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## The Digitalization of the Hungarian Justice system

### Abstract

The development of information technology and the growing use of electric devices have had a significant impact on the Hungarian justice system. Furthermore, the recent pandemic which was caused by the coronavirus (COVID-19) also showed that in some cases it can be vital to use electronic communication in legal procedures. In our current study, we aim to analyse the recent changes and trends that affected the Hungarian civil and criminal procedures. We introduce the reader that how these procedures became more and more digitalized throughout recent years. Our article explores the practical problems and difficulties which came from the new ways of communication. After the analysis, we give proposals for the future on how the justice system can further improve.

**Keywords:** digitalization, Hungarian justice system, civil procedure, criminal procedure, electronic communication.

### 1. The digitalization of the Hungarian Civil Procedure

The in-force regulation of the Hungarian civil procedure can be found in the Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: CCP). This Code had to respond to several changes because of the technical acquis, and its aim was to “strengthen the role of digitalization”<sup>1</sup>. The CCP replace the Act III of 1952 on

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<sup>1</sup> *Kommentár a polgári perrendtartáshoz. Kommentár a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez [Commentary on Civil Procedure Code. Commentary on the Act CXXX of 2016 on Civil Procedure Code]*, ed. Zs. Wopera, Wolters Kluwer Hungary Kft., Budapest 2019, p. 21.

the Code of Civil Procedure (hereinafter: previous CCP), which needed a reform due to changes in society.

In Hungary, electronic communication has been provided since 1<sup>st</sup> of January 2013 in proceedings before the Tribunal and since 1<sup>st</sup> of January 2015 in all courts<sup>2</sup>. However, the electronic path was an option for judicature and did not impose any obligation on them.

The previous CCP from the 4<sup>th</sup> of December 2015, made possible hearing parties, other litigants, witnesses via closed-circuit telecommunications network if conducted at the original venue of the hearing or personal interview would entail considerable hardship or unreasonably higher costs<sup>3</sup>.

The impact of digitization in civil litigation can be examined in two main areas. One of the topics is electronic communication and electronic procedures. Electronic communication as a legal institution first appeared in the bankruptcy proceedings and the company registrations. Later the lawmaker expanded this to the civil and administrative procedures. There are four types of electronic communication in civil cases:

- mandatory electronic communication,
- optional electronic communication,
- electronic communication with the expert,
- electronic communication between the authorities.

The other area is the use of an electronic communication network related to the hearing and taking of evidence. CCP in Part Ten, under the heading “Use of electronic technologies and equipment”, provides for electronic communication, its rules, and a hearing via the electronic communications network.

### **1.1. Communication with the court in civil litigation**

In civil litigation, the parties can be divided into two groups in terms of the mode of contact; some are obliged to communicate electronically and those who are not obliged to communicate electronically. Thus, not all parties to a civil lawsuit are required to communicate with the court electronically. The scope of the obligation to communicate electronically is defined in the Act CCXXII of 2015 on the General Rules for Trust Services and Electronic Transactions (hereinafter: E-government Act), based on which the business organization, state, local government, budgetary body, prosecutor, clerk, public body, other administrative authority acting as a customer and the legal representative of the customer are obliged to conduct electronic administration<sup>4</sup>. Those who are not required to communicate electronically may opt for the electronic procedure<sup>5</sup>.

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<sup>2</sup> K.F. Grébecz, *Az elektronikus kapcsolattartás szabályai egyes bírósági eljárásokban [Rules for electronic communication in certain court proceedings]*, “Adóvilág” 2017, no. 5, p. 37.

<sup>3</sup> Section 394/N of previous CCP.

<sup>4</sup> Section 9 (1) of E-government Act.

<sup>5</sup> Section 605 (1) of CCP.

## **1.2. Optional electronic communication**

Those who are not required to keep contact electronically can opt for the electronic procedure, which is an option for them. It is important to note that there may be mixed proceedings regarding the means of communication, as in addition to electronic communication, the traditional paper-based procedure is also present in civil litigation. The application for electronic communication may be submitted to the court seized at any stage of the proceedings, and the submission of the application by electronic means also constitutes an undertaking to take electronic contact. If electronic communication is chosen, the party or his representative must communicate with the court electronically and the court will send him all judicial documents electronically throughout the proceedings, except for the document or decision attached or to be delivered during the hearing. In the event of an extraordinary remedy, the scope of the electronic liaison shall also apply. If the party who is not obliged to communicate electronically does not undertake to communicate in this way and the other party is obliged or has undertaken to do so, the submissions of the party submitting the paper document shall be digitized by the court and served electronically to the other party<sup>6</sup>.

In the context of optional electronic communication, the National Council of Heads of Civil Colleges (in Hungarian abbreviated as CKOT) addressed the question of whether it is sufficient to query the disposition records upon receipt of the claim or to view it before each issue. In its resolution, the CKOT stated that the data in the register must be queried before any official delivery. However, in the case of a power of attorney in the register, the party (its representative) must indicate that he has a power of attorney in the register and will therefore not attach it. The CCP<sup>7</sup> states that a power of attorney given or modified during a lawsuit in the register is effective against the court only from the date of its notification<sup>8</sup>.

