# Budget fraud – Preparatory Meeting

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**Abstract**

*The pursuit of acceleration of legal proceedings in the Hungarian procedural law has been observable for long. In the past decades several European countries have implemented new laws to reduce the time required by litigations.*

*In the Hungarian procedural law, preparatory meeting introduced by Act XC 2017 is intended to fulfil the economy goals in court proceedings. To achieve the targets the court, the prosecution and the defence should be able to interpret and put the law in practice in a consistent way.*

*During both the negotiation over the preparatory meeting and the court proceeding, the accused's confessions play a key role, for the simplification of the process is based on, after all, the sentences by which the accused plead guilty to avoid imprisonment and losing freedom, which would be the most painful for them. In case of criminal proceedings initiated owing to budget fraud, the accused usually plead guilty if – considering the volume of the financial loss caused by them – the prosecution proposes suspended imprisonment. Therefore, if the loss exceeds 50 million forints, the prosecution proposes mandatory prison sentence and the case shall be solved within the framework of standard judicial processes.*

***Keywords:*** *admission of guilt, acceleration of procedures, budget fraud, preparatory meeting, preparation for hearing, cooperation between the accused and the defence counsel*

## I. Introduction

An effort to accelerate procedures has long been present in Hungarian law governing criminal proceedings. Since the early 1980s, criminal proceedings have become increasingly lengthy. Not only has the number of crimes increased significantly since the 1990s, but the factual complexity and intricacy of the cases have rendered judgment more and more difficult. Added to this the norms of the criminal justice system have become increasingly complex.[1] With this in mind, in recent decades, many European countries have introduced new rules with the aim to reduce the length of court proceedings and to promote other rules of procedural economy.

This study provides a brief overview of legal instruments intended to introduce new concepts to the different codes of administrative procedure in line with the aforesaid thoughts. I will emphasize in particular the role of the Preparatory Meeting as it appeared in *Act XC of 2017* on Criminal Procedure and which entered into effect

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[1] Belovics, Ervin, *A büntetőeljárás időszerűsége*. In Gál, Andor-Karsai, Krisztina: AD VALOREM, Ünnepi tanulmányok Vida Mihály 80. születésnapjára, Iurisperitus Kiadó, Szeged, 2016, p. 35.

on 1 July 2018 (hereinafter referred to as CP) and at the same time analyses the possibilities it provides for a speedy completion of fiscal fraud cases.[2]

## II. Provisions accelerating proceedings before the entry into force of Act XC of 2017

The Criminal Law Proposal of 1795 laid down as a basic requirement that any verdict should be preceded by a public and oral hearing.[3] It must be noted that Hungarian Criminal Procedure abandoned the idea of procedure simplifying regulations based on an agreement until the end of the 20th century.

Indeed, in accordance with legislation aspiring to establish guarantees, the principle was that the accused had to be given an opportunity to defend himself and that during his questioning no promises or plea bargains could be offered in exchange for his confession.[4]

Nonetheless, the Criminal Prosecution Code of 1896 regarded and regulated vindictive orders as an accelerating provision. Its purpose was to simplify and speed up procedures and thereby reduce the workload of the courts. Decisions were made solely on basis of the content of documents without collecting evidence, which

[2] According to Section 396 of Act C of 2012,

*(1) any person who*

*a) induces a person to hold or continue to hold a false belief, or suppresses known facts in connection with any budget payment obligation or with any funds paid or payable from the budget, or makes a false statement to this extent*

*b) unlawfully claims any advantage made available in connection with budget payment obligations; or*

*c) uses funds paid or payable from the budget for purposes other than those authorized; and thereby causes financial loss to one or more budgets, is guilty of misdemeanor punishable by imprisonment not exceeding two years.*

*(2) The penalty shall be imprisonment not exceeding three years for a felony if:*

*a) the budget fraud results in considerable financial loss; or*

*b) the budget fraud defined in Subsection (1) is committed in criminal association with accomplices or on a commercial scale.*

*(3) The penalty shall be imprisonment between one to five years if:*

*a) the budget fraud results in substantial financial loss; or b) the budget fraud results in considerable financial loss and is committed in criminal association with accomplices or on a commercial scale.*

*(4) The penalty shall be imprisonment between two to eight years if:*

*a) the budget fraud results in particularly considerable financial loss; or b) the budget fraud results in substantial financial loss and is committed in criminal association with accomplices or on a commercial scale.*

*(5) The penalty shall be imprisonment between five to ten years if:*

*a) the budget fraud results in particularly substantial financial loss; or*

*b) the budget fraud results in particularly considerable financial loss and is committed in criminal association with accomplices or on a commercial scale.*

*(6) Any person who manufactures, obtains, stores, sells or trades any excise goods in the absence of the criteria specified in the Act on Excise Taxes and Special Regulations on the Marketing of Excise Goods or in other legislation enacted by authorization of this Act, or without an official permit, and thereby causes financial loss to the central budget, shall be punishable in accordance with Subsections (1)-(5).*

[3] Hajdu, Lajos, *Az első (1795-ös) magyar büntetőkódex-tervezet*, Közgazdasági és Jogi Kiadó, Budapest, 1971, p. 260.

[4] Fantoly, Zsanett, *Lemondás a tárgyalásról – lemondás az igazságról?* In Erdei Árpád: A büntető ítélet igazságtartalma, Magyar Közlöny-, és Lapkiadó, Budapest, 2010, pp. 139-140.

allowed a significant saving of time.[5] Article 139 states that "after the accused has admitted his crime, normally other evidence of his guilt must be obtained. In the event that the admission of guilt is supported by other details found during procedure, further investigation or proceedings will only be made if the accuser makes a motion.

