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The process of accusation and its judicial control – a comparative study

I. Introduction

The act of indictment is a key moment in every criminal procedure, because the existence of indictment is an essential condition, a *conditio sine qua non* for conducting the court proceedings, without indictment there can be no trial either. The indictment also determines the positive and negative framework of the court proceedings, since the court can only judge the criminal liability of a person, who was indicted, and only those actions of this person, he was charged with, the court is not allowed to overreach the charges. Accordingly, the judicial control of accusation is supposed to guarantee, that the procedure continues based on a grounded and a lawful indictment. To compare the several procedural models regarding the abovementioned institutions in other countries can bring important conclusions. The study gives therefore a brief review of the models for the process of accusation and the judicial control of indictment in the common law and in the continental legal systems, and introduces the current regulation on this topic in Croatia and Hungary. The paper pays special attention to the implementation of the judicial control of indictment in the new Code of Criminal Procedure of Croatia enacted in 2008. Regarding the Hungarian criminal procedure law, the study introduces the process of accusation, and analyses the definition and requirements of 'lawful indictment', which concept has been part of Hungarian law since 2006.

II. The regulations on the process of accusation in several law systems in Europe

1. Germany[1]

If the public prosecutor in Germany has filed the indictment, it is not mandatory to make a decision on the accusations immediately in the framework of court proceedings. First of all, the independent court, which has the jurisdiction for conducting the court proceedings has to examine the indictment in the course of the closed session of the intermediate phase of the criminal procedure (*Zwischenverfahren*), whether the suspicion is reasonable (StPO[2] articles 199-211.). It is allowed only based on reasonable suspicion to expose the defendant to the trial, which can be harmful to his personality. After the indictment was filed (with this act the suspect becomes an accused) the head of the judicial chamber informs the defendant about the indictment and warns him, to make a statement within the given time, whether he wishes to submit motions on evidence or to file a complaint (StPO article 201. paragraph 1.). If the defense is mandatory, and the defendant does not have a defense lawyer, the head of the chamber is obligated according to StPO article 141. paragraph 1. to appoint a defense counsel. The court decides about the motions and complaints submitted by the defendant (StPO article

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[1] Cs. Herke, *A német és az angol büntetőeljárás alapintézményei* [The Basic Institutions of German and English Criminal Procedure] (Pécs, PTE ÁJK 2011) pp. 69-70.
[2] Strafprozeßordnung in der Fassung der Bekanntmachung vom 7. April 1987 (BGBl. I S. 1074, 1319), die zuletzt durch Artikel 2 Absatz 30 des Gesetzes vom 22. Dezember 2011 (BGBl. I S. 3044) geändert worden ist.

201. paragraph 2.). The court is allowed to order single actions to obtain evidence to clarify the facts of the case (StPO article 202.). There is no legal remedy against the abovementioned decisions of the court (StPO article 201. paragraph 2 and article 202.). Finally, the court decides in a closed session on the termination of procedure or opening the court proceedings.

2. England[3]

In England, after the police has started the procedure the public prosecutor's office (Crown Prosecution Service) has to take the case over. The most important feature of the English system is the discretionary indictment. After receiving the case file, the prosecutor makes a decision on continuing the procedure or on termination of procedure (under the section 23. of the Prosecution of Offences Act 1985, with a memorandum on 'Discontinuance of proceedings'). In the second case, the prosecutor simply gives notice to the court that he does not want the proceedings to continue. If the procedure was terminated under section 23., the suspect has the right to insist on the continuance of the procedure (e.g. he is confident of being acquitted on trial). There is no law in England, which would have a coherent regulation on the expected procedural steps between the indictment and the trial. But usually in this phase 1. the mode of the trial is decided by the s. c. triable-either-way offences, where it is necessary to make a decision, whether the accused will be tried at the Magistrate's Court or at the Crown Court; 2. decisions are made on the bail or on the detention (the magistrate decides these issues, in a public session, considering the arguments of the defense and the prosecutor); 3. preliminary hearings are held (e.g. on the admissibility of evidence, or when the defense gives facts in response to the evidence of the prosecutor).

3. France[4]

The French criminal procedure is based on discretionary indictment as well. Starting the procedure is the task of the public prosecutor (CPP[5] article 31.), but he has to asses not only the legal aspects of the case, but the evidence as well. The defendant always has to be informed about the indictment, if the case is sent to trial, with the precise legal description of the charges. Still it happens, that the *ordonnance pénale* (criminal order) issued by the *tribunal de police* (police court) is delivered to the convict only after the decision. Whereas the procedure before the trial is conducted mainly through written documents (the examination is recorded in a written statement or report), the accused can explore the facts of the case by reading the case file. The CPP does not allow him to access the case file directly, the documents are sent to his lawyer usually. The decision on the case in France can be a) unilateral or b) multilateral.

ad a) Apart from those relatively rare cases, when the *tribunal de police* is reluctant to judge a *contravention* (misdemeanor) in an *ordonnance pénale*, the main example for the unilateral decision is, when the public prosecutor terminates the case *classée sans suite* (without further instructions). It is similar, if the *juge d'instruction* (investigation judge) examines the case, and concludes, that the evidence against the *mise en examen* (detainee) are insufficient, and declares, that there is no reason for continuing the procedure (this is called *ordonnance de non-lien*, CPP article 177.). In this case, the defendant has to be released, or, if he was bailed out, every measure against him has to be terminated.

ad b) There are three ways for the negotiation between the parties in France, which can alter the traditional course of the procedure or close the whole case: the first two ways (conditional classification – *classement sous condition* and mediation – *médiation*) is initiated by the

[3] Herke, op. cit. n. 1, at pp. 70-76.

[4] Cs. Herke, *A francia és az olasz büntetőeljárás alapintézményei* [The Basic Institutions of French and Italian Criminal Procedure] (Pécs, PTE ÁJK 2011) pp. 71-76.

[5] Code de procédure pénale

public prosecutor and closes the case without trial; the third way (rating downgrade – *disqualification*) happens with the acquiescence of the judge, and leads to a milder punishment than prescribed by the law.

4. Italy[6]

The indictment (*richiesta di rinvio a giudizio*) is in writing in Italy as well. The principle of legality is controlled in two forms:

- the public prosecutor is not allowed to terminate the procedure (he just proposes the termination in a motion to the court);
- the harmed party can file a complaint against the public prosecutor's motion on the termination of procedure.