## **1.3. Switching to paper-based communication**

A party who has undertaken electronic communication may subsequently apply for permission to switch to a paper-based procedure. In the request, the party shall establish the occurrence of subsequent major changes in his circumstances whereby maintaining electronic communication would bring unreasonable hardship upon him<sup>9</sup>. It is sufficient to make the changes of circumstances probable. In this connection, the question arises which changes the court will

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<sup>6</sup> Section 605 of CCP.

<sup>7</sup> Section 69 (2) If the power of attorney is entered into the register of dispositions, or a registered power of attorney is amended after the opening of judicial proceedings, such legal statements shall take effect vis-à-vis the court upon the time of notification of the court, and vis-à-vis the opposing party upon the notification of the opposing party.

<sup>8</sup> CKOT Resolution No. 45.

<sup>9</sup> Section 606 (1) of CCP.

accept to justify a switch to a paper-based procedure. In this connection, I would like to highlight one of the Curia's opinion that the party's request for an application of extension is unfounded, alleging that he was unable to lodge his petition on time because his legal representative's computer failed. This is because the party choosing the electronic communication is obliged to ensure the technical conditions that ensure the secure use of the IT system operated by the National Office for the Judiciary. The Curia found that the legal representative appeal and the authorization were made with a computer on the last day of the time limit in question. So that at that time the legal representative still had the means to prepare and submit the petition to the court electronically. The resolution also pointed out that there is a higher degree of expectation for legal representatives in the application of equity<sup>10</sup>.

If the court allows the switch to paper-based communication, it does not have to make its decision in a separate decision form, so it does not have to make a separate order. However, the court will make an order if it denies the request. This order can be appealed. There is no restriction on how an appeal may be lodged, it can even be submitted on paper<sup>11</sup>.

In the case of an appeal against rejection order, the question may arise as to whether the party must submit his submissions to the court on paper or electronically pending the outcome of the appeal. In her position, Soltész explains that it follows from the interpretation of the law that, pending the adjudication of the appeal, the submissions must be submitted and served following the rules of electronic communication. Then, depending on the outcome of the appeal, the method of contact may change. The correctness of this practice is confirmed by the fact that, if paper-based contracts were to continue until adjudication, the statements contained in the paper petitions until then would become void if the appeal were rejected or the decision rejecting the application would be repealed<sup>12</sup>.

However, an account must be taken of the provision stating that the electronic submission of the application constitutes an undertaking to keep contact electronically. The submission of a petition electronically shall be considered as an undertaking to keep contact electronically, even during the appeal period<sup>13</sup>.

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<sup>10</sup> Court Decision Number: BH2018. 314.

<sup>11</sup> Section 606 (2) of CCP.

<sup>12</sup> I. Soltész, *Az elektronikus kapcsolattartás [Electronic Communication]*, [in:] F. Petrik, *Polgári eljárásjog – Kommentár a gyakorlat számára [Civil Procedure Law – Commentary for the practice]*, HVG-ORAC Lap- és Könyvkiadó Kft., Budapest 2019, p. 1303.

<sup>13</sup> G. Dombi-Nyárádi, *Az elektronikus kapcsolattartás [Electronic Communication]*, [in:] Zs. Wopera, *Kommentár a polgári perrendtartáshoz. Kommentár a polgári perrendtartásról szóló 2016. évi CXXX. törvényhez [Commentary on Civil Procedure Code. Commentary on the Act CXXX of 2016 on Civil Procedure Code]*, Wolters Kluwer Hungary Kft., Budapest 2019, p. 1372.

In our view, in this case, it is more appropriate for a party to be entitled to paper-based contacts pending the outcome of the appeal since he is requesting the switchover precisely because it would be disproportionately difficult or no longer possible for keeping contact electronically.

#### **1.4. Mandatory electronic communication**

The scope of those required to communicate electronically is defined in Section 9 (1) of the E-government Act. Those who are required to communicate electronically may only submit all submissions to the court electronically and the court will also serve documents electronically, except for a document or decision attached or that can be delivered during the hearing<sup>14</sup>. In a civil case, the party or representative must submit the application using a form. When submitting the form, the petition of the party keeping contact electronically will be checked from an IT point of view via the delivery system. If the petition does not meet the IT requirements, the party communicating by electronic means will be notified directly as part of the submission process. If the petition complies with the IT requirements, the applicant will receive a notification, a so-called acknowledgment of receipt, containing the name of the sender, the arrival number, the date of receipt, and information suitable for identification. The petition is considered submitted if an acknowledgment of receipt has been sent by the IT system<sup>15</sup>.

In the case of electronic communication, it is important to mention the attachments and the format in which they can be attached. There is no legal provision on this issue. The task of the National Office for the Judiciary is to provide information on the accepted file formats as well as the acceptable file sizes. This information can be found on the website of the courts titled [www.birosag.hu](http://www.birosag.hu). Before submitting the petition, it is worth checking the website, because if the file format or file size does not correspond to the ones specified there, the petition will not be considered to have been duly submitted<sup>16</sup>.

