



Article 7 – Ensuring Access to Case Materials in Hungary

METHODOLOGICAL MANUAL

2017



Supported by the Justice Programme of the European Union



Hungarian Helsinki Committee

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Introduction

One of the Hungarian Helsinki Committee's (HHC) prominent strategic goals is to decrease unjustified pre-trial detentions in Hungary, to ensure that the regulation and practice of pre-trial detention complies with the standards set by the European Court of Human Rights, and that the Hungarian legal provisions properly transpose the provisions of the respective EU directives. In the HHC's view, one of the outstanding problems of the domestic regulation and practice of pre-trial detention was that in the investigation phase of the criminal procedure (before the indictment) the defence had only restricted access to the materials and files of the case. The European Court of Human Rights also confirmed in several of its decisions that this restricted access to the case files violated the right to a fair trial and the requirement of the equality of arms. Consequently, it meant a significant change when, in order to comply with Article 7 of Directive 2012/13/EU on the right to information in criminal proceedings, ensuring the right of access to case materials, Act XIX of 1998 on the Code of Criminal Procedure was amended with regard to defendants whose pre-trial detention is initiated. As of 1 January 2014, Article 211 of the Code of Criminal Procedure sets out that if the prosecutor motions that the judge orders the defendant's pre-trial detention, the copy of the case files substantiating the prosecutorial motion shall be attached to the motion and shall be provided to the defendant and the defence counsel. As of 1 July 2015, the latter rule also applies when a motion is put forth for the prolongation of the defendant's pre-trial detention.

The HHC's research project "*Article 7 – Ensuring Access to Case Materials in Hungary*", concluded in 2017 and supported by the Justice Programme of the European Union, aimed at assessing the practical application of Article 7 of Directive 2012/13/EU on the right to information in criminal proceedings in Hungary. The project aimed at examining, through interviews with judges, prosecutors and attorneys and a case file research, whether there are any legislative or practical shortcomings with regard to the access to case files in Hungary (not only with regard to pre-trial detainees but also in general), and if yes, in what manner these could be solved.¹

¹ The research report prepared in the framework of the HHC's project "*Article 7 – Ensuring Access to Case Materials in Hungary*", presenting also the domestic legal background for accessing case materials, is available in English and in Hungarian on the website of the HHC: <http://www.helsinki.hu/>.

In the framework of the project,

- research interviews with 11 investigation judges (judges deciding on pre-trial detention) were conducted at 11 different courts, between September 2016 and January 2017;
- written answers were provided to the HHC's questions by 10 prosecutors from 10 different prosecutors' offices in the autumn of 2016; and
- research interviews were conducted with 17 attorneys, covering eight county bar associations (from the 20), in April and May of 2017.

The aim of the case file research conducted in the framework of the project was twofold: along with mapping the problems in the practice, the case file research, limited to the review of 50 criminal cases, was also aimed at testing the research methodology. Our aim was to provide future researchers with a tested method, should there be a future research into the issue covering a larger number of cases. In addition, the HHC also aimed to provide a starting point for designing a research methodology which may be used to assess how the defendants' and their defence counsels' right of access to the materials of the case prevails in practice also in other member states of the European Union.

In the call for participating in the research (which was, among others, disseminated to all county bar associations in Hungary) we not only asked the attorneys to share their general experiences in the framework of a research interview, but also to grant the HHC access to the files of criminal cases complying with the research criteria in which they provided defence (while respecting data protection rules and attorney-client privilege), and to consult researchers on access to case files in these cases. Based on the above-mentioned research criteria, the HHC aimed to cover the following kind of cases:

- criminal procedures in which the first interrogation of the defendant was carried out after 1 July 2015,
- preferably in which the investigation has already been concluded, and
- which constitute a good or bad practice in the view of the given attorney with regard to
 - (i) access to the materials of the case in the investigation phase in general, or
 - (ii) access to case files substantiating the prosecutorial motion aimed at pre-trial detention.

From among the cases provided by attorneys on the basis of the call, ordering pre-trial detention was motioned in 41 cases where the hearing on ordering pre-trial detention was held after the amended text of Article 211 of the Code of Criminal Procedure came into force, thus, after 1 January 2014. Accordingly, access to case files substantiating the motion aimed at ordering pre-trial detention was assessed regarding these 41 cases.

In the cases provided by attorneys altogether 73 decisions were made on prolonging pre-trial detention after 1 July 2015, thus in the period when, on the basis of the repeatedly amended text of Article 211 of the Code of Criminal Procedure, the prosecution was already under the obligation to attach the copy of the case files substantiating the motion to the motion aimed at prolonging pre-trial detention.

Access to case files in the case of defendants not taken into pre-trial detention was assessed regarding nine individual cases.

Accordingly, the results of the case file research carried out in the framework of the project may not be considered representative of course, but its results – coupled with the outcome of the interviews – can be used to determine those issues which should be examined further. It has to be added that the case files acquired from the attorneys were in many instances somewhat incomplete: for example, minutes of the hearing on pre-trial detention were sometimes missing. On the other hand, attorneys were able to provide researchers such first-hand information with regard to the individual cases which could not have been acquired via a case file research conducted at the courts.

The present methodological manual contains the research tools used in the HHC's *Article 7 – Ensuring Access to Case Materials in Hungary*, namely

- the questionnaire for interviews conducted with judges,
- the questionnaire for interviews conducted with prosecutors,
- the questionnaire for interviews conducted with attorneys, and
- the questionnaire used for the case file research.