The First Socialist Code of Conduct was Act III of 1951 following Soviet pattern. Law-Decree number 8 of 1962 was constituted on similar principles. The principle of procedure acceleration safeguarded by warranty elements was not reflected in any law of that time.[6] Provisions relating to the Preparatory Meeting were referred to in Article 172 of Law-Decree number 8 of 1962. According to this, the court shall examine a given case in a Preparatory Meeting if there might be need for referral, suspension or termination of the case, or the possibility of additional investigation or a different classification of the crime emerges, furthermore if a decision has to be made on pre-trial detention, a prohibition on leaving the country or on a temporary compulsory medical treatment. From the viewpoint of the subject of this paper the most important rule regarding the regulation of the Preparatory Meeting was that decisions were made during the Preparatory Meeting in cases where fines could be imposed without a hearing. Paragraph VIII/A of the above Law-Decree contained the rules on prosecution under the heading 'prosecution without indictment or trial'.

Act I of 1973 is still of decisive importance, both as regards the guarantee rules and the provisions for accelerated procedures. This law contains extensive provisions regarding the preparation of the trial; furthermore, its *Special Proceedings* section mentions provisions which may accelerate procedures as known today. Section 167 of this law, similarly to Law-Decree 8 of 1962, contains a comprehensive list of the tasks to be performed by the chairman of the council or in case of a trial that of the judge regarding the preparation of the trial. A new element in this list emerged, namely the possibility to be summoned in front of a five-member council. The intention was to involve the accused and his lawyer in the preparatory procedure, although at this stage the principle of the written form still prevailed.[7] It should be noted, however, that Act I of 1973 did not include any provisions that could speed up any given procedure in merit, although it included regulations with the intention to speed up proceedings. These included such concepts as '*diversion*' to divert people from crime in the pre-trial phase, whereas during the court phase, the range of legal instruments included putting people to trial (Criminal Procedure, Section 345) or the omission of court hearings (Criminal Procedure, Section 351).[8]

Even in Act XIX of 1998 the concept of the Preparatory Meeting only appears in connection with the preparation of the hearing. According to Section 272 (1), if it appears necessary to hear the prosecutor, the accused or the victim in matters examined during the preparation of the trial, the court shall have a meeting, within 30 days after the expiry period specified in section 273 (1). It should be noted that this law provided legal instruments with the intention of accelerating criminal procedure,

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[5] Farkas, Ákos, Róth, Erika, *A büntetőeljárás*, Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., Budapest, 2012, p. 466.

[6] Szabóné, Nagy, Teréz, *A büntető eljárás egyszerűsítése*, Közgazdasági-, és Jogi Könyvkiadó, Budapest, 1970, pp. 269-305.

[7] Bérczes, Viktor, László, *A védői szerepkör értelmezésének kérdései – különös tekintettel a büntetőbíróság előtti eljárásokra*, Pázmány Press, Budapest, 2014, pp. 107-108.

[8] Farkas, Ákos, *A falra akasztott nádpálca, avagy a büntető igazságszolgáltatás hatékonyságának korlátai*, Osiris Kiadó Budapest, 2002, pp. 97-106.

meaning that the role of the Preparatory Meeting was not the speeding up of the proceedings. The accelerated procedures that were originally applied to minor crimes were now also applied to cases that involved more serious and relatively frequent crimes. The confession of guilt played a prominent role in these special procedures initiated by prosecution.[9]

Government Resolution of 2002/1994 (01/17) on the Concept of Criminal Procedures has already formulated its aim to strengthen the right of disposal of the parties as well as the implementation of simplified procedures.

Having this in mind Act CX of 1999 established the institution of *waiver of trial*. This regulation was a milestone, as the court by giving up an eventually lengthy process of finding evidence was able to impose a punishment within a significantly reduced range, in exchange for the admission of guilt. The essence of a special procedure based on a plea bargain at that time in Hungary was that the accused had waived his right to a trial and doing so completely deprived himself of his right to appeal. In return, abandoning the general principles of imposing a sentence, the prosecutor accepted the court's decision to impose a sentence from a given frame.[10] We may assume that the above mentioned waiver of trial was meant to play a similar role as the Preparatory Meeting does currently, and emphasis was put on the confession of crime which in turn could give way to a waiver of trial. The aim was to make proceedings faster and simpler and to avoid the accumulation of cases in the courts. At the request of the prosecutor the court was able to declare the accused guilty and impose a sentence at a public hearing, provided that the offense did not imply an imprisonment exceeding 8 years and the accused waived his right to trial and at the same time pleaded guilty.[11] However, due to the characteristics of Hungarian criminal law, the waiver as specified under special proceedings differs from the Anglo-Saxon model. A major difference is that it only applies to offenses for which the Criminal Code imposes a sentence not exceeding a period of 8 years of imprisonment. Another difference is that the settlement takes place between the prosecutor and the accused and the attorney is formally excluded from the process. Thirdly, the right to dispose of the accused is not comprehensive. The court will only accept admission of guilt if it is supported by evidence found during the investigation phase. In case the court believes that there is reasonable doubt regarding the ability of the accused to be accounted for his actions, or whether his confession is voluntary or credible, or if the testimony differs significantly from the confession made during the investigation, the case will be referred for trial.[12]

## III. Efforts to speed up the proceedings as stated in the provisions of Act XC of 2017 regarding the Preparatory Meeting

The concept of speeding up judgment is handled under Article VI of the European Convention on Human Rights and similarly in Article 14.3 of the International

[9] Cséka, Ervin, *Megjegyzések az új Büntetőeljárási Kódex koncepciójához*, Acta Juridica Et Policita, Tomos LIV., Fasticulus V., Szeged, 1998, pp. 12-13.

