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ELECTRONIC EVIDENCE IN HUNGARY: A GENERAL OVERVIEW

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Types of evidence in Hungarian procedural acts

The rules used in legal proceedings concerning disputes in connection with the property or personal rights of natural and other persons are contained in Law no. III of 1952 on civil procedure (CPC). The rules that apply to criminal procedure are contained in Act XIX of 1998 on Criminal Procedure (Criminal Procedure Act), and the rules that apply to administrative procedures are contained in Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (Administrative Procedure Act).

System, principles and forms of evidence

The Hungarian Civil Code (CC) contains the minimal formal requirements for simple written statements, but does not provide for forms of evidence. The CPC determines the various forms of evidence, including, amongst others, the notion of official deeds and private deeds of full probative value. The Act on Electronic Signature (ESA), as amended, introduced the notion of electronic deeds in 2001, and regulates three types of electronically signed electronic deeds: the simple, the advanced, and the qualified electronic signature. The notion of electronic official deeds (for example, the electronic decision of the Company Registration Court) was first applied by the Act on Online Company Registration and on Conversion of Company Deeds into Electronic Format, and was simultaneously introduced in the CPC in 2003. As a result of this amendment, the decisions of the Court of Registration that are provided electronically have the same probative value as decisions issued in written paper form. As of July 2004, the Act on Notaries Public introduced the notion of electronic official deeds that can be issued by notaries public. Since 1 June 2010, business entities may only initiate electronic payment order procedures, details of which are discussed below under 'payment order proceedings'.

Both the Criminal Procedure Act and the Administrative Procedure Act allow the use of electronic evidence, and the latter also provides, in a separate chapter, for the entire procedure to be carried out in electronic format (specified types of cases can be administered in electronic format). The Act on the electronic service of official deeds and on the electronic certificate of receipt (Act LII of 2009) has made it possible to provide for mandatory electronic communication in all types of procedures. Various statutes and regulations if issued upon authorization granted in statutes, may provide for the introduction of mandatory electronic communication in various proceedings. Finally, at the level of ministerial regulation, the equivalent electronic copy made from paper deeds[1] and European Electronic Data Interchange (EDI), a European standard of electronic data storage, processing and forwarding,[2] are to be used in the event of the issuance of electronic invoices and electronic communication. The use of EDI is provided for in the Hungarian VAT regulations, namely in Act CXXVII of 2007 (the VAT Act) as well as in Regulation of the Ministry of Finance No.46/2007 on certain rules regarding electronic invoices).

System, principles and forms of evidence in civil procedure

System and principles

By virtue of section 3(3) of the CPC, unless otherwise regulated by law, it is incumbent upon the parties to provide the evidence required to resolve a legal dispute. It is for the parties to submit a motion for evidence and to provide evidence, unless otherwise regulated by a provision of a law, and the party with the duty will face the legal consequences of a belated motion for

1 *Regulation of the Minister of Informatics and Telecommunication No 13/2005 (X. 27.) IHM on the rules of making of electronic copies from paper documents.*

2 *94/820/EC: Commission Recommendation of 19 October 1994 relating to the legal aspects of electronic data interchange (Text with EEA relevance) OJ L 338, 28/12/1994 P. 0098 – 0117.*

evidence and failing to provide evidence. The court is required, for the purposes of resolving a legal dispute, to inform the parties before the trial of the facts to be proven, the burden of proof and the consequences of the failure of producing evidence. However, the court is not bound by the motion for evidence and its order on the provision of evidence.[3] The court will omit to order the collection of evidence or to conduct the collection of evidence that might already have been ordered if it is not necessary from the point of view of the resolution of the legal dispute. Where a party submits a motion to collect evidence that is delayed for any reason attributable to him, or in a manner not consistent with the conduct of the case in good faith, the court will omit the collection of evidence unless otherwise provided by law. The court may only order the collection of evidence if it is permitted to do so by law.[4] The judge will order the collection of evidence, in particular electronic evidence, if a legal provision provides for the collection of such of evidence or no other evidence exists under the applicable substantive law. When making a decision, the court is not bound by the decision of other authorities or a disciplinary resolution.[5]

The party with the burden of proof is required to adduce evidence of sufficient probative force to convince the adjudicator.[6] The forms of evidence include witness statements, expert opinions, survey, deeds and other tangible evidence.[7] Unless otherwise provided by law, the court is not bound by any formal rules, the methods used to collect evidence or the application of different forms of evidence in civil procedure.[8] The court may freely use the statements of the parties as well as any other form of evidence that allow for the establishment of the facts of the case. These provisions do not prejudice statutory presumptions, including provisions pursuant to which certain circumstances shall be considered true unless there is evidence to the contrary. The court establishes the facts on the basis of a comparison of the statements of the parties and the evidence submitted, it evaluates the evidence provided in its entirety and adjudicates upon the evidence in accordance with its conviction.[9]

Forms of evidence

If a special competence is required in the procedure in order to establish or adjudicate upon a significant fact or other circumstance that the court does not possess, the court may order an expert to provide an opinion.[10] In general, only one expert is used. Additional experts may be called upon where the factual issues fall in several areas of expertise. Under Act XLVII of 2005 on court experts, any natural person, or duly registered partnership, company, institution set up for this purpose, specialized expert bodies authorized by statute and, exceptionally, persons appointed in individual cases, may provide expert opinion to courts. Anybody from among the listed legal subjects (except for the entities set up by special statutes) can apply for entry to the court experts' register retained by the ministry responsible for the administration of justice. The preconditions for entry and the areas of expertise that may be applied are listed in the act, and Exhibit 6 of the implementation regulation[11] lists the entry requirements for inclusion in the experts' roster in the field of informatics and telecommunication (qualification, period of practice and such like). An expert listed in this roster may qualify as a digital evidence specialist.

The court can order a survey to be conducted if the direct observation or examination of a person, tangible object, fact or scene is required to establish or disclose a material circumstance,[12] and a person in possession of an item of evidence can be required to present or deliver up the evidence, or enable it to be viewed, subject to reimbursement of their costs and the payment of damages incurred by any visit to their premises.

Authenticity

Deeds

A distinction is made between the term 'electronic deed' as used in the context of the ESA and that used in the CPC. The CPS expressly mentions the term 'electronic deed' (a deed fixed or copied in electronic format, for which see the definition below), while the ESA does not. The ESA uses the term 'electronic document' without making the distinction between documents without legally relevant content and documents that qualify as representations with a legal effect. The broader term of the ESA covers all data fixed on electronic carriers, while the narrower term used in the CPC covers 'forms of evidence including representations about the existence of facts, the assumption of obligations or the exercise of rights, the acceptance of such representations or the recognition of such representations as compulsory'. All

3 Section 3(4) of the CPC.
4 Section 164(2) of the CPC.
5 Section 4(1) of the CPC.
6 Section 164(1) of the CPC.
7 Section 166(1) of the CPC.
8 Section 3(5) of the CPC.
9 Section 206 of the CPC.
10 Section 177(1) of the CPC.
11 Regulation of the Ministry of Justice No. 9/2006. (II. 27.)
12 Section 188(1) of the CPC.

deeds are classified under Hungarian procedural law according to their probative value. There is a distinction made between official deeds and private deeds, and within the category of private deeds, a further distinction is made between private deeds of full probative value and simple private deeds.

