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2 - My rights during the investigation of a crime and before the case goes to court

How does the investigation start and who investigates?

The investigative authority starts the investigation on the basis of information from someone, or information that it obtains through its own activities.

The investigation is carried out by the investigative authority (usually the police) or the prosecutor, depending on the criminal act. The prosecutor also supervises the investigations that he does not conduct. If the investigative authority does not end the procedure during the course of the investigation (because it concludes that no criminal act took place), it sends the case to the prosecutor. The prosecutor examines the case and on the basis of his examination, sends it back for further investigation, ends the procedure, or files charges.

What are the main elements of the investigation (the procedure before the case goes to court)?

Taking of evidence

During the course of the investigation, the authority tries to uncover the circumstances of the criminal offence, to establish the identity of the person who committed it and to locate the evidence. To this end, the investigative authority may hear you as the accused, may hear witnesses, obtain an expert opinion, etc.

Coercive measures and other restrictions of rights

Coercive measures are measures restricting your rights as an accused person in order to ensure the success of the criminal process. Examples of coercive measures are custody, preliminary arrest (detention pending trial), or search of your home.

In this part, you will also find information on other restrictions of rights (e.g. taking fingerprints).

The introduction of documents

When the investigation is completed, the authority presents the entire investigation file to the defence counsel. At this point, you and your lawyer will be able to see all the documents and evidence serving as the basis for a possible indictment.

My rights during the investigation

For further information about your rights during the various stages of the investigation, click on the links below.:

- [Taking of evidence \(1\)](#)
- [Coercive measures and other limitations of rights \(2\)](#)
- [The introduction of documents \(3\)](#)

Taking of evidence (1)

What is the purpose of this stage of the process?

The purpose of this stage is to investigate the circumstances of the offence, to identify who committed it and to collect the evidence. The investigation is conducted by the investigative authority (usually the police) or the

prosecutor. They carry out different proof procedures (hearing the accused and the witnesses, obtaining expert opinions, conducting witness confrontations etc.). The investigation must be completed within two months, but – in justified cases – this deadline can be extended for not more than two years from the date of the first hearing.

What information do I get?

At the beginning of the very first hearing, the person conducting the hearing must inform you about the nature of the hearing and give a brief summary of the crime you are accused of). In addition to this, they must inform you which parts of the Hungarian Criminal Code have been violated by the act you are accused of. However, they do not have to disclose to you the evidence which the charge is based on.

During the course of all proceedings to take evidence where you are present, you must be informed of your most important rights (e.g. your right to remain silent). This warning and your decision on whether or not to testify must be entered into the minutes word-for-word. If this is not done, your testimony cannot be used as evidence.

Will an interpreter be provided if I don't speak Hungarian? Will the documents of the criminal process be translated?

If you are not familiar with the Hungarian language an interpreter will be used in every phase of the criminal process. You can use your mother tongue, or another language known by you.

The costs of interpreting are paid by the state even if the court eventually convicts you. However, the state does not provide an interpreter free of charge for consultations with your defence counsel.

The acting authority must ask you in every instance whether you understand the interpreter, and the statement about this must be included in the minutes.

There are restrictions on the translation costs which are paid by the state, namely the state must pay the translation costs for those documents which legally must be served on you by the authorities (e.g. a copy of the indictment or the judgment).

The acting authority does not pay for the translation of other documents (e.g. the minutes of the procedural acts). If you would like to have them in your mother tongue, you will have to pay the costs of translation.

Will I be heard? Must I speak during the case?

During the course of your hearing you are not required to make a statement. You can refuse to testify or respond to the individual questions at any time during the course of the hearing. You cannot be required to give any testimony which indicates any wrong-doing on your part, or to provide evidence against yourself.

The procedure continues even if you refuse to testify. If you refuse to testify in connection with a crime, no further questions can be put to you in connection with it and no confrontation with the other accused/defendants or witnesses in the case will take place. You can ask questions and make observations and motions even if you have refused to testify.

You can decide at any time to make a statement, even if you had refused to testify earlier on.

In your testimony you do not have to tell the truth but you cannot falsely accuse another person of the commission of a criminal act.

When can I talk to a lawyer?

[Getting legal advice](#)

All this does not mean that you can only be heard in the presence of a defence counsel. If you request that you want your defence counsel to be told about the hearing, the authority will notify him – by fax, electronically or, if this is not possible, by telephone. If your defence counsel has been notified about the hearing and does not appear for whatever reason, the hearing can be held in his absence. The hearing can also be held if the appointed defence counsel, having been notified, does not appear.

The state does not provide an interpreter free of charge for consultation with your defence counsel. If there is no language in which you could communicate with your defence counsel, you must pay an interpreter. The authorities usually allow the interpreter appointed for the hearing to interpret during the consultation between you and your defence counsel before the hearing.

Can the contents of the charge be changed during the investigation?

If the charges against you change, that is, you are suspected of a different criminal act(s) from the one in the original charge, you must be told that at the beginning of the next interrogation.

Will I be informed about the evidence against me?