[10] Fantoly, Zs., *op. cit.*, pp. 140-141.

[11] Chwala, Tamás – Fülöp, Edit – Sléder, Judit, *Büntetőeljárás – Jog*, Rejtjel Kiadó, Budapest, 2004, p. 365.

[12] Farkas, Á., *op. cit.*, pp. 113-116.

Covenant on Civil and Political Rights.[13] The slowness of proceedings undermines in every respect the belief in criminal justice and may interfere with the proper functioning of jurisdiction. For this reason the development of legal instruments which intend to speed up procedure is highly justified, given that the participants in criminal proceedings usually complain about the length of the proceedings when they turn to the European Court of Human Rights.[14] In the court's view, the specific circumstances of an individual case may play a decisive role in undue delays, such as the complexity of the case and of the proceedings, the behavior of the people involved in the proceedings, whether they have deliberately contributed to its delay, or if they have done everything possible to speed up the proceeding.[15] The European Court of Human Rights has also found that a significant part of the delay in court proceedings is due to the fact that they have to investigate the circumstances of the case in detail. According to the European Court of Justice, it is not necessary and not in the interest of anyone that the police and the court conduct double investigations.[16] However, this is one of the peculiarities of Hungarian probative proceedings. Section 164 (1)-(3) of the above Act on Criminal Proceedings clearly states that the burden of proof is on the accused. In the absence of a request for proof, the court is not required to obtain or examine evidence. Nonetheless, the defence counsel often accuses judges who seek a thorough and well-founded judgement of having made inquiries about the case. Subject to Article IV of the European Convention on Human Rights on fair trial, and Recommendations 87 / 18 of the Council of Europe on the simplification of criminal justice[17], several European countries have introduced new procedural rules in recent decades with the aim among other things, to reduce the length of court proceedings and to promote rules to reduce court costs.[18] There are various ways of accessing fast, impeccable justice respecting individual rights.[19] One solution might be to facilitate speedy proceedings when it comes to crimes of minor importance. Naturally it should only apply to cases where the offender, the circumstances of the offense, the quality of the crime, the degree of punishment that can be imposed, and the extent of the damage caused makes it possible.

Recently, however, there has been a demand for co-operation-based regulation even in cases of high-profile offenses, modelled after American plea bargains.[20]

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[13] Az emberi jogok és alapvető szabadságok védelméről szóló Rómában 1950. november 4-én kelt egyezmény és az ahhoz tartozó 8 kiegészítő jegyzőkönyv kihirdetéséről szóló 1993. évi XXXIII. törvény, Dunay, Pál-Kardos, Gábor-Kende, Tamás-Nagy, Boldizsár, *Nemzetközi jogi szerződések és dokumentumok*, Nemzeti Tankönyvkiadó, Budapest, 1991, pp. 278-307.

[14] Polgári és Politikai Jogok nemzetközi Egyezségokmánya és a hozzá kapcsolódó fakultatív jegyzőkönyv, Dunay, Pál-Kardos, Gábor-Kende, Tamás-Nagy, Boldizsár, *Nemzetközi jogi szerződések és dokumentumok*, Nemzeti Tankönyvkiadó, Budapest, 1991, pp. 223-246.

[15] Belovics, E., *op. cit.*, p. 36.

[16] Bogár, Péter, *Az Európa Tanács Miniszteri Bizottságának R. (87.) 18. számú ajánlása a büntető igazságszolgáltatás egyszerűsítéséről*, In Tóth, Mihály, Büntető eljárásjogi olvasókönyv, Osiris Kiadó, Budapest, 2003, p. 458.

[17] Recommendation R.87 / 18 of the Committee of Ministers of the European Council on the simplification of criminal justice accepted by the Committee of Ministers on17 September 1987, Strasburg, 1988.

[18] Tarr, Ágnes, *A büntetőeljárás gyorsításáról*, Gondolat Kiadó, Budapest, 2012, pp. 10-11.

[19] Bogár, P., *op. cit.*, pp. 455-458.

[20] Gácsi, Anett Erzsébet, *A terhelti együttműködés rendszere az új büntetőeljárási törvényben*, http://jogaszvilag.hu, downloaded on 11/01/2019, p. 275.

Another important point to consider is the necessity of reducing the number of criminal cases pending before the courts. The legislator deemed that the implementation of the above could only be carried out if the Preparatory Meeting was made compulsory.[21] Thus it has become a general principle to hold a Preparatory Meeting in all cases. Its role has become increasingly important as in case of a confession of guilt it opens the way to make judgement at the Preparatory Meeting, while in the absence of confession the framework of the probative proceedings and the direction of defence tactics are set.[22] By doing so the law established a system of co-operation with the defendant, and one of the priority areas of this new concept is the reinterpretation and making mandatory of the Preparatory Meeting.

