

Act C of 2012
on the Criminal Code

Section 127

(1) For the purposes of this Act, members of the regular force of the Hungarian Armed Forces, and the professional staff members of the police, the Parliament Guard, the department of corrections, the professional disaster management body and the civilian national security services shall be deemed servicemen.

(2) The provisions of this Act shall apply to military personnel subject to the exceptions set out in this Chapter.

(3) A military offense may only be committed by military personnel as perpetrator.

Act XIX of 1998
on Criminal Proceedings

Chapter XXII

MILITARY CRIMINAL PROCEEDINGS

Section 469 In the event of military criminal proceedings the provisions of this Act shall be applied with the derogations stipulated in this Chapter.

Scope of military criminal proceedings

Section 470 (1) Military criminal proceedings shall apply in the case of

a) a military crime (Chapter XX of the Criminal Code) committed by a soldier [Section 122 (1) of the Criminal Code] during the time of his actual service period,

b) any criminal offence committed by a member of the armed forces,

c) other criminal offence committed by a permanent staff member of the Police Service, the Parliamentary Guard Service, the Penitentiary Service, the Disaster Emergency Service or the civil national security services at his post or in connection with his military duty,

d) a criminal offence committed by a member of allied armed forces (Section 368 of the Criminal Code) within the boundaries of Hungary, or on a Hungarian ship or Hungarian aircraft outside of Hungary, falling in the judicial authority of Hungary.

(2) All criminal offences committed by the defendant shall be subject to military criminal proceedings if military criminal proceedings apply to any of such offences and no severance is possible.

(3) In the case of several defendants, military criminal proceedings shall be conducted if the criminal offence committed by any of the defendants is subject to military criminal proceedings and the close connection between the facts of the case permit no separate proceedings. This provision shall also apply to the receiver and the abettor.

The court

Section 471 (1) In cases falling under the rules of military criminal procedure, the military panel of the county regional court designated by the Act on the organisation and administration of courts shall proceed at first instance.

(2) In cases falling under the rules of military criminal procedure, the military judicial panel of the Budapest Court of Appeal shall proceed at second instance.

(3) An appeal filed against the decision of a military judge proceeding as an investigation judge, shall be adjudicated by the second instance judicial panel of the county regional court.

(4) In determining whether retrial can be allowed and in revising the judgment given in the retrial proceedings, another judicial panel of the Budapest Court of Appeal may also proceed at second instance.

(5) A military judge may also proceed in cases not falling under the scope of the military criminal procedure.

Composition of the court

Section 472 (1) In military criminal proceedings, both in the first and second instances the professional judge shall be a military judge and the associate judge in the first instance shall be a military associate judge.

(2) In the cases of criminal offences specified in Section 14 (1) *a*) and Section 16 (1) *a*)-*h*) the court of first instance shall act in a panel, while in other cases it shall act as a single judge, without the participation of associate judges.

(3) The court of first instance may also act in a panel consisting of one professional judge and two associate judges, if it establishes the court established that the classification may be graver than that indicated in the indictment.

(4) In the military criminal proceedings – with the exception of the case specified in subsection (5) – the associate judge may not be of lower rank than the accused. As a rule, the panel shall consist of the associate judges of the armed force at which the accused discharged his duty at the time of the offence. Derogation from the above rule is allowed if the required for the purpose of administration of justice.

(5) In proceedings against an accused bearing the rank of general, if the panel of the court consisting of the selected military associate judges cannot be set up as specified in subsection (4), anybody bearing the rank of a general may act as an associate judge in the case.

(6) If the panel cannot be set up even according to the rules of subsection (5), the president of the competent county regional court designated to conduct the military criminal proceedings - via the president of the National Judiciary Council's Office – shall

initiate a procedure to select associate judges as stipulated in the Act on the legal status and remuneration of judges. The staff meeting to select the associate judges shall be held within 15 days following its initiation by the president of the National Judiciary Council's Office. In such a case, the panel shall consist of military associate judges of the rank of general, selected at the staff meeting of generals.

Jurisdiction of the first instance court

Section 473 (1) The geographical jurisdiction of the military panel of the county regional court designated to conduct the military criminal proceedings is stipulated in the Act on the organisation and administration of courts.

(2) Adjudication of a criminal offence committed outside of Hungary shall fall in the jurisdiction of the military panel of the Budapest Regional Court.

