

Government Decree 89/2020 (5 April)
on measures related to certain international legal assistance proceedings in criminal matters during the period of state of danger

The Government,
acting within its original legislative power laid down in Article 53 (2) of the Fundamental Law, having regard to the provisions of Act XII of 2020 on the containment of coronavirus,
acting, with respect to section 21, within its original legislative power laid down in Article 53 (3) of the Fundamental Law, on the basis of authorisation by the National Assembly under section 3 (1) of Act XII of 2020 on the containment of coronavirus,
acting within its function laid down in Article 15 (1) of the Fundamental Law,
orders as follows:

1. Derogations from the provisions of Act XXXVIII of 1996 on international legal assistance in criminal matters

Section 1 The provisions of Act XXXVIII of 1996 on international legal assistance in criminal matters (hereinafter “Nbjt.”) shall apply subject to the derogations laid down in this Decree.

Section 2 (1) Regarding a defendant held in custody or subjected to temporary criminal supervision for extradition, the Budapest-Capital Regional Court, if it establishes that the conditions for extradition are met, may, instead of passing a decision on ordering arrest for extradition, decide also to order or maintain the temporary criminal supervision for extradition.

(2) The court shall send its final decision establishing that the conditions for extradition are met, together with the case files, to the Minister responsible for justice (hereinafter “Minister”) for a decision on extradition.

(3) In the case of simplified extradition, if the Minister consents to the extradition of a person requested to be extradited who is subjected to temporary criminal supervision for extradition, ordering the custody and arrest for extradition of the defendant shall not be mandatory; instead, the temporary criminal supervision for extradition of the defendant may be maintained on the basis of paragraph (1), provided that its conditions are still met.

Section 3 (1) The surrender of the extradited person shall not be executed if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) If on the basis of paragraph (1), the surrender of the extradited person cannot be executed, the state of danger declared by the Government shall qualify as circumstances beyond the control of any of the proceeding authorities.

(3) The provisions of section 27 (2) of the Nbjt. shall apply accordingly to the time limit of a temporary criminal supervision for extradition ordered or maintained in accordance with section 2.

(4) If the defendant is subjected to a temporary criminal supervision for extradition and his surrender can be executed, the defendant may be taken into custody for the purpose of executing the surrender.

Section 4 (1) If the court established that the conditions for extradition are met, it shall review, *ex officio* and on the basis of the case files, the necessity of the temporary criminal supervision for extradition or arrest for extradition every three months following the establishment that the conditions for extradition are met or the declaration of state of danger.

(2) In the course of reviewing the necessity of the coercive measure, the court shall, by way of the Minister, request the requesting foreign state to establish whether

- a) the conditions for issuing an extradition request are still met, and
- b) the objective of the extradition request can be achieved by any other form of legal assistance.

(3) The court shall review the necessity of the coercive measure in accordance with paragraphs (1) to (2) and pass a decision

- a) maintaining the coercive measure, or
- b) terminating the coercive measure, and shall notify the Minister accordingly.

Section 5 (1) The requested person shall not be received if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) If a defendant is arrested on the basis of an international arrest warrant, the court shall review, on the basis of the case files, with assistance of the prosecution service if before indictment, the necessity of the international arrest warrant *ex officio* every three months, or at an initiative by the requested state.

(3) In the course of reviewing the necessity of an international arrest warrant, the court, with assistance of the prosecution service if before indictment, shall examine whether

- a) the conditions for issuing an international arrest warrant are still met,
- b) the objective of the international arrest warrant can be achieved by any other form of legal assistance.

(4) If, as a result of a review conducted in accordance with paragraphs (2) to (3), the court establishes that the conditions for international arrest warrant are not met, it shall withdraw the international arrest warrant.

(5) The issuing court shall send the order withdrawing an international arrest warrant to the Minister and the NEBEK (“International Law Enforcement Cooperation Centre”) without delay.

(6) If the review was initiated by the requested state and the international arrest warrant was not withdrawn by the court, the court shall, by way of the Minister, notify the requested state that the conditions for international arrest warrant are met.

Section 6 A criminal proceeding in Hungary concerning a defendant subjected to a coercive measure affecting personal freedom shall not be transferred if the surrender of the defendant would be contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

Section 7 A criminal proceeding in progress abroad concerning a defendant subjected to a coercive measure affecting personal freedom in a criminal proceeding shall not be taken over if the surrender of the defendant would be contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

Section 8 If a convict is held in custody abroad, and the conditions are met for taking over the enforcement of a sentence of imprisonment or a custodial measure at the time of adjudicating a request for legal assistance regarding taking over such enforcement, the Minister shall postpone the decision on taking over the enforcement of the penalty or measure until the end of the period of state of danger, and inform the requesting state accordingly.

Section 9 (1) If the Minister decided for taking over the enforcement of a sentence of imprisonment or a custodial measure of a convict in custody abroad, that convict shall not be received if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) The NEBEK shall, by way of the Minister, inform the requesting state about the provisions of paragraph (1), and about the existence of the state of danger declared by the Government.

Section 10 The transfer to another state of the enforcement of a sentence of imprisonment imposed or a custodial measure applied with final and binding effect by a Hungarian court regarding a convict staying in Hungary shall not be initiated or ordered if surrendering the convict is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

Section 11 (1) If the transfer of the enforcement of a sentence of imprisonment imposed or a custodial measure applied with final and binding effect by a Hungarian court was initiated and the executing foreign state decided to take over the enforcement, the convict shall not be surrendered if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) The NEBEK shall, by way of the Minister, inform the executing foreign state about the provisions of paragraph (1), and about the existence of the state of danger declared by the Government.

Section 12 (1) A request for procedural assistance that would involve the surrender or receipt of a person in custody in Hungary or abroad shall not be submitted or granted.