*Article 499 (1) A Preparatory Meeting shall be a public meeting after the indictment in order to prepare the trial, at which the accused and the defence counsel may express their views on the accusation before the trial and assist in the further development of criminal proceedings.*

Section 183 (4) of Act on Criminal Proceedings specifies that other evidence is to be obtained upon admission of guilt of the defendant. This guarantee rule serves to clarify the material truth so that criminal authorities and the court do not have to question the veracity of the confession. Nevertheless, according to the studies of Balázs Elek and Zsanett Fantoly, it is an eternal dilemma whether criminal proceedings should allow for simplified rules based on confession or they should pursue the evidentiary procedure in order to find out material truth. The Act on Criminal Proceedings has clearly moved towards the simplification of proceedings based on admission of guilt. As a primary form of co-operation, a plea bargain is favoured, but even if it fails, the legislator manifests a desire to encourage the accused to acknowledge his guilt even at later stages of the procedure. Thus, if our aim is to speed up criminal proceedings, it might be a good starting point if the accused and his counsel agree on the facts of the accusation.[23] For this reason it is worthwhile treating those cases in which the accused confesses his guilt differently from proceedings in which a denied guilt must be proved.[24] We must allow for a paradigm shift to ensure that a fair settlement of the charges would not only be in the interest of the courts, but also of the state's prosecutor and of the defendant and his defence counsel.

I agree with the thoughts of János Bánáti: " the court will need to deal with far fewer cases in detail and lengthiness would impose a less great problems as it does today".[25][25]Besides the opinion of lawyer János Bánáti regarding plea bargains I would like to mention the thoughts of another practicing lawyer Gábor Dicső: “I do not believe that any waiver of trial or agreement will serve its purpose, unless the defendant might feel that he can expect a significantly more favorable judgment by

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[21] Nagy, Anita, *Büntetőeljárást gyorsító rendelkezések az Emberi Jogok Európai Egyezményében, az Európa Tanács Miniszteri Bizottságának ajánlásaiban és az Európai Unió és a hazai jogalkotásban*, Bíbor Kiadó Miskolc, 2008, p. 42.

[22] Pataki, Bettina, *Az új Be. előkészítő üléshez kötődő terhelti együttműködése*, https://arsboni.hu/, downloaded on 11/01/ 2019, pp. 1-5.

[23] Elek, Balázs, *Költség és időtartalékok a büntetőeljárásban*, https://ujbtk.hu/dr-elek-balazs-koltseg-es-idotartalekok-a-buntetoeljarasban/, downloaded on. 11/01/2019, pp. 4-5.

[24] Gácsi, A., E., po.cit, pp. 273-275.

[25] Bánáti, János, *Gyorsítás, hatékonyság, versus garanciák*, In Polt, Péter-Belovics, Ervin-Gellén, Balázs-Ambrus, István, Ünnepi kötet Györgyi Kálmán 75. születésnapja alkalmából, ELTE Eötvös Kiadó, Budapest, 2016, pp. 15-17.

making use of this opportunity."[26] In these cases – he goes on – the defendants explicitly ask him to contribute to a speedy conclusion, due to the considerable stress and cost factors. In the case of a court appointed public defence counsel, however the interests of the parties are not necessarily met.[27]

### *1. Preparatory Meetings at the level of district courts and courts of justice regarding Budget Fraud*

For a realistic presentation of the institution, I have investigated several cases of Budget Fraud pending before five courts and fifteen district courts between 1 July 2017 and 1 February 2018 with the following considerations in mind:[28]

- Was there an investigation initiated due to a budget fraud as specified in Section 396 (1)-(5) or (6) of the Criminal Code?
- Did the accused make a confession during the investigation?
- If no agreement was reached during the investigation, did the accused and his defence attorney appear in court?
- What was the content of the motion made by the prosecution regarding the criminal classification of the budget fraud in question, the penalty frame and the financial loss caused?
- Has the accused made a confession due to the motion and has he exercised his right to waive trial?
- In how many cases was there a settlement reached, has the court approved the parties' agreement in all cases?
- In the absence of a settlement, how lengthy were the proceedings?
- Did the judgment of the court differ from the motion handed in originally by prosecution?

Regarding the cases studied, it can be stated that according to their subject matter the felonies were all classified as Budget Fraud specified in Section 396 (1) to (5) of the Act. Typically, offenses referred to in Section 396 (1) (a) have been committed, such as receiving or issuing fictive invoices for Excise Goods and claiming tax returns, thus causing a financial loss to one or more budgets. Among the cases pending before the District Court, nine involved this type of offense, whereas in six cases the subject of the offense was obtaining and marketing of Excise Goods (typically cigarettes), causing a financial loss to the state as referred to in subsection (6).

A form of co-operation can start during the investigation phase titled: Agreement on Confession of Guilt.[29] However, I do not intend to deal with this legal institution in detail, as in the cases studied this type of co-operation had obviously not occurred. At any rate, prosecution does normally not provide the court any information about unsuccessful attempts of settlement initiated by the defendant, nor does it provide the

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[26] Dicső, Gábor, *Egyeztetés a büntetőeljárásban, avagy „alku" a büntetőperben*, In Elek, Balázs-Miskolczi, Barna, Úton a bírói meggyőződés felé, A készülődő büntetőeljárási törvény kodifikációja, Printart-Press, 2015, p. 89.

[27] Dicső, G., *op. cit.,* pp. 88-90.

[28] Empirical research conducted on cases pending before the District Court of Debrecen and at the General Court of Debrecen

[29] Act XC of 2017 paragraph LXV Sections 407 to 411

court with relevant documents.[30] On the other hand, three of the five cases studied showed that the suspects exercised their right to remain silent until the indictment was filed. In two cases the suspects testified, but they stated that the companies involved in the case were engaged in genuine economic activities and that there were real economic activities behind the invoices received and issued.

