

## THE HUNGARIAN LAW ENFORCEMENT SERVICES

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The structure of Hungarian law enforcement authorities and the criminal proceedings are very complicated. The new Hungarian Act of Criminal Procedure has been in force since July 2003. Until now five different Criminal Procedure Acts have existed in our country. The new Act significantly differs from the former codes as far as its structure is concerned and it was made so that the international requirements are also taken into consideration for example: primarily human rights and fundamental liberties on the basis of the Treaty of Rome, furthermore the practice of the Court of Human Rights in Strasbourg.

### I. Fundamental principles of Hungarian criminal proceedings law

These fundamental principles are as follows:

- Prosecution, defense and sentencing are separate functions.
- It is the exclusive right of the court to ascertain the liability of a person in committing a criminal offence and to impose punishment therefore.
- The charge is proven by the accuser. Facts not proven beyond a reasonable doubt may not be contemplated to the detriment of the defendant.
- The defendant has the right to defense.
- It is the responsibility of the court, the prosecutor and the investigating authority to initiate and conduct the criminal proceedings if the conditions set forth in the Criminal Procedure Act prevail.
- Criminal proceedings may only be initiated upon the suspicion of a criminal offence and only against a person reasonably suspected of having committed a criminal offence.
- Everyone will be presumed innocent until convicted through a final court verdict.
- No one may be compelled to give self-incriminating testimony or to produce self-incriminating evidence.
- Criminal proceedings are conducted in the Hungarian language. Not knowing the Hungarian language can't serve as grounds for discrimination. In criminal proceedings all people involved may use, both verbally and in writing, their native language, or, pursuant to and within the scope of an international agreement promulgated by law, their regional or minority

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language, or – if not in command of the Hungarian language – another language defined by the party concerned as a language spoken.

## II. Investigating authorities

In Hungary the investigating authorities conduct the investigation upon the order of the prosecutor or they do it independently. Regarding the subjects of criminal procedure the most significant changes in the new Criminal Procedure Act affect the public prosecutor. The public prosecutor has become the main leader of the investigation, either through his personal investigation, or through somebody else's investigation in execution of the prosecutor's order.

The investigating authorities conduct the investigation or perform certain investigative actions independently, if the criminal offence was detected by, or the complaint filed with, the investigating authority itself, or the offence came to the notice of the investigating authority in another way.

### 1. *The Police Force of the Republic of Hungary*

The general investigating authority is the Police Force of the Republic of Hungary.

In order to protect public security and internal order, the police carries out crime prevention, criminal prosecution, public administration and law enforcement tasks set out in the law. Its main functions are:

- Exercise the general powers of investigating authority, pursue crime prevention and investigation activities;
- Assist in preventing and investigating offences;
- Perform authority functions in relation to the manufacture, distribution and use of certain substances and devices endangering public security;
- Perform traffic authority and law enforcement tasks;
- Perform law enforcement tasks relating to the maintenance of order in public areas;
- Protect the life and corporeal integrity of persons who are very important for the interests of the Republic of Hungary and guard selected establishments;
- Authorize and supervise personal and property protection and private investigation activities – except for law enforcement authorities;
- Perform law enforcement tasks referred to its competence in the case of emergency or danger.

### A. Organization and legal status

The police is an armed public law enforcement authority performing crime prevention, criminal prosecution, public administration and law enforcement functions. The central unit of the police having national competence is the National Police Headquarters. There are three directorates in the National Police Headquarters: Criminal Investigation General Directorate, Public Security General Directorate and General Directorate for Economic Resource Management and Administration.

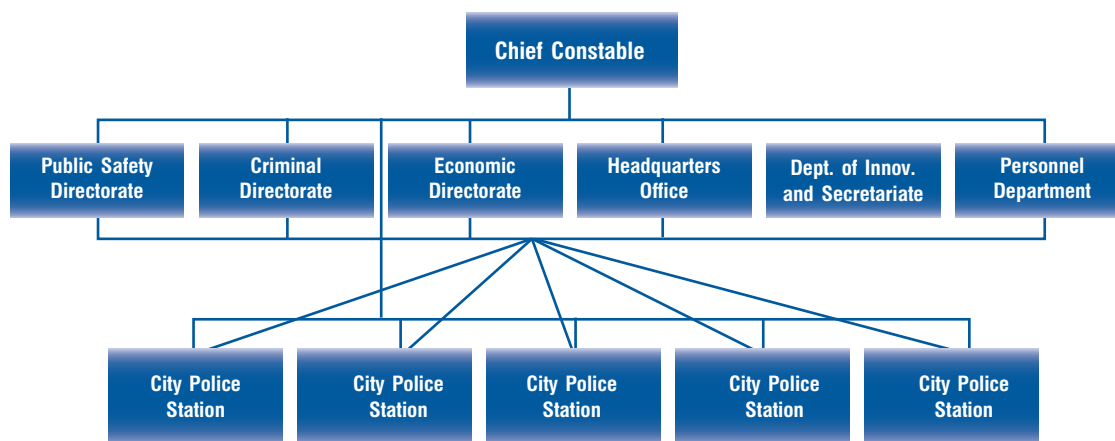
The Criminal Investigation General Directorate gives professional advice on the investigation, and supervises the overall investigation process.

