



MY LAWYER MY RIGHTS COUNTRY REPORT: HUNGARY



My Lawyer, My Rights
Enhancing children's rights in criminal proceedings in the EU



Défense des Enfants
DEI-BELGIQUE



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LIST OF ABBREVIATIONS

“Attorneys Act ”	means Act XI of 1998 on Attorneys at Law
“Child Protection Act”	means Act XXXI of 1997 on the Protection of Children and Administration of Social Services
“Civil Code”	means Act V of 2013 on the Civil Code
“Constitution”	means the Fundamental Law of Hungary
“Criminal Code”	means Act C of 2012 on the Criminal Code
“Criminal Procedure Act”	means Act XIX of 1998 on the Code of Criminal Procedure
“Misdemeanors Act”	means Act II of 2012 on Misdemeanors, Infringement Proceedings, Misdemeanor Records System

KEY DEFINITIONS

Child	An individual under the age of 18.
Best interests of the child	<p>The concept of the child’s best interest is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).</p> <p>Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.</p>
Criminal proceedings	Proceedings in court in relation to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term “criminal proceedings” in a broader way that also includes other types of proceedings e.g. proceedings which are specially designed for children and which could lead to protective, corrective or educative measures in cases where the child’s alleged actions would be seen as committing an offence or a crime in the adult criminal system.
Lawyer of the child	Lawyer appointed to represent a child during criminal proceedings.
Socio-Legal Defence Centres (SLDC)	A centre which offers children direct access to justice and social-legal support including information provision, referrals to other service providers and legal advice and representation.
Reservation	When a state makes a reservation in relation to a section of a legal instrument, it is saying that it won’t give effect to this section.
Declaration	A state makes a declaration as to how they will interpret provisions of a treaty.



INTRODUCTION

I. REPORT PURPOSE AND STRUCTURE

This report has been produced as part of the “My Lawyer, My Rights” project. My Lawyer, My Rights is a national research study, the main objective of which is to acquire an overview of the right to access assistance from a lawyer for children in European Union countries. Such a right is essential to enable children to enjoy and exercise their rights. Even though the right to legal representation for child suspects is recognised, it is unevenly applied across Europe. This report seeks to explain how international and EU procedural safeguards and legal principles relating to the rights of children are applied in the Hungarian legal system. Its goal is to present an overview of the applicable legislation, which professionals can use to achieve child friendly justice in Europe.

Part 1 of this report will explain how this report was created and who it was created by.

Part 2 of this report, titled ‘Legal Context at the International and EU Level’ will outline the relevant international and EU legal instruments that are relevant to Hungary. Any declarations or reservations Hungary has made will be considered.

Part 3, titled ‘Legal Context at the National Level’, will go on to explain the national legal framework in the context of the Portuguese juvenile justice system, with a particular emphasis on the procedural rights of minors who are suspected or accused of committing a crime.

Part 4 titled, ‘Juvenile Justice Specialisation or Special Status at the National Level’, discusses specialised lawyers in national proceedings and the training that they undertake. The legal aid system is considered. The different private and public socio legal services, which can aid minors in obtaining an optimal respect for their rights during proceedings, are explored.

Part 5, titled ‘Child’s Access to a Lawyer’, considers the role external organisations play in assisting a child obtain access to a lawyer. It explains the process that is involved when obtaining a lawyer.

2. WHO’S INVOLVED?

The My Lawyer, My Rights project involves the European Criminal Bar Association and a number of European NGOs who are primarily led by Defence for Children International.

Defence for Children International are a leading, child rights focused organisation. They provide direct legal and social services to approximately 100,000 children per year. Their highly trained staff can be found in 45 countries across 5 continents. Their mission is to promote and protect children’s rights at the local, national, regional and international levels. They predominantly achieve this aim by lobbying for changes in legislation; by raising awareness of children’s rights; through the research and analysis of developments relating to child rights issues; and by training a number of professionals who work with children.

A group of lawyers from DLA Piper UK LLP worked on this report: Partner Mónika Horváth, Junior Associates András Orbán, András Bordás, Balázs Baranyai, Balázs Szalbot, Máté Csernus, Orsolya Gondos and Paralegal Dániel Kupi.

3. METHODOLOGY

To create this report, research was carried out in several different ways:

- Desk based research: existing documentation, case law and the official commentaries of applicable legal instruments were studied.
- Field research: information was requested from competent authorities as well as from NGOs dealing with the subject matter of the report.
- Online research: of legal databases.