Official deeds

A strong rebuttable presumption supports the probative value of official deeds. Until the successful proof of the contrary, an official deed is deemed authentic. However, the court may, if it finds it necessary, request the issuer of the deed to make a declaration with respect to the authenticity of the deed. Any papers or electronic deeds issued by a court, a public notary or other authority or administrative agency within their power, in a form consistent with the formal requirements as provided in separate legal regulations, are admitted as official deeds which fully prove the truth of the measure or decision included in the document, as well as the truth of the data, facts and declarations they assert, and the date and place of issuance of the document.[13] Deeds admitted as official deeds by any other act also have the same probative value.[14]

Section 195 of the CPC contains detailed rules in relation to official deeds. All paper copies made from official deeds by means of traditional reproduction methods (analogue devices) have the same probative value as an official deed. More precisely, any record (photograph, film, music record) made – usually by technical or chemical means – from an official deed, as well as a deed made from the original deed by way of any data carrier, has the same probative value as the original official deed, provided that the record or the deed made out of the data carrier was issued by the court, a public notary or other authority, administrative organ or any other organization under their supervision. The record or deed made by or under the supervision of the organ entitled to store the deed (such as archives), as well as the deed made by the organ entitled to make or to store the official deed on the basis of the data obtained from a record or data carrier, have the same probative value. However, the physical or digital nature of the data carrier is not specified in the CPC.

In addition, an electronic copy made from a paper or electronic official deed that was issued in the regular form by the person entitled to make the official deed within his or her regular activity, which bears a qualified electronic signature and – if the law so requires – a time stamp, has the same probative value as the original paper or electronic official deed. The electronic copy may be a paper document that has been scanned or a document in electronic format without being transferred to paper, such that the document is created in electronic format and remains in electronic format without being printed. The electronic copy made by the person entitled to make the official deed in accordance with procedural rules set forth in a special act and the electronic act which was declared to be an official deed by the law, have the same probative value as the original official deed.

Furthermore, a paper document made on an electronic official deed that was issued in the regular form by a person entitled to make the official deed within his or her sphere of regular activity prescribed by specific legislation, has the same probative value as the original paper or electronic authentic instrument.

A copy – including both paper and electronic acts – of a private deed issued in the form of an official deed by the person otherwise entitled to make an official deed within his or her regular activity, fully proves that its content is identical to that of the original deed. In the case of an electronic deed, the probative value can only be established if the person entitled to issue the official deed affixes a qualified electronic signature to the deed and – if the law so requires – with a time stamp, or if it prepares the deed in accordance with special procedural rules set forth in a special act, such as Act LVIII of 2001 on the Hungarian National Bank. Under the provisions of section 64, the books and the excerpts from the books of the Hungarian National Bank, if signed in accordance with the company registration, qualify as official deeds. The probative value of the copy made from a private deed in the form of an official deed is, with respect to the content of the private deed, identical to that of the original deed.

All provisions concerning official deeds also apply to foreign official deeds, provided that these are re-certified by the Hungarian foreign representative authority that has territorial jurisdiction at the place where the deed is issued. In the case of any other international agreements concluded by the Republic of Hungary (such as the Hague Conference Convention of 5 October 1961 Abolishing the Requirement of Legislation for Foreign Public Documents or other bilateral

13 Section 195 (1) of the CPC.

14 For example, the Act on the Hungarian National Bank qualifies the books and duly signed extracts of the National Bank's bookkeeping as official deeds.

conventions on the avoidance of re-certification), re-certification is not required. In those countries where there is no Hungarian foreign representative authority and no other country represents Hungarian interests, re-certification cannot take place. The execution of foreign official deeds are regulated by EC Regulations 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[15] and 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.[16]

Private deeds

Section 196 of the CPC provides for private deeds with full probative value and simple private deeds. Such deeds contain numerous sub-types. Until the contrary is proven, it is presumed that the person signing a private deed made, accepted, or recognized as binding, and is bound by the statement contained in the document, provided that one of the following conditions are met:[17]

a. the issuer has made and signed the deed himself;

b. two witnesses certify on the deed with their signature that the issuer has signed the deed which he has not made himself, or that he has recognized his signature as his personal signature before the witnesses; the address of the witnesses must also be included on the deed;

c. the signature or initial of the issuer on the deed is certified by a court or public notary;

d. the deed was issued within the regular scope of activity of the business entity and was duly signed;

e. an attorney-at-law signs the deed made to confirm that the issuer has signed the deed made by someone else in front of him or her, or that the issuer recognizes the signature as his or her personal signature, or the content of a digital deed signed by its issuer with a qualified electronic signature is identical to the content of the digital deed made by the attorney-at-law;

f. the issuer has affixed a qualified electronic signature to the electronic deed.[18]

Records made from a deed issued or stored by a business entity, as well as any deeds made by way of a data carrier, are presumed to prove that their content is identical to the original deed, provided that the business entity which made the record, or issued or stored the deed, has duly certified that the records or deeds are identical. In addition, electronic deeds prepared from a deed issued or stored by a business entity are presumed to prove that their content is identical to the content of the original deed if the maker of the electronic deed has affixed a qualified electronic signature to it and – if so required by the law – a time stamp, or has prepared the deed in accordance with a procedure specified in a particular act.[19] The probative value of a deed made from a deed issued or stored by a business entity is, with respect to the content of the deed, equal to that of the original deed, and in case of a deed made from an official deed, its probative value is equal to that of a private deed with full probative value.

There are also rules for the benefit of illiterate and foreign persons. If the issuer of the deed cannot read or does not understand the language in which the deed was made, the deed only has full probative value if it is apparent from the deed itself that its content was explained to the issuer by one of the witnesses or the certifying person. The foregoing does not prejudice the existence and applicability of legislation which otherwise regulate the probative value of certain private deeds, or which require a deed issued in a particular form for the purpose of documentary proof in certain cases.