Questionnaire for interviews with judges

Questions concerning the interviewee

1. What kind of judicial position do you currently work in (e.g. investigation judge)?
2. For how long have you worked as a judge?
3. Did you work in a different legal profession before? If yes, in which, and for how long?
4. Have you participated in any training concerning Directive 2012/13/EU on the right to information in criminal proceedings?

Access to case materials during the investigation phase in the case of pre-trial detention

- 5.1. Article 211 (1a) of the Code of Criminal Procedure prescribes to provide the defence “the case files substantiating the [prosecutorial] motion”. In your experience, does this definition cause any problems, where the prosecutor does not provide you and the defence evidence or case files that might weaken the prosecutorial motion (e.g. which question the existence of a well-founded suspicion against the defendant or the existence of the special grounds for pre-trial detention [such as flight risk or the risk of reoffending])? If yes, how can this be found out (e.g. from the defence’s submission or the prosecutor’s remarks)?
- 5.2. If yes, and you believe that the case file may contain further evidence or documents which might be relevant with regard to the pre-trial detention, what can you do / do you do?
- 5.3. In your experience, are the case files submitted to you and the defence always entirely identical? Has it ever happened that the defence had not received everything submitted to you by the prosecutor? If yes, how did you proceed in this situation?

- 5.4. In your experience, does the wording of Article 211 (1a) of the Code of Criminal Procedure, which prescribes providing the copies of “case files substantiating the motion”, result that the defence does not receive documents/evidence which are advantageous for the defendant (supporting the lack of a well-founded suspicion against the defendant or the lack of special grounds for pre-trial detention)? Do you see any differences in that regard between ordering pre-trial detention and prolonging pre-trial detention?
- 6.1. In your experience, in what proportion are defendants in pre-trial detention and their defence counsels provided with case materials essential to challenging effectively the lawfulness of pre-trial detention? (I.e., to what extent does the scope of access to case materials as envisaged by Directive 2012/13/EU on the right to information in criminal proceedings prevail in practice, in spite of the wording of the Code of Criminal Procedure?) Do you see any differences in that regard between ordering pre-trial detention and prolonging pre-trial detention?
- 6.2. In your experience, are the above issues – primarily, the scope of case files to which the prosecution “grants” access – influenced by the type of criminal offence underlying the criminal procedure, or by the number of defendants involved in the case? Are there any other factors related to the criminal proceedings which have an influence on the issues above?
- 7.1. If you have any knowledge about this: typically, what kind of case files are not submitted to the defendant and/or the defence counsel?
- 7.2. What reasons does the prosecutor give and on the basis of what documents when elaborating on the grounds for pre-trial detention?
- 7.3. If you notice that not all documents necessary to assess the lawfulness of the pre-trial detention have been submitted to the defendant and the defence counsel (and, accordingly, to you) under Article 211 (1a) of the Code of Criminal Procedure, do you take steps in order to ensure that the defence is provided with the further relevant case materials or all the materials of the case? If yes, what legal provisions are these steps based on?
- 8.1. Are defendants in pre-trial detention and their defence counsels granted access to copies of means of evidence beyond written documents, such as
- a) the relevant photographs?
 - b) the relevant video recordings?
 - c) the relevant audio recordings?

- 8.2. In what form and on what data medium are the defendants in pre-trial detention and their defence counsels provided access to
- a) the relevant written documents?
 - b) the relevant photographs?
 - c) the relevant video recordings?
 - d) the relevant audio recordings?
- 8.3. May the defendant/defence counsel inspect the material evidence in the case?
- 9.1. In general, how long before the hearing do you receive the prosecutorial motion and the case files attached to it? Do you find this time enough to adequately prepare for the hearing?
- 9.2. Do you have any knowledge about how long before the hearing/decision concerning pre-trial detention are the defendants and their defence counsels provided with a copy of the case files substantiating the prosecutorial motion for ordering or prolonging pre-trial detention? If yes, how much time does the defence have in general to prepare, and how do you find out about this (from the defence's "complaints", or from the case files)?
- 9.3. In your opinion, how long before the hearing/decision should the defence have access to the case files in order to have a realistic chance to prepare for the hearing, to submit motions, to gather documents, etc.?
- 9.4. In your opinion, in what percentage of the hearings/decisions does it arise as a problem that
- a) the defence has not been provided access to the case files in time before the hearing/decision?
 - b) the defence has not been provided access to the case files before the hearing/decision at all?
- Are there any differences in this regard between the hearings/decisions related to ordering pre-trial detention and those related to prolonging pre-trial detention?
- 10.1. Is submitting the case files to the defence a precondition of holding court hearings related to pre-trial detention and of deciding on pre-trial detention? Are there any differences in this regard between the ordering of pre-trial detention and the prolongation of pre-trial detention?