In one of the cases pending before the District Court, the prosecution brought the accused to court after he confessed to possess Excise Goods and after having confiscated 2000 boxes of cigarettes found in his vehicle. The accused maintained his testimony during the trial. The motion by the prosecution to sentence him to suspended prison terms on probation was not contested by either the accused or his lawyer, and the trial was thus closed. In one case of Budget Fraud as described in subsection (6) the court ruled without hearing, in line with the motion of the prosecutor. During the investigation phase, the place of abode of the accused was known. When the order was delivered, however he moved to an unknown place, so the court continued with a trial. The content of the judgement was identical to that of the order, as the accused had not been found.

In six out of the remaining thirteen cases, the defendants admitted their guilt during the investigation. Regarding matters covered by Subsection (6) denial is difficult, since the accused are mostly caught red handed. In connection with offenses as referred to in Subsections (1) to (4) of Section 396 in five out of seven cases the accused confessed their guilt, while in two cases the accused did not testify.

Unnecessary delays in procedures are prevented by Section 499 (2) of the Act on Criminal Proceedings[31], which states that a Preparatory Meeting shall be held within three months of delivery of the indictment. The presence of the defendant, the defence counsel and of the prosecutor is mandatory. In the case of a Preparatory Meeting, the presence of a lawyer is mandatory, both in terms of a better co-operation of the accused and due to the concentration of evidence. Therefore, in such cases the presence of a lawyer is obligatory even if it is not otherwise required by the law. In all twenty cases, the defence attorneys appeared well prepared for the case. The parties expected to conclude a settlement, especially at the courts of justice and therefore did not intend to delay the proceedings.

The presence of the accused is mandatory at the Preparatory Meeting. Therefore, if despite proper summons he remains absent, the court shall use all legal means to ensure his presence. If this cannot be achieved within a reasonable time, the Preparatory Meeting shall be postponed for no more than two months. As stated above, it is not the absence of the defender that will result in postponing the Meeting, but the non-appearance of the accused. In five district court cases, the Preparatory Meeting was postponed because the defendants did not appear. The actions taken to search them were unsuccessful so these cases were closed in their absence. In my view, if the accused do not appear voluntarily upon proper summons, it indicates, that they are not willing to come to an agreement or to admit their guilt and that they are not at all interested in the proceedings.

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[30] Fantoly, Zsanett, *Konszenzuális elemek az új büntetőeljárási törvényben*, In Dobák, Imre-Hautzinger, Zoltán Szakmaiság, szerénység, szorgalom, Ünnepi kötet a 65 éves Boda József tiszteletére, Dialóg Campus Kiadó, Budapest, 2018, pp. 193-195.

[31] Act XC of 2017 Section 499 Subsections (2) to (6).

### *2. Settlement at the Preparatory Meeting*

*Section 502 (1) states that if there are no obstacles to hold a Preparatory Meeting, the prosecutor shall, at the request of the court, set out the substance of the charge, indicate the means of evidence in support of the charge and propose the duration or measure of the sentence if the accused admits his guilt at the Preparatory Meeting.*

At the joint request of the accused and their counsel, it is possible to hear only the substance of the accusation, and at court hearings even this may be omitted. At the district courts however, it was found – as the charges are minor – that the judges made the prosecutor read the charges.[32]

After this the prosecutor usually held to the motions as indicated in the indictment, unless some new evidence came to light before the Preparatory Meeting. From the prosecution's point of view, this could include a repayment or part payment of the financial loss caused. In the five court cases – where in one case the financial loss caused was over HUF 55 million and in the other four cases over HUF 200 million – the prosecutor's office emphasized in his petition that a more favorable motion can only be made in case the admission of guilt is accompanied by partial or full recovery of the financial loss caused. This made the accused to consider making a confession. As regards the cases at the district courts, since the financial losses caused were under HUF 50 million, typically between HUF 3 to 30 million, prosecution has originally filed a suspended sentence on probation and insisted on this during the Preparatory Meeting as well.

Following the prosecutor's motion, the court warns the accused that he may plead guilty at the Preparatory Meeting and at the same time may waive trial. The warning should also state that, if the admission of guilt is accepted, the court will not adduce further specific evidence to establish the facts of the charge and to establish guilt. The court will base its judgment solely on the confession, the acceptance of it and the content of the case file.[33] The roots of this modern form of settlement are to be found in the USA. The application of such settlement was possible because of the broad scope of the prosecution's ability to exert pressure on the accused. It must be noted that in case of a plea bargain the primary objective of prosecution is to condemn the accused as soon as possible, to minimize the likelihood of terminating the process or to release the accused, and to obtain an acceptable sentence. The prosecutor considers it his duty to obtain an acceptable punishment. Meanwhile the defence attorney must weigh the probability of his client being released and in the light of this reconsider whether accepting a plea bargain is in their interest or not.[34]

Therefore, it is largely up to the prosecutor whether the judge will condemn the accused or not. As a public prosecutor he has the right to choose from different legal forms already in the investigational phase if he deems it appropriate for a certain case. It can be stated that the key initiator of an eventual diversion from the normal flow of things – that is to say to have a trial at the court – is the prosecutor. The extent to which a prosecutor makes use of this opportunity can hardly be influenced by legislation or jurisprudence. This will be addressed later in connection with a case

[32] Act XC of 2017 Section 502 Subsection (2)
[33] Act XC of 2017 Section 502 Subsection (3)
[34] Farkas, Á., *op. cit.*, pp. 107-114.

