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Contents

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Sacrificing Core Criminal Procedural Principles on the Altar of Efficiency

This essay attempts to give a brief presentation of the main new features of the new Code of Criminal Procedure. After comparing the conceptual ideas determining the new code with the concept of the old version, my conclusion is that the legislator codified several aspirations that had been defined about 25 years ago but never implemented; many of these new rules therefore simply carry on these old ideas.

The Parliament approved Act XC of 2017 on the Code of Criminal Procedure (hereinafter 'new Code') on 13 June 2017. The quite lengthy act – which contains 864 paragraphs – enters into force on 1 July 2018, replacing the present code, act XIX of 1998 (hereinafter 'Be.') after 15 years.

The Be. was enacted in 1998 but, due to lobby fights, and political conflicts, it only entered into force five years later, in 2003. Strangely, the new Code has had its difficulties as well, because, less than two years after entering into force, 138 paragraphs of the code were modified by Act XLIII of 2020, adopted by the Parliament in May 2020.

These facts show that, in the case of criminal procedural code, it is quite difficult to find a proper balance between public expectations and legal guaranties, and between the protection of fundamental freedoms, and the requirement of efficiency.

During the voting, the provisions of the act requiring a qualified majority were approved with 154 'yes', 10 'no' and 34 'abstention' votes, while the remaining provisions requiring a simple majority were enacted with 154 'yes', 7 'no' and 33 'abstention' votes.[1] The voting ratios clearly show that, regarding the provisions of the draft act, there was no significant conflict between the governing parties and the opposition. In addition to the representatives of Fidesz and KDNP, the opposition party Jobbik also supported the draft; only two representatives of MSZP and five independent members of parliament voted against it while the other attending MPs from LMP and MSZP abstained.[2]

The results of the voting allow the conclusion that the new Code does not contain solutions that represent the values of the actual majority of the competing legal policies as such; instead, it is a system of new procedural rules to which the different sides of politics do not

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1 Website of the Hungarian Parliament, <https://rb.gy/g0l2wv> accessed 2 April 2018.

2 Website of the Hungarian Parliament, <https://rb.gy/xv3heu> accessed 2 April 2018.

have any basic objections. This fact is rather surprising with regard to the significantly permissive rules on the applications of covert means of surveillance, especially so since the act's provisions on the subject required a qualified majority. It is equally surprising, in the light of the opposition's previous questioning of the independence and impartiality of the prosecutor's office. The new Code seems to grant trust to the investigating authorities and their supervisor, the prosecutor, to a remarkable extent regarding both open and secret data collection and procedures requiring the use of covert means of surveillance.

Undoubtedly there are several important innovations in the new code, their most important feature being the improvement of the efficiency (timeliness and economic efficiency) of criminal procedures. The new code places simplified procedures (based on the confession of the accused) in the focus of the proceedings, instead of the traditional trial-based approach. Should the legislator be successful, most cases will be settled an out-of-court procedures. This change will result in the re-evaluation or abandonment of traditional legal values. The new code departs from the principle of material truth. In the cases that will eventually brought to court, the principle of adjudication in chamber will be extremely limited, as will be the participation of lay judges, and the principles of oral procedure, directness and publicity are also limited in the new code, much more than we ever saw in codified Hungarian criminal procedure before 1945 or since 1990.

I The Relationship of between the New Code's Concept and the Be.

The new Code is a much lengthier set of rules than its predecessor: it provides several positive new legislative solutions but it does not create a new criminal procedural system. In order to evaluate the significant elements of the new provisions it is useful to observe which fields show a conceptual change compared to the Be. Obviously, the volume limitations of this essay do not make it possible to present a detailed analysis of all sections of the new Code and their comparison with the present rules but we may attempt to examine the most important conceptual elements of the changes and to compare the legal solutions of the new Code and the Be.