It is justified to examine the concept of a legal representative in the case of electronic communication, as Section 608 (2) of the CCP states that clerks and legal officers must also be considered legal representatives if permitted under this Act (CCP) to partake in judicial proceedings. The purpose of this regulation is to ensure that the method of communication does not change simply because a particular application is not submitted by a legal representative but by a clerk or a legal officer<sup>17</sup>.

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<sup>14</sup> Section 608 (1) of CCP.

<sup>15</sup> Section 75/C (2f) of 14/2002. (VIII. 1.) Decree of the Ministry of Justice on the rules of court administration.

<sup>16</sup> G. Dombi-Nyárádi, *op. cit.*, p. 1375.

<sup>17</sup> G. Dombi-Nyárádi, *op. cit.*, p. 1376.

### 1.5. Proof of entitlement to represent

We consider it is important to emphasize in the context of electronic communication how a representative can prove his right of representation. In the case of electronic communication, the representative must attach his power of attorney as an annex to the first application he submits to the court. If the power of attorney is available as an electronic document, it must be attached. If the power of attorney is not available as an electronic document, it will be digitized and attached by the representative. A representative need not attach his power of attorney if it is listed in the register of dispositions<sup>18</sup>. If the power of attorney granted to the representative is included in the national and authentic register of general powers of attorney, the right of representation need not be separately certified<sup>19</sup>.

Regarding the proof of the right of representation, the question arose as to how the right of representation should be proved before the court if the legal representative had not yet sent an application to the court, so it could not be attached. In this situation, it is questionable whether the power of attorney is sufficient to be presented at the court appearance or whether it should be sent to the court before it. This situation occurs when the authorized lawyer or law firm entrusts the replacement to another lawyer or law firm. Soltész sets out the following position in that regard. When applying the rules on mandatory electronic communication, the question may arise as to the consequences of a party without a legal representative at the first or reconvened hearing being substituted by a legal representative who has not previously attached his power of attorney in this case electronically. CCP according to Section 227 (4) and (5), if the certification of the right of representation is not regular, the court shall summon the person present to certify the right of representation within a short period. In the absence of a duly submitted power of attorney, the court may continue the proceedings and at the request of the party, present continues. If the default has not been corrected within the specified time limit, all acts of the person appearing shall be void and the provisions on default shall apply. There is no reason, for a court to apply more unfavorable rules to a party using electronic communication simply because of the different forms of contact. Given the above, a legal representative who fails to submit a power of attorney in advance by electronic means shall, as a general rule, be summoned to rectify the deficiencies and the legal consequences of the omission may apply in the event of failure to do so<sup>20</sup>.

The CCP since it came into effect until 31 December 2020, stated at Section 608 (1) as follows:

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<sup>18</sup> Section 611 (1) of CCP.

<sup>19</sup> M. Vitvindicis, *Az elektronikus kapcsolattartás [Electronic Communication]*, [in:] Zs. Wopera, *A polgári perrendtartásról szóló 2016. évi CXXX. törvény magyarázata [Explanation of the Act CXXX of 2016 on the Civil Procedure Code]*, Wolters Kluwer Hungary Kft., Budapest 2017. p. 685.

<sup>20</sup> I. Soltész, *op. cit.*, p. 1310.

The party obliged under the E-government Act to maintain communication electronically shall file all submissions addressed to the court by way electronic means only, in the manner specified in the E-government Act and its implementing decrees, and the court shall effect all deliveries to the party also electronically.

The CCP since it came into effect until 31 December 2020, stated at Section 605 (3) as follows:

If having opted to use electronic means as provided for in Subsection (1), in the proceedings the party and/or his representative shall maintain communications with the court electronically, including each stage of the proceedings and extraordinary redress procedures – and the court shall deliver all judicial documents to the party also electronically.

At the time of drafting the resolution of the CKOT, the provisions described above related to the examined issue were in force. From the 1<sup>st</sup> of January 2021, these rules were amended by the Act CXIX of 2020.

The Civil College of the Pécs High Court of Appeal in 2/2019. (III. 27.) the recommendation stated that electronic communication cannot be interpreted for the procedural act to be performed at the hearing according to Section 8 (4) of the E-government Act, these procedural acts are not covered by the scope of the E-government Act out, and CCP nor do its provisions on electronic communication apply. The recommendation explains that the legal interpretation that the hearing must be postponed for a party to submit a power of attorney or another document available at the hearing is not only by the E-government Act but it also opposites with the provisions of Section 28 of the Fundamental Law. It would also run counter with the requirement of ‘common sense’ set out and to the legislative objective set out in its preamble<sup>21</sup>.

However, from 1<sup>st</sup> January 2021, Section 608 (1) of CCP based on the Act CXIX of 2020 Section 75 (31), was amended as follows:

The party obliged under the E-government Act to maintain communication electronically shall file all submissions addressed to the court by way electronic means only, in the manner specified in the E-government Act and its implementing decrees, and the court shall effect all deliveries to the party also electronically, with the exception of any document and/or decision attached or that can be delivered during the hearing.

