

HOLDING A TRIAL VIA PRIVATE TELECOMMUNICATION NETWORK

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ABSTRACT: *Today the use of telecommunication techniques are becoming more and more important in criminal case cooperation. In recent decades there had been a great shift of perspectives in the field of telecommunication. Modern telecommunication possibilities like video- and telephone conference calls are already in use in the questioning of the witness and the hearing of the expert. The Hungarian Criminal Procedure Law introduced the use of closed circuit telecommunications network. Besides conducting processes swiftly and supporting witness and victim protection, this institution can have a significant role in fulfilling international Legal Aid requests as well. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union regulates hearing by videoconference and telephone conference. The Hungarian criminal procedure legislation is fully consistent with the provisions of the Convention of the European Union.*

KEYWORDS: *telecommunication, criminal procedure law, witness and victim protection, interrogation*

JEL CLASSIFICATION: K 00, K 23

International documents – such as the Brussels Declaration – emphasize the necessity of separating the injured from the perpetrator under charge while bearing witness to collect evidence, with the help of audiovisual tools (this has been considered in a certain sense necessary by the EU frame decision of 2001 about the rights of the injured during penal procedure as well). The previous conditions can already be found in Hungarian law. The articles of Be. 244/A-D contain provisions about the possibilities, conditions and guarantees of holding a trial via private telecommunication network.¹

Law justifies the provision of interrogation via private telecommunication network thus: “The causes fall first and foremost under the scope of witness protection, including the cases where the witness, due to his or her age, should be prevented from meeting the accused, or when the interrogation via private telecommunication network happens for

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¹ <http://www.iom.hu/PDFs/GENERAL.PDF> (Downloaded at April 21 2008)

the sake of those injured due to actions defined in that law. The law allows the use of this institute also when it is not justified by witness protection, but when his or her state of health or any other aspect makes it extremely difficult for the injured to attend. It is possible to conduct an interrogation via private telecommunication network in regard to both the witness and the accused when these people take part in a witness protection program defined by a separate law – the law LXXXV. of 2001 concerning the Protection Program for those taking part in a penal procedure and helping jurisdiction -, or when it is justified to protect them for any other cause.

The president of the council can order the interrogation of the witness – or in special cases, the accused – to happen via private telecommunication network after a proposal from the prosecutor, the accused, the defense attorney, the witness, the lawyer representing the witness, the attendant or the legal representative of the underage witness, or it can be done *ex officio*. During the interrogation conducted via private telecommunication network, the immediacy of the connection between the location of the trial and the accused is provided by a device transmitting picture and sound simultaneously.

As per the second paragraph of the same law:

The president of the committee can order the interrogation to happen via private telecommunication network

- (a) for a witness under the age of 14,
- (b) for a witness to whose injury a crime against life, security or good health (Penal Law Chapter XII. Title I.), or against marriage, family, youth or sexual moral (Penal Law Chapter XIV.), or any other violent crime against a person has been committed,
- (c) for a witness whose attendance to the trial would be made extremely difficult by his or her state of health or any other aspect
- (d) for a witness or an accused taking part in a witness protection program defined by a separate law or when it is justified to protect them for any other cause
- (e) for the accused or a witness under arrest whose presence at the trial would cause a threat to public safety.

The further provisions of the law and the articles 244/B-C-D include the regulations discussing more details, the location, the participants, guarantees etc. of the trial via private telecommunication network.²

“244/B. Article

(1) The witness or accused who is to be interrogated via private telecommunication network must be isolated in a room at the interrogating court or at the penal institution. In this separate room, only the lawyer of the witness, the legal representative or the attendant of an underage witness, or if need be, an expert, an interpreter and the staff operating the private telecommunication network system can be present. In case of interrogating an accused via private telecommunication network, his or her lawyer may be present both at the trial and in the separate room.