(2) The return of a person in custody to Hungary or to a foreign country shall not be executed if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

2. Derogations from the provisions of Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal matters

Section 13 The provisions of Act CLXXX of 2012 on cooperation with the Member States of the European Union in criminal matters (hereinafter “EUtv.”) shall apply subject to the derogations laid down in this Decree.

Section 14 Regarding a defendant held in custody or subjected to temporary criminal supervision for surrender, the Budapest-Capital Regional Court, if it establishes that the conditions for surrender are met, may, at the time of passing a decision on surrender or simplified surrender, decide also to order or maintain the temporary criminal supervision for surrender of the defendant, provided that the conditions for this are met.

Section 15 (1) The surrender of the defendant shall not be executed if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered. In its decision on surrender, the court shall temporarily postpone the execution of the surrender of the defendant for the period of state of danger. The court shall pass its decisions concerning temporary postponement on the basis of the case files.

(2) If on the basis of paragraph (1), the surrender of the defendant cannot be executed, the state of danger declared by the Government shall qualify as a humanitarian reason deserving special consideration and an unavertable obstacle endangering the life or health of the defendant.

(3) If the defendant is subjected to temporary criminal supervision for surrender and his surrender can be executed, the defendant may be taken into custody for the purpose of executing the surrender.

Section 16 (1) If the court established that the conditions for surrender are met, it shall review, *ex officio* and on the basis of the case files, the necessity of the temporary criminal supervision for surrender, or arrest for surrender, every three months following the establishment that the conditions for surrender are met or the declaration of state of danger.

(2) In the course of reviewing the necessity of the coercive measure, the court shall, by way of the Minister, request the judicial authority of the issuing Member State to establish whether
a) the conditions for issuing a European arrest warrant request are still met, and

b) the objective of the European arrest warrant can be achieved by any other form of legal assistance.

(3) The court shall review the necessity of the coercive measure in accordance with paragraphs (1) to (2) and pass a decision

a) maintaining, or

b) terminating

the coercive measure.

Section 17 (1) The requested person shall not be received if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) If a defendant is arrested on the basis of a European arrest warrant, the court shall review, on the basis of the case files, with assistance of the prosecution service if before indictment, the necessity of the European arrest warrant *ex officio* every three months, or at an initiative by the judicial authority of the executing Member State.

(3) In the course of reviewing the necessity of a European arrest warrant, the court, with assistance of the prosecution service if before indictment, shall examine whether

a) the conditions for issuing a European arrest warrant are still met,

b) the objective of the European arrest warrant can be achieved by any other form of legal assistance.

(4) If, as a result of a review conducted in accordance with paragraphs (2) to (3), the court establishes that the conditions for European arrest warrant are not met, it shall withdraw the European arrest warrant.

(5) The issuing court shall send the order withdrawing a European arrest warrant to the Minister and the NEBEK without delay.

(6) If the review was initiated by the judicial authority of the executing Member State and the European arrest warrant was not withdrawn by the court, the court shall, by way of the Minister, notify the judicial authority of the executing Member State that the conditions for European arrest warrant are met.

Section 18 (1) A request for procedural assistance that would involve the surrender or receipt of a person in custody in Hungary or abroad shall not be submitted or granted.

(2) The return of a person in custody to Hungary or to a foreign country shall not be executed if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

Section 19 (1) If the court decided for taking over the enforcement of a criminal sentence imposing a penalty of imprisonment, or applying a custodial measure, concerning a convict in custody abroad, that convict shall not be received if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(2) The transfer of the enforcement of a sentence of imprisonment imposed or a custodial measure applied with final and binding effect by a Hungarian court regarding a convict staying in Hungary shall not be initiated if surrendering the convict is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

(3) If the transfer of the enforcement of a sentence of imprisonment imposed or a custodial measure applied with final and binding effect by a Hungarian court was initiated and the executing Member State decided to take over the enforcement, the transfer of the convict shall not be executed if doing so is contrary to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered.

3. Final provisions

Section 20 (1) With the exception specified in paragraph (2), this Decree shall enter into force following the day of its promulgation.

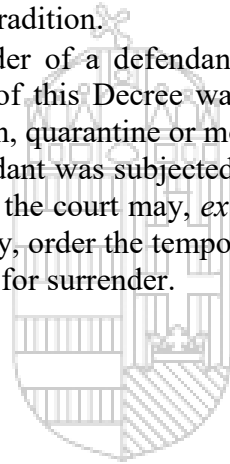
(2) Section 21 shall enter into force on the fifteenth day following the promulgation of this Decree.

Section 21 The Government extends the temporal scope of this Decree until the end of the period of state of danger under Government Decree 40/2020 (11 March) on the declaration of state of danger.

Section 22 (1) This Decree shall apply also to proceedings pending on the day of its entry into force.

(2) If the surrender of a defendant subjected to arrest for extradition ordered before the entry into force of this Decree was not possible due to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered, and before the arrest for extradition was ordered, the defendant was subjected to temporary criminal supervision for extradition or its conditions were met, the court may, *ex officio* or at a motion and by applying section 25/A (2) of the Nbjt. appropriately, order the temporary criminal supervision for extradition of the defendant instead of his arrest for extradition.

(3) If the execution of the surrender of a defendant subjected to an arrest for surrender ordered before the entry into force of this Decree was not possible due to the rules of the epidemiological isolation, observation, quarantine or monitoring ordered, and before the arrest for surrender was ordered, the defendant was subjected to temporary criminal supervision for surrender or its conditions were met, the court may, *ex officio* or at a motion and by applying section 9/A of the EUtv. appropriately, order the temporary criminal supervision for surrender of the defendant, instead of his arrest for surrender.



MINISTRY OF JUSTICE
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