The codification concept of the act of 1998 was defined at the beginning of 1994, and this concept was finally incorporated into the approved Be., with minor changes.[3] The main conceptual elements were the following:

> 1. Within the criminal procedure, the division of tasks and functions shall be enforced much more than today. The police, prosecutorial and judicial powers shall be clearly separated. 2. The newly

[3] I provide a detailed review of the procedure of the enactment of the Be. in my monograph in chapter VI titled 'The influence of organisations on the regulations of the procedural code'. Hack Péter, *A büntetőhatalom függetlensége és számonkérhetősége* (Magyar Közlöny Lap- és Könyvkiadó 2008, Budapest) 257–346.

established procedure shall respect the requirement that the issue of guilt shall be determined at trial with the application of the principle of directness, and that the principle of contradiction, including the parties' right to self-determination, shall be enforced much more. 3. The powers of the single judge shall be broadened, while still respecting the principle of adjudication in chambers. 4. In order to protect fundamental rights, the possibility of judicial participation shall also be ensured for procedural actions taken in the phases of the procedure preceding the trial. 5. Two-level ordinary appeal shall be ensured. 6. The possibilities of the enforcement of the victim's claims shall be broadened with the position of substitute private prosecutor. 7. In addition to the basic form of procedure, in which trial dominates, simplified procedures shall be established, the proper application of which allows the differentiated determination of cases. 8. The problems of the legal regulations of the judicial branch (lay judges, appointed defence counsel) shall be resolved. [4]

After comparing the points of the original concept, which had been drafted 28 years ago, with the text of the new Code, we may conclude that there are only 3 of the 8 points that are not affected by the present changes. These are no. 4, which was realised with the introduction of the position of the investigating judge; no. 5, which recommends the introduction of the two-level ordinary appeal – which was attempted by the act of 1998, but was eventually realised in 2006 – and no. 6, the introduction of the substitute private prosecutor, which has been part of the system of criminal procedure since 2003. The latter is only modified by the new Code by regulating the procedure conducted in the event of the participation of the subsidiary private prosecutor as a special procedure, like the procedure of the private prosecutor.

Regarding the remaining points, no. 1–3 and 5–6 of the 1994 concept, the drafters of the new Code considered it their task to realise the endeavours defined 28 years ago but they also set out new priorities.

1 Principle of the Division of Functions

According to the first point of the concept of the new Code: '1. Within the criminal procedure the division of tasks and functions shall be enforced much more than today. The police, prosecutorial and judicial powers shall be clearly separated.'

During the enactment of the Be., and also during the period between the enactment and the entry into force of the Be., an important point has been raised, namely whether the Hungarian judicial system would be able to depart fundamentally from the system maintained since 1955,[5] characterised by the over-dimensional features of the investigation, the problem of distinguishing between the competences of the investigating authority and the prosecutor, and the expected activity of the trial court in the evidential procedure. The act of 1998 was unable to solve these problems due to the resistance of the judicial authorities.

[4] See Government decision 2002/1994. (I. 17.).

[5] Bócz Endre, 'A Be. újabb novellája elé' (2005) 52 (12) Magyar Jog 712–722, 712–719.

The new Code regulates the division of tasks between the investigating authorities and the prosecutor by dividing the investigation into two parts; in the inquiry phase, the task of the prosecutor is to supervise the inquiry, while in the second phase – in the prosecution – it is to control the prosecution.[6]

The debate on the issue of the division of powers between the prosecutor and the judge has been present for decades; it even continued after the proclamation of the Be. in 1998. Mihály Tóth summarised the essence of the problem as follows:

> Finally, we have to reject the scenario – even though many may consider it comfortable, but it is hardly in conformity with the modern concept of the division of tasks – that at the trial the judge makes enquiries, the prosecutor complies with his tasks, even if he only upholds the charges and at the end he files some useless motions; and the defence counsel refers to the 'difficult childhood' of the accused as a plea for a merciful judgment. We have to return to the roots, even if this makes us realise some suspiciously obvious principles again, namely that the prosecutor accuses, the defence counsel defends and the court judges.[7]

Based on the old debate, the provisions of the Be. set forth that 'The burden of proof shall be on the accuser.' [section 4 paragraph (1)], and the rules on evidence state that 'The objective of gathering evidence shall be the thorough and complete elucidation of the true facts; however, if the prosecutor does not suggest so, the court is not obliged to gather and examine evidence supporting the indictment.' [section 75 paragraph (1)]. In addition to these provisions, the notion of lawful accusation was introduced in 2006.[8]

These provisions were not enough to close the debate finally, therefore presently we may witness two different approaches to the role of the judge. According to one, the prosecutor shall be responsible for the charges; therefore, in line with the cited provision of the Be. the judge shall not gather evidence *ex officio,* due to the lack of a submission by the prosecutor. Others, however, stress the first part of the provision, namely the requirement of 'thorough and complete elucidation of the true facts' and the 'corrective feature' of the procedure.[9]

In the new Code, the legislator makes further steps to strengthen the division of powers, as section 164 states:

> (1) The gathering of facts necessary for proving the indictment, and the provision of, or filing a submission for the acquisition of means of evidence supporting these facts shall be a burden on the accuser. (2) During the clarification of the facts, the court shall gather evidence only on the

[6] Act XC of 2017, section 25 paragraph (2).

[7] Tóth Mihály, 'Új büntetőeljárási törvény vagy további novellák sora?' (A new act on criminal procedure or the latest in the series of novels?) (2000) (2) Belügyi Szemle.

[8] Act LI of 2006, section 1.

[9] This approach is obvious in the Summary opinion *Examination of the lawfulness of the indictment 2013* of the Jurisprudence Analysis group of the criminal law department of the Curia. <http://www.lb.hu/sites/default/files/joggyak/a_vad_torvenyessegenek_vizsgalata.pdf> accessed 02 April 2018.

> basis of a motion. (3) In the absence of a motion, the court shall not be obliged to gather and examine evidence.

However, the last sentence of this provision still allows the judge to gather evidence *ex officio,* in the absence of a submission by the prosecutor.

In addition to the possible activity of judges, contrary to the provisions in the Be., section 163 paragraph (2) of the act expects the judges to determine 'truthful', not 'true' facts. The section 164 declares, that the judge is not obliged, to collect the evidences if the prosecutor failed to provide them. According to section 593 paragraph (4): 'If groundlessness is obviously due to the failure to act in line with section 164 paragraph (1), the effects of groundlessness shall not be applicable.' In such a case, the court of second instance shall not repeal the judgment of the first instance court and shall not order the court of first instance to conduct a new procedure.

2 The Significance of Trial and the Principle of Contradiction

There was a government decree of 1994 that, *inter alia,* aimed at increasing the significance of hearings and strengthening the principle of contradiction at trial. The new Code dramatically departs from this endeavour. Its main goal, as analysed in detail below, is to allow most cases to end without a hearing, with an agreement based on the confession of the accused. If the legislator's aim is realised in practice, most criminal cases will arrive at the proclamation of guilt and application of punishment based on a bargain and agreement between the prosecutor and the accused (and their defence counsel, if available), in which the court will only have a symbolic role. If the case gets to the submission of charges then , according to the new rules, the – closed – preparatory session[10] will be one of the most significant events of the procedure, partly because the court will have the chance to 'convince' the accused to confess and waive the right to trial: in such a case, the proclamation of guilt and the application of sanction may happen without a formal trial, at the preparatory session. The significance of the preparatory session is further increased by the provision that the accused 'may present the facts grounding his defence and the supporting means of evidence, and may initiate the gathering or the exclusion of evidence (…)' [section 500 paragraph (2) item *c)* of the new Code].

The accused may only file a motion for the gathering of evidence at the trial if

> *a)* the fact or means of evidence justifying the motion emerged after the preparatory session or it came to the knowledge of the initiator – for reasons outside the control of the initiator – only after the preparatory session, or *b)* the motion aims to rebut the probative value of a means of evidence or of the result of the already performed gathering of evidence, provided that the relevant method and means became apparent for the initiator only from the gathering of evidence performed. [section 520 paragraph (1) of the new Code]

[10] Act XC of 2017 Chapter LXXVI.

Prior to the enactment of Act XIX of 1998, the legislator aimed at increasing the contradictory features by changing the order of questioning at the trial, namely that the accused and the witness would not have been questioned by the court, but by the prosecutor or the defence counsel, depending on the initiator of the questioning. Due to the resistance of the professions, this legislative goal was not realised and it remained in the Be. in the simplified form of 'Questioning the witness by the prosecutor, the accused or the defence counsel' (section 295 of the Be.). The new Code completely abolishes this possibility.

3 Principle of Adjudication in Chambers

At the time of drawing up the Be., the concept stated: 3. The powers of the single judge shall be broadened, while still respecting the principle of adjudication in chambers.

Therefore, the Be. states that the district court shall proceed in a panel, comprising a judge and two lay judges, if the crime is punishable by at least 8 years of imprisonment. Furthermore, the district court may also proceed in a panel if the imprisonment ordered by the Criminal Code for the indicted crime is lower, but the court believes it may be classified more severely, or if the single judge refers it to council.

In cases with a lower possible punishment, the court shall proceed as a single judge. It is possible for the district court to proceed in a panel of two professional judges and three lay judges, if the level of difficulty of the case requires it. The Municipal Court acting as a court of first instance may conduct its proceedings in a panel consisting of one professional and two lay judges, or of two professional judges and three lay judges The Municipal Court acting as a court of second instance and the appeal court, acting as a court of second or third instance, may conduct its proceedings in a panel consisting of three professional judges The Curia shall act in a council of three, or if the law provides it, five professional judges (section 14 of the Be.).

The new Code limits adjudication in chamber to a very narrow scope. At district courts, the main rule will be proceedings with a single judge. According to section 13 paragraph (2) of the new Code, both the district court and the tribunal only proceed in councils of three judges if the single judge refers the case to council, in which case three professional judges will proceed. In proceedings at the district court, the new Code does not prescribe obligatory council participation. In cases before the tribunal, in a narrow scope the new Code regulates the procedure of councils made of three professional judges for special crimes related to financial management, in which case, at second and third instance, a council of five may also proceed [section 13 paragraph (5) of the new Code]. [The scope of such cases is listed in section 10 paragraph (1) item 3 of the definitions part.][11]

[11] According to the research made by the National Judicial Office, from July 2018, to March 2019 nationally there were just 58 cases, when it was obligatory to adjudicate in chamber. In *Az új Be. alkalmazásának tapasztalatai (Experience of the application of the new Code of Criminal Procedure)* 07 May 2019, 43.

The court of second and third instance proceeds in councils of three professional judges. The new Code allows for adjudication in chambers at first instance only exceptionally, while the participation of society realised through lay judges is only possible in juvenile cases if the crime is punishable by imprisonment of at least 8 years, or the single judge refers the case to council.[12] In addition to this the participation of lay judges remains in military procedures.[13]

4 The Simplification and Acceleration of the Procedure

The concept of the Be. considered the court hearing as the basic form of procedure and, in addition to this basic type, it also considered it important to establish simplified procedures.[14] Eventually the Be., in addition to the arraignment and the omission of the trial, only contained a waiver of trial, inspired by the American form of plea bargaining, but with a significantly different content, which did not meet expectations despite numerous modifications of the law. According to the report by the Chief Prosecutor to the Parliament in 2016, 'the number of those accused against whom first instance court judgment was delivered as result of the waiver of trial dropped further (2016: 101, 2015: 132, 2014: 148). The number registered in this year was the lowest in the past five years.'[15] Compared to the 10-14,000 arraignments,[16] and the 16-17,000 omission of trial cases, this shows the complete failure of this legal institution.[17]

One, if not the main reason for establishing the new Code was that the judicial government had to face the fact that not only had the waiver of trial failed, but the attempts to conduct effective and quick procedures in general did not meet expectations. The average length of the main phases of procedures conducted against the accused increased from 545.8 days (2007) to 665.2 days (2013), and they still required 641.6 days in 2016, according to the statistical figures of the Office of the Chief Prosecutor.[18]

It also compounds the situation analysed that the growth in the length of the procedures happened when the number of crimes committed dropped by 25%,[19] and the same percentage

[12] Act XC of 2017 Chapter 680. § (1) a), b).

[13] Act XC of 2017 Chapter 698. §.

[14] Government decision 2002/1994. (I. 17.) section 7.

[15] B/17351 'Report of the Chief Prosecutor to the Parliament about the activities of the prosecutor's office in 2016' 25. <http://ugyeszseg.hu/pdf/ogy_besz/ogy_beszamolo_2016.pdf> accessed 02 April 2018.

[16] Ibid, 24.

[17] Ibid, 25.

[18] Criminality and justice. Office of the Chief Prosecutor 2017. The average number of days of the main phases of criminal procedures conducted against indicted persons (in calendar days) <http://ugyeszseg.hu/repository/mkudok264.pdf> accessed 02 April 2018.

[19] Office of the Chief Prosecutor Registered crimes. <http://ugyeszseg.hu/repository/mkudok264.pdf> accessed 02 April 2018.

increase in the staff and budget of the police and prosecutor's office[20] should have led to more effective and quicker procedures. However, the figures show that this is not what happened.

The reasoning of the new Code states:

> Furthermore, there is a high expectation from society for the timely completion of procedures and the effective operation of criminal justice, the essence of which is that the perpetrators – and only the perpetrators – of crimes shall all be prosecuted, with the least social contribution and in a fair procedure.[21]

And

> a special goal of the Draft is to improve the timeliness of criminal procedures, for example by making certain special procedures – such as arraignment, consent procedure and penal order – more effective.[22]

As figures about the length of the procedures show that, of all the procedural phases, the one lasting from the filing of charges to the delivery of the final court judgment takes the most time (in 2007 356.8 days on average, in 2013 410.6 days on average, in 2016 361.5 days on average[23]), the legislator established a procedural system in which most cases end without a proper hearing. In order to reach this goal, the legislator considered three special procedures to be the most important: arraignment,[24] which is an improved version of the procedure regulated in the present Be.,[25] the consent procedure,[26] which is the revision of the waiver of trial regulated in the Be.[27] and the procedure for a penal order,[28] which is a slightly modified version of the omission of trial procedure in the Be., the simplified and accelerated special procedure that is used the most.[29]

I believe that one of the main modifications of the new Code is in this context. These changes have been allowed by the constantly changing approach of Hungarian legal practitioners. In 1998 the practitioners of criminal justice could hardly or in no form accept a procedural simplification based on confession, whereby the court does not deliver its decision

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[20] Office of the Chief Prosecutor Statistical budget figures (million HUF), Staff figures <http://ugyeszseg.hu/repository/mkudok264.pdf> accessed 02 April 2018.

[21] Draft law T/13972. 316. <http://www.parlament.hu/irom40/13972/13972.pdf> accessed 02 April 2018.

[22] Ibid, 317.

[23] Criminality and justice. Office of the Chief Prosecutor 2017. The average number of days of the main phases of criminal procedures conducted against indicted persons (in calendar days) <http://ugyeszseg.hu/repository/mkudok264.pdf> accessed 02 April 2018.

[24] Act XC of 2017 Chapter XCVIII Arraignment.

[25] Act XIX of 1998 Chapter XXIV Arraignment.

[26] Act XC of 2017 Chapter XCIX Consent procedure.

[27] Act XIX of 1998 Chapter XXVI Waiver of trial.

[28] Act XC of 2017 Chapter C Procedure for penal order.

[29] Act XIX of 1998 Chapter XXVII Omission of trial.

based on the material or objective truth. As such, within the waiver of trial, rules had been defined that were directly leading to the failure of the procedure. Regarding the applicable punishment, the legislator specified the limits within criminal law (in sections 82–83 of the then valid Penal Code), within which lit was not the waiving prosecutor but the judge who determined the degree of punishment. However, after 20 years, the new Code seems to be ready to depart from the requirement of material truth and, with regard to confession, it is ready to accept that, in such cases, the basis of the factual background determined will not be the absolute truth.

5 The Problems of the Judicial Organisation

The 1994 decree also stated that '8. The problems of the legal regulation of the judicial branch (lay judges, appointed defence counsel) shall be solved.'

Some of these problems are still relevant. Dealing with these problems is still timely. As we have seen, the new Code takes a radical step regarding the issue of lay judges, as it only allows for their participation in case of serious crimes (punishable by at least 8 years of imprisonment) in juvenile and military cases; in all other procedures, the principle of the participation of society (through lay judges) ceased to exist as of 1 July 2018.

The appointment of a defence counsel has been another unsolved issue in Hungary for decades.[30] The essence of the problem is that in cases in which the participation of a defence counsel is obligatory and the defendant cannot or does not want to hire one, the authorities appoint the defence counsel – those authorities in whose interest it is not at all to provide a defence counsel for the defendant, one who does everything in the interest of his client and whose work makes the actions of the authorities more difficult.[31]

Section 46 of the new Code aims at settling the issue by stating:

> (1) The appointment of the defence counsel acting as appointed defence counsel shall be the task of the regional bar association competent in the territory of the proceeding court, prosecutor or investigating authority. (2) For the purposes of appointment, the decision on the appointment of defence counsel shall also be delivered to the competent regional bar association defined in paragraph (1). (3) For the appointment of a defence counsel, the regional bar association shall operate an information system that possibly allows the immediacy of appointment and the effective availability of the appointed defence counsel.

At first sight, this complies with the suggestions formulated in the legal literature for the solution of the problem. The question, however, is whether this approach will also be suc-

[30] I have already analysed this issue in 2011. Hack Péter, 'A védelem és a védő szerepének aktuális kérdései' (Topical questions on defence and the role of the defence counsel) (2011) (2) Magyar Jog 87–92.

[31] The problem, together with its possible solutions is described very clearly in Kádár András Kristóf, Tóth Balázs, Vavró István, 'Védtelenül. Javaslat a magyar kirendelt védői intézmény reformjára' (Defenceless. Suggestions for the reform of the institution of the appointed defence council) (2007) Budapest <https://helsinki.hu/wp-content/uploads/Vedtelenul.pdf> accessed 02 April 2018.

cessful in practice, for example whether the chambers will be able to ensure, the 'immediacy of appointment' at weekends or at night. The legislator does not exclude the possibility that this new form of appointment will sometimes be ineffective, therefore it also regulates the substitute defence counsel. Section 49 of the new Code states:

> (1) The court, the prosecutor or the investigating authority shall appoint a substitute defence counsel in order to replace the defence counsel if *a)* the defence counsel fails to attend any procedural actions despite a lawful subpoena, *b)* fails to inform the authorities of his absence in advance for justifiable cause or fails to arrange a substitute defence counsel, *c)* the further conditions of the performance of the procedural action are fulfilled, and *d)* the performance of the procedural action cannot be avoided.

As we can see, in this case, the presently known and disputed form of the appointment of defence counsel returns, and the authority will decide on the counsel for the defendant.