(2) In the separate room a judge from the responsible court must be present. During the beginning of the trial, after reviewing those present in the courtroom, the president of

² <http://www.iom.hu/PDFs/GENERAL.PDF> (Downloaded at April 21 2008)

the council orders the judge to assess the identities of those present in the separate room, and to certify that no unauthorized personnel are among them, and also that the rights of the witness or the accused are not limited in any way.

(3) When starting the interrogation, the president of the council informs the witness or the accused via the private telecommunication network that his or her interrogation shall take place via private telecommunication network.

(4) The duties of the judge from the responsible court determined by this Article can be fulfilled by a court secretary, in this case the record mentioned in the First paragraph of Article 244/D. should be kept by the court secretary.

244/C. Article

(1) During the interrogation via private telecommunication network it must be ensured that the participants of the penal procedure can exercise their rights to ask, to remark, and to propose (among others) with the exception in paragraph (4), according to the provisions of this law.

(2) It must be ensured during interrogation that the accused can contact his or her lawyer. When the lawyer is at the location of the trial, this right must be secured with a telephone connection between the location of the trial and the separate room.

(3) It must be ensured that the participants being present at the trial can see the interrogated witness or accused in the separate room, and all the people being there in the room with them at the same time. It must be ensured for the witness or accused in the separate room to be able to follow the course of the trial.

(4) Only the president of the council can ask questions via private telecommunication network from a witness under the age of 14. The members of the council, the prosecutor, the accused, the defense lawyer, or the injured may propose to ask questions. The witness under the age of 14 present in the separate room can – except at confrontation – only see and hear the president of the council via the transmitter.

(5) When interrogating via private telecommunication network, the personal traits of the witness – that can give away his or her identity (e.g. facial characteristics, voice) – can be technologically distorted during the broadcast.

244/D. Article

(1) The judge present at the separate room keeps a separate record about the circumstances of the interrogation via private telecommunication network, indicating the people present in the separate room. This record must be attached to the record of the trial.

(2) Simultaneously with the interrogation via private telecommunication network, at the location of the trial and where the interrogated is situated, a video and sound recording must be made about the proceedings. These recordings must be attached to the records of the trial.

(3) The president of the council can, after a proposal from the participants of the penal process, order the replay of the video and sound recording at and outside of the trial. At the replay of the recording it must be ensured that no unauthorized person may see or hear it, change or destroy its content, or copy it either.”³

³ Articles 244/A–D of the Law XIX. of 1998.

Practical experiences

The introduction of the possibility of holding a trial via private telecommunication network is necessary also because of the practical experiences, the negative tendencies in the morphology of crime (the rise of organized crime and the degree of brutality). The influence-free, safe interrogation of the injured, the witnesses, and many times, the accused is a prerequisite in certain cases of a successful process of verification. For this, a continual, simultaneous image and voice-connection is necessary between the location of the trial and interrogation, which must be conducted with good quality, because direct impressions and conclusions drawn from human behavior and reactions bear a vital significance for the court. It is also important, that with the help of image and voice recordings, it becomes easy to monitor perfectly whether rules of process are kept or not.

For the provisions of the law to work as they should it is necessary to establish the infrastructure in all courts, or at least at the local courts of the county court and at the county courts as well. Establishing a mobile system is the most practical thing to do. The technical and telecommunication tools should be established in all courts following the same view-points so that the system is ready to provide both services (Keeping the records in another way and conducting interrogation between distant locations).

In recent decades there had been a great shift of perspectives in the field of telecommunication. The process began in the United States, and with a delay, it has been taken over by the legislation of the European Union as well. Previously it was widely and obviously accepted that in a country the company responsible for telecommunication is on the one hand owned by the state and on the other, it has a monopoly. The first sign of changing perspectives was the thought that the military and internal interests can be secured without state ownership, which lead to privatization in this field as well.⁴

Most courts are only on a basic informatics level, the equipments and programs necessary for the special tasks pointed out in the rules of law above are not available for them. Networks and computing tools should be upgraded to be sufficient for this purpose, special equipment necessary to record, transmit, receive, store and copy image and voice recordings should be obtained, the private telecommunication network system should be established.⁵

The point of this is that the court trial is conducted via a private network that satisfies judicial needs by providing a direct connection and transmitting video and voice simultaneously. At such a trial, the people to be interrogated are not present physically, but they are elsewhere at another location, and the system mentioned above secures the connection with the court.