Actually, there is no intermediate phase in the Italian Criminal Procedure Act (ICPP). Despite this fact there is a phase in Italian criminal procedure as well, which shows multiple similarities with the intermediate phase. We can speak of intermediate phase in Italian criminal procedure in a sense, that between the indictment and the trial there is a phase, in which a court organ reviews the indictment proposal in order to prevent to try the defendant based on ungrounded incitements. This review happens in Italy during a preliminary hearing with the attendance of the parties, which is led by a *giudici per le indagini preliminari* (investigative judge). This is the s. c. preliminary trial (*udienza preliminare*). The preliminary trial is not public, the attendance is obligatory for the public prosecutor and the defense lawyer (ICPP article 420. paragraph 1.), but not for the accused. The judge has a wide competence regarding the evidence in the *udienza preliminare* (ICPP article 421-bis.). In the case, if the evidence presented before him is deficient, he can order additional investigative actions. After conducting the *udienza preliminare* the judge has to options: to terminate the procedure with a sentence called *sentenza di non luogo a procedere* (ICPP article 424. paragraph 1.), or to send the case to trial (ICPP article 424.).

III. Procedure of accusation and judicial control of accusation in Croatia

1. Introductory notes

By accepting the new Criminal Procedure Act, which went into effect on January 1, 2008[7] (hereinafter: CPA/08) Croatia thoroughly reformed its criminal procedure, the tradition of preliminary criminal procedure headed by an investigative judge, where the public prosecutor held a central position cherished for decades, was abandoned. Briefly, court investigation was abolished, and the public prosecutor's investigation was introduced, which necessarily lead to the separation of the function of collecting data for the accusation, performed by the public prosecutor, from the function of deciding in the preliminary procedure, which is the right and duty of the court.[8] These modifications resulted in significant changes in the intermediate phase of the criminal procedure consisting of the process of accusation and its judicial control.[9] Unlike the earlier provisions of the Criminal Procedure Act of 1997[10] (hereinafter: CPA/97), the regulation of the new act introduced mandatory judicial control of the accusation both in the regular and in the summary procedure. According to CPA/97, the

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[6] Herke, op. cit. n. 4, at pp. 76-78.

[7] Criminal Procedure Act, 18 December 2008., Narodne novine, nr. 152/08, 76/09, 80/11.

[8] B. Pavišić, 'Novi hrvatski Zakon o kaznenom postupku' [The new Croatian Criminal Procedure Act], 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2008) pp. 515.

[9] D. Tripalo, 'Tijek kaznenog postupka – kontrola optužnice, rasprava, pravni lijekovi' [The course of the criminal procedure, review of the indictment, trial, and legal remedies], 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2008) pp. 731-734.

[10] Criminal Procedure Act, 3 October 1997., Narodne novine, nr. 110/97, 27/98, 58/99, 112/99, 58/02, 143/02, 62/03, 178/04, 115/06.

review of the accusation was optional, i. e. it happened only as an exception and in two possible situations: following the complaint of the defendant or his lawyer; or at the request of the head of the judicial chamber, before whom the main hearing was supposed to be held when the complaint against the indictment was not submitted, or it was rejected[11]. Namely, accusation control is now mandatory, and it is only exceptional, that the court does not examine the grounds of the accusation: a) if the defendant abandons his right for the session of the accusatory committee and requires a trial with a definite statement submitted in written form within three days before the session of the accusatory committee (CPA/08 Article 348. Paragraph 4.), b) in the summary procedure started on the basis of private prosecution (CPA/08 article 527.), c) and in the procedure on issuing the criminal order (CPA/08 article 540.). By accepting the concept of the court control of the accusation, the Croatian legislative has clearly prescribed that an independent and impartial court entity is supposed to decide on the possibility of initiating and conducting the criminal procedure, which protects the defendant from the ungrounded and unjust criminal prosecution. Since CPA/08 made the public prosecutor the master of the preliminary procedure there is no control of his decision on issuing the criminal prosecution. In other words, the defendant has no available legal means to initiate the review of the decision of the public prosecutor on the legitimacy of the proceedings in accordance with the principle of legality, and the court has no authority to do so except in cases when it decides some issues[12] during the procedure, by which it examines indirectly the existence of the conditions for conducting the criminal prosecution and investigation.[13] Subsequent to such organization of the preliminary procedure, in the so called intermediate phase of accusation the accusatory committee has become the entity which reviews for the first time whether there are existing conditions for initiating and conducting the criminal procedure. Thus planned control of the accusation represents a certain 'filter' which every indictment has to go through, in order to fulfill different purposes. On the one hand, the rights of every citizen are protected from ungrounded accusation this way, and for the court it is the phase in which it can prevent confronting the deficiencies of the preliminary procedure or the deficiencies in the indictment itself only at the trial.[14] Since, according to the new concept of the preliminary procedure, the criminal procedure does not begin with the investigation, it is only a possible phase[15] through which the preliminary procedure can go, it has become necessary to submit its result under court control. It should not be forgotten, that the activities in the investigation are undertaken by the public prosecutor[16] who, as a party in the procedure, will primarily present only those facts and collect only those evidence, which

[11] See also: V. Ljubanović, *Kazneno procesno pravo – izabrana poglavlja* [Criminal procedure law – selected chapters] (Osijek, Grafika 2002) pp. 261.-265.

[12] i.e. search, detention, pre-trial detention, seizure.

[13] See also: Z. Đurđević, 'Sudska kontrola državnoodvjetničkog kaznenog progona i istrage: poredbenopravni i ustavni aspekt' [Judicial Control of Criminal Prosecution and Investigation: Comparative and Constitutional Aspects] 1 *Hrvatski ljetopis za kazneno pravo i praksu* (2010), pp. 15-18.

[14] See: B. Pavišić, *Kazneno postupovno pravo* [Criminal procedure law] (Rijeka, Pravni fakultet 2010), pp. 325.

[15] Namely, CPA/08 prescribes that the investigation has to be conducted only for criminal offences for which the punishment of long time imprisonment (20-40 years) is prescribed, and it can be conducted for criminal offences in the jurisdiction of the county court, i. e. criminal offences for which the prescribed punishment is over 12 years of imprisonment. It is realistic to expect that the investigation would be a rare stage of the proceedings, and, regarding the trends in criminality in more than 90 % of the criminal cases there will be a summary procedure.

[16] See also: D. Novosel, M. Pajčić, 'Državni odvjetnik kao gospodar novog prethodnog kaznenog postupka' [The Public Prosecutor as the Master of New Preliminary Criminal Proceedings], 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2009), pp. 445-460.

are in favor of the prosecution,[17] and since his procedural interests do not provide guarantee of the legality of thus collected evidence, it seems necessary to subject his activity under the control of the court. Consequently, after the completion of the preliminary procedure, the public prosecutor should have another duty, and that is to convince the court, in the procedure of accusation by presenting the results of his proceedings, that the probability, that a certain person committed a crime is so high, that it is more realistic to expect conviction rather than acquittal in the case so it is sufficient to verify the indictment and send it to trial.[18] Because of the complexity of the topic, we introduce here only the essence of the accusation procedure and provide an overview of some practical issues deriving from the duty of exposing the evidence between the parties. We pay special attention to the exclusion of evidence obtained in illegal way and to the final verification of the indictment and sending the case to trial.