- 10.2. If the case files are provided to the defence only with a short time before the hearing/ decision: is there such a short amount of time where even if the case files are provided to the defence, it shall be considered as the prosecution not fulfilling its duties to provide the case files?
- 10.3. If it is revealed that the defence has not received the case files or has received the case files very late, how do you proceed? Do you resort to some sort of legal consequence?
- 10.4. How do the investigation authorities prove that they have handed over the case files to the defendant/defence counsel?
11. Are the defendants and their defence counsels provided with the case files substantiating the prosecutorial motion for ordering or prolonging pre-trial detention free of charge?
- 12.1. Do you have any knowledge about the approximate proportion of cases in which defendants/defence counsels file complaints for not receiving the case files substantiating the prosecutorial motion aimed at ordering or prolonging pre-trial detention? In these cases, do they usually rely on Article 195 or Article 196 of the Code of Criminal Procedure? (Note: there are no official national statistics available in this regard.)
- 12.2. Do you have any knowledge about how successful these complaints are? Is there any difference in this regard between the ordering of pre-trial detention and the prolongation of pre-trial detention?
13. In your opinion, would it be justified to extend the rules entailed in Article 211 (1a) of the Code of Criminal Procedure concerning access to case materials to those under house arrest?
- 14.1. If you could change anything about the regulation concerning access to case materials in the case of pre-trial detention, what would you change?
- 14.2. If you could change anything about the practice concerning access to case materials in the case of pre-trial detention, what would you change?
- 14.3. Additional comments or remarks:

Access to case materials during the investigation phase in general

15. Do you have any knowledge about whether the defendant/defence counsel is always granted access to the minutes of investigative acts where the defendant or the defence counsel may be present and to expert opinions [i.e. where granting access should be mandatory]? If not, how often does it happen that they are denied access?
- 16.1. In your experience, how often is access to case files (providing copies of case files) denied with regard to case files where granting access is not mandatory, claiming that granting access would violate the interests of the investigation?
- 16.2. Do authorities provide a detailed explanation in these cases as to why the interests of the investigation would be violated by granting access to certain case files?
- 16.3. In your experience, what are the considerations when deciding on whether the defence's access to certain case files would violate the interests of the investigation or not? For example, is access to the case files influenced by the type of criminal offence underlying the criminal procedure, the number of defendants involved in the case, or how much the investigation has progressed?
- 16.4. Does it ever happen that access to case files is denied on the basis of some other reason and not on the basis that it would violate the interests of the investigation?
- 17.1. Are defendants and defence counsels given copies of means of evidence beyond written documents, such as
 - a) the relevant photographs?
 - b) the relevant video recordings?
 - c) the relevant audio recordings?
- 17.2. In what form and on what data medium are defendants and defence counsels provided access to
 - a) the relevant written documents? Is it possible to take a photo of these documents?
 - b) the relevant photographs?
 - c) the relevant video recordings?
 - d) the relevant audio recordings?
- 17.3. May the defendant/defence counsel inspect the material evidence in the case?

- 18.1. Do you have any knowledge about the proportion of cases in which the defendants/ defence counsels file a complaint, based on Article 195 of the Code of Criminal Procedure, about being denied access to the copies of case files,?
- 18.2. In your experience, how successful are these complaints? Is it usually the prosecution or the judge who decides in favour of the defence?
- 18.3. If you have ever decided on a motion for review regarding the provision of copies of the case files, what did you take into consideration when deciding whether access to the case files would violate the interests of the investigation or not?
- 19.1. If you could change anything about the regulation concerning the provision of a copy of the case files, what would you change?
- 19.2. If you could change anything about the practice concerning the provision of a copy of the case files, what would you change?
- 19.3. Additional comments or remarks:

Connection to sentencing

20. In your experience, is it considered an irreparable procedural violation in the second instance court procedures [leading to quashing the first instance decision and ordering that a new first instance procedure is conducted] if the defendant or the defence counsel could not exercise their right to access to case materials, or exercising this right was restricted? Is there any difference in this regard between defendants who are in pre-trial detention and those who are not?

Questionnaire for interviews with prosecutors

Questions concerning the interviewee

1. In what prosecutorial position do you currently work in?
2. For how long have you worked as a prosecutor?
3. Did you work in a different legal profession before? If yes, in which, and for how long?

Access to case materials during the investigation phase in the case of pre-trial detention

4. Article 211 (1a) of the Code of Criminal Procedure prescribes to provide the defence “the case files substantiating the [prosecutorial] motion”. In your understanding does this mean that prosecutors are not required to provide the defence evidence or case files that might weaken the prosecutorial motion (which question the existence of a well-founded suspicion or the special grounds for pre-trial detention [such as flight risk or the risk of reoffending])?
 - 5.1. Do the investigation judge and the defence receive an entirely identical case file every time?
 - 5.2. In your experience, do investigation judges require that the entire case file is provided to them, and does it ever happen that they request additional case files beyond those already submitted to them? In these cases, does the judge (or you) submit these case files to the defence e.g. at the hearing?
6. What course of action do you follow when you should submit case files to the defence before pre-trial detention is ordered the provision of which, according to your position, would violate the interests of the investigation?

- 7.1. In your experience, how long before the hearing/decision on pre-trial detention do defendants and defence counsels receive the copies of the case files substantiating the prosecutorial motion aimed at ordering or prolonging pre-trial detention?
- 7.2. Do you send the motion and the case files attached to it to the defence and the investigation judge at the same time?
- 8.1. Is it a precondition of holding a hearing or making a decision about pre-trial detention that the defence has been provided with the case files? Is there a difference in this regard between ordering pre-trial detention and prolonging pre-trial detention?
- 8.2. If it has ever happened in practice that the defence had not received the case files or had received the case files very late: how did the court proceed in this case?
- 8.3. How do the investigation authorities prove that they have submitted the case files to the defendant/defence counsel?
9. Are defendants and their defence counsels provided with the case files substantiating the prosecutorial motion to order or prolong pre-trial detention free of charge?