Any deed that neither qualifies as an official deed, nor as a private deed with full probative value, is called a simple private deed. Such simple private deeds may, for instance, be deeds produced by a word processor and solely signed by its issuer, or hand written letters, but

15 *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1 (as amended by Commission Regulation (EC) No 1496/2002 of 21 August 2002 amending Annex I (the rules of jurisdiction referred to in Article 3(2) and Article 4(2)) and Annex II (the list of competent courts and authorities) to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, OJ L 225, 22.8.2002, p. 13; Corrigendum to Commission Regulation (EC) No 1937/2004 of 9 November 2004 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 334, 10.11.2004), OJ L 50, 23.2.2005, p. 20 and Commission Regulation (EC) No 2245/2004 of 27 December 2004 amending Annexes I, II, III and IV to Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 381, 28.12.2004, p. 10.*

16 *Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, 23.12.2003, p. 1.*

17 *Section 196 (1) of the CPC.*

18 *Section 196(1) of the CPC.*

19 *Section 196 (2) of the CPC.*

not bearing any signature or sign (although the person who wrote the instrument must be capable of being identified), or even deeds issued by the authorities that cannot be considered as official deeds due to formal errors or lack of competence. The probative value of simple private deeds is not regulated by law, which means the court assesses such evidence by evaluating all the data collected at the hearings of the parties and from the evidence made available at trial. It is not necessary to prove the authenticity of a private deed unless the opposing party challenges it, or if the court finds it necessary to prove its authenticity. If the signature on a private deed is not in doubt or if it is proven, or nonetheless nothing else can be concluded from the result of an examination of the electronic signature (being at the minimum an advanced signature), the text preceding the signature – the signed data in case of an electronic deed – is deemed not to be false unless it is proven to the contrary, although any irregularities or deficiencies in the deed itself are capable of rebutting this presumption. In case of doubt, the authenticity of the signature or the text can be established by comparing it with another example of writing, where the authenticity is not in doubt. In such circumstances, a court may order a writing test, which can, if necessary, be examined by a graphologist.[20]

Where the identity of the signatory or the authenticity of an electronic deed with an electronic signature (being at minimum of a advanced signature) is doubtful, a court may, to begin with, request the certification-service provider issuing the certificate related to the electronic signature to make a statement in relation to the matters it is competent to provide evidence upon. In the event there is a doubt concerning the data certified by the time stamp attached to the electronic deed, a court may request the service provider responsible for the application of the time stamp to make a statement (this provision is also referred to in 1.3. on the ESA).[21] The court is required to reach a decision on the authenticity of the deed based upon the evidence. The court may impose a fine on the party or representative who denies the authenticity of his signature or the signature of the party that he represents, despite his better knowledge or because of gross negligence.[22]

Payment order proceedings

Payment order proceedings are simplified civil proceedings for enforcing monetary claims. Although the procedure itself has long been a part of Hungarian civil procedure law, a significant reform was executed in 2009 with effect from 1 June 2010 (Act L (50) of 2009 on the Order for Payment Procedure). An overdue pecuniary claim may only be enforced – on some conditions to be fulfilled – by a petition to issue a payment order, if the amount of the claim does not exceed one million forints (about euro 3,600). The reason behind the introduction of electronic payment order proceedings is the simplification, acceleration and the increase of cost-efficiency of the enforcement of pecuniary claims.

This reform can be summarized as follows: (i) the transfer of the competence from the courts to notaries public for issuing payment orders; (ii) the mandatory use of electronic communication for legal persons and legal counsels, and (iii) the formal examination of the claim without respect to the merits. As a result, no evidence is collected and evaluated in the payment order proceedings save for the formal evaluation of the mandatory deeds attached to the payment order form that is to be filled in by the petitioner. The party ordered to perform the payment obligation can request that a judge review the payment order. Where a judge is requested to review the payment order, the nature of the proceedings alters, and become an ordinary action in civil proceedings under the rules of the CPC.

System, principles and forms of evidence in criminal procedure

System and principles

The most important basic principles in criminal matters are the presumption of innocence and the right of the defendant not to incriminate him or herself. As a result, the Criminal Procedure Act provides that everyone charged with a criminal offence shall be presumed innocent until proven guilty in accordance with the resolution of a court beyond which no further appeal lies. Furthermore, no one is obliged to make a confession or to provide evidence against him or herself. In criminal proceedings, it is a requirement that the parties to the proceedings must endeavor to thoroughly and completely clarify the facts of the case. However, in the absence of such a request from the public prosecutor, the court does not acquire and examine evidence pertaining to the guilt of the accused. In addition, it is not necessary to provide evidence of well-known facts or facts of which the court or the

20 Section 197 (1), (2), (3) of the CPC.
21 Section 197 (4) of the CPC
22 Section 197 (5) of the CPC

public prosecutor has official knowledge. The Criminal Procedure Act is based on the concept of free evidence. Thus, in criminal proceedings, any kind of evidence and evidence procedure set forth in the Act may be used and applied. The evidentiary value of the forms of evidence are not determined in advance in the Act, but the court and the public prosecutor are required to evaluate the evidence individually and in their overall meaning case by case.

It is important to note that evidence obtained illegally, improperly or by restricting the rights of the parties to the proceedings by the court or the public prosecutor should not be admitted as evidence. In general, the investigating authority and the public prosecutor bear the burden of proof, and where a fact is in doubt, it cannot be used against the accused.

Forms of evidence

Under the Criminal Procedure Act, the forms of evidence include the testimony of witnesses and of the accused, expert opinion, physical evidence and deeds. The court, the public prosecutor or the investigating authority may authorize the witness to give their testimony by electronic means, although the testimony must be signed with the qualified electronic signature of the witness. Experts must be appointed by the investigating authority, the public prosecutor or the court, if facts can only be established or interpreted by a person with relevant expertise in the subject matter. The expert is required to carry out any examination by means of tools, methods and procedures that are up-to-date, reflect appropriate professional knowledge and the current state of science in the subject. The expert may also use the use of computer-generated animations and simulations. The evidentiary foundation requirements necessary for such simulations or animations are not defined in law. The decision to admit computer-generated animations and simulations remains within the discretion of the responsible authority.

Physical evidence includes all objects that are suitable for providing evidence of the fact to be proven, especially objects subject to the criminal act and evidence of the criminal acts, which came into existence through the criminal act or which were used to commit the criminal act. Physical evidence includes documents, and the Criminal Procedure Act also provides that documents include any object that records data.[23] Deeds are forms of evidence that have been prepared to provide evidence of the truth of a fact or data, the occurrence of an event or the making of a declaration, and which are suitable for this purpose. Deeds also include any object that records data and satisfies the above-mentioned conditions.

The procedures set out in the Criminal Procedure Act for the purpose of gathering evidence include the survey (the inspection of a person, an object or a location, or the observation of an object or a location), holding a hearing at the scene, undertaking experiments (such as whether an event or phenomenon could have occurred at a certain place and time under certain circumstances), an exhibition for the purpose of recognition (to identify a certain person or object), confrontation and the parallel hearing of experts (such as the hearing of one or more experts on the same topic). During the course of a survey, a sound and video recording may be prepared in respect of the person, object or place that is the subject of the survey. When conducting an exhibition for the purposes of identification, the person or object is exhibited by showing a photograph or a picture recorded on a data recorder. There is a requirement to record the procedure adopted when conducting a survey, undertaking an experiment and the identification of a person or object.

Common rules under the Regulations on Judicial Administration

The provisions of section 2(21) of Decree of the Ministry of Justice 14/2002 (VIII.1.) on the regulations of the judicial administration provide that the file of a case incorporates both paper and electronic deeds pertaining to the same case. A duplicate copy may be accepted where the copy is attested by the person authorized to do so, which includes a clause establishing the authenticity of the duplicate, and it includes the signature of the person so attesting, together with the seal of the court, or in the case of an electronic deed, such person has affixed a qualified electronic signature and a time stamp on the deed.

