

## Customer Information

### on submissions concerning major crimes connected to exercising executive powers and managing public goods

#### inNOVA form included in the Information

Case group: Criminal procedure concerning criminal offences.

Identifier	Title of form
IN-100017	Motion for reconsideration for procedures conducted in major crimes connected to exercising executive powers and managing public goods

**This information is in effect as of 11. January 2023.**

#### Legal background:

- Act XC of 2017 on Penal Procedure (hereafter: Be.)  
<https://njt.hu/jogszabaly/2017-90-00-00>
- Act C of 2012 on Penal Code (hereafter: Btk.)  
<https://njt.hu/jogszabaly/2012-100-00-00>

#### What is a motion for reconsideration?

As of 31. December 2022, there is a possibility in case of **major crimes connected to exercising public power and managing public goods**:

- if the investigative authority or the prosecutor's office rejects the denunciation or closes the proceedings,
- then, by way of a motion for reconsideration,
- one can turn to the court to order or continue the proceeding - should the investigative authority or the prosecutor's office not grant the motion for reconsideration.

#### Which crimes are affected by a motion for reconsideration?

By law, one can lodge a motion for reconsideration in case of **major crimes connected to exercising public powers or managing public goods**.

Based on the motion, proceeding authorities can also examine *other crimes closely connected to these crimes in a case*.

What are **major crimes connected to exercising public powers and managing public goods**?

- **corruption crimes** (Chapter XXVII of the Criminal Code) - *except for* minor cases of bribery and accepting bribery (Article 290 (1) and (6), Article 291 (1) of the Criminal Code)

- **abuse of authority** (Article 305 of the Criminal Code) - *except* when not committed by a senior official of a law enforcement agency, the Military National Security Service, the Parliamentary Guard, a capital or county government office, an administrative body of a local government or a public body.
- The following crimes committed against or damaging **national assets** or assets **managed by public sector asset management foundations** of general interest:
  - **serious cases of embezzlement, fraud, economic fraud or fraud committed by way of IT systems** [Article 372 (4) - (6), 373 (4) - (6), 374 (4) - (6), 375 (2) - (4) of the Criminal Code]
  - **fraudulent breach of trust** (Article 376 of Criminal Code)
- out of crimes against the budget:
  - **serious cases of budgetary fraud** [Article 396 (3) - (6)]
  - **failure to comply with supervisory or control obligations relating to budgetary fraud** (Article 397 of the Criminal Code)
- **agreement restricting competition in public procurement and concession procedures** (Article 420 of the Criminal Code)
- **or the following crimes committed in connection with the above crimes:**
  - **participation in a criminal organisation** (Article 321 of the Criminal Code)
  - **money laundering** (Article 399 and 400 of the Criminal Code)

### **For what reason can one lodge a motion for reconsideration?**

If the investigative authority or prosecutor's office rejected the denunciation or terminated the procedure because, in their opinion,

- the act is not a crime,
- the suspicion of the crime is missing (only in case of denunciation),
- the crime was not committed by the suspect,
- the committal of the crime cannot be established,
- the act is not a criminal offence to be prosecuted on public charges,
- a reason can be established to exclude the criminal liability of the perpetrator or the criminalisation of the act (e.g., if the authority found that the act was committed under duress or threat).

### **When cannot a motion for reconsideration be lodged?**

If:

- the denounced person or suspect is a **juvenile**,
- the perpetrator is a **child** or **cannot be held liable due to his abnormal mental state**,
- the denunciation was rejected, or the procedure was terminated based on the **collaboration of the accused person**,

- the denunciation was rejected, or the procedure was terminated because **the accused was an undercover agent, a member of a body entitled to use covert measures, or a secretly cooperating person.**

### **Which decisions may be subject to a motion for reconsideration?**

**Only decisions rejecting denunciations made following 31 December 2022 or decisions terminating investigations ordered following 31 December 2022 can be subject to lodging a motion for reconsideration.**

### **Who can lodge a motion for reconsideration?**

All **natural and legal persons**, *except for* the accused, the advocate, and state bodies or bodies exercising public authority. The Integrity Authority is not subject to the prohibition, they are entitled to lodge a motion for reconsideration.

**The motion for reconsideration can therefore be lodged by a person not immediately affected by the act (an “outsider”), too.**

The victim or whistle-blower has priority: if the victim or whistle-blower has submitted a motion for reconsideration, then there is no longer any possibility for another person to file a petition for reconsideration.

### **What is the deadline to lodge a motion for reconsideration?**

If a **denouncer** or **victim** took part in the procedure, they are eligible to lodge a motion for reconsideration first. The authority *directly delivers* them the decision; they have 1 month counted from the delivery to lodge the motion.

If the one month granted the victim or denouncer expires or there is no victim or denouncer, the decision will *be published on the official website of the body taking the decision* within 5 working days, *but this time in an anonymized form*. The motion shall be lodged with the *investigative authority or prosecutor's office taking the decision* within **1 month** following its publication.

The deadline expires **on the same number of days in the following month**, or on the last day of that month if there are no such number of days in the following month. If the last day of the deadline falls on a weekend or public holiday, the deadline will be changed to the next working day.