Access to case materials during the investigation phase in general

10. Is the defendant/defence counsel always granted access to the minutes of investigative acts where the defendant or the defence counsel may be present and to expert opinions? If not, how often does it happen that they are denied access?
11. In your experience, how often is access to case files (providing copies of case files) denied with regard to case files where granting access is not mandatory, claiming that granting access would violate the interests of the investigation?
12. Does it ever happen that access to case files is denied on the basis of some other reason and not on the basis that it would violate the interests of the investigation?
- 13.1. In your experience, in what proportion of the cases do defendants/defence counsels file a complaint about being denied access to copies of case files, based on Article 195 of the Code of Criminal Procedure?
- 13.2. In your experience, how successful are these complaints? Is it usually the prosecution or the judge who decides in favour of the defence?

Questionnaire for interviews with attorneys

Questions concerning the interviewee

1. How long have you been an attorney? Did you work in a different legal profession before? If yes, in which, and for how long?
2. Which county bar association are you a member of?
3. Have you participated in any training concerning Directive 2012/13/EU on the right to information in criminal proceedings?

Access to case materials during the investigation phase in the case of pre-trial detention

A) Ordering pre-trial detention

- 4.1. In the case of a motion aimed at ordering pre-trial detention, are you and your client provided a copy of all case files available at the time the motion is made? (*Multiple choice question*)
 - In all cases.
 - In more than half of the cases.
 - In half of the cases.
 - In less than half of the cases.
 - Never.
- 4.2. If you do not have access to the entire case file at this point, in what proportion do you receive all the documents necessary in order to argue substantively and effectively against the pre-trial detention? E.g.: do you receive the documents/evidence favourable

for the defendant, thus, which support the lack of a well-founded suspicion against them, or which counter the special grounds for pre-trial detention [such as flight risk or the risk of reoffending]? *(Multiple choice question)*

- In all cases.
- In more than half of the cases.
- In half of the cases.
- In less than half of the cases.
- Never.

5.

- a) Has it ever happened that you or your client has not received any case file before the first hearing concerning pre-trial detention?
- b) If yes, what steps did you take in this case, and to what extent were these steps successful?
- c) Did the investigation judge hold a hearing despite the fact that you or your client did not receive the case files? (In other words: is it a precondition of holding a hearing concerning pre-trial detention that case files are submitted to the defence?)

6.1.

- a) In general, how long before the pre-trial detention hearing do you receive the copies of the case files substantiating the prosecutorial motion for pre-trial detention?
- b) How long before the hearing is the defendant provided with a copy of the case files?
- c) Are the copies of the case files provided together with the prosecutorial motion, or separately from that, at a later date?

6.2. Are you given enough time to study the case files provided to you in order to be adequately prepared? *(Multiple choice question)*

- In all cases.
- In more than half of the cases.
- In half of the cases.
- In less than half of the cases.
- Never.

6.3.

- a) In general, in what form and on what data medium (on paper, CD, DVD, etc.) are case files provided to you and the defendant?
- b) In general, who is the one handing over the case files to you and the defendant, the investigation authority or the prosecutor?
- c) In general, where do you and the defendant receive the case files (the case files are taken to your office and to the police holding cell or the penitentiary institution; you have to go to the police station to pick them up; they are handed over to you in the hallway of the court, etc.)?

6.4.

- a) Does the judge ask you to at the beginning of the hearing whether you have received the case files and whether you have had enough time to study the case files? If yes, will this be included in the minutes?
- b) If you request extra time to study the case files, does the judge grant you extra time at the beginning of the hearing or before the hearing? If yes, how much time do you usually ask for to study the case files, and how much time are you granted? Is all this covered by the minutes of the hearing?

7. Are there any regional differences with regard to the above issues? If yes, what are they?

B) Prolonging the pre-trial detention

8.1. In what proportion are copies of case files which have emerged since the last decision on pre-trial detention attached to the motions aimed at prolonging pre-trial detention? *(Multiple choice question)*

- In all instances.
- In more than half of the instances.
- In half of the instances.
- In less than half of the instances.
- Never.

8.2. If you are not provided with all case files which emerged since the last decision on pre-trial detention, in what proportion do you receive the copy of those case files which are necessary to argue substantively and effectively against the prolongation of the

pre-trial detention? *(Multiple choice question)*

- In all instances.
- In more than half of the instances.
- In half of the instances.
- In less than half of the instances.
- Never.

9.

- a) Has it ever happened that you or your client has not received any case files before the prolongation of the pre-trial detention?
- b) If yes, what steps did you take in this situation, and how successful were these steps?
- c) Did the investigation judge issue a decision or hold a hearing despite the fact that you or your client did not receive the case files? (In other words: is it a precondition of prolonging the pre-trial detention and of holding a related hearing that the case files are handed over to the defence?)
- d) If no hearing is held, how does the investigation judge learn that you have not received the case files or that you have received them very late?

10.1.

- a) In general, how long before the decision or hearing on the prolongation of pre-trial detention do you receive the copies of the case files?
- b) How long before the decision or hearing is the defendant provided with a copy of the case files?
- c) Are the copies of the case files provided together with the prosecutorial motion, or separately from that, at a later date?

10.2. Are you given enough time to study the case files provided to you in order to be adequately prepared? *(Multiple choice question)*

- In all instances.
- In more than half of the instances.
- In half of the instances.
- In less than half of the instances.
- Never.

- 10.3.
- a) In general, in what form and on what data medium (on paper, CD, DVD, etc.) are case files provided to you and the defendant if there is a motion for prolonging the pre-trial detention?
 - b) In general, do you receive the copy of the case files via post? If not, from whom and where do you and the defendant receive the copies of the case files?
11. Are there any regional differences with regard to the above issues? If yes, what are they?