2. Filing the indictment, preliminary examination and response to the indictment

Before discussing the issue of filing the indictment and its formal control, it is necessary to point at the basic forms of the criminal procedure according to CPA/08. Namely, CPA/08 basically differentiates between two forms of criminal procedure. On the one hand, there is regular criminal procedure, which, according to the specific provisions of the act, is conducted on the account of all criminal offences for which the law prescribes the jurisdiction of the county court (CPA/08 article 203. paragraph 1.)[19], and on the other hand there is summary criminal procedure for the other criminal offences which are not in the jurisdiction of the county courts, and which are in the jurisdiction of the municipal courts.[20] On the basis of thus prescribed actual jurisdiction of the courts, functional jurisdiction for the preliminary examination of the indictment is regulated in the following way. Preliminary examination of the indictment for criminal offences, for which the regular criminal procedure is prescribed, is conducted by the judge of investigation, while for the criminal offences for which the summary criminal procedure is prescribed an individual judge or the head of the judicial chamber has the jurisdiction.[21]

The indictment[22] is filed by the public prosecutor, after the completion of the investigation. If the investigation is not mandatory, the public prosecutor is allowed to file the indictment without conducting any investigation, if the collected data referring to the criminal offence and the perpetrator provide sufficient grounds for filing the indictment (CPA/08 article 341. paragraphs 1. and 2.). But, before filing the indictment the public prosecutor has to fulfill an

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[17] The law, to some extent, mitigates the unilateral actions of the public prosecutor in the investigation where there is a possibility for the defendant to, after the receiving the order on conducting the investigation, proposed to the public prosecutor taking of certain evidence presenting activities which is guaranteed by the supervision of the investigative judge over that decision (CPA/08 article 234. paragraph 1. and 2., related to article 213. paragraph 3.). Moreover, there is a significant article 213. paragraph 4. which enables the defendant *de facto*, after finding out that there is a criminal indictment filed against him, or require his interrogation from the public prosecutor within the period of 30 days from the submitting of the indictment which gives him the possibility to perform the insight into the documents of the case and to explore the evidence which are available to the public prosecutor.

[18] See: F. Feeney, J. Herrmann, One Case – Two Systems, A Comparative View of American and German Criminal Justice (New York, Ardsley 2005), pp. 382.

[19] County courts are actually competent to trial for criminal offences for which there is a legally foreseen penalty of imprisonment of over twelve years or long time imprisonment (CPA/08 article 19c paragraph 1a).

[20] Municipal courts are actually competent to trial for the criminal offences for which there is legally prescribed main fine or imprisonment up to 12 years (CPA/08 article 19a paragraph 1.).

[21] For criminal offences, for which there is a presribed penalty of imprisonment of up to 8 years, formal control of indictment is conducted by an individual judge, and for criminal offences for which the prescribed punishment is between 8 and 12 years of imprisonment, the indictment is reviewed by the head of the judicial chamber (CPA/08 article 19b. paragraph 1. and 2., related to article 525. paragraph 1.).

[22] About the content of formal accusation see: CPA/08 article 342.

important duty, and this is the mandatory formal questioning of the suspect. The interrogation of the suspect before filing the indictment is a key moment in the preliminary procedure. By fulfilling that duty, the public prosecutor does not only fulfill a legal obligation, but this is also a moment by which the defendant and his lawyer have a chance to get an insight into the documents of the case and come to know about the evidence available to the prosecutor.[23] The insight into the documents of the case is a necessary condition of the good preparation for the defense, because it is the only opportunity for the defendant and his lawyer to find out about the way in which the indictment is determined and limited. Considering the fact that fulfilling the right to get insight into the documents depends on the moment of the interrogation of the defendant, the logical question arises, when the defendant shall be questioned. The provision which prescribes that it should be done before filing the indictment is quite wide and unspecific. Namely, if the questioning came only at the end of the investigation or immediately before filing the indictment, it is clear that, the defendant could perform the insight into the documents too late and that would significantly limit his possibilities for preparing for the defense. However, we should expect that in the majority of the more difficult cases the defendant would relatively soon be able to perform the insight into the documents of the case, because after the arrest the public prosecutor has the duty to question the detainee within a short time of 16 hours from the notification of the custody police warden (CPA/08 article 109. paragraph 5.).[24] On the other hand, in all other cases the law prescribes, that the defendant can require a questioning within 30 days from the day of filing the indictment or of performing the search of the suspect, his home or other premises used by him or any movable goods used by him, or from the seizure of the items of the suspect, performing the line up of the suspect or taking fingerprints and other body prints, taking biological samples or from the completion of the expert opinion about the suspect according to article 325. or 326. of the CPA/08. If the public prosecutor does not question the suspect within the time prescribed by law, the suspect has the right to get insight into the documents of the case after the expiration of that deadline (CPA/08 article 213. paragraph 4. related to paragraph 5.). After the public prosecutor has submitted the indictment to the judge of investigation, there follows the preliminary examination of the indictment in order to decide whether it fulfills the legally prescribed formal conditions for filing it. The judge of investigation has the duty to examine whether the indictment was filed by an authorized prosecutor, whether before the filing of the indictment there was an investigation conducted if it was mandatory, whether the investigation was amended, thus the indictment has the legally prescribed elements, whether the documents contain evidence which can not be the basis for the indictment, whether the indictment was submitted within the prescribed deadline, whether the public prosecutor has filed a new indictment within the period of six months from the withdrawal of the previous indictment (CPA/08 article 344. paragraph 1.). An important remark has to be made to the so-formed formal control of the indictment. Namely, the law does not mention at all, whether the judge of investigation should consider any possible procedural obstacle, so called negative procedural condition (statute of limitation, amnesty, immunity). The cited provision does not

[23] See also: V. Drenški Lasan, J. Novak, L. Valković, 'Pravni i praktični problemi dobre obrane okrivljenika' [Legal and Practical Issues Related to Providing a Good Defence for the Defendant] 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2009), pp. 524-527.