Also from 1<sup>st</sup> January 2021, Section 605 (3) of CCP based on the Act CXIX of 2020 Section 75 (31), was amended as follows:

If having opted to use electronic means as provided for in Subsection (1), in the proceedings the party and/or his representative shall maintain communications with the court electronically, including each stage of the proceedings and extraordinary redress procedures – and the court shall deliver all judicial documents to the party also electronically, with the exception of any document and/or decision attached or that can be delivered during the hearing.

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<sup>21</sup> Civil College of the Pécs High Court of Appeal 2/2019. (III. 27.) college recommendation.

Until the entry into force of the amendments, there was no uniform practice in case law, but the amendment provided an answer to the question of whether those who are required to communicate electronically or who choose to communicate electronically may attach a document at the hearing. Based on this, it is allowed for them to submit a document at the hearing. This amending rule is in line with Section 8 (4) of the E-government Act, according to which there is no place for electronic administration in the case of a procedural act where this cannot be interpreted.

### **1.6. Consequences for any breach of the provisions applicable to electronic communication**

We think it is important to review the consequences of breaking the rules on electronic communication. If the party communicating electronically does not submit the statement of claim, the opposition to the court order, appeal, application for review, or application for retrial to the court by electronic means or by electronic means, but not under the E-Government Act, the court shall reject and statements in other submissions shall be of no effect<sup>22</sup>. The New CCP Consultative Board in its Statement 43 stated that if the legal representative submits the application for retrial on paper (not electronically) or electronically but in an inappropriate manner without complying with the rules on mandatory electronic communication, the court will reject it without calling for correction of submissions<sup>23</sup>.

### **1.7. The assessment of e-mail address from the view of procedural law**

Another element to review in the aspect of digitalization is the assessment of the e-mail address from the view of civil procedural law in the field of electronic communication. It is important to note that submitting an application from an e-mail address to a court does not constitute keeping contact electronically. CCP stipulates precisely that the court may forward documents to the e-mail address of the party only in the case specified in this Act (CCP)<sup>24</sup>. In the case of public notification, if the party's e-mail address has been notified to the court, the public notice must also be sent to the e-mail address<sup>25</sup>. In connection with the service of a statement of claim and a substantive decision rendered in the conclusion of the proceedings, if the e-mail address of the party has been notified to the court, the court shall notify the addressee about the fiction of service<sup>26</sup>. A party, the prosecutor, and any other person involved in a lawsuit, as well as

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<sup>22</sup> Section 618 (1) of CCP.

<sup>23</sup> New CCP Consultative Board Statement No. 43.

<sup>24</sup> Section 614 (3) of CCP.

<sup>25</sup> Section 145 (1) of CCP.

<sup>26</sup> Section 137 (3) of CCP.



their representative, may request that the document be forwarded to the e-mail address provided by the court if the document is available at the court in electronic form, in the form of an electronic document or as an electronic copy of paper-based documents<sup>27</sup>.

### **1.8. Use of electronic communication networks**

In this aspect, we must mention the ordering of the use of electronic communication networks. The party, the other litigant, the witness, and the expert may be heard, and the inspection may be conducted via an electronic communications network unless the owner of the object objects. The court may order a hearing via an electronic communications network, either at the request of a party or *ex officio*. The court will make this decision in the form of an order. Such a decision shall be possible if it appears reasonable or if the hearing at the scheduled place of the trial or personal hearing would involve considerable hardship or unreasonably higher costs, or if this is justified by the personal protection of the witness. A hearing via electronic communications network shall be ordered with a summons by a court, which shall be served to the summoned together with a summons to a hearing, a personal hearing or an inspection, and shall be sent to the court or other body providing the room for such a hearing. In the case of a hearing via an electronic communications network, the direct connection between the designated venue of the hearing, personal interview, or inspection and the place of the interview via electronic communications network shall be ensured by a device that is capable of simultaneous transmission of video and audio signals in real-time. If a direct connection can be provided, it is possible to use several other places of interview venues via an electronic communications network<sup>28</sup>.

The regulation of conducting an interview via the electronic communication network has also special rules. The person to be heard via the electronic communications network must appear in a room set aside for that purpose in the building of the court or other body and be present during the hearing. The publicity shall be provided for in the designated venue of the hearing. CCP determines who may be present in the premises designed for interviews via an electronic communications network<sup>29</sup>.

The judge presiding over the hearing, or the presiding judge carries out the identification of the person to be heard via an electronic communications network. The presiding judge or court secretary shall state that only persons whose presence is permitted by law and that the person heard is not restricted in the exercise of his procedural rights shall be present in the premises designated for hearings via electronic communications networks. The presiding judge of

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<sup>27</sup> Section 619 (1) of CCP.

<sup>28</sup> Section 622 and 623 of CCP.

<sup>29</sup> Section 624 of CCP.

the court secretary shall inform the person heard through the electronic communications network that the hearing is conducted via the electronic communications network at the beginning of the interview. During the hearing via the electronic communications network, it shall be ensured that the participants present at the designated venue of the hearing can see the person to be heard in the premises designated for interviews via the electronic communications network, as well as all other persons present. The premises designed for hearings via electronic communications network must be ensured for the questioned person to be able to monitor the course of the hearing<sup>30</sup>.