C) General questions

- 12.1. How / from what can it be found out or on what basis can it be assumed that the full case file was not submitted to the defence, or that evidence/documents relevant with regard to the pre-trial detention were not submitted to the defence?
- 12.2. If you believe that there is evidence / documents in the case file which are relevant to ordering or prolonging the pre-trial detention, but you did not receive a copy of them, what steps can you take / do you take, and how effective are these?
- 12.3.
- a) In your experience, is the scope of case files to which access is “granted” by the prosecution influenced by the type of criminal offence underlying the criminal procedure, or the number of defendants involved in the case?
 - b) Are there any other factors related to the criminal proceedings which have an influence on the issues above?
- 12.4. Typically, what case files are not submitted to the defendant and/or the defence counsel?
13. In your experience, are the case files submitted to the defence and the judge always entirely identical? If not, how can this be found out, and what do you do in this situation?
- 14.1. Are defendants in pre-trial detention and their defence counsels granted access to copies of means of evidence beyond written documents, such as
- a) the relevant photographs?
 - b) the relevant video recordings?
 - c) the relevant audio recordings?

- 14.2. In general, in what form and on what data medium are the defendants in pre-trial detention and defence counsels provided access to
- the relevant written documents?
 - the relevant photographs?
 - the relevant video recordings?
 - the relevant audio recordings?
- 14.3. May the defendant/defence counsel inspect the material evidence of the case?
- 14.4. In your experience, do the defendants have the opportunity to properly study the case files handed over to them (e.g. do they have enough time to study the case files; do they have access to a computer in the police holding cell or in the penitentiary institution to study case files handed over to them on CD/DVD; etc.)?
- 15.
- In what form does the investigation authority or the prosecution prove that they have handed over to the defendant / to you the copies of the case files? E.g. do you and the defendant have to sign a record of receiving the case files, and if yes, does the defendant / do you get a copy of this?
 - Is there an itemized list included in the prosecutorial motion or in the record of receiving the case files of the case files the copies of which were handed over to the defence?
 - Is it clear from the case files / can it be proven on the basis of the case files when exactly (to the hour and minute) you/the defendant were handed over the copies of the case files?
- 16.
- Have you ever filed a complaint because the case files substantiating the prosecutorial motion aimed at ordering or prolonging pre-trial detention had not been submitted to the defendant or to you at all, or because the case files had been submitted to the defence too late?
 - If yes, did you file the complaint/complaints based on Article 195 or Article 196 of the Code of Criminal Procedure?
 - Were these complaints successful?
17. In your opinion, would it be justified to extend the rules entailed in Article 211 (1a) of the Code of Criminal Procedure concerning access to case materials to those under house arrest?

- 18.1. Overall, how would you rate the regulation on access to case files in the case of pre-trial detention? *(Multiple choice question)*
- 1 (very bad)
 - 2
 - 3
 - 4
 - 5 (very good)
- 18.2. Overall, how would you rate the practice of accessing the case files in the case of pre-trial detention? *(Multiple choice question)*
- 1 (very bad)
 - 2
 - 3
 - 4
 - 5 (very good)
- 18.3. If you could change anything about the regulation concerning access to case materials in the case of pre-trial detention, what would you change?
- 18.4. If you could change anything about the practice concerning access to case materials in the case of pre-trial detention, what would you change?

Access to case materials during the investigation phase in general

19. Before the investigation is concluded, do you/the defendant have access to those case files to which providing access is mandatory on the basis of the Code of Criminal Procedure (i.e. the minutes of investigative acts where the defendant or the defence counsel may be present and to expert opinions)? *(Multiple choice question)*
- In all cases.
 - In more than half of the cases.
 - In half of the cases.
 - In less than half of the cases.
 - Never.

- 20.1. How often do you request access to further case files (copies of further case files) in the case of which granting access is not mandatory under the Code of Criminal Procedure? *(Multiple choice question)*
- In all cases.
 - In more than half of the cases.
 - In half of the cases.
 - In less than half of the cases.
 - Never.
- 20.2. In your experience, how often is access denied to case files (how often is the issuing of copies denied) in terms of case files to which granting access is not mandatory, claiming that granting access would violate the interests of the investigation? *(Multiple choice question)*
- In all instances.
 - In more than half of the instances.
 - In half of the instances.
 - In less than half of the instances.
 - Never.
- 20.3. Do authorities provide a detailed explanation in these cases as to why the interests of the investigation would be violated by granting access to certain case files?
- 20.4. In your experience, what are the considerations when deciding on whether the defence's access to certain case files would violate the interests of the investigation or not? For example, is the scope of access to case files influenced by the type of criminal offence underlying the criminal procedure, the number of defendants involved in the case, or how much the investigation has progressed?
- 20.5. Does it ever happen that access to case files is denied on the basis of some other reason and not on the basis that it would violate the interests of the investigation?
- 20.6. Does it ever happen that you request access to case files and copies of the case files [on the basis of the general rules] also if the defendant is in pre-trial detention, and, therefore, the case files (or a part of them) are already at your disposal? If yes, what is the reason for this?