3.1 Key reports used

- a) In the Shadow of Suspicion Critical Analysis on the Enforcement of the Right to Efficient Legal Defence, initiated by the Hungarian Helsinki Commission (“**Report One**”)



- b) Without Protection – Advice on the Reformation of the Hungarian Appointed Defence System (“**Report Two**”)
- c) Defence Rights in Court Procedures – Summary Opinion (“**Report Three**”)

Report One

This report was financed by the European Commission, Budapest Open Society Institute Foundation and the Trust for Civil Society in Central and Eastern Europe.

The purpose of this report was to articulate obligations stemming from human rights and EU laws which would ensure the actual enforcement of the right to efficient legal defence. The report sets out mechanisms which would help determine whether the criminal law system of a state complies with such obligations. From this report, we became aware that whilst the Hungarian legal system attempts to guarantee rights which are essential to ensure efficient defence, the practice of competent authorities and the substantial structural problems of the defence system obstructs this.

Report Two

This report was initiated by the Hungarian Helsinki Commission and financed by both the European Commission and the Ministry of Foreign Affairs of the Netherlands.

From this report, we found that there are many structural problems within the Hungarian defence system which undermine the enforcement of the right to efficient defence. The report provides detailed advice on the potential ways in which reform can be made in order for the system to comply with relevant international and EU laws.

Report Three

This report was initiated by the Supreme Court, who determine that many Hungarian Laws which relate to defence rights comply with international laws and court practice. However, it is acknowledged in this report that several changes should be made to national legislation in order for full compliance with such laws.

4. LIMITATIONS

Unfortunately, we have experienced significant limitations on the amount of information available with respect to the subject matter of the questionnaire. We are of the view that this may be related to the fact that in Hungary, the special significance of youth lawyers is not recognised and there is no difference between lawyers representing children and lawyers representing adults. No additional obligation, training requirements or supervision applies to lawyers representing children.



A. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL

I. THE INTERNATIONAL FRAMEWORK

I.1 Ratified treaties

Below you will find the treaties Hungary has acceded to, the dates of ratification and whether any declarations or reservations to them have been made.

a) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was signed on 25th March 1969 and was ratified on 17th January 1974. We could not obtain any information on whether reservations or declarations the ICCPR have been made.

b) The Convention on the rights of the child (CRC)

The CRC was signed on 14th March 1990 and ratified on 7th October 1991. Information relating to reservations and declarations in relation to this Convention was not available.

c) The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

Information relating to reservations and declarations in relation to this Convention was not available.

d) European Convention on Human and Fundamental Rights (ECHR)

Hungary signed the ECHR on 6th November 1990 and ratified it on 5th November 1992. Information relating to reservations and declarations in relation to this Convention was not available.

e) European Social Charter

The European Social Charter was signed on 13th December 1991 and ratified on 8th July 1999.

Hungary made a declaration to say that it considered itself bound, in accordance with Article 20, paragraph 1, sub-paragraphs b and c, by Articles 1, 2, 3, 5, 6, 8, 9, 11, 13, 14, 16 and 17 of the European Social Charter.

In Decree No. 34/2004, the National Assembly of the Republic of Hungary declared that Hungary was bound by the following numbered paragraphs of Part II of the Charter: paragraph 1 of Article 7, Article 10, paragraph 1 of Article 12 and Article 15.

f) European Union Charter of Fundamental Rights

This charter was signed on the 13th December 2007 and ratified on 22nd December 2007. There was no information available as to whether any reservation or declaration to this Charter has been made.

I.2 The rules of soft law

The rules of soft law, relevant to the rights of the child, are contained within the following international instruments. These rules are guidelines for the States, without any obligation to conform to them. They are not legally binding.

a) Riyadh Guidelines

The Riyadh Guidelines have been promoted by the State. They can be found in presentations on the Ministry of Justice Website.

b) UN Basic Principles on the role of the lawyers

These UN Principles are reflected in Hungarian legislation but are not explicitly mentioned or referred to.

c) Havana Rules

These principles are present and they are explicitly mentioned in the 3412/2013 (VII 16) Decision of the Constitutional Court.



d) UN Guidelines for Action on Children in the Criminal Justice System

These guidelines are promoted by the State, they appear in the presentations of the Integrated Legal Protection Service of the State found online.

e) General Comments of the Committee on the Rights of the Child

These comments are not present or reflected in Hungarian Legislation.

f) UN Principles and Guidelines on Access to Legal Aid in criminal justice systems

These Principles are not present or reflected in Hungarian Legislation.

g) Guidelines on a Child Friendly Justice of the Council of Europe

These guidelines are promoted by the State, they appear in the presentations of Courts found online.