[24] See also: M. Pajčić, 'Pravo okrivljenika na uvid u spis predmeta tijekom prethodnog kaznenog postupka u pravnim sustavima nekih europskih država i praksi Europskog suda za ljudska prava' [The right of the Accused to Inspect the Case File in the Preliminary Criminal Procedure in the Legal Sytems of some European States and in the Judicature of the European Court Of Human Rights], 1 *Hrvatski ljetopis za kazneno pravo i praksu* (2010), pp. 44-49.

allow us to conclude that the judge of investigation is allowed to reject the indictment based on a procedural obstacle, although we can come to such a conclusion by the logical interpretation of article 206., in relation to article 355. paragraph 1. and article 308. of CPA/08. Therefore, in order to eliminate the legal uncertainty, it would be *de lege ferenda* reasonable for the legislative to determine such competence of the judge of investigation. Regarding the fact, that checking the minimum conditions is the essence of the preliminary examination of the indictment, therefore, checking the formal conditions for proceeding, it is natural that the judge of investigation considers all the existing negative procedural conditions, and not only whether the indictment has been filed by an authorized prosecutor.[25] If the judge of investigation establishes the fact that the indictment is legally appropriate, it is served to the defendant to respond. The defendant can file a complaint within eight days from receiving the indictment. It is important to note that the defendant does not have the obligation to file a complaint so the judge of investigation shall, disregarding whether the defendant has filed a complaint or not, after the expiration of the deadline for submitting the complaint, forward the indictment, together with the documents of the investigation, if the investigation was conducted, to the accusatory committee.

3. The review of the grounds of the indictment before the accusatory committee

The procedure before the accusatory committee is the central phase of the intermediate procedure of accusation[26] which, in principle, is mandatory for all indictments.[27] The accusatory committee decides on the verification of the indictment in a closed session where, as a rule, the parties, the lawyer of the defendant and the damaged party are present (CPA/08 article 349. paragraph 2.). We say that it happens as a rule because the session of the accusatory committee can be held without the presence of the aforementioned persons. CPA/08 enables in the summary procedure, conducted on the account of criminal offences for which the law prescribes a fine or imprisonment up to eight years, to hold the session of the accusatory committee without the presence of the parties (CPA/08 article 526. paragraph 2.).[28] In that way, the legislator has, without any justified reason, drastically limited the right of the parties to be present at the procedural actions in the criminal procedure before the court decision. Therefore, we condemn this legal construction, because the parties are not able to get information about the evidence of the other party this way, so this regulation restrains them in practicing their procedural rights and breaks the principle of adversarial procedure as one of the foundations of the right to fair trial.[29] This provision is disadvantageous especially for the defendant, who can not exercise his right to denounce all occurrent omissions in the preliminary procedure and all occurrent illegal evidence.[30] If the session of the accusatory committee is held in the presence of the parties, the head of the committee opens the session with the statement of the indictment. After the statement, the public prosecutor briefly presents the results of the preliminary examination, the evidence on which the indictment is based and which justify the filing of it (CPA/08 article 350. paragraph 2.). The defendant and the lawyer are allowed to present the evidence in favor of the defendant, as well as to

[25] See also: Pavičić A, Bonačić, M, 'Skraćeni postupak prema novom Zakonu o kaznenom postupku' [Summary Proceedings in the new Criminal Procedure Act], 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2011), pp. 502-504.

[26] See: Craig, M. Bradley, Criminal Procedure, A Worldwide Study, 2nd edition, (Durham, Carolina Academic Press, England, pp. 175-180, USA, pp. 540-541, Germany, pp. 261-263., Italy, pp. 333-343.

[27] Cases in which there is no review of the indictment see *supra*, page 4.

[28] For criticism of this provision see more: Pavičić A, Bonačić, M, op.cit., n. 19., pp. 507-509.

[29] See also: D. Krapac, *Prva knjiga: Institucije* [Criminal procedure law, Volume one: Institutions] (Zagreb, Narodne novine 2011), pp. 148-152.

[30] See also: E. Ivičević Karas, D. Kos, 'Sudska kontrola optužnice' [Judicial Review of the Indictment] 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2011), pp. 455-458.

denounce the occurrent omissions in the investigation and the occurrent illegal evidence (CPA/08 article 350. paragraph 3.). We can see from the introduced regulation, that the procedure of filing the indictment is closely connected to the legal obligation to expose the evidence[31] for the other party. However, even at filing of the indictment the public prosecutor has the obligation to attach a list on the evidence which is available to him, but he doesn't intend to present before the court, because they refer to the innocence of the defendant, to the lower degree of guilt, or to an alleviating circumstance (CPA/08 article 342. paragraph 2.). This obligation of the public prosecutor is a logical consequence of the provision according to which 'both the court and state entities which participate in the criminal procedure are obligated to examine and establish the facts against the defendant and the facts which are in his favor with equal attention', and 'the public prosecutor's office… with equal attention collects evidence on the guilt and on the innocence of the defendant (CPA/08 article 4. paragraphs 2. and 3.)'. On the other hand, there is an obligation on the disclosure of evidence for the defense as well. Thus the defendant and the defense lawyer notify the prosecutor on the evidence that they intend to present before the court referring to the existing alibi and to the mental disorder of the defendant (CPA/08 article 352). But this provision is not very precise either. Does that mean that the defendant has the obligation or just is allowed to inform the prosecutor on the aforementioned circumstances? If we interpret it as an obligation, we certainly have a collision with a principle which is a *condicio sine qua non* for every modern criminal procedure, and that is the right of no self accusation and the defendant's right to remain silent. If we understand it in a way that the defendant is only allowed to inform the prosecutor about this kind of evidence, we do not violate this basic principle, but there is a danger that a calculating defendant, by presenting his alibi at the last possible moment, only at the trial, might surprise the prosecutor and disable him from the effective challenging of the alibi.[32] Another significant characteristic of the accusation procedure is the decision on the exclusion of illegal evidence and the possibility for conduct a preliminary trial on the legality of evidence, if the accusatory committee doubts the legality of some evidence and without obtaining additional evidence this issue can not be decided. In that case the committee has to postpone the hearing and immediately set a new one where they obtain the evidence, which are relevant in establishing facts on the legality of the evidence at issue. This is the so called preliminary trial on the legality of evidence (CPA/08 article 351. paragraph 1. and 2.). It is necessary in every modern criminal procedure to prevent the possibility of sentences based on illegal evidence. Therefore, the CPA/08 declares, that the court's decisions can not be based on evidence obtained in illegal way (CPA/08 article 10.) with the aim to prevent illegal evidence to influence the belief of the judge on the existence or non-existence of the facts. The CPA/08 mentions the obligation of the exclusion of illegal evidence in many places, so even the judge of investigation, before finishing the investigation or during the preliminary examination of the indictment examines whether the file contains any illegal evidence and the same is performed in the procedure before the accusatory committee with the situation that the control of the legality of the collected evidence is increased by the provision that the court, in case of suspecting the illegality of some evidence, and without obtaining any additional evidence on that, can not reach any decision, and a separate hearing will be set during which the legality of the evidence shall be decided, and

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[31] See: M. Damaška, *Lica pravosuđa i državna vlast* [Faces of Justice and State Authority], (Zagreb, Nakladni zavod Globus 2008), pp. 137-140., M. Pajčić, 'Otkrivanje informacija i dokaza između stranaka u kaznenom postupku' [Disclosure of Information and Evidence between Parties in Criminal Proceedings], 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2009), pp. 66-70.