The National Bureau of Investigation is a division of the Criminal Investigation Directorate. It is authorized to conduct investigation in any case or in any place when such need arises. They investigate the most dangerous crimes and have exclusive rights to conduct investigations in the following cases: money laundering, international drug and weapon smuggling and related international crimes. They concentrate on covert data gathering.

Another division of the Criminal Investigation Directorate is the International Law Enforcement Cooperation Centre. Every request of a Hungarian law enforcement agency to a foreign authority shall be forwarded by this department and such a request from a foreign authority shall be received by this Center. All the information concerning international crime is flowing via this Center including EUROPOL data.

The regional units of the police are the chief police departments directly subordinate to the National Police Headquarters. There are 19 county police units and the Budapest Police Headquarters. Each county headquarters has a criminal investigation service. They investigate serious crimes, for example: homicide, kidnapping, blackmail, armed robbery and crimes against property of considerable value.

### Organizational Chart of the Country Police Headquarters



The local units of the police are the police stations subordinate to the chief police departments which have independent competence. There are 131 city police stations and 22 district police stations in Budapest. Every police station deal with

investigation in less serious crimes for example: pick-pocketing, deterioration of property, shoplifting, burglary, battery, trespassing, etc.

*B. Management of the police*

The operation of the police is directed by the Minister of Interior.

The police have a separate chapter in the section of the Ministry of the Interior within the state budget.

The Prime Minister appoints and revokes the National Chief Police Commander at the proposal of the Minister of Interior. The candidate for the position is interviewed by the relevant parliamentary committee which decides on the candidate's aptitude.

The Minister of Interior:

- Represents the police at the sittings of the parliament and the government;
- Prepares the drafts of laws, international treaties and other high-level government decisions affecting the operation, functions and authority of the police or participates in the preparation of the same;
- Ensures the performance of tasks determined in order to protect public security and internal order;
- Regulates the activities and the operation of the police by issuing orders and by other legal means of public administration;
- Keeps contacts in order to promote the international cooperation by the police and its improvement;
- Takes care of controlling the police.

*C. The staff*

The staff of the police may consist of regular police officers, public officials and civil servants. The total number of the Hungarian police is about 38,000 and about 8,000 of them deal with inquires. The rules of the employment of regular police officers, public officials and civil servants can be determined in separate laws. Regular service contract can be made with Hungarian nationals who have full capacity of action, permanent residence and a clean police record, who are fit for armed service, meet all the other educational, health and physical requirements and have a good reputation.

*D. The relations between local governments and the police*

Before the establishment or dissolution of a police department or police station, it is also necessary to have the agreement of the local council.

Before appointing the head of a police department or police station, the opinion of the representative body at the local municipality is sought by the person exercising the right of appointment. When the head of a chief police department

is to be appointed, the opinion of the representative body of the county municipality is sought. If a removal becomes necessary, the local municipality should be informed simultaneously with the notification of the person concerned.

The head of the police department annually reports to the representative body of the local government, about public security in the settlement, the measures taken to improve public security and the tasks related therewith. The chief police commander makes an annual report at the request of the county or capital municipality.

The local municipality may conclude a contract with the head of the chief police department operating in the area of its administrative competence to discharge particular tasks relating to local public security, to coordinate the activities of the police and the local municipality and to promote the establishment, expansion and development of the police unit operating in its area of competence. The police may refuse to conclude such a contract, if it would violate the law or contradict the instructions of the head of the superior police unit, if its financial and material resources are not guaranteed or if the content of the contract is professionally unfounded.

## *2. Other investigation authorities*

The Hungarian Customs and Finance Guard conducts the investigation of the following criminal offences:

- a) violation of international legal obligations, violation of obligations related to the movement of internationally controlled products and technologies, foreign trade without a license, misuse of excise duty, smuggling and receiving smuggled goods;
- b) false marking of goods, usurpation, violation of copyright or associated rights, evasion of technical measures guaranteeing copyright or associated rights, forgery of data relating to copyright or associated rights and violation of rights protected by industrial patent law, if such offences involve goods subject to customs or excise duty;
- c) social security or tax fraud, fraud, if such offences involve taxes, contributions or budget subsidies falling within the competence of the Customs and Finance Guard;
- d) forgery of public deeds, private deeds, unique identification marks and stamps;
- e) drug abuse through import into Hungary, export from Hungary or transport through the territory of Hungary and misuse of substances used for drug production, if the offence is detected or the complaint is received by the Customs and Finance Guard.