2. THE REGIONAL FRAMEWORK

2.1 The European directives of the European Union

The European Union formulated a series of directives to create a common framework for Criminal Justice in EU Member States¹. The directives were created following criticism of the European Court of Human Rights for violating Articles 5 and 6 of the ECHR².

The directives set common minimum standards in relation to procedural rights for people suspected or prosecuted in criminal proceedings in order to encourage judicial co-operation and mutual trust between the Member States of the EU.

A directive is a flexible instrument mainly used as a means to harmonize national laws. It is binding on the countries to whom it is addressed (one, several or all of them) as to the result to be achieved, while leaving national authorities competence as to form and means. Once adopted on EU level, for a directive to take effect at national level, EU countries must adopt a law to transpose it. This national measure must achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission.³

In principle, the directive only takes effect once transposed. However, the ECtHR considers that a directive that is not transposed can produce certain effects directly when:

- the transposition into national law has not taken place or has been done incorrectly;
- the provisions of the directive are unconditional and sufficiently clear and precise; and
- the provisions of the directive give rights to individuals.

When these conditions are met, individuals may rely on the directive against an EU country in court. However, an individual may not rely on making a claim against another individual with respect to the direct effect of a directive if it has not been transposed⁴.

The directives adopted by the European Union regarding procedural rights in criminal procedures are the following:

- Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings;⁵

¹ Article 82 of the Treaty on the functioning of the European Union (TFEU)

² http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm

³ <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=LEGISSUM:II4527>

⁴ <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=LEGISSUM:II4527>

⁵ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>



- Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings;⁶
- Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;⁷
- Directive 2016/800/EU of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings;⁸

- Directive 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings;⁹

Hungary has transposed Directives 2010/64/EU, 2012/13/EU and 2013/48/EU by way of the Criminal Procedure Act. The deadline to transpose Directive 2016/800/EU is June 2019.

⁶ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>

⁷ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:En:PDF>

⁸ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0800&from=FR>

⁹ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1919&from=EN>



B. LEGAL CONTEXT AT THE NATIONAL LEVEL

This part will outline the legal and regulatory framework on the right of access to a lawyer for children suspected or accused in criminal proceedings at the national level.

I. LAWS APPLICABLE TO CHILD SUSPECTS

I.1 Relevant Laws

The following are the most important laws of the Hungarian juvenile justice system:

- the Constitution, which is the Fundamental Law of Hungary that was promulgated on 25 April 2011, and came into effect on 1 January 2012 (Freedoms and Responsibilities Articles IV, XV, XXIV, XXV and XXVIII)
- the Criminal Code, that was promulgated on 13 July 2012, and came into effect on 1 July 2013
- the Criminal Procedure Act, (Sections 446-469 – “Criminal proceedings against juveniles”), effective as of 1 July 2013
- the Child Protection Act was promulgated on 8 May 1997 and came into effect on 1 November 1997
- the Misdemeanors Act was promulgated on 6 January 2012 and came into effect on 15 April 2012

The first three laws are not only important to the Hungarian juvenile justice system, but also provide the foundations for the Hungarian criminal law system. Each act has special provisions and safeguards in connection with juveniles. The Constitution, as the fundamental constitutional document of Hungary, contains several fundamental rights in connection with the Hungarian justice system: the right to freedom, equality before law, equal legal capacity, prohibition of discrimination, the State’s obligation to take special measures to protect

children, right to fair trial, right to submit complaints and requests. These rights are also applicable to children.

The most important laws of the criminal justice system in Hungary are the Criminal Code and the Criminal Procedure Act. The Criminal Code defines who a juvenile is (from a criminal perspective), sets the minimum age of criminal responsibility, and determines the applicable punishments. The Code of Criminal Procedure Act lays down several safeguards in connection with procedures against juveniles in a separate chapter.

The Child Protection Act regulates the “education of young offenders”, which shall be conducted in reformatory institutions aiming their reintegration to society. This is a special punishment – and according to the Criminal Code – only applicable against juveniles. The Misdemeanors Act regulates smaller criminal offences, and – similar to the Criminal Code – has a separate chapter laying down special safeguards in procedures against juveniles.