[32] For comparative presentation as well as standpoints of ECHR on the issue of evidence disclosures see: E. Ivičević Karas, D. Kos, op. cit., n. 30, pp. 461.-463.

only then can the procedure on the examination of the indictment be continued. This provision has a special meaning in Croatian criminal procedure law if we interpret it in the light of the new provisions referring to illegal evidence which introduced the possibility of the 'weighing' of evidence. Namely, Croatian lawmaker has, for the first time, dared to accept the system of the so called relative exclusion of illegal evidence[33] and in spite of the system of absolute exclusion of illegal evidence, has allowed the court to assess, whether some evidence collected in an illegal way can still be used in the criminal procedure. Such radical twist is formulated by the lawmaker in a way that illegal evidence is not considered to be evidence obtained by violating of the Constitution, law or international right of guaranteed right of defense, right to dignity, reputation and honor, and the right to integrity of personal and family life, which is obtained by the activity for which by the criminal act there is no counter measure, and in the procedure for severe criminal offence for which the regular procedure is conducted, where the violations of rights, considering the extent and nature, is significantly smaller than the extent of the criminal offence (CPA/08 article 10. paragraph 2. subparagraph 2., in relation to paragraph 3.). On the basis of this provision, there has been a possibility introduced that the court is allowed to 'weigh'[34] the interest of the state for the effective criminal prosecution and the interests of the defendant's defense which is manifested in the need of protection of basic human rights in the criminal procedure still exceptionally allows the use of the evidence obtained in an illegal way if it is required by the public benefit.[35] Here we have to ask a question of how the trial court shall exercise the possibility of 'weighing' the evidence, since CPA/08 has on several occasions prescribed mandatory exclusion of illegal evidence and that thus excluded evidence can not be used again neither at the review of the indictment nor at the trial. Ivičević Karas and Kos are of the opinion that the court entities which principally have the obligation to exclude the illegal evidence from the file, in order to restrain the trial court to encounter such evidence, do not have the obligation to do that in connection with the evidence which is subject to 'weighing' of the court of trial.[36] Therefore, this means that neither the judge of investigation nor the accusatory committee don't have the authority to decide on the legality of the evidence whenever there is the possibility of 'weighing' but they should, obviously, allow such evidence of questionable quality for the court to analyze it only at the trial.

4. Verification of the indictment and sending the case to trial

The essence of the judicial control over the accusation is to review all activities of the prosecutor undertaken in order to start the criminal procedure in the preliminary procedure, and consequently to decide on the justification of trying the defendant. Whether the indictment is justified, depends primarily on the existence of the necessary degree of suspicion in relation to the criminal offence and the perpetrator which the law demands is sufficient to start the procedure. But during the assessment of the justification of the indictment, the court necessarily has to consider the occurrent negative procedural conditions. In other words, the court has to check whether the offence which is subject of the indictment is a criminal offence, whether there are circumstances which exclude the guilt of the defendant, whether the request or the motion of the authorized prosecutor or the approval of

[33] See also: Ž. Karas, M. Jukić, „Promjene u sustavu nezakonitih dokaza, s osvrtom na kretanja u poredbenom pravu" [Changes in the Exclusionary Rule in Croatia and Trends in Comparative law] 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2009), pp. 605-606.
[34] Krapac, op.cit., n. 29., pp. 430-431.
[35] Ibid. pp. 619-620., See also: I. Bojanić, Z. Đurđević, „Dopuštenost uporabe dokaza pribavljenih kršenjem temeljnih ljudskih prava" [Admissibility of Evidence Obtained by Infringing Fundamental Huma Rights] 2 *Hrvatski ljetopis za kazneno pravo i praksu* (2008), pp. 998-1001.
[36] E. Ivičević Karas, D. Kos, op. cit., n. 30, pp. 465.

the authorized person which is required by law is lacking, whether there are circumstances which exclude the criminal prosecution or whether there is sufficient evidence that the defendant is a reasonable suspect for the offence which is subject of the indictment (CPA/08 article 355.). According to that, when we examine the justification of the indictment we primarily think of its justification to a certain extent. That level of justification of the indictment is determined by the law. Thus, CPA/08 prescribes, that if the accusatory committee after the examination of the indictment decides that there are grounds for the indictment, they issue a decision on the verification of the indictment. Therefore, the justification of the indictment for starting the criminal procedure means its justification to the extent of reasonable suspicion. But, the court has to be very cautious during the review of justification of the indictment. Namely, the court control of justification for starting the criminal procedure can not become a trial on the guilt of the defendant before the actual trial. The essential task of the accusatory committee is to decide whether the defendant can be tried, and if the defendant shall be convicted, this decision should be left to the trial. The most difficult task for the accusatory committee is undoubtedly to handle the legal situation and to assess the presented evidence without presuming the guilt of the defendant. The only right way for the court is not to engage in determining the authenticity and the evidentiary value of the contradictory evidence, but to leave this assessment to the trial, as a central stage of the procedure. At the determination of the existence of reasonable suspicion, that a certain person committed a crime, which is sufficient for the verification of the indictment, the court should limit itself to determine the completeness, the admissibility and the sufficiency of evidence. The assessment of the completeness of evidence means that all the legally relevant facts of the specific case are discovered and the presented evidence are substantiating these facts. The admissibility of evidence refers to the appropriate legal way for the collection and presentation of the evidence. Finally, at the assessment of the sufficiency of evidence the court has to decide whether on the basis of presented evidence there can be determined a certain degree of suspicion that a certain person committed a criminal offence which is sufficient for the verification of the indictment and sending the case to trial. If, on the basis of the collected evidence, such conclusion can not be made i. e. the committee determines that in respect to the whole indictment there are deficiencies in the preliminary procedure or that the factual description of the offence does not derive from the previously gathered evidence, or that it is necessary to have better clarification of the facts, then the indictment shall be returned to the prosecutor to be amended (CPA/08 article 356.). After the verification of the indictment, the accusatory committee is obligated to forward without delay the decision on the verification of the indictment together with the indictment itself and the trial documents to the office of the competent court.