Where a person has the right to inspect the file of a case, they may request certified or non-certified copies of the deeds of the case, unless law excludes the provision of copies of the deed.[24] If the deed of a case is only available in electronic format, the copy will be prepared on the basis of the printed version of the electronic deed. Where a paper copy of a resolution of the court created in electronic format is requested, the copy must include the date of the time stamp affixed to the electronic deed, together with details of the person

23 Section 115 of the Criminal Procedure Act.
24 Section 13(1) of the Decree of the Ministry of Justice 14/2002 (VIII.1.).

that signed the electronic deed with an electronic signature and the type of electronic signature used. These provisions apply to copies prepared of picture and sound recordings and recordings containing both picture and sound.

System, principles and forms of evidence in Administrative Procedure

System and principles

The provisions of the Administrative Procedure Act apply to the administrative actions of administrative authorities falling within the scope of the act. Administrative action includes: all actions where the administrative authority defines any right or obligation concerning a client; verifies any data, fact or entitlement; maintains official records and registers or conducts a regulatory inspection, and procedures for admission into and removal from the register to engage in activities, where engaging in a specific profession is rendered subject to membership of a public body or similar organization, not including disciplinary and ethics proceedings.

Proceedings of administrative authorities must normally be concluded within 22 business days. The authority is required to ascertain the relevant facts of the case in the process of making a decision, and if the information available is not sufficient, the authority is required to initiate further investigations on its own motion or upon request. Any facts which are officially known to the authority and which are of common knowledge do not need to be the subject of evidence.

On the basis of the authorization provided by the Administrative Procedure Act, Act LX of 2009 on the Electronic Public Services (Electronic Public Services Act) establishes the general framework of the electronic administration. As a general rule, administrative authorities must ensure that they can liaise with clients by electronic means and must additionally make their services available by electronic means.[25] Thus administrative authorities are required to make electronic communication available for clients. If a client files its request by electronic means or so requires, the administrative authority must liaise with the client by electronic means.[26] However, only acts adopted by the Hungarian Parliament may oblige clients to liaise with administrative authorities by electronic means.[27] The Electronic Public Services Act sets forth the general rules on identifying clients, which is a pre-condition to obtain access to the system of electronic public services if by the nature of the service provided, the client needs to be identified.[28]

According to the Administrative Procedure Act, electronic communication is deemed to be a written communication.[29] The date of submission of electronic documents is the date when dispatched; however, the procedural deadline commences on the following business day.[30]

As a general rule, if the client does not confirm the receipt of an electronic communication within five business days, the administrative authority is then required to communicate with the client in another way in writing.[31] Similarly, should the authority deliver its decision by electronic means, and the client does not confirm the receipt within five business days, the authority must deliver the decision in another way in writing. In this case, the date of the second delivery is deemed as the date of delivery of the decision.[32]

The list set out below indicates the main judicial and administrative proceedings in which the procedure or a part of the procedure may be conducted by electronic means:

1. Administrative proceedings: various taxation matters; registration of births, marriages and deaths as of 1 January 2011; public procurement; procedures before the Hungarian Patent Office.

2. Judicial proceedings: company registration procedure (available by electronic means only); payment order procedure (available by electronic means only); electronic auction of movables and real properties in the framework of the judicial enforcement system.

Forms of evidence

Evidence includes the client's statement, documents, testimony, a memorandum of inspection, an expert opinion, a memorandum drawn up during a regulatory inspection, and physical evidence. Documents include all objects that are, in general, designed to record data using some technical or chemical process, such as a photograph, video or sound recording, optical disc,

25 *Section 6 of the Electronic Public Services Act.*
26 *Section 28/B (6) of the Administrative Procedure Act.*
27 *Sections 8 and 28/B (4) of the Administrative Procedure Act.*
28 *Sections 12-16 of the Electronic Public Services Act.*
29 *Section 28/B (1) of the Administrative Procedure Act.*
30 *Section 65 (5) of the Administrative Procedure Act.*
31 *Section 28/B (7) of the Administrative Procedure Act.*
32 *Section 78 (7) of the Administrative Procedure Act.*

magnetic disc or tape, electronic document. The authority may select the evidence it deems admissible at its own discretion. The authority may be required by law to base its resolution solely on certain specific forms of evidence. Furthermore, an act or government decree may prescribe the use of certain specific forms of evidence as mandatory, and may prescribe that certain specific bodies have to be consulted. The authority is required to assess each item of evidence both separately and on the aggregate, and is required to establish the facts according to its conviction based on this assessment. An authority may seize any item of physical evidence and document that may be admissible as evidence for ascertaining the relevant facts of the case by way of a ruling, and is required to document the procedure properly. As a general rule, it is necessary to record, by way of a memorandum or sound recording, with or without a video recording, the interview of the client, a witness or an expert; of a survey or site inspection, and of the hearing and any petitions that presented orally.

Electronic signatures

The ESA[33] implements EC Directive no. 1999/93[34] and sets out the law relating to electronic signatures and the admissibility of data in electronic format. The Act provides that an electronic signature or deed, including its use as evidence, cannot be denied legal effectiveness, and their suitability for the purposes of a legal statement and their legal force cannot be disputed solely on the grounds that the signature or deed only exists in electronic format. A deed prepared in connection with the legal relationships relating to the law of succession and family law is not capable of being prepared exclusively electronically.[35] Furthermore, in court proceedings, in addition to their use as evidence, procedural actions may be implemented exclusively by electronic deeds executed with electronic signatures: that is by setting aside paper documents only if the law expressly provides. In such cases, if the law prescribes the written form of deeds, this condition can be met when using electronic deeds executed with electronic signatures, being at a minimum, an advanced signature.

The ESA distinguishes three types of electronic signature:

> 'Electronic signature' means data in electronic form which are attached to or logically associated with other electronic data or which serve as a method of authentication (for example, a scanned copy of a manuscript signature);
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> 'Advanced electronic signature' means an electronic signature that meets the following requirements:
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> i. it is capable of identifying the signatory;
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> ii. it is uniquely linked to the signatory;
>
> iii. it is created using means that the signatory can maintain under his sole control; and
>
> iv. it is linked to the deed to which it relates in such a manner that any change to the data of the deed made subsequent to the execution of the signature is detectable;
>
> 'Qualified electronic signature' means an advanced electronic signature that has been created by the signatory with a secure-signature-creating device and is attested by a qualified certificate.

Since an electronic signature (such as a scanned signature, for instance) does not necessarily allow for the unambiguous identification of its issuer, the electronic deed bearing an electronic signature is qualified by the CPC as a simple private deed, the probative value of which is established by the court by free assessment, as described above. If the written form of deed is prescribed by law for any legal relationships other than those related to the law of succession and family law, electronic deeds executed with electronic signatures are sufficient to satisfy these criteria if bearing an advanced electronic signature, but these deeds are also only admitted as simple private deeds. Only an electronic act bearing a qualified electronic signature is considered as a private deed with full probative value. However, the print-out of an electronic deed executed by an advanced or qualified electronic signature is not admissible as evidence in the same way as the same deed made in electronic format, although such evidence can be assessed in accordance with the prevailing system of free collection and assessment of evidence.