studied.[35] In a state governed by the rule of law, the legislator will only give room for opportunism if it can be assumed that it is beneficial to the parties and not disadvantageous. The rule of law does not waive its right to punish, but must indirectly, through the discretion of the prosecution, guarantee the fulfilment of the ius punendi nature of the rule of law, i.e. the core elements of justice, fair trial and the principles of legal certainty.[36] As explained above in connection with district court cases, given a lower material value – unless aggravating circumstances exist – motions usually propose suspended custodial sentencing. Crimes against the economy are listed as priority as they have mushroomed at national level. In four out of the thirteen cases pending before the district courts the Preparatory Meeting had to give way to trial because the accused stayed at an unknown location. Eight cases were concluded with a settlement between the prosecution and the accused, while in one case the parties went to trial.

Returning to the thoughts of the above-mentioned prominent attorneys, if the sentence suggested in the motion suited the defendant, the defence counsel also searched the interests of his client and wanted to avoid criminal proceedings. Ancillary issues such as the confiscation of assets and legal expenses lose their significance compared to the importance of getting a reasonable sentence. In cases pending before the courts, motion was made for imprisonment, due to the extent of the pecuniary damage caused. In only one case did the defendants make a full confession accompanied by a repayment of HUF 2 million per capita relying on the court's practice namely, that on account of the HUF 55 million forfeitures they caused, the court could impose a suspended custodial sentence. In another case, the accused denied their guilt from the outset. Given the caused HUF 150 million loss, defence justly feared a sentence of imprisonment. Again, taken into account the established judicial practice, the financial loss was reduced to less than HUF 100 million by repayment. The prosecution amended the indictment and its motion prior to trial for suspended custodial sentence. In the other three cases no agreement was reached so it took the courts several months to make judgement.

### *3. Acceptance of the confession of guilt*

If the accused confesses being guilty with respect to the accusation, the court must first decide whether to accept the confession or not. The court must examine whether the accused has made a confession of his own accord, without any outside influence, and whether he is aware of the nature of his confession and its possible consequences. To exclude all doubt concerning the credibility of the confession, it should be duly supported by other available evidence. Confession of the accused must be voluntary, free from all forms of coercion.

For this reason, the court must examine the circumstances as a matter of guarantee and make an order of it. The statement of the accused to facilitate a successful conclusion of the proceedings must be evaluated by the court in order to

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[35] Róth, Erika, *Az ügyész diszkrecionális jogköre*, Miskolci Egyetemi Kiadó, Miskolc, 2015, pp. 23-31.

[36] Horgos, Lívia, A ius puniendi jogállami tartalmának kiteljesedése, Doktori értekezés, Debreceni Egyetem Marton Géza Állam-és Jogtudományi Doktori Iskola, Debrecen, 2018, downloaded on: 1/03/2019, https://dea.lib.unideb.hu/dea/bitstream/handle/2437/256269/Horgos_Livia_Maria_doktori_disszertacio_nyilvanos.pdf?sequence=1&isAllowed=y, p. 208.

exclude any doubt as to the mental ability of the accused, and thus the voluntary nature of the confession.[37] The purpose of criminal proceedings still remains to find out material truth and then to impose a sentence or measure in proportion of the crime committed. No practical or expedient consideration should override this concept.[38] The main issue of applying this legal institution is to arrive at a confession of guilt. A clear description of the facts of the crime must be obtained. On the other hand, however we must not overlook subjectivity, since an offense is only committed in the presence of factuality and in the absence of any reason excluding lawfulness, in other words if the perpetrator is aware of the consequences of his acts. Therefore, care must be taken to avoid an eventually subjective judgment of the accused of his guilt and not to condemn an innocent person so that unexplored truth will become the cost of speed. Consideration should be given to the fact that in return for a lighter penalty the defendant might accept an unfair bargain only to get rid of the burden of the proceedings as soon as possible. While conscientious defence attorneys have a great responsibility to avoid such cases, courts must take all possible actions to avoid unfair judgments.[39] In the cases studied, the courts had no doubt as to the verity of the confessions of the accused and therefore approved the settlements.

According to Anita Nagy, the plea bargain is an agreement between the prosecutor, the accused and the defence attorney. Its essence is that the accused gets some kind of a concession in return for his confession, and the prosecutor promises that he will not propose the highest punishment possible, but a significantly more favorable sentence. He will dismiss aggravating circumstances and file a motion for a less serious form of crime, impose a suspended sentence, and will not bring any other offenses against the accused. Of the various crimes committed the accused will only face charges for one crime. The place and the method of how the sentence will be served may also be negotiated. When it comes to plea bargains the parties' willingness to compromise is of great importance. Therefore, this procedure can be considered a more humane model for the future.[40] In case the court accepts the confession of the accused, it cannot examine the merits of the indictment or the question of guilt, nor may it impose a less favorable sentence or a less favorable measure than the punishment proposed by prosecution. The question arises whether the judge may differ from the classification of the crime as described in the indictment when judging. In the opinion of Ervin Belovics, he cannot, since the confession of the accused covers the facts described in the indictment and the qualification formulated by the prosecution.[41] If the court has doubts in this regard, it will not approve the settlement and will refer the case to trial. Therefore, if the court has doubts as to the authenticity of the confession, it must declare that the conditions for accepting the confession are missing. As a result of such an investigation, the court may make two types of decision.