IV. The process of accusation in Hungary and the concept of lawful indictment

1. The phase of accusation in the intermediate procedure

The intermediate procedure in Hungary consist of the phase of accusation and of the phase of trial preparation. These two phases are placed between the investigation and the court proceedings in the course of criminal procedure. The Hungarian Criminal Procedure Act (Act Nr. XIX. of 1998, hereinafter: HCPA) regulates the phase of accusation in a separate chapter, in the second part of the act called ‘Investigation’, albeit this phase actually comes only after the completion of the investigation. The investigative authority (usually the police), discloses the case file after the perfection of the investigation, and the suspect and the defense lawyer are allowed to examine the documents of the case (HCPA article 193. paragraph 1.). After this examination, the investigative authority forwards the documents to the authorized public prosecutor within 15 days (HCPA article 193. paragraph 5.), this action is the s. c. proposal for accusation, which launches the phase of accusation. The public prosecutor reviews the

case file in 30 days after receiving the documents[37] (the leader of the public prosecutor's office can allow 30 additional days, and his superior public prosecutor can allow altogether 90 days for the review). The public prosecutor has seven options depending on the result of the review of the case file:

- taking further investigative actions (or ordering them);
- suspending the investigation;
- termination of investigation;
- transferring the case to mediation;
- omitting pressing of charges partially;
- postponing the filing of an indictment;
- filing an indictment (HCPA article 216. paragraph 1.).

The accusation has four main forms in Hungary. In case of a crime, which is under public prosecution: bill of indictment (this is the most typical form); in case of subsidiary prosecution: motion for prosecution; in case of private prosecution: report; in summary procedure: verbal accusation of the public prosecutor (together with a written memorandum). Because of the limited extent of this study, we introduce only the first form of accusation. Main sections of the bill of indictment are: forepart; brief (facts of the case); section of law (the legal accusation itself and a subsection with declarations, motions); and date. The structure of the indictment is unusual compared to other resolutions in the criminal procedure, because the section of law comes after the brief. We introduce the essential and optional elements of the indictment according to the HCPA – together with the elements regulated in the Direction of the Attorney General Nr. 11. of 2003 – with the help of the following table:

Table 1. The structure and elements of indictment. (HCPA article 217. paragraph 3.)

[37] If the aforementioned disclosure of the case file was done by the public prosecutor himself, the deadline starts with the date of this event. HCPA 216. Article (1)

	Essential elements	Optional elements
Forepart	• superscription • personal data of the accused	• if the accused is or was held captive, the name of the coercive measure and the dates • previous convictions of the accused
Brief	• description of the conduct • list of evidence	• if there are more criminal conducts, separate counts of indictment
Legal accusation	• the expression 'I accuse' • the precise name of the offence according to the Criminal Code, with reference to the articles and paragraphs	
Subsection	• reference to the rules, according to which the court and the public prosecutor has the jurisdiction • list of the persons to be summoned and notified to attend on trial, and a motion to read the statements of those witnesses, who will not be present at the trial • motion for punishment • motion for the chronological order of presenting the evidence at the trial	• procedural condition • claim of indemnification • moition to extend the coercive measure limiting personal freedom • motion for the termination of the parental custody of the accused over his children • motion for the continuance of the suspended procedure against a drug addict • reference to the records from the interrogation of the anonym witness • other motions
Date	• date, signiture	

The public prosecutor submits the bill of indictment to the court, this is the act of accusation in Hungarian law. There is no legal remedy against the indictment. The indictment has to be submitted in more copies (one for the court, for every defendant and for every defense lawyer). The investigative authority also gets one copy of the indictment, and if the accused is held captive, the public prosecutor has the obligation to notify the institution, which detains him about the filing of the indictment. The public prosecutor attaches all documents, which were previously disclosed to the accused and the defense lawyer in the procedure, and all material evidence to the written accusation, when he submits the bill of indictment to the court. If the accused cannot speak Hungarian, the bill of indictment (or the relevant part of it) has to be translated to his mother language.

2. The process on verification of the indictment in the framework of trial preparation

The process on verification of the indictment is conducted after the indictment was submitted, but yet before the trial. On the one hand, this phase is supposed to be a filter for the criminal cases, i.e. the defendant should be only tried based on a grounded and lawful indictment, on the other hand it has a practical function as well: to facilitate the quick and effective trial in the case (issuing subpoenas etc.).[38] The process on verification of the indictment is conducted in Hungarian criminal procedure by the trial court itself, in the framework of the s.c. trial preparation. The head of the judicial chamber (or the individual judge) reviews the case file in 30 days after receiving the documents, and examines, whether it is necessary to decide any of the questions which are listed in the HCPA,[39] after this the judge sends the defendant and the

[38] Cs. Fenyvesi, et al., *Új magyar büntetőeljárás* [New Hungarian Criminal Procedure] (Budapest-Pécs, Dialóg Campus Kiadó 2004) p. 453.

[39] These are the following questions: remittal; consolidation or severance; suspension of the procedure; termination of the procedure; actions for amending the indictment or discover evidence; decision on coercive measures limiting personal freedom; decision about an alternative legal assessment of the case; setting up a

defense lawyer the indictment, and orders them to present the evidence of the defense to the court within 15 days. The head of the chamber examines the defendant's and the defense lawyer's motions on evidence within 30 days from the serving of the indictment, sets the date for the trial, and makes arrangements to prepare the trial, issues the subpoenas and notifications. Thus, according to the HCPA's rules, setting the date for the trial means, that the court accepts the indictment of the public prosecutor, this is the 'judicial verification of the indictment' in narrower sense. This, naturally, does not mean, that the court finds the defendant guilty, not even temporarily; it is only a decision on the procedural conditions of the case.[40] The judicial control of the accusation is conducted in this phase as well. If the indictment does not fulfill the requirements prescribed by the law (one or more from the essential elements listed in Table 1 is missing, s. c. imperfect indictment), the court sends a request to the public prosecutor according to the HCPA article 268. paragraph 1., in order to amend the indictment. If the public prosecutor does not implement the indictment upon this request, the court terminates the procedure (HCPA article 267. paragraph 1. subparagraph k). The court also terminates the procedure during the trial preparation, if the indictment is not lawful (HCPA article 267. paragraph 1. subparagraph j). It is important to note, that contrary to the imperfect indictment mentioned above, in this case there is no legal way to rectify the indictment, the public prosecutor can perhaps file a new indictment in the case, but this possibility is questionable (see section 3. paragraph f). Of course, the court has to terminate the procedure likewise, if a procedural condition (e.g. private motion) is missing, or there is a procedural obstacle (e.g. res iudicata), or there is another ground (e.g. the public prosecutor withdraws the indictment) for terminating the procedure (HCPA article 267. paragraph 1.), but we can not introduce these grounds here, because of the limited extent of the paper. The Hungarian regulation on the connection of the indictment and the evidence is unique, because the law does not really enable the court during the judicial control to filter out the indictments based on weak evidence. Albeit the HCPA declares among the basic principles, that criminal procedure (so court proceedings as well) against a person can be started only, if there is reasonable suspicion, that the person committed a crime (HCPA article 6. paragraph 2.), but de law does dot allow the termination of the procedure grounded on insubstantial evidence in the phase of trial preparation. The court can send a request to the public prosecutor to discover additional evidence, and can require data from several organizations (HCPA article 268.), but if despite of these actions, the existence of the reasonable suspicion cannot be clarified, and the public prosecutor is unwilling to withdraw the indictment, the court has no other choice, than try the defendant.

