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THE APPLICATION OF VIDEO CONFERENCING IN HUNGARIAN PRISONS

Abstract: *The application of the different solutions of video communication are getting more and more popular in the field of criminal justice. Video conferencing technology can be used for legal proceedings that would otherwise require transporting the prisoner and utilizing other staff resources. The purpose of the present study is to briefly introduce video conferencing and its effect on the prison environment.*

Keywords: *video conferencing, courtroom, prison setting, prisoners.*

1. INTRODUCTION

Nowadays the application of the different solutions of video communication are getting more and more popular in the field of criminal justice. Parallel to the increasing number of criminal cases, the need for such technology which develops efficiency and decreases costs is also growing. Besides video conferencing which is transacted between the courtrooms and another endpoint with the help of audio-visual equipment¹, we also can refer to the practice of video visitations and the telemedicine² as the new dimension of the prisoners' healthcare in the penitentiaria-

¹ According to the definition of the Association Internationale des Interprètes de Conférence (AIIC) video conference is a teleconference comprising one or several video signals which convey the images of some or all the participants. Quoted by Yvonne Fowler, „Interpreting into the ether: interpreting for prison/court video link hearings” <https://criticallink.org/wp-content/uploads/2020/04/CL5Fowler.pdf> 15. March 2021.

² For more details on telemedicine see: Jeremy D. Young, Mahesh Patel, “HIV subspecialty care in correctional facilities using telemedicine,” *Journal of Correctional Health Care*, 21(2) 2015, 179.; Jody Lannen Brady, “Telemedicine behind bars: A cost-effective and secure trend,” *Biomedical Instrumentation & Technology*, January/February 2005, 7; Violetta Andriolo, “Use of telemedicine in the European penitentiaries: a 2015 survey”, *European Journal of Public Health*,

ry system. The purpose of the present study is to briefly introduce video conferencing and its effect on the prison environment.

2. THE VIDEO CONFERENCES

The expression 'video conferencing'³ is the most commonly used term in the international legal literature referring to the discussed legal institution. It is based on video conferencing technology which allows for two or more people to see, hear or talk to each other in separate locations but in real time. The Hungarian legal background of these video conferences transacted from the courtrooms appeared in the previous Hungarian Criminal Procedure Act (Act XIX of 1998) in the form of the so called closed circuit telecommunication network trials.⁴ At the time this legal institution functioned as a form of witness protection from the 1st of July 2003, since mostly it was used according to witness hearings, and only exceptionally related to the charged persons interrogation. This also meant that it could not be applied outside the aforementioned categories of persons, further proving acts could not be performed and other phases of trial could not be held in this construction.⁵

The Hungarian Criminal Procedure Code in force (Act XC of 2017)⁶ has made more changes in relation to this legal institution: in addition to the change of the name⁷, the regulatory framework has clearly expanded. This means on the one hand the expansion of categories of persons, thus currently the application of the abovementioned telecommunication tool is possible not only according to the

3/2015, 30.; Maria Gualano et al., "Use of telemedicine in the European penitentiaries: Current scenario and best practices", *The European Journal of Public Health*, 27(1) 2016, 30–35.

³ Also referred to as 'video link' or 'audio-visual link'.

⁴ The legal institution was enrolled by Section 146 of Act I of 2002 on the amending of Act XIX of 1998 on the Hungarian Criminal Procedure: Holding a trial by way of a closed-circuit communication system, Sections 244/A–244/D. According to the previous Hungarian Criminal Procedure Act "At the motion of the prosecutor, the accused, the counsel for the defence, the witness, the lawyer acting on behalf of the witness, the ward or legal representative of a minor witness, or ex officio, the presiding judge may order the examination of the witness, or, in exceptional cases, the examination of the accused by way of a closed-circuit communication system. In the event of an examination via a closed-circuit communication system, direct links between the venue of the trial and the place of stay of the person heard shall be provided by a device simultaneously transmitting oral and visual communication."(art. 244/A. para.1.)

⁵ You can read about this topic in detail: Anett Erzsébet Gácsi, "Büntetőtárgyalás tartása zártcélú távközlő hálózat útján", *Acta Universitatis Szegediensis, Forum: Acta juridica et politica*, 2/2017, 5–24.

⁶ The current Hungarian Criminal Procedure Code entered into force on 1 July 2018.