Besides conducting processes swiftly and supporting witness and victim protection, this institution can have a significant role in fulfilling international Legal Aid requests as well. The 10. article of the Treaty between the states of the European Union about the mutual Legal Aid in criminal matters regulates the institute of providing legal aid in criminal matters via the use of private telecommunication networks. But rules controlling the use of private telecommunication networks to interrogate are included not only in international

⁴ http://www.zmne.hu/hadmernok/archivum/2007/2/2007_2_pandi.html (Downloaded at April 21 2008)

⁵ [http://www2.pm.gov.hu/web/home.nsf/\(PortalArticles\)/71FB612F9B2F8595C125723D0052046A/\\$File/06s.pdf](http://www2.pm.gov.hu/web/home.nsf/(PortalArticles)/71FB612F9B2F8595C125723D0052046A/$File/06s.pdf) (Downloaded at April 21 2008)

treaties concerning legal aid in criminal matters, but also in norms of European Union and the Council of Europe laws that share goals with the intentions to create a Hungarian legislation of this issue.

Regarding the audiovisual tools that can be used in penal processes, the 10 September 1997 proposition of the Council of Europe about witness intimidation and rights of defense has significance. It declares in the section about general principles that witnesses must be provided with such alternative circumstances to make a confession that prevent them from meeting the accused face to face. Based on this, the proposition considers confessions made in separate rooms as a possibility.⁶

The proposition determines the cases where the president of the council can order, by a plea or ex officio, the interrogation of the witness or the accused via private telecommunication network after taking these international documents into consideration. This legal institution can be applied primarily during the interrogation of underage witnesses and victims of violent acts of crime.⁷

Courts must be able to provide separate rooms, the appropriate guarding of these rooms and the telephone connection between the courtroom and the interrogation room (if the defense lawyer is in the courtroom when the accused is interrogated separately, it must be ensured that they are connected through a private telephone line).

Technicians should be trained to ensure the undisturbed and efficient working of the system, and specialists should be hired who manage the video and sound transmission. In addition, a judge must be present in the separate room from the responsible court, whose task is to help the judge at the courtroom.

Records made by the process cannot be substituted by any other means of recording, thus no other means of recording can create more workforce or technical capacity for the court. Keeping and storing the recordings of the process must be dealt with by the court itself. For this it is necessary to continually upgrade the storing capacity and data medium of the informatics structure. The participants of the penal procedure can see and hear the recordings of the process outside the court as well, as the law states, "at the premises designated for this." It must be ensured that no unauthorized person could see the recording, could change its contents or copy it. This can be controlled either with personal supervision or with video surveillance. This provision must be strictly kept regarding secrets of state and service.

Also, a provision allows the court to create copies on the request of participants of the process with a right to get to know records.

For the sake of enforcing the rules above, it is necessary to have rooms with technical equipment and court employees (who are allowed to proceed with secret cases as well).⁸

⁶ Elek, Balázs: A vallomás befolyásolása a buntöeljárásban. TKK, Debrecen, 2008, pp. 132

⁷ <http://mkdsz1.freeweb.hu/n14/parl011018-buntöeljaras.html> (Downloaded at April 21 2008)

⁸ [http://www2.pm.gov.hu/web/home.nsf/\(PortalArticles\)/71FB612F9B2F8595C125723D0052046A/\\$File/06s.pdf](http://www2.pm.gov.hu/web/home.nsf/(PortalArticles)/71FB612F9B2F8595C125723D0052046A/$File/06s.pdf) (Downloaded at April 21 2008)

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