The report shall also cover, in addition to the content elements set out in the General Provisions the recording of the circumstances in which the hearing is to take place via the electronic communications network and the persons present in the room set up for the hearing via the electronic communications network<sup>31</sup>.

## 2. The digitalization of the Hungarian Criminal Procedure

The development of information technology has led to a change in crime forms. New ways of crime commission appeared and started to spread like online credit card fraud, misuse of virtual currencies. The volume of cybercrime will probably increase in the future<sup>32</sup>. These created new challenges for the legislation in the aspect of the criminal procedure<sup>33</sup>. Digitalization is one of the tools that can help in combatting crime in general.

Digitalization trends in criminal procedures started in the early 2000s but only began to spread in the middle of the 2010s. In this aspect, digitalization has many levels, such as communicating thru electronic devices, downloading the forms and forms to be used in the procedure, using the framework to complete them, authenticating the administrator, using the electronic delivery system, operating a computer system with Internet access, and so on. As these rules are not inherently connected to the specific procedural laws. They contain rules in connection with communication, the normative background of these laws can be found in the E-Government Act similarly to the civil procedures. In this Act, there are

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<sup>30</sup> Section 625 of CCP.

<sup>31</sup> Section 627 of CCP.

<sup>32</sup> Sz. Dobrocsi, A. Domokos, *Kiberbűnözés [Cybercrime]*, [in:] ed. Á.O. Homicskó, *Egyes modern technológiák etikai, jogi és szabályozási kihívásai [Ethical, Legal and Regulatory Challenges of Some Modern Technologies]* Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, Budapest, pp. 49–74.

<sup>33</sup> Domokos, A., *Digitalizáció a bűnüldözés, a büntető igazságszolgáltatás és a büntetés-végrehajtás szolgálatában [Digitization for law enforcement, criminal justice and the enforcement of sentences]*, [in:] ed. Á.O. Homicskó, *Digitalizáció hatása az egyes jogterületeken [The impact of digitalisation in each area of law]*, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, Budapest 2020. pp. 77–98.

mainly technical regulations. As a result, the Criminal Procedure Code does contain, albeit to a very limited extent, technical provisions<sup>34</sup>. Digitalization is a goal as well for the state because it can help authorities to make the criminal procedure faster, less expensive, and more productive.

## 2.1. A brief overview of the legal history of the digitalization of the Hungarian Criminal Procedure

Hungary has adopted a new Criminal Procedure Code in 2017, which came into effect in 2018 on the first of July. Although the previous Criminal Procedure Code – which was drafted in 1998 – consisted of some areas of digitalization, the new Code further expanded these.

The Act XIX of 1998 on the Criminal Proceedings (further on referred to as previous Criminal Procedure Code) had several topics connected to digitalization. Regulations that were affected by digitalization consisted of rules regarding the technical system, electronic communication, coercive measures, and some special procedures<sup>35</sup>.

The possibility of using videoconferences or telephone conferences in the criminal procedure was enacted in the previous Criminal Procedure Code by modifying Act I of 2002. This institution was necessary due to witness protection and for legal aid purposes. The regulation was very rigid, and the technical conditions were not sufficient at the time of introduction, so it was not used widely.

A reform of this regulation was provided by the amending Act CXLIV of 2017. This amendment has facilitated the use of holding a trial by way of a closed-circuit communication system.

Article 9 of The Act LXXXII modified the previous Criminal Procedure Code by introducing the possibility of subpoena thru the computer. Another modification of this Act stated that if the appeal is not made at the time of the announcement of the verdict, it can be submitted to the court of the first instance thru computer (Article 37 of the modifying Act.) In theory, this was a progression of the procedure, but in practice, many problems occurred with these sections. Professor Csongor Herke pointed out, that many questions have arisen, for example:

- What can be considered as submitting thru a computer?
- Should the authorities check always who sent it?
- Should cell phones be regarded as computers?<sup>36</sup>

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<sup>34</sup> R. Bartkó, *Elektronikus kapcsolattartás [Electronic communication]*, [in:] ed. G. Karácsony, *Az elektronikus eljárások joga [Laws of electronic proceedings]*, Gondolat Kiadó, Budapest 2018. pp. 73–99.

<sup>35</sup> Cs. Herke, *A digitalizáció szerepe a büntetőeljárásban [The role of digitization in criminal proceedings]*, [in:] ed. K. Mezei, *A bűnügyi tudományok és az informatika [Criminal sciences and informatics]*, Pécsi Tudományegyetem Állam- és Jogtudományi Kar – MTA Társadalomtudományi Kutatóközpont, Budapest – Pécs 2018, pp. 104–124.

<sup>36</sup> Cs. Herke, op. cit., pp. 104–124.

Initially, in criminal procedures, electronic communication was possible between authorities, and there was no detailed regulation. This regulation was expanded in 2018, and most of them are still in effect in the new Criminal Procedure Code<sup>37</sup>.