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[37] Elek, Balázs, *Költség és időtartalékok a büntetőeljárásban*, https://ujbtk.hu/dr-elek-balazs-koltseg-es-idotartalekok-a-buntetoeljarasban/, downloaded on 11/01/2019, pp. 5-7.

[38] Kovács, Tamás, *A büntetőeljárás reformjának egyik dilemmája*: a *vádalku kérdése*, In, Fenyvesi, Csaba-Herke, Csongor, A munkát nem lehet eltitkolni, Tiszteletkötet Tremmel Flórián professzor emeritus 75. születésnapjára, Pécsi Tudományegyetem Állam-és Jogtudományi Kara, Pécs, 2016, p. 67.

[39] Fantoly, Zs., *op. cit.*, pp. 142-143.

[40] Nagy, A., *op. cit.*, pp. 40-41.

[41] Belovics, Ervin, *Az előkészítő ülés szerepe a 2017. évi XC. törvényben*, In, Polt, Péter-Belovics, Ervin-Gellér, Balázs- Ambrus, István, Ünnepi kötet Györgyi Kálmán 75. születésnapja alkalmából, Elte Eötvös Kiadó, Budapest, 2016, p. 48.

On the one hand it may accept the confession of the accused and see no obstacle to close the case at the Preparatory Meeting. The accused is interrogated regarding circumstances of sentencing and judgment is made. If the accused does not admit his guilt or there seem to be an impediment to settle the case during the Preparatory Meeting the court will arrange for a trial.[42] If the court has accepted the confession of offender, it cannot proceed to prove the merits of the indictment and the question of guilt. Only evidence necessary for the imposition of a sentence or adjudication of ancillary matters shall be admitted.

### *4. Preparation of a substantive and concentrated hearing*

Another key function of the Preparatory Meeting is the preparation of a substantive and focused hearing. If the accused has not made a statement of confession or has made a statement but there is no legal condition for its admission, the need to establish the framework and means of proof at the earliest possible stage of the trial will prevail. According to the proposals annexed to the law this is the only way to ensure that the procedure will be completed within a reasonable time. In all cases, the person who submits a motion for probative proceedings must state the reason and purpose of his submission and indicate which fact needs to be proven.

The purpose of excluding certain evidence is to clearly clarify the scope of evidence that cannot be used for the establishment of the facts at an early stage of the trial. Any deficient or unlawfully acquainted evidence precludes the court from considering its probative value subsequently.

In order to avoid unnecessary and lengthy proceedings for the taking of evidence, the court may determine the framework of evidence collection. In my view, a well-prepared judge will be aware of what evidence is required and which motions of the prosecutor or of the defence attorney regarding the collection of evidence he or she can reject at the Preparatory Meeting.

According to the proposals annexed to the law a hearing following the Preparatory Meeting may also accelerate procedure, as at this hearing a proximate date may be appointed to close the proceedings.

In all court cases, the court went to trial. As already mentioned, in one case the defendant testified and only the amount of tax loss caused was disputed. The court held a hearing to contact the state tax authority in this regard. In the remaining four cases, the court held at least fifteen to twenty hearings subject to the great number of defendants and witnesses, and to obtain expert evidence. The district court completed those cases where the accused remained at an unknown location after two or three hearings on average, while for the complex budget fraud cases termination could take between ten to fifteen hearings.

The possibility of co-operation of the accused is not limited to the Preparatory Meeting, but could be exercised in any crime case. The accused may at any time use this opportunity to shape the process of obtaining evidence.[43] It can be stated that in cases where the accused did not exercise their right of confession at an early stage, they will not make use of this possibility at a later stage of the proceedings either. Rather, they will get involved in the process of collecting evidence and wait for the outcome.

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[42] Act XC of 2017 Section 505.-508.

[43] Gácsi, A., E., *op. cit*., pp. 280-283.

The procedure can therefore be finalized within a few hours during the Preparatory Meeting. It can be stated, that such a proceeding will not only highlight the discretion of the prosecutor but the general professional skills of the lawyer may emerge as well. The defence attorney will have to co-operate with his client most intensely at this stage of the procedure, where he can demonstrate that he is well informed. He will also facilitate a speedy closure of the proceedings with an appropriate penalty keeping his client's interests in mind. It is important to underline this, as the European Court of Human Rights has stated that numerous criminal proceedings were lengthy, not only due to inactive periods of the national authorities, but also due to the dilatory conduct of the complainant.[44] However, the role of a defence attorney may take numerous forms depending on the course of proceedings, the attitude of defence, the style of questioning, and the way in which the defence speech is structured and presented. Pleading guilty in line with the indictment could be, in my view, part of the defence tactics, as the accused obviously expects the best solution from his lawyer. The role of the Preparatory Meeting – as has been mentioned several times – is to highlight that a speedy conclusion of the proceedings is in the interest of the defendant as well. The question often is whether the lawyer will give his client the best possible advice in this regard.