- 21.1. Are defendants and defence counsels given copies of means of evidence beyond written documents, such as
- the relevant photographs?
 - the relevant video recordings?
 - the relevant audio recordings?
- 21.2. In what form and on what data medium are defendants and defence counsels provided access to
- the relevant written documents? Is it possible to take a photo of these documents?
 - the relevant photographs?
 - the relevant video recordings?
 - the relevant audio recordings?
- 21.3. May the defendant/defence counsel inspect the material evidence in the case?
- 22.1. How often do you file a complaint – based on Article 195 of the Code of Criminal Procedure – about you being denied copies of certain case files? (*Multiple choice question*)
- In all instances.
- In more than half of the instances.
- In half of the instances.
- In less than half of the instances.
- Never.
- 22.2.
- Are these complaints effective? (*Multiple choice question*)
 - In all instances.
 - In more than half of the instances.
 - In half of the instances.
 - In less than half of the instances.
 - Never.
 - Is it usually the prosecution or the court which decides in your favour?

- 23.1. Overall, how do you rate the regulation on access to case files and providing copies of the case files? *(Multiple choice question)*
- 1 (very bad)
 - 2
 - 3
 - 4
 - 5 (very good)
- 23.2. Overall, how do you rate the practice concerning access to case files and providing copies of the case files? *(Multiple choice question)*
- 1 (very bad)
 - 2
 - 3
 - 4
 - 5 (very good)
- 23.3. If you could change anything about the regulation on access to case files and providing copies of the case files, what would you change?
- 23.4. If you could change anything about the practice concerning access to case files and providing copies of the case files, what would you change?

Connection to sentencing

24. In your experience, is it considered an irreparable procedural violation in the second instance court procedure [leading to quashing the first instance decision and ordering that a new first instance procedure is conducted] if the defendant or the defence counsel could not exercise their right to access to case materials, or exercising this right was restricted?

Additional comments or remarks:

Questionnaire for case file research

The questionnaire below was filled in by the researchers partly on the basis of the case files and partly on the basis of the information provided by the attorneys representing the defendants in the cases reviewed.

Motion for pre-trial detention

Was the pre-trial detention of the defendant motioned by the prosecution in the case?

- Yes
 No

If the answer is **NO**, go to **Part II.** of the questionnaire.

I. Access to case materials during the investigation phase in the case of pre-trial detention

1.1. The first hearing on ordering pre-trial detention

Date of the first hearing on pre-trial detention	DD.MM.YYYY. HH:MM
Did the defence receive the copies of all case files available before the first hearing on pre-trial detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> The defence counsel is not able to ascertain
Did the defence receive the copies of all case files which were necessary to argue substantively and effectively against ordering the pre-trial detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No If not, what relevant documents did the defence not receive?
Is the prosecutorial motion for ordering pre-trial detention available?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes: did the prosecution list in the motion the case files the copies of which were submitted to the defence?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly, meaning: <i>[e.g. only the type of evidence appears, such as "witness testimonies"]</i>
If yes: record the part where the prosecution declares that they had submitted the copies of the case files to the defence or arranged that the case files are handed over.	<i>[quote from the prosecutorial motion]</i>

QUESTIONNAIRE FOR CASE FILE RESEARCH

Who provided the defence with the copies of the case files?	In the case of the defence counsel: <input type="checkbox"/> the investigation authority <input type="checkbox"/> the prosecutor	In the case of the defendant: <input type="checkbox"/> the investigation authority <input type="checkbox"/> the prosecutor
Where did the defence receive the copies of the case files?	The defence counsel: <i>[e.g.: law office, police station, court hallway]</i>	The defendant: <i>[e.g.: law office, police station, court hallway]</i>
In what form did the defence receive the copies of the case files?	The defence counsel: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> other, namely:	The defendant: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> other, namely:
When did the defence receive the copies of the case files?	The defence counsel:	The defendant:
If it is possible to retrieve the date and time from the documents:	DD.MM.YYYY. HH:MM Answer based on: <i>[name of the document, e.g.: record of delivery]</i>	DD.MM.YYYY. HH:MM Answer based on: <i>[name of the document, e.g.: record of delivery]</i>
If it is not possible to retrieve the date and time:	<i>[e.g.: about 10 minutes before the hearing]</i>	<i>[e.g.: about 10 minutes before the hearing]</i>
Did the defence receive the copies of the case files at the same time as the prosecutorial motion?	The defence counsel: <input type="checkbox"/> Yes <input type="checkbox"/> No	The defendant: <input type="checkbox"/> Yes <input type="checkbox"/> No

QUESTIONNAIRE FOR CASE FILE RESEARCH

Did the defence counsel have enough time to study the documents?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Only after asking for more time from the investigation judge
Are the minutes of the hearing on ordering pre-trial detention available?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes: was it recorded by the hour and minute when the hearing on pre-trial detention started?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes: do the minutes contain information about whether the defence was provided with copies of the case files?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, record the respective phrase: <i>[quote from the minutes]</i>
If yes: according to the minutes, did the investigation judge ask the defence counsel and the defendant whether they received the copies of the case files?	<input type="checkbox"/> Yes, both of them <input type="checkbox"/> Only the defence counsel <input type="checkbox"/> Only the defendant <input type="checkbox"/> Neither of them
If yes: according to the minutes, did the investigation judge ask the defence counsel and the defendant about when they received the copies of the case files?	<input type="checkbox"/> Yes, both of them <input type="checkbox"/> Only the defence counsel <input type="checkbox"/> Only the defendant <input type="checkbox"/> Neither of them
If yes: according to the minutes, did the investigation judge ask the defence counsel and the defendant whether they had enough time to study the case files?	<input type="checkbox"/> Yes, both of them <input type="checkbox"/> Only the defence counsel <input type="checkbox"/> Only the defendant <input type="checkbox"/> Neither