Act XI of 1998 on Attorneys provides that by countersigning a deed with a qualified electronic signature, an attorney-at-law confirms that the content of an electronic deed upon which the issuer's qualified

33 *Act XXXV of 2001 as amended.*

34 *Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.01.2000, p.12.*

35 *Section 3(2) of the ESA.*

electronic signature is affixed is in accordance with the electronic deed prepared by the attorney.[36] As in the case of paper deeds, there is a presumption according to which if nothing else can be concluded from the result of the examination of an electronic signature (being at minimum of an advanced type), the text preceding the signature – the signed data in case of an official deed – shall be deemed as authentic until the contrary is proven, unless any irregularities or deficiencies in the deed rebut this presumption. When an attorney converts the documents relating to the foundation of a company or amendment to the company's data into electronic format, the attorney must affix his qualified electronic signature on such document, thereby verifying that the document is identical to the original printed version. A time stamp is affixed only on the entire electronic dossier. The attorney is required to retain the original (or a certified copy) of any document that has been converted into electronic format. Such documents shall be deposited into the attorney archives in the event the bar membership of the attorney is terminated.[37] When countersigning a document, in the course of verification of identity[38] of the parties, the attorney may consult – with the written consent of the respective party specific on-line official databases (such as personal data and address records, register of drivers' licenses, the authority maintaining the register of travel documents) in order to verify the data on the identity and home address and to confirm the validity of the identification document of the party making the legal statement or of the representative making a legal statement on behalf of the party. The attorney may use the data and information obtained in the course of the verification procedure only in connection with the document to which it pertains and with his countersigning such document, and may transmit such data and information only to the court of law, public prosecutor, authority competent in the criminal case in question and to the body of the bar association conducting disciplinary proceedings. The attorney may retain the print-outs of the data obtained in the verification procedure, must keep them separated from other documents, and is required to destroy them after five years.

It might useful to note that an electronic signature is also suitable for signing any deed, not only deeds in writing but also deeds in digital format, such as a digital sound record, a picture or software. This interpretation follows from the broad definition of electronic document and the term of electronic signature in the ESA.[39]

Relationship between the ESA and the provisions of the CC

With respect to the validity and binding force of an offer to conclude a contract, the CC[40] distinguishes between an offer made in person or by telephone, and an offer made remotely by other means than a telephone. A contract comes into existence between persons who are not present when the offeror receives the statement of acceptance. A contract statement, if made orally or verbally, becomes effective immediately when it becomes known to the other party. If the law provides for it or if the parties stipulate the contract is to be in written form, the material content of the contract must be put in writing. The CC itself does not require the written statement to be signed. The Supreme Court has issued a general guidance[41] dealing with the requirements of validity of agreements to transfer property rights in real estate. A manuscript signature is required to transfer of property rights in real estate, and the members of the court also determined that a manuscript signature is required in all contracts where the law provides or if the parties stipulate the contract is to be in written form.

An amendment to Law-Decree no. XI of 1960 on the entry into force and execution of the CC in 2004[42] provides that if the law requires that a contract must be concluded in a written form in order to be valid, then, unless otherwise provided by law, the following are also deemed to be a contract concluded in a written form: correspondence by letter; correspondence by telegram; the transmission of messages by way of teleprinter and facsimile transmission; and finally any agreement concluded by the exchange of declarations made through any permanent device defined in any special act,[43] such as a deed signed by an advanced electronic signature. If the agreement of the parties provides for a contract to be concluded in a written form, the parties may also agree to one of the types of written form set out above. Case BDT 2001/496,[44] decided before the

36 Section 27(1)b of the Act XI of 1998 on Attorneys.
37 Section 27/A of the Act XI of 1998 on Attorneys.
38 Section 27/B(1) of the Act XI of 1998 on Attorneys.
39 Section 2.2. of the official electronic explanation attached to the ESA, published in Complex Jogtár +, (Complex Publishing, member of the Kluwer Group).
40 Act IV of 1959.
41 XXV. PED (Civil Law General Guideline).
42 Subsection 38(2) of Law-decree no. 11 of 1960 as amended, effective in 2004.
43 This special act is the ESA. Please see the official electronic explanation attached to section 38 (2) of the implementation decree of the CC.
44 BDT stands for the abbreviated title of an edited monthly publication of the final decisions of the High Courts of Appeals (five such appellate courts are parts of the court system) and of county courts (including the Metropolitan Court of Budapest); the full title in English is 'The Compilation of Court Decisions', although the title is confusing, because a number of important judgments are not included in the compilation.

entry into force of the ESA, relates to the capacity of deeds that are not signed by the parties to generate legal effects. The reasoning in this case sets forth the principle that a signature is not always an essential element of the written form of deeds. The decision expressly refers to section 38(2) of Law-Decree no. XI of 1960 on the entry into force and execution of the CC, which was in effect before the enactment of the Electronic Signatures Act, and provided that if a statute orders a contract to be valid only if it is drawn up in writing, in the absence of an alternate provision of law, an agreement concluded via postal mail, telegram and messages sent by telex are considered as contracts drawn up in writing (facsimile transmissions and advanced electronic signatures were not on the list). In the view of the members of the court, this rule also applies to computer facsimiles. Computer facsimiles are prepared electronically and are sent via facsimile to the addressee, thus appearing in writing only when received by the addressee. Such deeds accurately reflect the thoughts of the person producing them, yet they do not contain the signature of the sender. The case concludes that computer facsimiles are capable, just as telegrams and telexes, of generating legal effects.

In another decision of the Supreme Court in 2006,[45] it was determined that an unsigned electronic mail is not capable of generating legal effects. In its reasoning, the Supreme Court referred to the requirements of the written form in general (not to the amendments to the Law-decree on the entry into force and execution of the CC in 2004), and concluded that only either a manuscript signature or an advanced electronic signature are sufficient to qualify as a written instrument. Since the e-mail in question was not furnished with an advanced electronic signature, it did not qualify as a written instrument. The rationale for the decision has been reinforced by a decision of the Győr Court of Appeal.[46] Representations communicated in e-mail correspondence were held not to meet the requirements of written form. The requirements are only met if the representations are fixed in an electronic document with at least an advanced electronic signature.

The CC is currently being revised by a Codification Committee. Although the new CC was adopted in 2009,[47] it never entered into force.[48] The new Civil Code provided a contemporary, abstract solution to the problem of electronic acts as described below.[49] It is possible that a similar solution will be proposed in the prospective new CC, which is expected to be submitted to the Parliament by the end of 2011. The new CC included abstract 'technology-neutral' rules concerning the definition of declarations made between those present and declarations made remotely: it avoided the exhaustive enumeration of what is deemed as a representation made by and to those present, but admitted as such any representation of which the addressee becomes aware simultaneously.[50] This definition includes both the offer made orally or by telephone and real-time internet communication (for instance, on-line chatting). The notion of the absent person was not defined, which means that any offer that is not made between those present is deemed to be an offer made between absent persons.