Despite the introduction of institutions to speed up proceedings, the period of time cases are dealt with within the framework of ordinary procedure after the Preparatory Meeting is too long. Evidencing must be detailed, resolving any contradictions, in other words complete, which is a time-consuming task.[45] According to Ervin Belovics, the reason for this lies in the following, 'in particular, in the growing number of crimes against intellectual property rights, which cause loss to the budget and undermine the order of business, but especially because of their growing complexity. In these categories, – also at the request of the accused – almost all cases require the assignment of an expert, and the processing and analysis of accounting and other documents and electronic data, sometimes consisting of tens of thousands of pages. „[46]

It cannot be ignored however, that in these cases prosecution consistently proposes the accused to be sentenced to the gravest form of penalty, i.e. imprisonment, despite their confession of guilt. On the other hand, compensation plays an important role. In the event of causing a financial loss exceeding HUF 50 million, compensation is the only means to give way to a settlement. Imposing of a severe penalty can only be achieved if an independent, impartial tribunal follows the requirements of fair trial in public hearings. It must be stated that current international legal and constitutional guarantees limit the possibility to increase efficiency, speed and simplicity of proceedings.[47] The Hungarian system is still a long way from the well-known and effective practice of arriving to a plea bargain as practiced in Anglo-Saxon countries. According to statistics about 90 percent of convictions in the United States are the result of the defendant pleading guilty. If a

[44] Czine, Ágnes – Szabó, Sándor – Villányi, József, *Strassburgi Str Bo. Ur. Strassburgi ítéletek a magyar büntetőeljárásban*, HVG Orac Lap-, és Könyvkiadó Kft. Budapest, 2008, pp. 423-428.

[45] Belovics, E., *op. cit*., pp. 37-40.

[46] Belovics, E., *op. cit*., pp. 45.

[47] Hack, Péter-Horváth, Georgina, *A büntetőeljárás egyszerűsítésének lehetőségei és korlátai*, In, Finszter Géza-Kőhalmi, László-Végh, Zsuzsanna, *Egy jobb világot hátrahagyni….*, Tanulmányok Korinek László professzor tiszteletére, Kódex Nyomda Kft, Pécs, 2016, pp. 300-301.

large number of defendants did not admit their guilt, the already heavily burdened justice system would drift to the brink of collapse.[48]

## IV. Conclusion

With the above few thoughts, I have tried to outline to the arch of development of the attitude of Legislative Authorities regarding the acceleration of criminal prosecution from the entering into force of Act XXXIII of 1896 to Act XC of 2017. Added to this I have examined the possibilities of saving time and expenses with respect to the already heavily burdened and costly criminal procedures. Undoubtedly, the new Procedural Act, which entered into force on 1 July 2018, contains the most promising regulation out of the aspirations described in this paper.

In my opinion, the success of the new law will not depend on the coherence of its textual body. As a matter of fact, the extensive regulations, and all elements of the new Act will fully comply with the requirements regarding procedural economy and litigation efficiency and with the requirements regarding timeliness as outlined in EU law. To illustrate the above idea, I have presented the rules governing the Preparatory Meeting making use of the detailed justifications as indicated in the draft of the Criminal Proceedings.

The achievement of the targets described above will largely depend on the ability of the participants, such as the courts, prosecutors, law firms etc. to interpret these rules uniformly and apply them for the purposes indicated in the law. It may also be important to know what the outcome of the mandatory Preparatory Meeting will be for each factual situation as referred to in the Penal Code. Enforcement authorities rarely encounter sets of rules, the application of which highly depends on the interpretation of the professions described above, the mentality of the enforcement authorities, and how they are able to get rid of the established frameworks of previous rules governing procedure. The question still remains whether the Preparatory Meeting has lived up or will live up to expectations.

I have studied 20 budget fraud cases since the entry into force of the new Criminal Proceedings. The findings of my research made me conclude in line with the opinion of noted experts in this field, that in cases of fiscal fraud causing significant loss to the budget and of great complexity, reaching an agreement is usually not in the interest of the parties. I agree with the thoughts of Ervin Belovics, that these matters can only be resolved within the framework of ordinary court proceedings. Given that such cases generally involve a substantial loss caused to the budget, the prosecution's position is that the proposal of suspended custody can only be considered if a significant amount of the loss is reimbursed. Therefore, it can be stated that the sole purpose of simplifying the procedure is to make the accused to acknowledge his guilt in order to avoid imprisonment. We must not forget an ancillary issue, namely the confiscation of property, on the other hand however nothing is more painful than losing one's liberty. Therefore, it is worth considering the viewpoint of Gabor Dicső

[48] Tarr, Ágnes, *A vádalku szabályozásának egyes kérdései*, In, Szabó Krisztián, Tanulmányok Dr. Kováts Andor professzor születésének 120. évfordulójára, Debrecen, 2004, pp. 141-143.

representing defence position, according to whom an agreement can only be reached if the accused receives a significant reduction of his penalty.

The investigation of the budget fraud cases pending before the above-mentioned district courts and tribunals indicates that agreement is more easily reached at the district courts and in less severe cases. Experience so far has shown that the likelihood of reaching an agreement at the tribunals is much lower. Such opportunity only arises if with regard to the conduct of the defendant, namely significant compensation of the loss caused, the prosecutor will be satisfied with suspended imprisonment.

The possibilities to accelerate proceedings as regulated in the current Criminal Proceedings, and as outlined above in the context of fiscal fraud goes beyond the framework of domestic regulations. Part of the conduct regarding facts in current criminal law is meant to protect the financial interest of the European Union. The European Council Resolution of 12 June 1994 set out forward-looking ideas on the protection of the Community's financial interests and made it compulsory to prosecute illegal activities detrimental to financial interests.[49] Therefore it is not irrelevant how much time will be spent on adjudicating conduct which infringes the financial interests of the Union. For this reason, provisions accelerating proceedings serve not only the interests of Hungarian law enforcement but also the interests of the European Union.

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[49] Madai, Sándor, *A csalás büntetőjogi értékelése*, Hvg Orac Lap-és Könyvkiadó Kft, Budapest, 2011, p. 240.

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