The written motions can be submitted at the latest in line with the rules of the electronic communication (e-form, Companies' Gateway) **up to midnight of the last day of the deadline**. Motions submitted in e-mail are not in force!

### **What is the procedure of lodging the motion?**

The anonymized decision and the document register shall be *published on the official website of the body taking the decision*. The *motion shall be lodged with the investigative authority or prosecutor's office taking the decision* within one month following the publication.

**Legal representation in the proceeding is mandatory.** Written submissions can only be lodged by way of a legal representative. Legal representatives can only lodge a submission in line with rules on legal representatives, in an electronic way (through Companies' Gateway).

The motion for reconsideration shall be reasoned. The person lodging the motion can attach any data, document or declaration to the motion that, in his opinion, can be evidential.

### **Is there a possibility to verify the reason of missing the deadline for submitting?**

Failure to meet the deadline **cannot be subsequently excused.**

**Is an attorney or other legal representative necessary?**

**Legal representation in the proceeding is mandatory.** The motion for reconsideration and all connected submissions can only be lodged in writing by the legal representative.

**When is the motion for reconsideration not effective?**

Let us draw your attention to the fact that if you

- have no legal representative,

and/or

- have not lodged the written motion *by way of a legal representative, in accordance with the rules of electronic communication,*

and/or

- have not lodged it within the time limit,

the motion is not effective, it cannot be assessed by the authorities on the merits.

**Therefore, complying with these rules is of utmost importance!**

Let us draw your attention to the fact that motions submitted by e-mail do not meet the criteria of electronic communication.

**Can I claim a cost reduction?**

Persons submitting a motion for reconsideration cannot lodge a request for cost reduction.

**Can I ask for an attorney?**

Persons submitting a motion for reconsideration are not entitled to an attorney.

**Can I consult the non-anonymized decision, document register, and documents of the investigation?**

Except for the victim and the denouncer, all other persons lodging a motion for reconsideration can only consult the anonymized decision and the anonymized document register.

The documents of the investigation can only be consulted at a later stage of the procedure when the person lodging the motion for reconsideration can, in the interest of submitting the indictment, request the documents of the investigation.

**What happens after submitting the motion for reconsideration?**

**1./ The investigative authority or prosecutor's office taking the decision** shall wait for the expiration of the one-month deadline available to lodge the motion for reconsideration and shall examine the motion(s) within 3 days.

If they agree with the content of the motion, they order or continue the investigation themselves.

If they do not agree with it, they forward the documents and the motion(s)

- to the prosecutor's office (in case of an investigative authority),
- to the superior prosecutor's office (in case of a prosecutor's office),

that shall examine the content of the motion for reconsideration within 8 days.

2./ If the **prosecutor's office or the superior prosecutor's office** agrees with the content of the motion, they order or continue the investigation themselves.

If they do not agree with it, they forward the documents and the motion(s) to the **Investigative Judges' Group of the Buda Central District Court**.

3./ The court takes a decision within one month. If the motion for reconsideration was lodged because of a termination decision and the quantity of the documents or the number of motions for reconsideration are significant, this deadline can be extended by no more than 2 months.

**The court:**

- can reject the motion(s),
- or can repeal the challenged decision, thereby the investigation starts, or the procedure continues.

**What is a repeated motion for reconsideration?**

If, based on the motion for reconsideration, the court decided to order or continue the investigation and the investigative authority/prosecutor's service **again terminates the penal procedure** for specific reasons, **there is a possibility to lodge a repeated motion for reconsideration**.

Repeated motion for reconsideration **can only be lodged by those who earlier lodged a motion for reconsideration in the case** (including the Integrity Authority).

Repeated motions for reconsideration can be lodged within one month following the delivery of the decision.

The repeated motion for reconsideration shall be lodged with the investigative authority/prosecutor's office taking the decision that shall forward it, within 3 days, to the Investigative Judge Group of the Buda Central District Court.

Should the court not find the repeated motion for reconsideration well-founded, they would refuse it. If, however, they consider that a termination decision should be annulled, the court will **declare that an indictment should be filed** instead of annulling the decision.

**Who is entitled to lodge an indictment?**

Should the court find, based on the repeated motion for reconsideration, that an indictment should be filed then – **as a rule** – only those can lodge the indictment **that lodged the repeated motion for reconsideration. It shall be lodged within two months** with the competent court by way of the investigative authority/prosecutor's office taking the decision.

**The only exception is when the Integrity Authority lodged the repeated motion for reconsideration since they are not entitled to lodge an indictment and cannot prosecute.**

In this case, the anonymized decision and the document register (whether it is a decision of the investigative authority or of the prosecutor's office) and the court decisions shall be published by the prosecutor's office on their website for one month, and **any natural or legal person may lodge an indictment with the competent court**.

If the court decides that the indictment meets the legal criteria and there is a well-founded suspicion against the person labelled as defendant, the person submitting the indictment (as a **“lay prosecutor”**) will represent the prosecution in court. *Legal representation is mandatory – and accordingly the electronic contact (form) – in this case also.*