Where the law or the parties so require, representations must be made in a written form. According to the main rule, a contract is deemed as written if the parties sign their representations. A representation shall also be considered as written if the representation was disclosed in any form of communication that is capable of being recorded and stored as information, and such information can be retrieved in an unaltered and readable form, identifying the person who has made it. With respect to representation made by way of electronic signals that are not recognized as writing, their recognition for legal purposes is conditional upon the possibility of establishing the identity of the person conveying the subsequent communication.

Should any of the parties be unable to write, the contract will only be valid if made in the form of an official deed (including an electronic act corresponding to an official deed). The performance of the contract cures any invalidity due to the lack of written form, unless the required form is an official deed, a private deed to be countersigned by an attorney of law (in-house counsel), or an electronic document with at least an advanced electronic signature attached, or the contract is concluded to transfer the property rights in real estate.

45 *BH (Court Decisions) 2006/324. For a translation of this decision into English, see pp 235-237.*

46 *Published in BDT 2008/3/46. (BDT2008. 1765. is the electronic identity number of the case in the legal database 'Complex'. The Győr Court of Appeal is the second instance court to hear cases that are in the first instance tried at the competent county court.*

47 *Act CXX of 2009 on the new Civil Code.*

48 *The new Government that took office after the 2010 elections decided for the recodification (Government Regulation No.1129/2010.VI. 0. on the codification of the new Civil Code) and an act was adopted by the Parliament on the non entry into force of the new CC (Act LCCIII. of 2010.).*

49 *Act CXX of 2009 5: 37.§ (5), 5:58.§. 5:75.§ (3).*

50 *CC 5: 37.§ (3), (4).*

Civil proceedings

Pre-trial

Preliminary collection and preservation of evidence

A court may, before the commencement of or during litigation,[51] order the preliminary collection of evidence upon the request of an interested party, if it appears likely that such collection of evidence during the proceedings or at a later time might not be successful or would cause considerable difficulties; it can be substantiated that such collection of evidence would facilitate the conclusion of the trial within a reasonable amount of time; the party is required to provide a statutory reason for failing to perform their obligations, or separate legislation allows for such collection of evidence to take place.

Either party may use evidence obtained during the preliminary fact finding procedure during the trial. Before a court will permit a preliminary fact finding, the reasons to issue such an order must be substantiated by the party making the application and must convince the court that there is sufficient justification for the fact finding to take place in the interests of justice. The court will decide on the preliminary fact finding after hearing submissions from the opposing party unless the opposing party is not known. In urgent cases, however, the court may render its decision without hearing from the opposing party. If the court reaches its decision without having heard from the opposing party, the opposing party must be notified of the decision in the event preliminary fact finding is ordered.[52] With respect to Intellectual Property rights, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights has been implemented into Hungarian law.[53] In accordance with special rules relating to intellectual property, preliminary fact finding may be carried out even before litigation has begun if the rights holder has already substantiated the infringement or threat of infringement to a reasonable extent.

Preliminary fact finding may be ordered without the other party having been heard, ex parte, where any delay is likely to cause irreparable harm or if there is a risk of evidence being destroyed. These circumstances will be treated under section 209(1) of the CPC as a case of urgency. Where any decision is adopted without the other party having been heard, the other party must be given notice at the time the decision is executed. Upon being notified of the decision, the party affected may request to be heard and may request that the decision ordering the preliminary evidence be modified or revoked. The court may require the applicant for such an order to provide a sum in the form of a security in connection with the presentation of preliminary evidence. This security is required to cover the possibility of harm occurring if the applicant is wrong. If, for example, the evidence can be found on a computer, it can be seized in the framework of the execution of the court decision on preliminary collection of evidence, or the party possessing the computer can be compelled to provide the data stored on the computer by imposing a fine, if necessary, repeatedly.

Disclosure

Neither party is required to disclose documents to the other party. However, while there is no general duty to disclose documents, the court can order a party, at the request of the other party, to disclose certain documents, including documents that could be harmful to the disclosing party (notwithstanding the protection of trade secrets). In certain matters, some documents must be disclosed under the rules of civil law. These include documents proving an ownership or right of use, or when the requested documents were issued on behalf of the party making the request. Disclosure must also be ordered for documents establishing a legal relationship between the requesting and the opposing party. Either party may request documents from a computer. There are no special provisions regarding evidence to be retrieved from a computer. If evidence is deliberately destroyed once a party becomes aware of litigation, the general rules on evidence apply, which means that the lack of evidence will be adjudicated to the detriment of the party destroying such evidence, on condition that the intentional or grossly negligent destruction can be proven.

In litigation dealing with intellectual property, the burden of proof can change if the plaintiff has substantiated its statements to a reasonable extent. As a result, the opposing party can be ordered to present and provide for review the documents and other physical evidence in his possession, and to notify the

51 *Section 207 of the CPC.*
52 *Section 209(1) of the CPC.*
53 *Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004), OJ L 195, 2.6.2004, p. 16; Act XXXIII of 1995 on the Protection of Inventions by Patents (Section 104); Act XI of 1997 on the Protection of Trademarks and Geographical Indications (Section 95); Act LXXVI of 1999 on Copyright (Section 94).*

other party of and to present bank, financial or commercial information and documents in his possession. If the court orders the change of burden of proof, the opposing party must comply with the order within the deadline specified in the order. If the party does not comply with the order, he can be fined, which is subject to appeal, or the lack of evidence can be adjudicated to the detriment of the opposing party.

With the exception of draft resolutions and possible separate opinions, the parties to the litigation, the prosecutor[54] and other parties participating in the litigation, as well as their representatives, may inspect the documents forming the litigation and prepare copies. There are no special provisions regarding electronic evidence and exceptionally large volumes of paper. The copies are to be ordered by the party or his counsel, including the clerks and employees working in the chamber of the counsel, in the clerical office of the court. The copies are made by the public servants of the court. The expenses are borne by the requesting party.[55]

Members of the general public are not permitted to view the documents filed by the parties in the course of the proceedings, or the minutes of the hearing established by the court. Evidence is only available to the parties, the prosecutor[56] and other participants to the proceedings. After 1 July 2007, court decisions rendered by the Supreme Court and the High Courts of Appeal are published on the internet without indicating the names of the parties.[57] There is no concept of privilege in Hungarian law. However, attorneys do owe a duty of confidentiality, for which see below.