QUESTIONNAIRE FOR CASE FILE RESEARCH

<p>If yes: do the minutes show when the defence counsel and the defendant were provided with the copies of the case files?</p>	<p><input type="checkbox"/> Yes, but only the day <input type="checkbox"/> Yes, by the day, hour and minute <input type="checkbox"/> Only in general, meaning: <i>[quote if possible, e.g.: "before the hearing"]</i> <input type="checkbox"/> No</p>
<p>Did the defence counsel ask for extra time from the investigation judge to study the case files?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, did the defence counsel receive extra time from the investigation judge? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, the amount of extra time provided:</p> <p>Is all of this included in the minutes? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Did the authorities prove with a record of delivery that the case files were handed over to the defence?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>If yes: do the minutes of the hearing show that the authorities proved that they had handed over the case files with a record of delivery?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> It is not possible to ascertain, because the minutes of the hearing are not available</p>

QUESTIONNAIRE FOR CASE FILE RESEARCH

Is the record of the delivery available?	<input type="checkbox"/> Yes <input type="checkbox"/> No, even though authorities used one <input type="checkbox"/> No, because no such record was used
If yes: does the record contain a list of the case files the copies of which were handed over to the defence?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly, meaning: <i>[e.g. only the type of evidence appears, such as “witness testimonies”]</i>
If yes: does the record show when the defendant and the defence counsel received the copies of the case files?	<input type="checkbox"/> Yes, but only the day <input type="checkbox"/> Yes, specified by day, hour and minute <input type="checkbox"/> No
Additional comments about access to case files substantiating the motion for ordering pre-trial detention	<i>[For example:</i> <ul style="list-style-type: none"> • <i>the defence (either the defence counsel or the defendant) did not receive the copies of the case files, or only received them after the hearing;</i> • <i>the defence told / did not tell this to the investigation judge;</i> • <i>the defence did not receive the copies of the case files, but/ therefore the investigation judge held / did not hold a hearing]</i>

1.2. The outcome of the first hearing on pre-trial detention

Was the defendant's pre-trial detention ordered in the case?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer is NO , go to Part II. of the questionnaire.	
Was the defendant's pre-trial detention prolonged in the case?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer is NO , go to Part II. of the questionnaire.	

2. Decisions on prolonging pre-trial detention

(The following table shall be filled out for every decision on prolonging pre-trial detention.)

Number of decision prolonging pre-trial detention	
The date of the decision prolonging pre-trial detention	DD.MM.YYYY.
Was a hearing held?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Before the decision regarding pre-trial detention, did the defence receive the copies of all case files which emerged since the previous decision on pre-trial detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> The defence counsel is not able to ascertain <input type="checkbox"/> No, because no new case files have emerged

QUESTIONNAIRE FOR CASE FILE RESEARCH

Did the defence receive the copies of the case files necessary to substantively and effectively argue against prolonging the pre-trial detention?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No, because no new case files have emerged	
	If not, what relevant documents did the defence not receive?	
If the answer to the previous two questions is “no, because no new case files have emerged”: is there any document indicating that the defence did not receive documents because no new case files have emerged?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	If yes, please elaborate: <i>[define the type of document and provide quote from document]</i>	
In what form and way was the defence provided with the copies of the case files?	The defence counsel:	The defendant:
	<input type="checkbox"/> by post, on paper <input type="checkbox"/> by post, on CD/DVD <input type="checkbox"/> other, namely:	<input type="checkbox"/> by post, on paper <input type="checkbox"/> by post, on CD/DVD <input type="checkbox"/> other, namely:
When did the defence receive the copies of the case files?	The defence counsel:	The defendant:
If it is possible to retrieve the date and time from the documents:	DD.MM.YYYY. HH:MM Answer based on: <i>[name of the document, e.g.: post receipt]</i>	DD.MM.YYYY. HH:MM Answer based on: <i>[name of the document, e.g.: post receipt]</i>
If it is not possible to retrieve the date and time:	<i>[e.g.: about three days before the decision]</i>	<i>[e.g.: about three days before the decision]</i>

QUESTIONNAIRE FOR CASE FILE RESEARCH

Did the defence receive the copies of the case files at the same time as the prosecutorial motion?	The defence counsel: <input type="checkbox"/> Yes <input type="checkbox"/> No	The defendant: <input type="checkbox"/> Yes <input type="checkbox"/> No
Did the defence counsel have enough time to study the case files?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Is the prosecutorial motion for prolonging the pre-trial detention available?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes: did the prosecution list in the motion the case files the copies of which were submitted to the defence?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly, meaning: <i>[e.g. only the type of evidence appears, such as "witness testimonies"]</i>	
If yes: record the part where the prosecution declares that they had submitted the copies of the case files to the defence or arranged that the case files are handed over.	<i>[quote from the prosecutorial motion]</i>	
Is the decision on prolonging pre-trial detention available?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes: does the decision contain information about whether the defence was provided with copies of the case files?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	If yes, record the respective phrase: <i>[quote from the decision]</i>	