(3) The ground for jurisdiction set forth in Section 17 (3) shall not be applied in military criminal proceedings.

The investigating judge

Section 486 In the course of military criminal proceedings, the tasks of the investigating judge shall be performed by the military judge of the Court of Justice. The appeal against the decision adopted by the military judge acting as an investigating judge shall be considered by the military panel of the High Court of Appeals.

Termination of the procedure

Section 487 On the grounds for the termination of punishability specified in Section 124 of the Criminal Code, until the filing of the indictment the military prosecutor and thereafter the court may terminate the procedure.

Persons participating at the trial

Section 488 The presence of the military prosecutor is statutory at the trial. In military criminal proceedings the draftsman of the prosecutor's office or the deputy prosecutor may not represent the indictment.

Section 489 The presence of the defence counsel is statutory at the trial,

- a) if the criminal offence is punishable by 5 years' or more imprisonment by law,
- b) in the cases regulated in Section 46,
- c),
- d) if there is a substitute private accuser.

Voting order of the military panel

Section 490 In the military panel, the judge of a lower rank shall vote before the judge of a higher rank. In the case of equal ranks, the officer having been promoted to the higher rank earlier shall cast his vote first. If the dates of promotion to the rank are

identical, the younger officer shall vote first. The presiding judge shall be the last to vote.

Act CLXII of 2011

on the Legal Status and Remuneration of Judges

2. Conclusion of service relationship of judges

Section 3

(1) The service relationship of a judge comes into existence upon his appointment.

(2) Judges are appointed by the President of the Republic.

(3) Appointment is made:

a) where the post is awarded by way of a public selection process to a person who is not currently serving as a judge;

b) if according to the relevant legislation the post is to be awarded without a public selection process to a person who is not currently serving as a judge;

c) if a judge who was appointed for a fixed term is appointed indefinitely;

***d)* if a judge advocate is appointed to a judge's post after terminating his post as a judge advocate, provided that the conditions provided for by law are satisfied.**

(4) If a judge who was relieved from office by the President of the Republic has to be reinstated in conclusion of a labor dispute, the President of the Republic shall re-appoint the judge in question for a fixed or unfixed term as before the time of dismissal.

(5) The recommendation for appointment and the instrument of appointment shall specify the time of commencement of the judge's service relationship, and the term of office where applicable, or an indication if the appointment is for an indefinite term.

4. Specific conditions relating to the appointment of judge advocates and administrative patent judges

Section 5

(1) As a precondition for serving as a judge advocate, the candidate to be appointed shall be a commissioned officer in the Hungarian Armed Forces. The prior consent of the minister in charge of defense is required for a motion for appointment. The appointment of a judge advocate shall be specifically for this post.

(2) Simultaneously with the appointment, the minister in charge of defense shall place the judge advocate on the active roster. Judge advocates shall serve at the judiciary until their term in judicial office is terminated.

15. Specific cases of assignment of judges, derogation from the original assignment

Section 27

(1) The President of OBH shall - on a recommendation by the president judge - assign judge advocates to military tribunals and - when their professional service relation with the Hungarian Army ends - to other judicial offices under Subsection (3) of Section 97.

Section 97

(1) When the service relationship of a judge advocate is terminated, the President of OBH shall submit the motion for dismissal - jointly with the minister in charge of defense - to the President of the Republic.

(2) The service relationship of a judge advocate with the Hungarian Armed Forces may only be terminated - other than by resignation - if the judge advocate's military judgeship is also terminated.

(3) If a judge advocate requests a transfer to another judge's office when his/her service relationship with the Hungarian Armed Forces is terminated, in the motion submitted to the President of the Republic the President of OBH shall present a proposal for the discharge of the judge advocate and for his/her appointment into judicial office, while retaining his/her judge's status. In this case, the judge shall be transferred to a general court or higher, with the proviso that he/she shall retain his/her previous court executive title if assigned to the general court where his/her former office was located; derogations may be made from this provision subject to the judge's consent. If the judge advocate does not

request a transfer to another judicial post, the President of OBH shall submit a motion to the President of the Republic for the dismissal of the judge advocate.

77. Legal status and selection of associate judges

Section 212

(1) Associate judge candidates shall be Hungarian citizens and shall be over the thirty years of age, they shall not be under guardianship or conservatorship or under the effect of advocated decision-making, they shall have no prior criminal record and shall not be deprived of civil rights.

(2) In addition to the requirements laid down in Subsection (1), associate judges of military tribunals adjudicating criminal charges under military law (hereinafter referred to as “military associate judge”) shall serve in the professional staff of the Hungarian Armed Forces or the law enforcement agencies.

(3) Associate judges may not hold membership in any political party and may not engage in political activities.

(4) Section 41 and Subsections (1)-(3) of Section 42 shall apply to lay assessors mutatis mutandis.

Section 213

(1) Associate judges are nominated by Hungarian citizens of legal age, municipal governments and associations - other than political parties - residing or established within the area of jurisdiction of the court in question.

(2) Associate judges who are teachers and who try the criminal cases of juvenile offenders shall be delegated by the faculties of the schools and educational institutions located within the court's area of jurisdiction.

(3) Military associate judges are delegated by the commanders of the competent units of the Hungarian Armed Forces or law enforcement agencies having regard to the recommendations made by local interest representation organizations.

(4) Associate judges for administrative and labor courts are, in principle, delegated by employers' and employees' organizations.

Section 215

(1) The associate judges of district courts shall be elected by the council of the

municipal government or the local nationality self-government of the municipality where the court is seated, and the associate judges of administrative and labor courts shall be elected by the competent county general assembly, the city council of Budapest or the council of the city with county rights, or council of the nationality self-government. The associate judges of district courts in the City of Budapest shall be elected by the council of the municipal governments or the local nationality self-governments located within the court's area of jurisdiction. In the case of district courts whose seat is located outside its area of jurisdiction, associate judges shall be elected by the competent county general assembly and the council of the regional nationality self-government.

(2) Military associate judges are elected by the meeting of staff officers of the proper rank.

78. Termination of the mandate of an associate judge

Section 220

(1) The mandate of an associate judge shall terminate:

- a) upon his/her death;
- b) at the end of his/her term;
- c) if either of the requirements set out in Subsection (1) of Section 212 are no longer satisfied;
- d) at the age of seventy;
- e) upon resignation;
- f) if the council of representatives having elected the associate judge recalls the associate judge in the case under Subsection (4) of Section 219.

(2) The mandate of a military associate judge shall end also if the judge is terminated from service for a reason other than retirement.

(3) An associate judge may resign his office in writing addressed to the council of representatives.

(4) The approval of the council of representatives is not required for the above-specified resignation to be effective.

(5) The council of representatives shall forthwith notify the president of the court affected about the resignation. Effective as of the day of resignation, the associate judge may no longer participate in judicature.

(6) In the cases described under Paragraphs c), d) and f) of Subsection (1), termination of an associate judge shall be declared by resolution of the council of representatives, of which the president of the court affected shall be informed without delay.

Act CLXI of 2011

on the Organization and Administration of the Courts

The Judiciary

2. Common provisions

Section 16

In Hungary, justice is administered by the following courts:

- a) Kúria (Curia);*
- b) courts of appeal;*
- c) general courts;*
- d) district courts and Budapest district courts (hereinafter referred to collectively as “district court”); and*
- e) administrative and labor courts.*

4. General courts

Section 21

(1) General courts shall proceed in the first instance in cases defined by law and in second instance shall hear appeals lodged against the decisions of district courts and administrative and labor courts.

(2) General courts are directed by the president.

(3) General courts are vested with legal personality.

(4) Chambers, groups as well as criminal, civil, economic and administrative and labor colleges shall operate at general courts. Various colleges may also function as a single unit.

(5) Specific cases defined by law shall be heard in the first instance by military tribunals at the general courts designated by specific other act and with areas of jurisdiction therein provided for.

5. Courts of appeal

Section 22

(1) Courts of appeal shall hear the appeals filed against decisions of district courts and general courts adopted in cases defined by law and shall hear other cases delegated under their jurisdiction.

(2) Courts of appeal are directed by the president.

(3) Courts of appeal are vested with legal personality and shall have their own economic organizations.

(4) Chambers, as well as criminal and civil colleges shall operate at courts of appeal.

(5) Appeals against the decisions adopted in military cases of first instance by military tribunals shall be heard by the military tribunal of the court of appeal provided for in specific other act.