I.2 Minimum Age Of Criminal Responsibility

According to the Criminal Code¹⁰, the general minimum age of criminal responsibility is 14. This means that persons who are under the age of 14 at the time the crime was committed shall be exempt from criminal responsibility. However, in the case of certain crimes (homicide, manslaughter, aggravated assault, terrorism, robbery and aggravated plundering) the minimum age of criminal responsibility is 12, but only where the person had the capacity to understand the consequences of his acts. An expert shall assess capacity. For minor crimes/misdemeanors the minimum age of criminal responsibility is also 14¹¹.

¹⁰ Sec. 16 of the Criminal Code

¹¹ Sec. 27 (1) of the Misdemeanour Act



1.3 The best interest of the child

The concept of the child's best interest is complex and its content must be determined on a case by case basis¹². To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

Under Hungarian law, the rules that safeguard the best interest of a child in a criminal justice proceeding are found in the general substantial and procedural criminal rules. These rules are applied by the juvenile court, therefore it is primarily within the juvenile court's competence to oversee the enforcement of those rules. However, according to the commentary of the procedural criminal rules, the best interest of the child should be considered by all of the parties to the procedure.

1.4 The right of access to a lawyer

Directive 2013/48/EU enshrines the right of access to a lawyer. The right to access a lawyer is recognised by the Hungarian Constitution. According to the Constitution "*anyone indicted in criminal proceedings shall be entitled to defence at all stages of such proceedings. Defence counsels shall not be held accountable for their opinions expressed*

in defence arguments"¹³. This is also stated in the Criminal Procedure Act "the accused shall be entitled to defence"¹⁴. Defence may be conducted personally by the accused, however, in case of criminal proceedings against juveniles the participation of a defender is always mandatory¹⁵, and according to the Criminal Procedure Act the defender shall be a lawyer¹⁶. If there are no authorised lawyers to act on behalf of the accused juvenile then the investigation authority, the court or the prosecutor shall appoint a lawyer for his defence¹⁷. The right to access a lawyer is one of the most important fundamental right of the Hungarian justice system and the EU Directive prevails without any significant derogation.

The European legislation distinguishes the terms « right of access to a lawyer » and « right of assistance by a lawyer ». While Directive 2013/48/EU grants every person suspected or accused in a criminal proceeding the right of access to a lawyer, Article 6 of Directive 2016/800/EU gives every child suspected or accused in a criminal proceeding the right to be assisted by a lawyer.

There is no distinction between these two terms in Hungarian legislation. These rights prevail simultaneously, as demonstrated by the obligations of the lawyer found in the Criminal Procedure Act. Examples of these obligations include: (i) make contact with the accused, (ii) use all legal means of defence in due time in favour of defendant, (iii) inform the defendant about the legal means of defence, and about his rights, (iv) pursue investigation for exculpatory or attenuating evidence in favour of the accused etc.

¹² To read more on this concept, please refer to http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

¹³ Subsection (3) of Article XXVIII (Freedoms and responsibilities) of the Constitution

¹⁴ Sec. 5 (1) of the Criminal Procedure Act

¹⁵ Sec. 450 of the Criminal Procedure Act

¹⁶ Sec. 44 (1) of the Criminal Procedure Act

¹⁷ Sec. 48 (1) of the Criminal Procedure Act



If the child is arrested, the lawyer has to be provided before the first interrogation. In the investigative proceeding, the lawyer has to be provided when notifying the children on the reasonable suspicion¹⁸.

According to the applicable laws, the accused child has the right to have enough time and opportunity to prepare for the defence¹⁹. If the child is deprived of his/her liberty, he/she has the right to get in touch with his/her lawyer and contact the lawyer without supervision²⁰. In this case the child also has the right to communicate with the lawyer before the questioning²¹. The lawyer must be notified about the questioning in appropriate time, at least 24 hours before the procedural action²².

As detailed above, the child is legally allowed to contact his/her lawyer without supervision in case of deprivation of liberty. However, in practice the house rules of the penal institution can derogate from this general right. For example, where there is only one meeting room or telephone device in the institute, the time duration of the phone call may be limited or the personal meeting can only be held during office hours.^{23 24}

There is no further detailed legislation regarding the communication between the child and lawyer during the investigative phase of the proceedings, but according to practical experiences of lawyers, if the lawyer of the child is present at the investigative action, he/she can briefly consult with the child before it.²⁵

It is important that defence/notification of the lawyer is mandatory, but not the actual participation of the lawyer. An investigative action during the investigation section of the criminal proceedings can legally take place without the participation of the lawyer²⁶. Therefore in practice it is really common, especially in the case of public defenders, that the lawyer is not present during the first questioning and other investigative actions²⁷.