The new Criminal Code of Hungary (Act C of 2012) has introduced a new measure in the sanction system called “irreversibly rendering electronic information inaccessible.” This type of sanction has appeared as a response to the new challenges because crime is getting more widespread in the world of the internet in the 21<sup>st</sup> century<sup>38</sup>. It is considered a preventive security measure<sup>39</sup>. This measure was necessary due to the proliferation of crimes that can be committed on the Internet, for example, copyright or copyright infringement fraud, child pornography, and the increasing number of victims. This measure makes electronic data containing illegal content permanently inaccessible, and it can be used when

- the publication or disclosure of which constitutes a criminal offense,
- which is used as an instrument for the commission of a criminal act; or
- which is created by way of a criminal act.

Due to the preventive nature of the sanction, this can also be applied if there is an obstacle of punishability in connection with the offender (e.g., childhood or insanity).

After the measure was introduced, the lawmaker enacted the instrument of “temporary rendering electronic information inaccessible” to the Criminal Procedure Code with the modifying Act CLXXXVI of 2013. This coercive measure is intended to make electronic data inaccessible for the duration of criminal proceedings. One way to do this is to oblige the hosting provider to remove the data temporarily. This method of inaccessibility can, in principle, be applied to any criminal offense to be prosecuted.

The amending Act also introduced another coercive measure called the obligation to retain data stored in an information system. This coercive measure constitutes a temporary restriction of the holder’s right of the data stored in the information system to dispose of the specified data stored in the information system to detect a criminal offense<sup>40</sup>.

Three of the special procedures were also affected by digitalization:

- confiscation, property confiscation, irreversibly rendering electronic information inaccessible, and seizure of the occupied item (Section 560 of the previous Criminal Procedure Code);
- subsequent confiscation, confiscation of property or irreversibly rendering electronic information inaccessible (Section 570 of the previous Criminal Procedure Code) and

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<sup>37</sup> R. Bartkó, op. cit., pp. 73–99.

<sup>38</sup> I. Ambrus I., *Digitalizáció és büntetőjog [Digitalisation and Criminal Law]*, Magyarország: Wolters Kluwer Hungary, Budapest 2021. p. 46.

<sup>39</sup> K. Karsai, Zs. Szomora, *Criminal law in Hungary*, Wolters Kluwer, Alphen aan den Rijn 2015, p. 113.

<sup>40</sup> Cs. Herke, op. cit., pp. 104–124.

- the provision on the implementation of the permanent inaccessibility of electronic data by definitively blocking access (Section 596 /A of the previous Criminal Procedure Code)<sup>41</sup>.

## 2.2. The in-force regulation regarding the use of telecommunication devices

The use of a telecommunication device makes it simpler and more cost-effective for law enforcers and participants in the proceedings to conduct the procedural act. According to the justification of the Criminal Procedure Code, the law emphasizes taking advantage of information technology in connection with keeping contacts alongside ensuring the possibility of being present on procedural acts via electronic communication. During the proceedings, in connection with the performance of individual procedural acts, electronic contact has become mandatory for some participants in the proceedings. In contrast, others may choose this method of communication voluntarily<sup>42</sup>. This does not mean the paper-based system has vanished from the proceedings, but these also must be digitalized (e.g., scanning signed documents). Here traditional methods are combined with new technologies.

First, we must discuss the main rules of the use of telecommunication devices. The law makes it clear that the purpose of using a telecommunications device is to ensure the presence of the person concerned. Therefore, the application is not limited to individual stages of the proceedings (investigation, court proceedings), to the bodies conducting the proceedings, or to specific procedural acts. Due to this, the presence of the subject of the procedure (e.g., witness, accused, etc.) can be guaranteed throughout the whole process with the use of a telecommunication device. In this procedure, there are at least two locations that are connected via electronic communication. If a telecommunication device is used, at least two areas are connected to the procedural act. The law also regulates who can be present on the videoconferences: every person who is involved in criminal proceedings and whose presence at the procedural act is possible or obligatory. The latter is called a separate location by law. A technical device provides a continuous and simultaneous connection between these two sites<sup>43</sup>.

If the procedural subjects use a telecommunication device, they must ensure for the procedure is direct and reciprocal. This means the connection can be video

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<sup>41</sup> Ibidem.

<sup>42</sup> Sz. Dobrocsi, *A digitalizációval összefüggő büntetőeljárás kihívásokról* [On the criminal challenges of digitization], [in:] ed. Á.O. Homicskó, *Technológiai kihívások az egyes jogterületeken* [Technological challenges in each area of law], Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest 2018, pp. 87–106.

<sup>43</sup> J. Tiszta-Papp, XXVII. Fejezet, *Az elektronikus kapcsolattartás* [XXVII. Chapter, *Electronic Communication*], [in:] ed. P. Polt, *Kommentár a büntetőeljárásról szóló 2017. évi XC. törvényhez*, Wolters Kluwer, Budapest 2018, pp. 351–376.

recording (with live picture and sound) or continuous sound recording. The latter can be used only during

- the questioning of the witness,
- hearing the expert,
- or the interrogation of the defendant.

The use of a telecommunication device can be ordered by the court, the prosecution office, or from the investigation authorities *ex officio*. This can maybe also be initiated upon request by the person who is entitled or obliged to be present on the procedural act.