3. The concept and requirements of lawful indictment

The Hungarian legislative enacted the concept of lawful indictment into the text of the HCPA on 1st of July 2006, but the Constitutional Court of Hungary has previously already summarized its elements in its resolution Nr. 14. of 2002, and the judicial practice also elaborated the concept. According to the HCPA article 2. paragraph 2. 'the indictment is lawful, if the prosecutor, who is entitled to press charges, initiates court proceedings against a definite person in a motion addressed to the court, because the conduct of this person, which is precisely circumscribed in the motion, violates criminal law.' Consequently, the concept of lawful indictment has formal and material requirements. Formal requirement is the motion to initiate court proceedings submitted by a prosecutor, who is entitled to press charges, the material requirements are: definite person; precisely circumscribed conduct; violation of criminal law. The lack of any of these requirements excludes the existence of the lawful

three-member judicial chamber for the case; setting up a five-member judicial chamber for the case. HCPA articles 264-271.

[40] Fenyvesi, op. cit. n. 39, at p. 454.

indictment, so these conditions are all necessary. Beside the questions deriving from the several requirements, two problems are worth to mention in connection with this concept: if the public prosecutor does not give formal legal accusation on a conduct, which is circumscribed in the bill of indictment, can we speak of lawful indictment in relation to this conduct; as well as, whether the termination of procedure based on the lack of lawful indictment excludes the repeated indictment in the same case (does the decision on the termination have material legal force). After introducing the requirements of the lawful indictment one by one, we analyze these two problems.

a) The prosecutor's legitimacy to press charges

It can only be an exceptional problem during the judicial control of accusation, to decide, whether the prosecutor is entitled to press charges or not. If the indictment was filed by a public prosecutor, the legitimacy to press charges is given almost in every case, apart from a few special situations (e.g. the indictment against a juvenile defendant was submitted by a public prosecutor, who is not assigned to juvenile cases[41]). But when the prosecutor is the harmed party, the lack of legitimacy to press charges can be more often: the indictment is unlawful, if a private prosecutor presses charges on account of a crime, which supposed to be under public prosecution, or the harmed party acts as a subsidiary prosecutor in a case, which is excluded from subsidiary prosecution by the law,[42] or the prosecutor was not harmed by the crime, eventually, the crime can not have victims at all.[43]

b) Definite person

The requirement of 'definite person' demands, that the defendant is identified, i.e. the indictment contains personal data, which point at one person only. The personal information required by the law: name; birth name; former name; place and date of birth; the mother's name; address; registration number of the ID card; nationality. But according to OCD 1., the requirement of 'definite person' is fulfilled, if the indictment does not contain all of the aforementioned data, because the deficiencies can be eliminated in the court proceedings.[44] It is not at all unlikely in case of private prosecution, that the prosecutor reports an unidentified perpetrator to the authorities, but this report cannot be considered as a lawful indictment, thus the court procedure cannot be started, the authorities have to open an investigation first, to identify the perpetrator.[45]

c) Precisely circumscribed conduct

This element needs the most consideration from the court. According to the opinion of the Supreme Court 'the conduct is precisely circumscribed, if the statement of facts in the motion contains all the facts equivalent to the relevant statutory provisions of the Criminal Code: the way the offence was committed, the place and the date of the conduct etc."[46] The judicial practice declared the violation of this requirement in accordance with this opinion in cases,

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[41] T. Jagusztin, 'A törvényes vád mint a büntetőeljárás perjogi előfeltétele' [The lawful indictment, as a procedural condition of criminal procedure] 5 *Ügyészek Lapja* (2006) p. 59.

[42] The opinion Nr. 1 of 2007 of the Criminal Divison of the Supreme Court on the interpretation of several rules of the act Nr. XIX. of 1998 (hereinafter: OCD 1.) 5 *Bírósági Határozatok* (2007)

[43] 'On the account of perjury subsidiary prosecution is not allowed; the motion for indictment filed in such a case does not fulfill the requirements of lawful indictment because the lack of legitimacy to press charges (…)' EBH 2010. 2125.

[44] OCD 1. I./2./a)

[45] 'The procedure has to be terminated, if from the report of the private prosecutor the court can not identify the person, against whom the court procedure was initiated' EBH 2006. 1395.

[46] OCD 1. I./1./a)

when the indictment did not contain the place and the date of the commission, or other relevant facts in connection with the crime,[47] or there were only few facts in the indictment, and the court was not able to decide, whether the conduct violates criminal law or not.[48] But it is not an essential element of lawful indictment, to describe the conduct with the same words used in the Criminal Code, the requirement is fulfilled, if the description of the facts is adequate enough to decide, that the conduct violates criminal law.[49]

d) Violation of criminal law

The conduct described in the indictment evidently has to be an action, which 'violates criminal law', this means practically, that it has to realize the statutory definition of a crime placed in the Special Part of the Hungarian Criminal Code (Act IV. of 1978, hereinafter: HCC). There are only two cases in Hungarian law, when a conduct, which is not defined in HCC, can be prosecuted.[50] Apart from these two rare cases, if the conduct, described in the indictment is not defined in HCC, the indictment is unlawful. In connection with that, there is an overlap in the regulation: article 267. paragraph 1. subparagraph a) of HCP prescribes for the court to terminate the procedure, if the prosecuted conduct is not a crime (i.e. it does not violate criminal code), but at the same time, the lack of lawful indictment is also a ground for the termination of procedure (HCPA article 267. paragraph 1. subparagraph j). Theoretically, the termination of procedure can be based on both grounds during the trial preparation. In our opinion, in the aforementioned case the court is not allowed to establish the lack of lawful indictment, it has to terminate the procedure based on the first ground, because it is special in relation to the second one. To decide, whether the prosecuted conduct violates criminal law or not can be a problem for the court, if the description of the conduct in the indictment is not precise enough, in this case the indictment is unlawful even for this reason (see previous section) and, if the statutory definition of the crime in HCC is a s.c. framework statutory definition.[51]

e) Conducts in the indictment without formal legal accusation

The indictment is undoubtedly lawful, if there is a s. c. 'ideal cumulation of crimes', and the public prosecutor made only one formal legal accusation in the indictment, instead of naming all the crimes which were committed by the defendant through one single act. The conduct itself is prosecuted beyond question (the public prosecutor initiated the court proceedings on the account of it), and, according to the HCPA, the court is not bound by the public prosecutor's motions on the legal assessment of the prosecuted conducts (HCPA article 2. paragraph 4.). In the opinion of the Supreme Court, the formal legal accusation is not an essential element of the concept of lawful indictment, because it can be amended in the court proceedings.[52] This opinion indicates a conclusion, according to which every conduct described in the brief section of the indictment (and violates criminal law) has to be