In Hungary there are no existing national mechanisms or bodies monitoring whether the rights of access and assistance are respected, however, it is possible to make a complaint to the courts or to other authorities (ombudsman, etc.).

1.5 Communication with the lawyer

The child has the right to confidential communication with the lawyer. Acquiring data secretly from any meeting room of any penal institution, from the private home or office of the lawyer, via telephone or in connection with the lawyer's correspondence is strictly prohibited²⁸.

The child has the right to communicate with the lawyer orally or in writing. If the child is allowed to possess a mobile phone he/she can use that and that is the most common form of communicating with the lawyer. If the child does not have a mobile phone, he/she can use the telephone device provided by the penal institution, correspond through letters or meet the lawyer personally within the institution.

¹⁸ Sec. 145 (1) of Joint Decree No. 23/2003. (VI. 24.) of the Minister of Internal Affairs and the Minister of the Justice on the Detailed Rules of Investigations.

¹⁹ Sec. 43 (2)(c) of the Criminal Procedure Act.

²⁰ Sec. 43(3)(a) of the Criminal Procedure Act.

²¹ Sec. 184 (3) of the Criminal Procedure Act.

²² Sec. 9 (2) of Joint Decree No. 23/2003. (VI. 24.) of the Minister of Internal Affairs and the Minister of the Justice on the Detailed Rules of Investigations.

²³ Dóra Takácsné Takács, "A fogvatartottak kapcsolattartási jogának egyes problémái".

²⁴ Magyar Helsinki Bizottság, "A gyanú árnyékában", 2009, p. 29.-30.

²⁵ Magyar Helsinki Bizottság, "A gyanú árnyékában", 2009, p. 29.

²⁶ Sec. 9 (3) of Joint Decree No. 23/2003. (VI. 24.) of the Minister of Internal Affairs and the Minister of the Justice on the Detailed Rules of Investigations.

²⁷ Solt Szabó – Sándor Szomor, "Fegyveregyenlőség". In: Rendészeti Szemle, 2007/3., p. 19–41.

²⁸ The exception to this rule is where there is a reasonable suspicion that the lawyer is involved in a crime in connection with the case



1.6 Conflict of interest between parent and child

The Criminal Procedure Act provides special rules to be applied in proceedings against juvenile offenders: before the filing of the indictment at the request of the prosecutor, thereafter at the request of the court, the child welfare agency shall appoint an ad hoc supervisor, if the interests of the legal representatives (e.g. the parents) are in conflict with the interests of the juvenile offender²⁹.

1.7 Legal Aid

No legal aid system (in the traditional sense) exists in Hungary. If the juvenile does not engage an attorney for the procedure then the police, the prosecutor or the court would appoint a defender for him from the register of appointed attorneys. This register is held by each regional bar association and consists of attorneys who are willing to act as appointed defenders in criminal proceedings³⁰. It is not mandatory for attorneys to undertake such obligation. This system is regulated by the Criminal Procedure Act and the Attorneys Act. Legal aid will be discussed in more detail in part 5 of this report.

1.8 Complaint mechanisms

We note that an appointed defence counsel may be fined by the court or by the prosecutor if the lawyer fails to meet its obligations (e.g. fails to appear before the court despite being duly summoned to, etc.) arising from the Criminal Procedure Act and other relevant laws.

The following complaint mechanisms exist in Hungary and permit a person to make complaints about his/her lawyers:

- a) According to the Criminal Procedure Act³¹, the accused may request the appointment of another lawyer during the criminal procedure if he can give substantive reasons for this request.
- b) According to the Attorneys Act³², a lawyer may also be held liable for disciplinary infractions. If a lawyer culpably violates his obligations deriving from practice of law or from legal regulations, or if he violates the code of ethics, the lawyer may face a reprimand, a fine or expulsion from the bar ('disbarment'). The disciplinary proceedings are conducted by the Disciplinary Tribunal of the Bar and these proceedings are usually initiated by a complaint.

²⁹ Sec. 452 (1)(a) of the Criminal Procedure Act.

³⁰ Sec. 35 of the Attorneys Act

³¹ Sec. 48 (5) of the Criminal Procedure Act

³² Sec. 37 of the Attorneys Act



C. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL

I. THE PROFESSIONALS INVOLVED AT DIFFERENT STAGES OF THE PROCEDURE

I.1 Lawyers specialised to represent children

In certain countries, lawyers who interact with children in the criminal justice system can be required or encouraged to specialise in juvenile justice. This means that lawyers will undertake training to represent children during criminal proceedings.

a) Training

12 EU Member States have mandatory training requirements on the rights and needs of children for judges³³. 11 Member States have mandatory training for prosecutors,³⁴ and 7 Member States mandatory training for defence lawyers³⁵. In the Flanders region of Belgium, lawyers can only represent children in criminal proceedings when they receive specialised training on this subject matter delivered by the Flemish Bar Association (these lawyers are referred to as “**Youth Lawyers**”).

In Hungary, there are no “Youth Lawyers”. In the applicable legislation and also in practice, no distinction is made between lawyers representing adults and lawyers representing juveniles (as well). In fact, the registers of attorneys who are willing to undertake legal representation in criminal procedures held by the regional bar associations do not state any of the areas of expertise of the attorneys.

There is no specific or compulsory training provided to Hungarian Lawyers on representing children in criminal proceedings by governmental authorities or by the bar associations. However, the Pázmány Péter

Catholic University and the University of Miskolc offer specialised postgraduate training courses for lawyers wishing to represent children in criminal proceedings. The courses consists of legal studies related to the legislation applicable to children and to proceedings against or involving children in the fields of civil law, criminal law, family law and administrative law. The training also involves sessions on related social sciences, as well as on child psychology, child psychiatry, conflict management, time management, victim protection and communication. The child psychology sessions consist of practical exercises on how to interview children.

The training provided by these Universities is subject to a tuition fee, which is around HUF 140,000 (approx. EUR 455) per semester. The fee must be borne by the lawyer as governmental organisations do not support lawyers in completing these courses. The training is generally undertaken as a correspondence course, however some sessions involve practical activities and field work, for example visiting juvenile reformatory institutions. Both courses consist of two semesters and can only be taken once. They do not provide continuous training offered throughout the lawyer’s career.

b) The role of the specialised lawyer

The defence counsel must be informed about the place of the detention of the defendant, moreover of the proposed place and time of the questioning by the resolution about the official appointment. The defendant shall be notified of the person of the defence counsel after the official appointment thereof³⁶. If the defendant is detained, the institution

³³ Austria, Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Hungary, Ireland, Italy, Luxembourg, Netherlands, Hungary, Slovenia, United Kingdom (England, Wales & Scotland).

³⁴ Belgium, Czech Republic, Estonia, Spain, France, Croatia, Hungary, Italy, Latvia, Hungary, Italy, England & Wales.

³⁵ Belgium, Czech Republic, Estonia, France, Italy, Latvia and Slovenia.

³⁶ Sec. 48 (1) of the Criminal Procedure Act.



executing the detention shall be notified immediately about the identity and contact details of the appointed defence counsel by the authority appointed him/her³⁷. The defence counsel has to establish contact with the defendant without delay³⁸.

The lawyer's presence is recorded at investigative or evidence gathering acts. The minutes recorded of any investigative acts must contain the name and role of the persons present during the investigative act³⁹. During the investigative phase of the criminal proceedings, even if legal representation is mandatory in general, the actual presence of the lawyer is not obligatory during an investigative act. The absence of the defence counsel in the investigative phase of the proceedings does not impede the investigative act⁴⁰.

The lawyer can be present at questioning in order to give advice to the child, ask for a break and ask questions. The lawyer is able to speak to the child during questioning.

1.2 Associations

In Hungary, the 'Hintalovon Alapítvány' Association helps children to engage a lawyer to represent them in criminal proceedings.

1.3 Other professionals

Persons under fourteen years of age may only be heard as a witness if the evidence expected to be provided by his testimony cannot be substituted by any other means⁴¹. Upon the questioning of such persons, the warning about the consequences of giving false evidence shall be omitted. At the hearing of a witness under the age of 18, the legal representative, the guardian thereof or a psychologists may be present. The psychologist aims to help the juvenile to overcome the strict form and depressing experience of the criminal procedure and can also ensure the control of the authorities' proceedings.