While the telecommunication device is used in a separated place, the following subjects can be present:

- the person whose presence is ensured through telecommunications,
- the attorney or helper of this person
- a member of the investigating authority, the prosecutor, the judge,
- in the case of a detainee, an employee of the detention facility authorized to establish the identity of the detainee,
- in the case of a detained person, the person who guards him.
- the expert,
- the staff is ensuring the operation of the telecommunications equipment.

The use of a telecommunication device can be only ordered by the court only if the defendant agreed to it in the following sessions:

- if the technical conditions for the use of a telecommunication device are met, the prosecutor's office and the investigating authority may not refrain (except if it is particularly necessary) to use the telecommunication device.
- In the case of a procedural act requiring the presence of a victim in need of special care.
- In the event of a procedural act requiring the presence of a witness or defendant in custody under a special protection program.

In this procedure, it is essential to ensure the connection between the defendant and the lawyer if they are not in the same place. Every subject in the videoconference can exercise their right to ask questions or file motions. The keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously in addition to that. The videoconference shall be recorded as well.

The main rule is that there is no remedy if the motion for the use of telecommunication devices is granted or denied because of expediency basis. The exceptions to this are in respect of the accused. These rules comply with Article 6 c) of the European Convention on Human Rights, which states that

Everyone charged with a criminal offense has the following minimum rights... to defend himself in person or through legal assistance of his choosing or if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

Currently, there is no definite case decision from the European Court of Human Rights, whether the use of videoconference might breach the direct and personal right to defense. However, the lawmaker, to ensure due process, made the possibility to the accused to defend himself or with an attorney directly. It is necessary to have the consent of the accused of the use of a telecommunication device. According to Section 122 (5) of the Criminal Procedure Code, the defendant has the right to appeal against the use of telecommunication devices at a hearing on the imposition of a coercive measure affecting personal freedom and the preliminary hearing.

### **2.3. Main rules of electronic communication in the Hungarian Criminal Procedure**

The use of electronic communication or, in other words, electronic contact became widespread in the new Criminal Procedure, and in most cases, it became mandatory as well. There are exceptions where the rules for electronic communication do not apply:

- in criminal proceedings instituted before 1 January 2018.
- Persons involved in criminal proceedings who are not obliged or undertake to communicate electronically.
- For those whose right to electronic administration is suspended.
- For cases that are exceptions to electronic communication<sup>44</sup>.
- According to section 17 of the background norm, the E-Government Act there are two conditions for a legal statement to be adequate.
- The first requirement is that the electronic identification of the declarant is carried out with the proper identifying tool (with the so-called eIDAS system) or through an electronic identification service declared appropriate by the electronic administration body).
- The second condition is that the electronic document delivered is identical to the document approved by the declarant<sup>45</sup>.

There are four types of electronic communication:

- optional electronic communication. Here the participant or legal representative who is not obliged to electronic communication (e.g., due to the legal relationship started before 2018) may undertake to use electronic communication.
- Mandatory electronic communication. In these cases, the participant is obliged to submit documents electronically, and the authority also delivers for him. If the participant's right to use electronic communication is paused, he is exempted from this obligation<sup>46</sup>.

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<sup>44</sup> J. Tisza-Papp, op. cit., pp. 351–376.

<sup>45</sup> Cs. Herke, Büntető eljárásjog. Az új büntetőeljárás törvény főbb rendelkezései [*Criminal procedure law. The main provisions of the new Criminal Procedure Code*], Dialóg Campus Kiadó, Budapest – Pécs 2019, pp. 62–63.

<sup>46</sup> A. Domokos, op. cit., 2020, pp. 77–98.

- Electronic communication with the expert.
- Electronic communication between the authorities.

The authorized lawyer must submit the authorization to the system in a digitalized form as well as an attachment. The authority may ask the attorney to show the original approval to establish consistency.

In the case of paper documents, if electronic communication exists, the participant shall ensure the digitization and preservation of the paper document. If this is not done, the authority will digitize it within ten working days. However, if the paper document must be presented, it does not have to be submitted electronically<sup>47</sup>.

## 2.4. Difficulties in the legal practice

In legal practice, many problems occurred with the digitalization of the criminal procedure. The first and foremost biggest problem is that there is no unified system for electronic communication. Electronic communication with the courts is made through the so-called General Form Filling Program (in Hungarian abbreviated as ÁNYK), which is also used in civil and economic law cases. The obliged person must download the ÁNYK program to submit their motion. They also must download the forms from the court website called *birosag.hu*. In the beginning, there were not many forms available. Thus, the lawyers generally used the B23–19–02. numbered “other” form. Even today, this form is the most used one though many special forms appeared since then like an appeal form, a report in private accuser cases form, motion for review form, motion for retrial form, and so on. Most forms were created by ad hoc cases. The other form can be used almost in every case; that is why it is still popular today. The courts usually do not deny the motion if the lawyer filled out the general “other” form instead of the special forms mentioned above<sup>48</sup>.