All the evidence will not be disclosed to you until the end of the investigation; you will see all the documents serving as the basis for the indictment only when the introduction of the documents occurs.

Can I plead guilty to all or some of the charges before the trial?

You have the opportunity to plead guilty during the investigation. If you do so, you may avoid punishment, the procedure may be shorter, and your punishment may be less severe; but this is not certain.

If you make a confession during the course of the investigation, the court may use an alternative procedure to decide your case.

Arraignment: if

- you are accused of a criminal act that is punishable by a maximum of 8 years' imprisonment;
- the case is simple;
- the evidence is available;
- you have been caught in the act or you have admitted committing the crime.

The prosecutor will arraign you within 30 days of your confession to the crime. This does not require your consent.

Waiving the court hearing

If you are involved in a procedure for a crime punishable by imprisonment for no more than 8 years, you have the opportunity to confess and waive the court hearing.

When the court hearing is waived, you and the prosecutor conclude a written agreement which contains the description of the crime you have confessed to, its legal classification, and the prosecutor's and your statement on what kind and extent of punishment you accept. The court will hear you in this case, too, but it does not take any evidence (e.g. it does not hear witnesses).

The court hearing is waived: if

- you are accused of a criminal act that is liable to imprisonment for not more than 3 years;
- the facts of the case are simple;
- you have confessed the crime.

In this case, the court passes a relatively mild sentence without holding a hearing (a suspended sentence of a maximum of one year of imprisonment) If you do not agree with the decision of the court you may request that a court hearing be held.

Active repentance

In certain minor cases (you are suspected of having committed a criminal offence against a person, a minor traffic offence, a minor offence against property, or a crime liable to no more than 3 years of imprisonment), you may avoid punishment by participating in mediation.

You must confess to the crime before the indictment is served and agree to compensate the victim in a manner which the victim agrees to.

If you are the subject of a criminal process where the possible penalty is a maximum of 5 years in prison, and you meet the above requirements, the court can alleviate your punishment without restrictions.

You or the aggrieved party can apply for mediation and both parties must consent to it voluntarily. In this case however the prosecutor must refer the case for mediation and rule that the court process can be waived.

Can I ask for evidence to be obtained?

You and your defence counsel are entitled to ask for certain evidence to be obtained (e.g. for witnesses to be heard). The acting authority will make a decision about your request. If the authority turns down the request, you can file a complaint (see below) but you cannot force the gathering of evidence.

Can I be present at the procedural acts?

During the course of the investigation you and your defence counsel can be present at the hearing of experts and some other procedures (e.g. the identification of a person or an object). Your defence counsel can be present at your interrogation, at the interrogation of witnesses who have been nominated by the defence, and when confronting such witnesses. However, during the course of the investigation, neither you nor your defence counsel can be present while witnesses who were not nominated by you are being heard.

Can I appeal during the investigation?

You can file an appeal against the authority's decision, measure, or failure to carry out a measure affecting you within 8 days. Complaints against the prosecutor's decisions are made to the superior prosecutor; complaints against decisions of the investigative authority are made to the prosecutor. You must be notified about the outcome of the complaint. Usually there is no opportunity for any further appeal against this decision.

Will information be obtained about my criminal record?

At the beginning of your hearing you will be asked about your criminal record, but the Hungarian authorities usually do not obtain such information from foreign records.

Can I contact the embassy of my country?

If you are in custody, you have the right to contact your consular representative and communicate with him in private. The consular representative may authorise a defence counsel for you and may be present at your hearing.

Can I leave the country during the investigation?

If you are not under preliminary arrest, house arrest, or subject to a ban on leaving your residence, you can leave the country but you have to be present at the procedural acts.

Do I have to be present at the investigation even if I am from another country?

You are required to take part in the investigative acts in person, even if you come from another country unless you were allowed to post bail.

If you live abroad and you are accused of/charged with a crime which is liable to no more than 8 years of imprisonment, you can request that bail be granted (unless the criminal act has resulted in the death of a person).

Before the bill of indictment is presented, you can make your request to the prosecutor, and afterwards to the court. If you are allowed to post a bail, once you have paid the amount set by the prosecutor or the court the procedure can then be conducted in your absence: that is, you do not have to attend either the investigation or the court hearing. You have to return to Hungary only if you are sentenced to imprisonment. You have to undertake to do this in your application.

If the court finds you guilty and the judgement becomes final, bail is returned to the state.

If you are acquitted, bail is returned to you. Bail is also returned if you are sentenced to imprisonment and you serve your sentence.

Hungarian law does not allow for you to participate in criminal proceedings conducted in Hungary by video link.

Can I be sent back to my home country?

The procedure against you can be transferred if the Hungarian authorities, taking into consideration the interests of the victim, decide that it is more appropriate to let the procedure be conducted by the authorities of another country. In this case, the court may order your arrest for the purposes of the transfer.

What happens if I have already been sentenced for this offence in another Member State?

There is a possibility that the Hungarian court will recognise the decision of the foreign court if the procedure abroad and the sentence do not conflict with Hungarian law.