³⁷ Sec. 48 (8) of the Criminal Procedure Act.

³⁸ Sec. 50 (1)(a) of the Criminal Procedure Act.

³⁹ Sec. 166 (2)(d) of the Criminal Procedure Act.

⁴⁰ Sec. 9 (3)-(4) of Joint Decree No. 23/2003. (VI. 24.) of the Minister of Internal Affairs and the Minister of the Justice on the Detailed Rules of Investigations.

⁴¹ Sec. 86 (1) of the Criminal Procedure Act.



D. CHILD'S ACCESS TO A LAWYER

I. INFORMATION FOR THE CHILD

I.1 From the state

The State does not play a role in giving information to children regarding their access to lawyers. The subject is not touched upon in schools, nor are there public campaigns to raise awareness. The Hungarian police regularly organizes events in schools related to prevention⁴², however, it is unclear as to whether the right of access to a lawyer is promoted during these events.

The central website of Hungarian courts has a page dedicated to children; this page presents the most important aspects of a criminal procedure against a juvenile, including the right of access to a lawyer. However, the “Frequently Asked Question” section of the webpage of the Integrated Legal Protection Service of the State offered specially for children⁴³ does not include information on their right to access a lawyer in a criminal proceeding.

I.2 From Associations

Foundations such as the Hintalovon Alapítvány facilitate the process of a child finding a lawyer, by looking for pro bono lawyers and contacting them on behalf of the child.

Another important initiative was developed by the Ministry of Public Administration and Justice together with the Foundation for Dramapedagogic Education (FDE) in 2013, entitled “I have a right to know!” (“Jogom van tudni!”), which targeted discussion classes in secondary schools to inform juveniles between age 14-16 about the operation of the judiciary system.

I.3 Where the child is deprived of liberty

Where a child is deprived of liberty⁴⁴, e.g. detained at a prison, police station or hospital, he/she must be informed of the right to access a lawyer as the participation of a lawyer is compulsory in a criminal proceeding against a child. The Criminal Procedure Act imposes the obligation⁴⁵ to provide the information in a child friendly language. However, according to the Criminal Procedure Act, everybody has the right to use his/her mother tongue or another language spoken/understood by him/her in a criminal proceedings both in oral and written communication⁴⁶. The costs of the interpretation/translation is paid by the state in advance, but generally, if the defendant is found guilty he or she must pay the costs of the criminal proceeding including the interpretation/translation fees⁴⁷. However, juveniles are subject to a personal exemption from paying procedural fees⁴⁸.

I.4 Choosing a lawyer

Natural persons who are under 18 but over 14 years old (and not incompetent) only have limited legal capacity, and their legal statements – as a general rule – shall not be deemed valid without the consent of their legal representative⁴⁹. However, they are entitled to dispose of the earnings they acquire through employment and undertake commitments up to the extent of their earnings⁵⁰. So hypothetically, it is possible for a child to choose his or her own lawyer. Natural persons who are under 14 are legally incompetent, their legal statements are null and void and their legal representatives proceed on their behalf⁵¹.

⁴² <http://www.police.hu/hirek-es-informaciok/bunmegelozes/aktualis>

⁴³ <http://www.ijsz.hu/gyermekeknek.html>

⁴⁴ Where the child is not permitted to leave at will

⁴⁵ Sec. 62/A and 67 of the Criminal Procedure Act

⁴⁶ Sec. 114 of the Criminal Procedure Act

⁴⁷ Sec. 114 and 338 of the Criminal Procedure Act

⁴⁸ Sec. 2 (3)(a) of Joint IM-BM-PM Decree No. 9/2003 (V. 6.) on the application of personal fee exemption in criminal proceedings.

⁴⁹ Sec. 2:12 (1) of the Civil Code.

⁵⁰ Sec. 2:12 (2)(c) of the Civil Code.

⁵¹ Sec. 2:14 (1) of the Civil Code.



As the participation of a defence counsel is mandatory, the child is unable to waive his/her right of access to a lawyer. The practice of the Constitutional Court also supports the point of view, as they stated that the defence counsel shall practice its rights on behalf of the defendant even if it is against the defendant's will⁵². The reason for the above practice is that the primary purpose of the institution of statutory defence is not to strengthen the defendant's position, but to "strengthen the trust placed in the justice system."⁵³

2. INTERPRETATION AND TRANSLATION WHEN MEETING THE LAWYER

If the accused fails to command the Hungarian language, the part of the indictment pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at request, into another language defined by the accused as a language spoken and formerly used in the proceedings, and thus filed with the court⁵⁴. If the accused does not understand the Hungarian language, after the announcement, the part of the verdict and conclusive decision pertaining to such accused shall be translated into the native, regional or minority language of the accused, or at his request, into another language defined by the accused as a language spoken and formerly used in the proceedings, then served on the accused⁵⁵.