QUESTIONNAIRE FOR CASE FILE RESEARCH

<p>If yes: did the court list in it the case files the copies of which were submitted to the defence?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly, meaning: <i>[e.g. only the type of evidence appears, such as “witness testimonies”]</i>
<p>If yes: does the decision contain information about when the copies of the case files were sent to and received by the defence counsel and the defendant?</p>	<input type="checkbox"/> Yes, namely: <i>[quote from the decision]</i> <input type="checkbox"/> No
<p>Is there any document beyond the prosecutorial motion and the court decision which contains exact information about the case files the copies of which were submitted to the defence?</p>	<input type="checkbox"/> Yes, namely: <i>[define the type of the document and provide details, e.g. whether documents are listed in an itemized manner or appear by type]</i> <input type="checkbox"/> No
<p>Is there any document beyond the prosecutorial motion and the court decision which contains information about when copies of the case files were received by the defence?</p>	<input type="checkbox"/> Yes, namely: <i>[define the type of the document and provide details, preferably with a quote]</i> <input type="checkbox"/> No
<p>Additional comments about access to case files substantiating the prosecutorial motion to prolong pre-trial detention</p>	<p><i>[For example:</i></p> <ul style="list-style-type: none"> • <i>the defence (either the defence counsel or the defendant) did not receive copies of the case files, or only received them after the decision was made;</i> • <i>the defence signalled / did not signal this to the investigation judge; if it was signalled, what was the outcome?]</i>

3. Making a complaint

Did the defence make a complaint in the case in relation to access to the case files substantiating the prosecutorial motion aimed at ordering pre-trial detention?	<input type="checkbox"/> Yes, the defence counsel <input type="checkbox"/> Yes, the defendant <input type="checkbox"/> Both of them <input type="checkbox"/> Neither of them	
If yes: which Article of the Code of Criminal Procedure was the complaint based on?	In the case of the defence counsel: <input type="checkbox"/> Article 195 <input type="checkbox"/> Article 196	In the case of the defendant: <input type="checkbox"/> Article 195 <input type="checkbox"/> Article 196
If yes: was the complaint successful?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Did the defence make any complaints in the case in relation to access to the case files substantiating the prosecutorial motion aimed at prolonging pre-trial detention?	<input type="checkbox"/> Yes, the defence counsel <input type="checkbox"/> Yes, the defendant <input type="checkbox"/> Both of them <input type="checkbox"/> Neither of them	
If yes: which Article of the Code of Criminal Procedure was the complaint based on?	In the case of the defence counsel: <input type="checkbox"/> Article 195 <input type="checkbox"/> Article 196	In the case of the defendant: <input type="checkbox"/> Article 195 <input type="checkbox"/> Article 196
If yes: how many complaints were made?	<i>[total number of complaints]</i>	
If yes: how many complaints were successful?	<i>[number of successful complaints]</i>	

4. Additional comments regarding access to case files substantiating the prosecutorial motion in the case of pre-trial detention:

II. Access to case materials during the investigation phase in general

5. Access to case files during the investigation phase in general

<p>Did the defence have access to those case files in the investigation phase (before the presentation of the case file*) granting access to which is mandatory under the Code of Criminal Procedure (i.e. the minutes of those investigative acts where the defendant or the defence counsel may be present and the expert opinion)?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>If the defence did not have access to these case files, was a formal decision issued about denying access?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>If access was denied, on what basis did the authorities deny access and providing copies of the case files?</p>	<p><i>[If there was a formal decision, provide a quote from that.]</i></p>	
<p>If access was denied, did this result in the violation of the right to effective defence [in the opinion of the defence counsel]?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>If access was granted, in what form were case files provided to the defence?</p>	<p>In the case of the defence counsel:</p> <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:	<p>In the case of the defendant:</p> <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:

QUESTIONNAIRE FOR CASE FILE RESEARCH

Did the defence have access to those case files in the investigation phase (before the presentation of the case file) granting access to which is not mandatory under the Code of Criminal Procedure?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Partly (only to some of these case files)		
If the defence did not have access to these case files, was a formal decision issued about denying access?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If access was denied, on what basis did the authorities deny access and providing copies of the case files?	<i>[If there was a formal decision, provide a quote from that.]</i>		
If access was denied, did this result in the violation of the right to effective defence [in the opinion of the defence counsel]?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
If access was granted, in what form were case files provided to the defence?	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none; vertical-align: top;"> In the case of the defence counsel: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely: </td> <td style="width: 50%; border: none; vertical-align: top;"> In the case of the defendant: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely: </td> </tr> </table>	In the case of the defence counsel: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:	In the case of the defendant: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:
In the case of the defence counsel: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:	In the case of the defendant: <input type="checkbox"/> on paper <input type="checkbox"/> on CD/DVD <input type="checkbox"/> in email <input type="checkbox"/> other, namely:		

* *The presentation of the case file takes place after the investigation is concluded. From this point in the procedure, the defence has unlimited access to the case files.*

6. Making a complaint

Did the defence make a complaint in the case about access to case files being restricted or providing of copies of the case files being denied?	<input type="checkbox"/> Yes, the defence counsel <input type="checkbox"/> Yes, the defendant <input type="checkbox"/> Both of them <input type="checkbox"/> Neither of them
If yes: how many complaints were made?	<i>[total number of complaints]</i>
If yes: how many complaints were successful?	<i>[number of successful complaints]</i>

7. Additional comments about access to case files in the investigation phase in general:

III. Further issues (presentation of the case file, court phase)

The date of the suspect's first interrogation	DD.MM.YYYY.
Has the presentation of the case file already taken place in the case?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, the date of this:	DD.MM.YYYY.
If yes: was there any problem in relation to the presentation of the case file which resulted in the violation of the right to effective defence (e.g. late notice about the date of the presentation of the case file; defence was not allowed to take photos about the documents; the case file was incomplete; etc.)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, please elaborate:
Has the indictment already been filed in the case?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, the date of filing the indictment:	DD.MM.YYYY.
If yes: was there any problem in relation to access to case files after the indictment was filed which resulted in the violation of the right to effective defence?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, please elaborate:

