

## The practice of preparatory hearings with special regard to the conditions of a confession

On the basis of Section 29 (1) of Act CLXI of 2011 on the Organization and Administration of Courts, the President of the Curia has defined the “practice of preparatory hearings with special regard to the conditions of a confession” as a topic for the analysis of jurisprudence in the area of criminal procedures for 2021.

The jurisprudence-analyzing working group was tasked with examining the judicial practice of preparatory hearings that had developed since 1 July 2018. Preparatory hearings were re-regulated in Chapter LXXVI of Part 13 of Act XC of 2017 on Criminal Procedures (hereinafter: Act on Criminal Procedure) and thus were filled with new content. The analysis also covered the first half of 2021, given that Act XLIII of 2020 on the modification of the Act on Criminal Procedure and other related acts (hereinafter: Modification Act) entered into force on 1 January 2021 and amended the rules on preparatory hearings, too, thus responding to the problems of legal interpretation that emerged in judicial practice after the Act on Criminal Procedure entered into force.

The scope of the investigation covered public prosecution cases and, in view of the change in legislation, the jurisprudence-analyzing working group divided the period of investigation into two phases: from 1 July 2018 (the entry into force of the Act on Criminal Procedure) to 31 December 2020 and from 1 January 2021 to 30 June 2021. The analysis extended to all court levels and employed the methods of providing data sheets on first-instance court proceedings and examining various decisions in the case of second- and third-instance court proceedings.

The jurisprudence-analyzing working group’s report reviewed the previous domestic legislation on preparatory hearings and the defendant’s confession, and briefly described the main findings of two previous reports on preparatory hearings [the report on “The experience of the application of the new Act on Criminal Procedure” by the National Office for the Judiciary’s (7 May 2019) and the summary report by the Office of the Prosecutor General (4 August 2020)].

The report analyzed the regulations of the Act on Criminal Procedure on preparatory hearings in four areas and covered the provisions of the Modification Act, too:

- The defendant’s cooperation – the preparatory hearing;
- The guilty plea – the defendant’s confession;
- The acceptance of the guilty plea; and
- The right to remedy – remedial procedures.

The findings of the jurisprudence-analyzing working group’s investigation covered 10 topics in first-instance cases and the most important ones were the following: the relationship between the suspect's confession and the confession made at the preparatory hearing in relation to the acceptance of the confession; the connections between the defendant's mental capacity and the acceptance of the confession; and the reasoning of the order in relation to the acceptance of the confession.

The analysis of judicial practice of the courts of second instance was based on decisions forwarded by 4 regional courts and 15 high courts; in five counties and at one regional court,

there were no second-instance decisions that fulfilled the established criteria in any of the examined periods. In the first examined period, which ran from 1 July 2019 to 31 December 2020, the acceptance of the confession in the absence of legal prerequisites constituted a relative procedural irregularity under Section 609 (2) (e) of the Act on Criminal Procedure and this offence was recorded on two occasions at regional courts, while high courts issued cassation decisions in 27 cases. In the second examined period, this irregularity was already classified as a (absolute) procedural irregularity leading to total annulment pursuant to Section 608 (1) (h) of the Act on Criminal Procedure, and on the basis of this, regional courts did not issue any decisions that quashed previous rulings and ordered a court of first instance to conduct new proceedings; however, high courts issued such decisions in 18 cases over the course of six months under review. The modification of regulations in Section 606 (3) of the Act on Criminal Procedure had the same effect, because under these legal provisions, the number of reversals of first-instance decisions increased proportionally with time during the second-instance review of cases at both high courts and district courts in the second examined period.

With regard to the Curia's activities related to the uniform application of law, the jurisprudence-analyzing working group's report found that, prior to 1 January 2021, preparatory hearings could emerge only in a narrow cross-section of the Curia's judicial practice, because the acceptance of the confession in the absence of legal conditions could not serve as a basis for a review procedure. As a consequence, during this period, the Curia could primarily proceed when a sentencing rule was violated as specified in Section 565(2) of the Act on Criminal Procedure. In this context, the report highlighted the Curia's decisions No. Bt.688/2019/5 (BH 2020.64) and Bfv.1526/2021/11.

In the second examined period, in view of the amended law, the Curia was able to take action to ensure the uniform application of law in relation to the examination of the conditions for the acceptance of the confession. The report highlighted several decisions of theoretical importance in this regard [Bfv.I.639/2021/10 (BH 2022.121); Bt.II.1.399/2020 (BH 2021.160); and Bfv.I.1114/2021/8]

To sum up the analysis, the jurisprudence-analyzing working group concluded that regulations on preparatory hearings – which significantly promoted the timeliness of court proceedings and received new content from the legislator – required a change in judicial thinking, because before the Act on Criminal Procedure entered into force, the defendant's criminal liability could be established only after evidence taking at a court hearing in accordance with the general rules governing court proceedings. Since 1 June 2018, courts have had the power to issue a final decision that establishes guilt based on the acceptance of the defendant's confession as early as the date of the preparatory hearing. This provision of the Act on Criminal Procedure had been in force for three years during the period covered by the jurisprudence analysis, and throughout this time, not only did the courts' judicial practice develop, but it also showed a largely coherent picture.