than in 1% of the cases. The reason for its failure was explained by several factors in the literature:²⁹ there was a lack of social demand for the introduction of the legal institution, the concept was opposed to the requirement of material truth, legal practitioners took and used the principle of legality as a basis, the accused did not receive a real material legal benefit, the procedure was unpredictable and partly contradictory. We can record a similar failure in connection with the agreement. The reasons for failure are similar to the ones in the case of waiver of trial.

Based on the history of the Hungarian plea bargain so far, it can be seen that the institution's frequent modifications and judicial practice have not led to results either. In my opinion, the insistence on the material truth cannot serve as a reason for failure, since other accelerating institutions - such as the penal court decision and the preparatory session - are successful, and confession in an accelerated procedure is not the same as letting go of the material truth. The principle of directness, orality and publicity can also be justified in the same way: as long as the other accelerating legal institutions are popular, the failure of the agreement cannot be traced back to the basic principles. At the same time, a fundamental deficiency can still be observed: similarly, to German criminal procedure law, Hungarian criminal procedure also lacks the principle

²⁸ Antecedent: T/17438 bill.

²⁹ Czédli-Deák, "A beismerő vallomás szerepének változása," 15.

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of consensus as a legitimizing principle. It would be worth examining what kind of result the introduction of the principle of consensus would lead to. In addition, an important aspect would be the comparative examination of the various accelerating institutions, i.e., to which case groups and how they are applied. It can be assumed that the goal of speeding up the procedure is achieved more easily and more conveniently by the authorities by other simplification solutions.