⁷ Application of telecommunication tool (arts. 120-126.)

witness and the charged person, but also in relation to experts and translators. On the other hand, this means that its application is not limited only to the actual trial phase or the interrogation, but it can be used in all procedural phases in relation to all procedural acts. In this way, the original witness protection function of the legal institution has been replaced by the requirement to ensure presence at the procedural act, witness protection appears as an additional effect.⁸

Considering the place where the procedural act is taking place, the previous approach which was formulated and limited exclusively to two locations (interrogation court – correctional institution) was replaced by a much broader one, which means a designated area indicated by the prosecution authority and the police.

The idea of the closed circuit telecommunication network trials in 2014 raised the question of the form of interrogation of the charged persons or the witnesses in detention in which video communication is established between the courtroom and the correctional institution. In relation to this, it is important to highlight, that the previous Hungarian Criminal Procedure Code ordered the application of such system according to the charged persons and witnesses in detention in case of threat to public security.⁹ This video conferencing system was applicable in such cases, when the escape of the to be interrogated detainee was thoroughly feared. According to the Hungarian Criminal Procedure Code [art. 122, para. 3 b)-c)] in force the court can neglect the application of the telecommunication device only in particularly justified cases. It means on the one hand, the procedural acts which require the presence of the charged person or witness in detention, and on the other hand, the trial which is held in the matter of extending or maintaining the pre-trial detention, if the conditions for the application of the telecommunication device are provided.

According to the latter condition it can be said that the penitentiary system has set up an endpoint network for all prisons. Thus at the present, simultaneous visual and audio connection between the courts, other authorities¹⁰ and the correctional institutions – in the case of the detained charged person and witness – allows the participation in the procedural act.

The system is coordinated by a central module that ensures that the video conferencing takes place at the pre-settled time and between the designated endpoints. In case if the convicted person's presence should be ensured by telecommunication device in connection with several criminal cases at the same time,

⁸ A. E. Gácsi, 2017, 21.

⁹ „The presiding judge may order the use of closed-circuit communication system for the examination of a detained accused or witness whose presence at the trial would endanger public safety.”(art. 244/A, para. 2, f)

¹⁰ In case of the procedure of the prosecutor's office and the police, the Hungarian Criminal Procedure Code in force ordered the use of the telecommunication device as mandatory with the exception of those specified in art. 122. para 2.

according to the Penitentiary Regulation¹¹ (art. 81/A) due to the time conflict an obligation arises from the side of the penitentiary institution to notify the ones who ordered the application of the telecommunication device. For the correctional institution the primary focus will be on consultation in order to resolve the conflict between the ones who order such video conferencing. If this conflict effects a court or other authority (such as the prosecutor's office, the police, the mediator) the law gives priority to the court order.

The transaction of the first video conferencing happened on the 25th of May 2018 between the Regional Court of Eger and the Regional Correctional Institution of Heves county in the penitentiary proceeding in the matter of conditional release. Since then, the system has been updated several times and it also has been tested with a load test, meaning that all the correctional institutions have logged in the system at the same time.¹²

3. THE EVALUATION OF THE HUNGARIAN AND INTERNATIONAL EXPERIENCES OF VIDEO CONFERENCING

The following question inevitably comes up: what are the advantages and the possible disadvantages of the video conferencing system? Considering the benefits, it is obvious that the number of prisoners involved in transportation can be reduced, which emphasizes the cost-effectiveness of the system. Here, on the one hand, we can refer to the savings in travel costs, the time factor and the impact on organizing the service of the prison staff. On the other hand, in case of prisoners who pose significant security risk such expenses as providing special vehicles and necessary police escort for transporting can be eliminated. Another crucial aspect and argument in favour of the application of the system is that it reduces the security risk. The fact that the movement of prisoners could be realized only within the given correctional institution clearly influences and minimizes positively the security risk that otherwise arises. At the same time, this means that the workload of the prison staff can be reduced. As an advantage from the prisoner's side it should be emphasized, that on the one hand they don't have to go through the admission procedure again, and on the other hand they are absent from work, education or vocational training only on the day of the procedural act.

¹¹ Rules of Law Enforcement [Ministry of Justice Decree No. 16/2014. (XII. 19.) on the detailed rules of execution of imprisonment, confinement, pre-trial detention and confinement replacing payment of disciplinary penalty]

¹² Róbert Bogotyán, „Telekommunikációs eszközök alkalmazása a büntetés-végrehajtásban, az igazságszolgáltatás és a jogérvényesítés hatékonyságának növelése céljából” *Börtönügyi Szemle*, 4/2018, 22–23.