You cannot be tried twice for the same act. If the Hungarian court does not recognise the sentence, you can be tried again, but in this case, the sentence, preliminary custody, or house arrest carried out abroad will be deducted from the sentence imposed by the Hungarian court.

Coercive measures and other restrictions of rights (2)

Will my fingerprints, DNA or other samples be taken?

If you are suspected of a crime which could result in a prison sentence of 5 years or more, your finger- and palm-prints will be taken.

This also happens in the case of certain other crimes punishable by imprisonment of less than 5 years (e.g. severe bodily injury, bribery, drug abuse, forging a public document, forging a private document, theft, or fraud).

A DNA sample will be taken from you only if you are accused of a serious crime (e.g. if the possible punishment is at least 5 years in prison, a criminal conspiracy, or a crime involving a weapon).

Can there be a body search?

During the investigation you can be searched. Your clothing and body can be examined to locate evidence or other objects. During the course of the search, your vehicle, baggage and other belongings can also be examined. The search can only be conducted by a person of the same sex as you, and only a person of the same sex as you can be present at the search (with the exception of the doctor participating in the search). Individuals you name can also be present at the scene of the search.

Can my house be searched during the investigation?

A house search can take place during the investigation, and must be carried out in your presence. If you, or your defence counsel, or another authorised representative are not present during the search, the acting authority appoints a person whose role it is to protect your interests in an appropriate manner.

Will I be detained?

If you have committed a criminal act, the authorities may detain you. The police can hold you for up to 12 hours if you have been caught in the act of committing a crime or are suspected of a crime.

If the suspicion that you have committed a crime is confirmed and you become a suspect, and if there are good reasons to believe that the court will order your detention until the trial, you may be taken into custody for a period of time not exceeding 72 hours.

The court can order that you be detained until the trial (after the maximum duration of 72 hours of custody) if you are accused of a crime for which you could be sent to prison, and if you have previously absconded. This may also happen if there are grounds to suspect that you might abscond, repeat the crime, or endanger the success of the criminal proceedings (e.g. by influencing the witnesses).

During the investigation, the investigating judge will decide whether you should be detained. After completion of the investigation, it is the judge acting in the case who makes the decision. You can appeal against the decision.

The pre-trial detention is reviewed at certain time intervals. You or your defence counsel can make request to the investigating judge or the judge hearing the case that the detention should be brought to an end

What are the alternatives to pre-trial detention?

The judge may also decide to restrict your freedom in less severe ways. If you are placed under house arrest, you can only leave the area designated by the court, your home and the fenced-in area around it, for certain purposes specified in the court order (e.g. medical treatment).

If you are banned from leaving your place of residence, you cannot leave a specified area or district (e.g. town) without permission.

Is it possible to post bail?

If you were put under preliminary arrest (pre-trial detention) only because of the danger that you might flee, you or your defence counsel may request that bail be posted. If the court is satisfied that your appearance during the procedure can be secured in this way, bail is set.

Bail is lost if the court orders your preliminary arrest (pre-trial detention) because you did not appear in spite of being summoned. If you are under preliminary arrest for another reason (e.g. the danger of repetition of the crime), there is no possibility of bail.

Can I contact family members or friends?

While being held you must be given an opportunity to notify a relative or some other person, provided this does not jeopardize the investigation. If you cannot notify a family member yourself, the police must carry out the notification.

The person specified by you must be informed that you have been taken into custody and where you are being held within 24 hours.

While you are under preliminary arrest (pre-trial detention), you are entitled to communicate, under supervision, with a family member in person or in writing, unless the prosecutor or the judge prohibit this. You can only communicate with other individuals if the prosecutor, or the judge, grant permission to do so.

Can I get medical treatment?

If you are in custody and during pre-trial detention, you are entitled to medical treatment, which the police or the prison are required to provide, usually through their own medical service. If you need some treatment that only a civilian institution can provide, they are required to take you there and ensure that you are guarded appropriately.

The introduction of documents (3)

What evidence can I see during the investigation?

During the investigation, there are restrictions on your access to the documents and the evidence. You and your defence counsel have the right to view the records of those investigative measures which you had the right to be present at, even if you were not actually present. In addition, you have the right to view the expert opinions. You can only view other documents during the investigation if this does not interfere with the objectives of the investigative measures. The decision about this is made by the investigative authority. You and your defence counsel are entitled to free copies of the documents you can view.

When can I see all the evidence?

When the investigation is completed, you and your defence counsel can see all the documents serving as the basis for a possible indictment (with certain exceptions, e.g. the identity of a protected witness). After the investigation is complete, you have practically unlimited access to the documents. You are entitled to get free copies of all the

documents.

Having reviewed the documents, you or your defence counsel may ask for further investigations be carried out, and may also make other motions and observations. The authority which is conducting the investigation decides about these motions.

Related links

[The Criminal Procedures Act](#)

[The Criminal Procedures Law](#)

[Decree on the detailed rules of the investigation](#)

■ Last update: 29/10/2024

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