Trade secrets

The general rule is that court proceedings are conducted in public. However, a judge may decide that hearings will be held in private, either in whole or in part.[58] The judge can exclude publicity if it is deemed necessary to protect state, official, business or other secrets defined by the law, or public morality. In the case of trade secrets, the parties to the litigation, the prosecutor and other parties participating in the litigation, as well as the their representatives, may only exercise their right to inspect and make copies of the documents according to the order and regulations prescribed by the judge controlling the proceedings. In addition, the parties are required to provide written declarations containing their obligation to maintain such trade secrets in confidence.[59]

Confidentiality between the attorney and the client

The Act XI of 1998 on Attorneys at Law provides that an attorney is bound by a duty of confidentiality with regard to every fact and data obtained in the course of carrying out their professional duties. This obligation is independent of the existence of the contractual relationship with the client, and continues to exist even after the end of such a relationship. Confidentiality pertains to all of the documents prepared by the attorney and all other documents in their possession that contain any fact or data. An attorney may not disclose any document or fact pertaining to their client in the course of an official inquiry conducted at the attorney's office, but the attorney may go so far as to obstruct the proceedings of any authority acting in the matter. The client, its legal successor or its legal representative may release an attorney from the obligation to maintain confidentiality. Even if released, the attorney cannot be questioned as a witness about any fact or data of which they gained knowledge as defense counsel.[60]

While an attorney cannot disclose and cannot be obliged to disclose confidential information, the information itself or the document as such does not enjoy any specific protection. It follows that documents considered confidential under the Act on Attorneys could still be used in the course of legal proceedings if the documents were properly obtained by the other party. In-house attorneys are deemed employees of their company and, as such, do not enjoy any specific treatment. Therefore, in relation to confidentiality and the treatment of any documents they produce, there is no difference as compared to that of other employees. The correspondence and advice that is exchanged between client and lawyer is the subject of privilege. However, if the other party becomes aware of such documents, or they come into their possession, they can use such documents. If a document is not properly obtained by a party, it may be subject to a special procedure on infringement of trade or private secret, but trade secrets can be used in the procedure if the

54 *There are provisions in Hungarian law (section 9 of the CPC) under which the prosecutor may enforce civil law claims on behalf of the state or parties that are unable to defend their rights.*

55 *Section 119 and 119/A of the CPC, as well as Section 13 of Ministerial decree No.4/2002. (VIII. 1.) on the regulations of the court administration.*

56 *There are provisions in Hungarian law (section 9 of the CPC) under which the prosecutor may enforce civil law claims on behalf of the state or parties that are unable to defend their rights.*

57 *With some exceptions, such as where the defendant is named if the decision is rendered in a class action case.*

58 *Section 5(2) of the CPC.*

59 *Section 119 of the CPC.*

60 *Section 8 of the Act.*

Attorney, legal counsel and patent agent out-of-pocket and work fees must also be included in the calculation of litigation costs

privileged treatment is provided for by the court. The Competition Act contains specific provisions on legal privilege. Documents prepared for the purposes of, or while exercising the rights of defence of the parties, or prepared in the course, or for the purposes of communication between the parties and the lawyers they appointed may not be used in evidence, examined or seized in the course of the competition supervision proceedings. Furthermore, documents containing statements made in the course of such communication, provided in each of these cases that the character of the content is directly manifested by the document concerned, may also not be used in evidence, examined or seized in the course of the competition supervision proceedings. The owners of such documents may not be obliged in the course of inspections to present those documents, except where otherwise provided in the rules of the Competition Act. Parties may waive the application of this prohibition. Documents not in the possession of the party (or its legal representative) or of a lawyer authorized by the party may not be qualified as documents, and may be used in evidence unless the owner of the documents demonstrate that they left his possession in an illegal manner. The Competition Act provides detailed rules where the competition authority disputes the applicability of the legal privilege.[61] The European Court of Justice (ECJ) confirmed in the Akzo[62] ruling that communications between a company and its in-house lawyer are not protected by legal professional privilege in EU competition investigations. As a result, European Commission officials remain authorized to seize and use such communications in their investigation. There are no special provisions on documents that are supplied to the other side in electronic format, and similarly there are no rules and no case law to date on the use of metadata contained in the document, although it is suggested that metadata should share the qualification of documents.

Litigation costs

Disregarding the exceptions defined by law, the costs of litigation comprise all of the costs arising in connection with litigation conducted by the parties expeditiously and in good faith, howsoever caused (costs of preliminary enquiries and correspondence, procedural fees, witness and expert fees, litigation guardian and interpreter fees, proceedings at the premises and survey fees). Attorney, legal counsel and patent agent out-of-pocket and work fees must also be included in the calculation of litigation costs.[63] Costs in connection with the proceedings (witness, expert and interpreter fees; proceedings at the premises and survey costs) must be advanced by the party obtaining or adducing the evidence.[64] If the court considers it reasonable, it may, however, compel the party opposing the party submitting the evidence to advance all or part of the costs associated with the obtaining or submission of the evidence. The court rules on advanced payment of costs at the time the issue of costs are raised, although it may order a party to deposit a preliminarily sum sufficient to cover costs if it appears probable that costs will reach substantial levels or that other circumstances will warrant it. Where experts are appointed, the court must order that a sum sufficient to cover expert fees be deposited with the court.

With the exception of the cases set forth in the CPC (the defendant failed to provide a defence, partial success at litigation, litigation launched despite an agreement having been reached through mediation), the losing party bears the litigation costs of the successful party.[65] The court determines the amount of costs to be paid to the party that is successful by taking into account the information provided by the party and certified as necessary.[66] If the party fails to include or certify their costs, the court determines the costs based on other data available from the conduct of the litigation.[67] The fees of attorneys are regulated by the

61 *Section 65/B. of the Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition.*
62 *Case C-550/07 P, Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd v European Commission.*
63 *Section 75 of the CPC.*
64 *Section 164 of the CPC.*
65 *Section 78(1) of the CPC.*
66 *Section 79(1) of the CPC*
67 *Section 79 (1) of the CPC.*

Ministry of Justice Decree no. 32/2003 (VIII.22.). Fees that have been determined by agreement between the party and the attorney may be decreased by the court in cases where warranted, if the fees are not in proportion to the value of the subject matter of the litigation, or to the work actually carried out by the attorney. In the absence of an agreement regarding fees between the party and the attorney, or if requested by the party, the court will determine the fee to be paid in connection with the representation by taking into consideration the value of the subject matter of the litigation based on a regressive rate. There are no special rules on costs relating to electronic documents. As a result, each party will bear the costs to begin with, and then the costs will be allocated at the end of the litigation to the party that is not successful.

Criminal proceedings

As a general rule, the criminal procedure consists of two main phases: the pre-trial phase and the trial phase.

Pre-trial

Criminal proceedings begin with an investigation. The investigation is carried out by the investigating authority, which is supervised by the public prosecutor. In the course of the investigation, which, as a general rule, ought to be concluded within two months, the criminal act and the identity of the criminal offender should be clarified and the evidence obtained so that the public prosecutor can decide whether to raise a charge. It is important to note that a criminal act may be carried out by telephone or by electronic means.[68] A record of the investigation is maintained, which may be in electronic format.