Based on the aforementioned reasons, we may conclude that even though the new Code is a much lengthier act than its predecessor, and contains several positive legislative innovations, it still does not bring about any revolutionary changes in the system of criminal procedure. The most important conceptual elements of the draft were present in the government decision of 1994. The system of criminal procedure is still a mixed system, in which the pre-charges and the after-charges phases are closely built on each other. However, the recently introduced changes strengthen the inquisitorial features of the procedure, departing from the goal of the act of 1998, which tried to emphasise the accusatory features, especially the contradictory nature of the procedure. It is unquestionable, however, that there are useful and positive changes in several minor issues, among which the regulation of coercive measures in Part 8 of the new Code should be mentioned, as well as the rules on special care, in which some improvements have been made as well.

II Sacrifices for the Sake of Efficiency

The main objective of the new regulation is to improve the effectiveness of the procedure, and to ensure quicker procedures. This is an objective to be hailed, as, according to the famous British legal saying, 'justice delayed is justice denied'. However, it should also be considered that, as Károly Bárd put it in his great book published in 1987:

> In the focus of debates about the acceleration and simplification of the procedure, there are the issues of the trial system and the procedural principles. (…) Many believe that the way out is the departure from traditional principles.[32]

[32] Bárd Károly, *A büntető hatalom megosztásának buktatói* (Közgazdasági és Jogi Könyvkiadó 1987, Budapest,) 30–31.

Bárd's forecast proved to be right about the new Code of 2017, too; the new Code departs from several principles that had been considered unshakeable earlier. One of the most important of them is probably the principle of material truth. The textbook by Tibor Király which discusses the Be. states:

> According to the laws, the task of and requirement for criminal procedure is to allow the judge to determine the truth about the commission and the perpetrator of the crime, as result of the mutual activities of participating persons. (…) The Hungarian criminal procedural code does not contain the word 'truth' but, in general, neither laws nor legal practice have ever questioned that the main requirement for criminal procedure was to determine the truth.[33]

As I have referred to before, the obligation to establish objective, material truth may be interpreted from the provision of the new Code stating

> During the gathering of evidence, the goal shall be the thorough and complete elucidation of the true facts; however, if the prosecutor does not suggest so, the court is not obliged to gather and examine evidence supporting the indictment [section 75 paragraph (1)].

Even though the reasoning of the new Code states:

> The Draft preserved those values of the valid code that are useful, and about which neither legal practitioners, nor legal scholars, nor new foreign experiences require changes. The Hungarian people are committed to and search for the truth, and criminal prosecution based on the material truth is a fundamental value of our valid criminal procedure code.[34]

Regarding material truth, the provisions of the act refer to the assumption that the new Code does not preserve the value of the principle of 'criminal prosecution based on material truth.' As I have mentioned before, the new rule does not oblige authorities to establish 'true' facts, only to base their decisions on 'truthful' facts. [section 163 paragraph (2) of the new Code] In the same section, the new Code states that 'It is not necessary to prove those facts, the truth of which has been mutually accepted by the accuser, the accused and the defence counsel in the given case' [section 163 paragraph (4) item *c)*].

Without giving up the requirement for material truth, the set of simplified procedures built on the confession of the accused, especially the one named Consent procedure, could not be used.

Among those principles sacrificed on the altar of efficiency, there are the principles of adjudication in chamber, participation of society and directness. Giving up or radically lim-

[33] Király Tibor, *Büntetőeljárási jog (Criminal procedural law)* (Osiris Kiadó 2003, Budapest) 21.

[34] T/13972. törvényjavaslat indokolása (Justification of Bill T/13972), 316. <http://www.parlament.hu/irom40/13972/13972.pdf> accessed 12 April 2018.

iting traditional principles will probably lead to the expected result, namely that procedures will be finished quicker, but it is also an issue whether efficiency, appearing in the forms of speed and economic efficiency would in any way diversely affect social efficiency.

Due to these changes, criminal procedure significantly moves towards the inquisitorial model, and in most cases the 'inquisitor' will not be the judge, but the prosecutor, because, through agreement with the accused, the prosecutor will establish the truthful facts and will apply the sentence. It will only be possible to assess the effects of this change in the course of time.

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