[47] See: BH. 2009. 140.; BH 2011. 34.
[48] See: BH 2009. 267.; BH 2011. 60.
[49] BH 2011. 219.
[50] Namely, war crimes defined in Articles 11 and 13 of Decree 81/1945. (II.5.) ME, enacted by the Act VII of 1945, as well as crimes of apartheid defined in the International Treaty on the Combat and Punishment of Crimes of Apartheid, adopted on 30 November 1973 by the General Assembly of the the United Nations Organisation in New York, promulgated in Hungary by law-decree Nr. 27 of 1976.
[51] Framework statutory definitions are statutory definitions in the Criminal Code, which do not describe precisely the prohibited actions, but contain only the frames, and the frames are filled out with conent by the regulation of other laws. J. Földvári, *Magyar büntetőjog. Általános rész* [Hungarian Criminal Law. General Part] (Budapest, Osiris Kiadó 2003) p. 54.
[52] OCD 1. I./2./ c)

considered as prosecuted, the lawful indictment is given in relation to them, so the court is allowed to judge them at the trial, independently of the fact, whether the public prosecutor made formal legal accusations regarding these conducts in the indictment or not.

f) The legal force of the termination of procedure based on the lack of lawful indictment

After the concept of lawful indictment was enacted, the Supreme Court took the position, that the legal nature of the court order, which terminates the procedure based on the lack of lawful indictment, is different from other decisions on termination of procedure. In this judicial order the court does not judge the merits of the case, so it has no material legal force from the aspect of criminal liability. Consequently, there is no legal obstacle of filing a repeated indictment against the same defendant in the same case.[53] It is beyond debate, that the court does not judge the merits of the case in the order of termination, the court does not exhaust the charges, nevertheless this standpoint of the Supreme Court was critisised by legal scholars. In the opinion of Árpád Erdei, there is no special rule regarding the legal force of the order at issue, and from the interpretation of the rule of HCPA, according to which there is a possibility to demand compensation from the state for the coercive measures the defendant has suffered, after the termination of procedure based on lack of lawful indictment, he concludes, that this kind of termination is also of final nature.[54] Another counter-argument against the theory, which assumes the lack of material legal force is, that if the public prosecutor insists on his standpoint and submits the indictment to the court again without any changes, a legal recirculation can evolve without an end and without a solution. If we examine the question from the aspect of the basic principles of the criminal procedure, it is problematic, that the public prosecutor finds judicial suggestions in the order on termination of procedure, how to file the indictment again lawfully. This can result in the fusion of the function of the prosecutor and the function of the judge, which violates the principle of separation of functions in the criminal procedure. Nevertheless, the standpoint, which opposes the interpretation of the Supreme Court can also have negative consequences. After the termination of procedure based on the lack of lawful indictment, the legal situation is the following by the current law: subsidiary prosecution is not allowed according to the HCPA (in the case of a victimless crime, this would be no solution anyway), and the legal force of the order of termination can not be eliminated by an extraordinary legal remedy either. If the public prosecutor made an actual mistake and the indictment is definitely unlawful, the revision (an extraordinary legal remedy in Hungarian law) submitted by the prosecutor against the defendant has to be rejected by the court, in turn, the material legal force excludes the possibility of filing the indictment again. It is not appropriate, if somebody – even a perpetrator of a serious crime – avoids being tried forever, because of a one-shot mistake made by the public prosecutor. However, in a country, where the consequences deriving from the failure of the criminal justice should fall upon the state, according to the principle of the rule of law, this interpretation is more acceptable.

V. Conclusions

After examining the regulations of the English and some of the important continental (German, French, Italian) criminal procedure acts we can restate, that the indictment is everywhere an essential condition for conducting the court proceedings, and the court can only judge the criminal liability of a person, who was indicted, and only those actions of this person, he was charged with, the court is not allowed to overreach the charges. The judicial control of accusation guarantees, that the procedure continues based on a grounded and a

[53] OCD. 1. II./4./b)-d)

[54] Á. Erdei, 'Dogmatika nélküli büntető eljárásjog – képtelenség vagy valóság' [Criminal Procedure Law Without Dogmatics – Nonsense or Reality] 8 *Magyar Jog* 2008 pp. 518-520.

lawful indictment. By accepting the new Criminal Procedure Act, which went into effect on January 1, 2008 Croatia thoroughly reformed its criminal procedure, the tradition of preliminary criminal procedure headed by an investigative judge was abandoned, the public prosecutor's investigation was introduced instead. In the new model of criminal procedure, the judicial control of accusation became mandatory in Croatia as well, it is only exceptional, when the court does not examine the facts of the case (if the defendant abandons jis right for the session of the accusatory committee and requires a trial in written form within three days before the session of the accusatory committee, in the summary procedure started on the basis of private prosecution, and in the procedure of issuing of the criminal order). The paper gives an overlook on the theoretical and practical problems deriving from the aforementioned changes in Croatian law, (e.g. regarding the preliminary trial on the legality of evidence, the system of relative exclusion of unlawful evidence), and contains *de lege ferenda* proposals for the legislative (e.g. the investigative judge should have the competence to reject the indictment if there is a procedural obstacle). The verification of indictment happens in Hungary after filing the indictment, but yet before the trial (trial preparation). This procedure is a filter for the criminal cases, i.e. the defendant should be only tried based on a grounded and lawful indictment, but it has a practical function as well: to facilitate the quick and effective trial in the case (issuing subpoenas etc.). The Hungarian regulation on the connection of the indictment and the evidence is unique, because the law does not really enable the court during the judicial control to filter out the indictments based on weak evidence. The concept of lawful indictment in Hungary has formal and material requirements. Formal requirement is the motion to initiate court proceedings submitted by a prosecutor, who is entitled to press charges, the material requirements are: definite person, precisely circumscribed conduct, violation of criminal law. Regarding the concept of lawful indictment the paper analyses two main problems: if the public prosecutor does not give formal legal accusation on a conduct, which is circumscribed in the bill of indictment, can we speak of lawful indictment in relation to this conduct; as well as, whether the termination of procedure based on the lack of lawful indictment excludes the repeated indictment in the same case (does the decision on the termination have material legal force).