The investigating authority is entitled to conduct a search of premises as well as to seize certain objects, including any electronic equipment, such as computer data carriers.[69] The investigating authority is also entitled to examine electronic data recorders in the course of a search, and to seize hardware if it is considered a form of evidence.[70] If data is to be the subject of interception and surveillance, the investigating authority seizes the equipment, retrieves the data and returns the equipment in due course. The investigating authority may also temporarily restrict the right of disposal of the holder of the data, the data controller and the data processor in respect of data recorded by a computer system at the latest for three months. This means that the data must be available to the authority that orders the restriction on the use and disposal of the data and the data should not be altered or deleted or disclosed illegally to third parties. After the expiry of three months, the authority ordering the restriction must decide on the seizure of data or the termination of the restriction.[71]

Based on judicial authorization, the public prosecutor and the investigating authority may secretly record data. The purpose of recording data in secret is to disclose the identity and whereabouts of the perpetrator or to arrest him or her and to seek evidence. The recording of data covertly involves observing and recording the events within a private apartment, disclosing and recording by technical means the content of letters, other postal consignments and the communication forwarded by another telecommunication channel as well as disclosing and using the data recorded on or transmitted over a computer system.[72] Covert recording may primarily be applied with respect to the accused. It can only be applied with regard to another person if the maintenance of a relationship with the accused or the establishment of such relationship can be established, or where the investigating authorities have to establish the identity of the suspect. Covert recording cannot be impeded on the grounds that it inevitably concerns a third person.[73] The covert recording of data is only admissible if the proceedings were initiated on the suspicion that a criminal act has occurred, or there is an attempt or preparation of a criminal act that is (i) punishable by a term of imprisonment of five years or more, or (ii) committed as business or in criminal conspiracy and is punishable by a term of imprisonment of three years or more, (iii) an act of human trafficking, crime with illegal pornographic material, living on earnings of prostitution, pandering, smuggling of human beings, abuse of authority, harboring a criminal, that is punishable by imprisonment up to the term of three years, or (iv) violation of classified data.[74]

Data collected covertly may be disclosed in the course of performing data collection to the court, the public prosecutor and the investigating authority. If the public

68 Under Section 10 (1) of Act IV of 1978 on the criminal code, a criminal act shall mean any conduct that is carried out intentionally or – if negligence also carries a punishment – by negligence that is potentially dangerous for society and that is punishable by law. Section 10 (2) provides that an act causing danger to society means any activity or passive negligence that violates or endangers the governmental, social or economic order of the Republic of Hungary or the person or rights of citizens. By virtue of Section 11, a criminal act is classified either as a felony or a misdemeanor. A felony is a criminal act perpetrated intentionally and is punishable by imprisonment of two or more years. Every other criminal act is a misdemeanor.

69 Section 149 (1) of the Criminal Procedure Code.
70 Section 151 (2) of the Criminal Procedure Code.
71 Section 158/A of the Criminal Procedure Code.
72 Section 200 (1) of the Criminal Procedure Code.
73 Section 202(1) of the Criminal Procedure Code.
74 Section 201(1) of the Criminal Procedure Code.

prosecutor uses the data as evidence in criminal proceedings, a deed prepared from the covert recording must be attached to the documents. A deed prepared of the performance of data collection that contains the description of the covertly collected data may be used as evidence.[75] The public prosecutor is required in most instances to apply in writing to the investigating judge to conduct covert surveillance, although there are methods that can be applied in the course of the investigation without judicial authorization.[76] It is essential to note that by allowing the collection of data in secret, the Criminal Procedure Code remains within the framework provided by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4.XI.1950) (Convention). Article 8 of the Convention reads as follows:

> '(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

Generally speaking, in addition to the prosecutor, the accused, his or her defender and the aggrieved party may be granted access to documents used in the criminal proceedings.[77] Copies of documents prepared over the course of criminal proceedings must be provided by the court, prosecutor or investigative authority conducting the proceedings in question within eight days of a request from a person participating in the criminal proceedings.[78] Those who may be present at an action of investigation set forth in the Criminal Procedure Code may immediately observe the minutes prepared of such action. The accused, the defender and the aggrieved party may observe the expert's opinion in the course of the investigation. They may observe other documents only where it does not violate the interests of the investigation. The accused and the defender are authorized to receive copies of the documents that they may observe.[79] Following the performance of the investigation, the public prosecutor, or if the public prosecutor does not provide otherwise, the investigating authority provides the taped documentation of the investigation to the accused and the defender at a venue designated for that purpose. It must be made possible for the accused and the defender to familiarize themselves with each document constituting the basis for a potential accusation, save for the documents with restricted access.[80] These provisions of the Criminal Procedure Code are consistent with the requirements of the Convention with respect to the minimum rights of accused persons, including their right to have adequate facilities to prepare their defense.[81] If the court finds that the order of pre-trial detention is not justified, it may order a prohibition to leave a certain territory.[82] The court may also order the police to check compliance with the prohibition by placing a monitoring device on the accused; however the approval of the accused is also necessary.[83]

Trial

As a general rule, the court decides on the merits of the case at trial. As a general rule the court summons all persons in writing, however it is entitled to do so via telephone, facsimile transmission or computer (presumably e-mail) as well.[84] The evidentiary procedure begins with the hearing of the accused. If the accused is not present, his or her testimony from the pre-trial phase may be introduced. In the course of the evidentiary procedure before the court, the public prosecutor, the accused, the defense counsel and any other parties to the proceedings may submit requests and comments. If the court considers it necessary, it may acquire further evidence. This may occur by delegating a judge of the court to obtain further evidence, or by requesting the help of another court where the evidence cannot be obtained, or the evidence can only be obtained with extraordinary difficulties during the trial. If evidence cannot be obtained by delegating a judge or requesting the help of another court, the court may call on the prosecutor to use what powers they have to obtain evidence: that is anything that is admissible as testimony in a court of law, such as

75 Section 206(1), (2) of the Criminal Procedure Code.
76 Such tools and methods are regulated in Section 64 of Act XXXIV of 1994 on the Police, such as the use of a confidential person, collection of information by disguising the patterns of police.
77 Sections 43(2(b), 44(1) and 51(2)(a) of the Criminal Procedure Code.
78 Section 70/B(1) of the Criminal Procedure Code.
79 Section 186(1), (2) and (3) of the Criminal Procedure Code.
80 Section 193(1) of the Criminal Procedure Code.
81 Article 6(3)(b) of the Convention.
82 Section 137 (1)-(2) of the Criminal Procedure Code.
83 Section 137 (3) of the Criminal Procedure Code.
84 Section 67 (2) of the Criminal Procedure Code.

a witness or a document.[85]

Authenticity

Digital evidence, providing it qualifies as an electronic document, is considered as authentic if the documents were prepared in compliance with the provisions of the ESA.

Where to hold the trial

The court may decide to hold the trial via a closed-circuit electronic communication network in case of exceptional circumstances (for instance if the witness is an infant, his or her appearance at the trial would cause unreasonable difficulties, or if the witness is participating in a witness protection programme). In such cases, the features of the witness serving as his or her identification (face, voice) may be masked.

Obtaining and providing evidence in other jurisdictions

In respect of international cooperation, Hungary has implemented the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union by way of Act CXXX of 2003. Pursuant to that act, the hearing of witnesses or experts may take place by video conference. In addition, the Member States are required to cooperate regarding the interception of telecommunications. In respect of non-EU Member States, unless otherwise provided for by an international treaty or the principle of reciprocity, the rules set forth in Act XXXVIII of 1996 on international criminal cooperation apply in respect of mutual assistance in criminal matters. When providing the criminal assistance requested, the rules of the Criminal Procedure Act apply.

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85 Sections 305(1) and (2) of the Criminal Procedure Code.