The Customs and Finance Guard is directed by the Minister of Finance. It is an armed public law enforcement authority; it operates on three levels of organization, which, after the reorganization completed in 2004, are the following:

- The Directorate General of the Customs and Finance Guard: the top of the organizational hierarchy that controls the middle-level divisions. After reorganizations it works with smaller staff, but is in possession of a wide range of powering.
- Middle-level organizations: in compliance with the EU standards regional directorates were set up in 2000, which specialize in customs and excise responsibilities, and supervise lower level organizations. Another special middle-level organization is the Central Criminal Investigation Directorate with the investigation offices under it.
- Lower-level organizations: they include the inland head customs offices, the customs offices on the borders, the regional excise centers and the regional investigation offices. After Hungary joined the EU the borders with Slovenia, Austria and Slovakia have become internal borders and the number of customs administration officers at the borders has dropped.

The Hungarian Border Guard are responsible for the following criminal offences: prohibited entry or stay in Hungary, facilitation of unlawful stay in Hungary, trafficking in human beings, damaging border marks and forgery of public deeds in respect of travel documents. The investigation in these cases shall be conducted by the Border Guard, if the offence is detected or the complaint has been received by the Border Guard.

The Border Guard is directed by the Minister of Interior. Until this year the Border Guard was the member of armed forces, but after parliament's decision it became an armed public law enforcement authority. It has had investigative licence since 1997. The total staff is about 12,000 people, but only 400 officers are involved in investigations. The whole organization comprizes the Hungarian Border Guard Headquarters and 10 directorates alongside the border. According to some experts, the Border Guard should be integrated into the police. Others say that it is not necessary. However, because of the tightening of the borders, the necessary steps should be taken by the government.

### *3. Competence and jurisdiction of the investigating authority*

The competence and jurisdiction of the investigating authorities is stipulated in the relevant legislation. In the event of a conflict of interest among the investigating authorities listed in the law, or, if an offence falling within the competence of the police or the Customs and Finance Guard is combined with an offence beyond the competence of the given investigating authority and the procedure cannot be practicably separated, the acting investigating authority shall be designated by the competent prosecutor. The prosecutor may also designate as the acting investigating authority an investigating authority which would not otherwise be competent in the investigation of the offence.

Upon the agreement of their heads and the consent of the prosecutor, the investigating authorities may set up a joint task force to investigate a specific case or a specific group of cases.

### III. Investigation process

The investigation starts either based on data coming to the cognizance of the prosecutor or the investigating authority within his official competence or the member of the investigating authority in his official capacity, or on a complaint.

The investigation is ordered by the prosecutor or the investigating authority, who/which prepares a memorandum thereon. The memorandum indicates the underlying criminal offence – if the person against whom the complaint was filed is known – the subject person of the investigation and the starting date of the investigation.

The decision on ordering an investigation could be adopted within three days following receipt of the complaint, unless the complaint is rejected. The investigating authority notifies the prosecutor of the investigation ordered or complaint rejected within twenty-four hours.

The investigation may commence without an order, if the prosecutor or the investigating authority implements an investigatory action in order to secure the means of evidence, identify the suspect, prevent the suspect from absconding, concluding the criminal offence or committing of a further criminal offence or for other high-priority reasons.

Anyone may lodge a complaint concerning a criminal offence. It is obligatory to lodge a complaint as failure to do so constitutes a criminal offence. Generally, the complaints are made with the prosecutor or the investigating authority verbally or in writing. The complaint may be received by other authorities and the court as well, but they forward it to the investigating authority. If the complaint required prompt action, its receipt may not be rejected.

The investigation shall commence within the shortest possible period and conclude within two months following its order or start. If justified by the complexity or an insurmountable obstacle, the deadline of the investigation may be extended by two months by the prosecutor, and after the lapse of that deadline, by the county prosecutor general up to one year from the commencement of the criminal proceedings. After one year, the deadline of the investigation may be extended by the Prosecutor General.

In order to establish the identity, locate or arrest the offender or to find means of evidence, from the time the investigation is ordered until the documents thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned:

- a) keep under surveillance and record the events in a private home with a technical device;
- b) learn and record with a technical device the contents of letters, other pieces of mail as well as communications made by telephone or other means of communication;
- c) learn and use data transmitted and stored by way of a computer system.

Covert data gathering is permitted by the court at the motion of the prosecutor in compliance.



There has been a new member in the criminal procedure in Hungary since 2003. This is the investigating judge. His role is closest to the investigation authorities because prior to the filing of the indictment, the responsibilities of the court of first instance are performed by the investigating judge. The investigating judge decides on the following:

- before the indictment is filed, on motions concerning the coercive measures falling within the competence of the court;
- permitting and terminating covert data gathering;
- after the termination of the investigation, on resuming the same;
- at the motion of the prosecutor, on declaring the witness specially protected;
- hearing the specially protected witness and the witness whose life is in imminent danger;
- hearing the witness under the age of fourteen, if there is reasonable ground to believe that questioning at the hearing would adversely affect the witness's personal development;

The prosecutor, the suspect and the counsel for the defense may file a motion for an evidentiary procedure, if there is reasonable ground to believe that the means of evidence thus obtained would not be available in the course of the court procedure, would significantly change by that time or would lose its quality as a means of evidence.