In addition to highlighting the positives, two negative approaches should be pointed out: in Hungary such criticisms were brought by the penitentiary judges that it is not necessarily possible to make a proper personal impression through the camera, for example as to whether the regret which is expressed by the prisoner is real or not. Consequently, judges are forced to rely on the subjective submission when making their decision.¹³ On the other hand, the fact that at their choice the defense counsel may be present at the segregated place or at the designated place [art. 123, para. 2 of the Hungarian Criminal Procedure Code] clearly renders the communication with the prisoner more difficult in cases when the defense counsel prefers to be present in the courtroom.

The international experiences also indicate that the popularity of this technological solution is to be found in cost savings and security considerations. Taking these aspects into account most evaluative opinions agree that „virtualization” is inevitable, however also draw attention to a number of limitations. For example, a pilot project in Manchester revealed that an important component of efficiency is the adequate training of the staff using the technology, as most of the negative feedbacks were given regarding that.¹⁴ Several authors pointed out that the video communication is impersonal, technically it alienates the accused person from the court and at the same time hinders the contact with the legal representative.¹⁵ *Donoghue*¹⁶ directly highlighted that the application of telecommunication devices could increase the number of confessions in cases where a prisoner and his/her defense counsel cannot communicate properly with each other, the suspects could confess such which they would not have done in the presence of the defense counsel. *Ward*¹⁷ argued, that for example with video communication it is more difficult to ascertain and assess the health or therapeutic needs of the charged person. *Rowden* and his colleagues¹⁸ pointed out that according to the opinion of the legal representatives their clients are not aware of the importance of the procedure, as

¹³ Kúria Büntető Kollégium, Joggyakorlat-elemző csoport, „A büntetés-végrehajtási bírói gyakorlat, különös tekintettel a reintegrációs őrizetre. Összefoglaló vélemény” 2017, 11. https://kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemeny_8.pdf (20. December 2020)

¹⁴ Joyce Plotnikoff, Richard Woolfson, „Evaluation of Video Link Pilot Project at Manchester Crown Court. Final Report,” 20 April 2000, 3. <http://lexiconlimited.co.uk/wp-content/uploads/2018/03/Videolink-Crown.pdf> (20. December 2020)

¹⁵ Tamara Walsh, „Video links in youth justice proceedings: when rights and convenience collide”, *Journal of Judicial Administration*, 27(4) 2018, 161, 181.

¹⁶ Jane Donoghue, „The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice”, *Modern Law Review*, (80)6 2017, 995.

¹⁷ Jenni Ward, „Transforming ‘Summary Justice’ Through Police-led Prosecution and ‘Virtual Courts’: Is ‘Procedural Due Process’ Being Undermined?”, *The British Journal of Criminology*, (55)2 2015, 354.

¹⁸ Rowden et al., „Sentencing by videolink: up in the air?” *Criminal Law Journal*, (34) 6 2010, 376–377.

they feel it informal and unrealistic in view of the video communication. The interaction between the judge and the defense, the body language and the dynamics of certain courtroom actors may be fade because the charged person is only the on-screen observer of the events. Kluss¹⁹ worded that video conferencing could dehumanize the prisoner and that could be accompanied by a more severe judgement. The reason for this can be found in the fact that the judge is less likely to consider the living conditions and the effects of imprisonment on the person concerned and his/her relatives in case of video conferencing.

4. CONCLUSIONS

According to the experiences of the Hungarian application of video conferencing it can be stated, that this type of video communication meets the requirements of efficiency and cost savings, however it also has disadvantages. This way of communication results such interactions in which the traditional face-to-face relationships and their personal nature are taken over by a virtual, more impersonal medium. The situation reshaped by the video connection also reshapes its actors: it supposes different skills, abilities and attitudes on the part of the judges, the penitentiary system, legal representatives and the prisoners. Despite all of these, the positive experiences of video conferencing suggest that there is likely to be a need to introduce them in the field of criminal justice in more and more countries in the near future.

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¹⁹ Susan Kluss, „Virtual justice: the problems with audiovisual appearances in criminal courts”, *Law Society Journal*, (46)4 2008, 51.

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Примена апликације за видео конференцију у мађарским затворима

Сажетак: У данашњим данима примена различитих апликација за видео комуникацију се све више примењује на пољу казненог правосудја. Технологија видео конференције се може примењивати у ипаквим иправним институцима који су иначе везани за транспорт затвореника и који иначе захтевају укључивање и ангажовање затворског персонала. Ова студија покушава да изнесе крајки приказ примене видео конференције, односно деловање примене видео конференције на затворске услове.

Кључне речи: видео конференција, судница, затворско окружење, затвореник.

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