The other form-filling system is called the e-paper system. These forms can be found on the *epapir.gov.hu* website. The forms can be sent to other authorities like the prosecution office, police, National Tax and Customs administration, and so on. Both systems use the so-called customer port of entry system for the identification of the person. The ÁNYK system also uses an electronic identification card and so-called mobile token for the identification purposes of submitting a form. In the ÁNYK system, just for editing the forms, identification is not necessary compared to the e-paper system where identification is required when you log in to the website. The latter is quite inelastic and often works slowly.

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<sup>47</sup> Cs. Herke, op. cit., 2019a, pp. 62–63.

<sup>48</sup> Cs. Herke, *A büntetőeljárásbeli elektronikus kapcsolattartás gyakorlati problémái Magyarországon [Practical problems of electronic communication in criminal proceedings in Hungary]*, [in:] ed. Kádár Hunor, *A magyar és a román büntetőeljárás törvénykönyv vitatott és problémás kérdései [Controversial and problematic issues in the Hungarian and Romanian Criminal Procedure Codes]*, Románia Forum Iuris, Kolozsvár 2019, pp. 55–67.



Sometimes it takes a longer time to send the submission itself, than filling out the form. There are often problems with the connection when you identify yourself on the customer entry port.

Sometimes the authorities send a paper-based answer for the lawyer who is not obliged to electronic communication (usually because the case started before 2018) even though the lawyer submitted the motion in electronic form. There was also a case report when the defendant was caught in the act, and afterward, the authority appoints an attorney in the interrogation process, but later the defendant authorizes a lawyer, who submits the authorization and a complaint in electronic form. In this case, the appointed lawyer's duty is terminated by the new authorization. Even though the prosecution office sent the complaint denying decision to the originally appointed lawyer in paper form with a notification that the appointment is terminated.

There are also problems with the file formats. The lawyers can only send the files in pdf format, but the authorities use several types. There were many occasions where the court sent a document that was in a format that the attorney could not read it. This way of communication should not be deemed as a legally effective delivery<sup>49</sup>.

Lastly, there were problems when the authorities required the lawyer's electronic authorization at the interrogation of the defendant. In this case, the lawyer has to scan the document and upload it to the system, and only after this can he join the procedure. Even if the lawyer is well equipped and scans the authorization with his smartphone and submits it online, the police can not verify this immediately because these are often handled by the system administrator who is not always available. This problem was eventually solved in Section 155 (4) of the Criminal Procedure Code, which states that electronic communication rules should not be applied during a procedural act involving a personal presence<sup>50</sup>.

## Summary

In our paper, we analysed the digitalization trend in the Hungarian civil and criminal procedure law. The electronic procedure and the paper-based procedure are simultaneously present in civil litigation. Electronic contact is mandatory for the group of persons defined in the E-government Act, not all rights seekers are obliged to keep contact electronically. As in the previous regulation, the party has the option to choose electronic communication. Issues related to the electronic procedure need to be properly regulated so as not to harm the interests of the parties and participants. In civil proceedings, the hearing via the electronic

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<sup>49</sup> Cs. Herke, *op. cit.*, 2019b, pp 55–67.

<sup>50</sup> See further in: Cs. Herke, *Practical problems of electronic contact in the criminal proceedings in Hungary*, „Police Studies: The periodical of the police scientific council” 2021, no. 1–2, pp. 80–89.

communications network and other means for the simultaneous transmission of images and sound has become more important because of the coronavirus epidemic, and the discussion to be held in this way has come to the fore.

Digitalization in criminal procedures includes the possible use of video conferencing in the and the submission of motions and files to the authorities via electronic communication. Even though electronic communication was introduced in the previous Criminal Procedure Code and there was half year for the lawmaker and the legal practice to prepare and enhance the system in the new Code, unfortunately, many problems still exist.

In our view, we must unify the electronic communication system, and this will make the criminal procedure more fluent and effective in the future. This mostly requires technical development, but the lawmaker should also create a legal background to unify the system. One of the benefits of digitalization is that the procedures can become faster and more cost-effective.

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## Cyfryzacja węgierskiego wymiaru sprawiedliwości

### Streszczenie

Rozwój technologii informacyjnej i rosnące wykorzystanie urządzeń elektrycznych wywarły istotny wpływ na węgierski wymiar sprawiedliwości. Co więcej, niedawna pandemia wywołana przez COVID-19 również pokazała, że w niektórych przypadkach wykorzystanie komunikacji elektronicznej w procedurach prawnych może być kluczowe. W naszym obecnym badaniu staramy się przeanalizować ostatnie zmiany i trendy, które wpłynęły na węgierskie procedury cywilne i karne. Przedstawiamy czytelnikowi, jak te procedury stały się w ostatnich latach coraz bardziej zdigitalizowane. Nasz artykuł bada praktyczne problemy i trudności, które wynikają z nowych sposobów komunikacji. W ramach analizy przedstawiamy propozycje potencjalnych rozwiązań, które przyczynią się do usprawnienia funkcjonowania wymiaru sprawiedliwości.

**Słowa kluczowe:** cyfryzacja, węgierski wymiar sprawiedliwości, postępowanie cywilne, postępowanie karne, komunikacja elektroniczna.