As of 18 November 2013, Hungary has implemented Directive 2010/64/EU on the right to translation and interpretation by amending its domestic laws, most importantly the Criminal Procedure Act. Accordingly, not knowing the Hungarian language shall not be a ground for discrimination. The Hungarian regulation determines a greater protection than the minimum standards of the Directive in the sense that it ensures the right to use one's native language in criminal proceedings. If the use of the native language involves unreasonable difficulties, the use of another language (including sign language) defined by the person not

speaking the Hungarian language shall be provided for by way of an interpreter. The Act leaves the possibility to employ a temporary interpreter with advanced language skills, if the employment of interpreters having the qualification stipulated in a separate legal regulation is not possible.

Decree 7/1986 (VI. 26. MM) on the conditions required to obtain a qualification for translation and interpretation sets out the scope of persons who can be employed as an interpreter. Neither this Decree nor Decree 7/1986 (VI. 26. IM) about its implementation require quality control or an official register (in contrast to the Decree on the register of sign language interpreters).

The state shall bear the cost incurred as a result of the fact that the accused cannot command the Hungarian language, and used his or her regional or minority language in the course of the proceedings⁵⁶. Consequently, when the child meets with the lawyer throughout the course of the criminal proceedings, the child has access to a free interpreter. However, this obligation is tied to the criminal proceedings and not to meetings with the lawyers, hence it is possible that where the child meets with his or her lawyer outside the criminal proceedings (e.g. to prepare for the hearing) an interpreter will not be provided.

3. THE LEGAL AID SYSTEM

3.1 Is legal aid available to juveniles?

As juveniles are subject to a personal exemption from paying procedural fees⁵⁷, the cost of the appointed defence counsel is borne by the State of Hungary. The regional bar associations who are responsible for registering the appointable defence counsels are financed by the statutory member fees. The participation of a defence counsel is statutory in the proceedings against a juvenile offender⁵⁸ and the court, the prosecutor, or the investigating authority shall officially appoint a defence counsel, where the defendant has not retained a defence counsel⁵⁹. As a

⁵² Constitutional Court Resolution No. 1320/B/1993.

⁵³ Károly Bárd, *Human Rights and Criminal Justice in Europe – Treaties in Human Rights Doctrine*, Budapest, 2007.

⁵⁴ Sec. 219 (3) of the Criminal Procedure Act.

⁵⁵ Sec. 262 (6) of the Criminal Procedure Act.

⁵⁶ Sec. 339 (2) of the Criminal Procedure Act.

⁵⁷ Sec. 2 (3)(a) of Joint IM-BM-PM Decree No. 9/2003 (V. 6.) on the application of personal fee exemption in criminal proceedings.

⁵⁸ Sec. 450 of the Criminal Procedure Act.



result, where the juvenile offender does not retain a defence counsel then legal aid will be provided for him.

A child benefiting from this system cannot choose their lawyer, defence counsels are appointed by the acting authority (the court, the prosecutor or the investigating authority). There is no legal remedy available to challenge the decision, however a request (with justifications) can be made to the investigating authority to appoint another defence council⁶⁰. The Attorneys Act prescribes that under the general rules, an investigating authority may exempt an appointed attorney from appointment where the accused shows good reason for requesting the exemption⁶¹. If the request is rejected, it is possible for the child to file a complaint at the Disciplinary Tribunal of the competent regional bar association. As a last resort, the child can engage a private lawyer outside the legal aid system⁶².

The Hungarian Committee of UNICEF – together with ELTE Bibó István College for Advanced Studies – operates a legal aid program which offers information on child molestation and child rights.

3.2 Remuneration for lawyers

The appointed defender is entitled to remuneration for the following:

- appearing before the court, the prosecutor or the investigating authority when summoned or notified
- studying the files of the case

- for counselling the detained defendant at the institution executing the detention
- for verified out of pocket expenses incurred in connection with his actions.⁶³

The hourly rate to be paid for attorneys is regulated in each year's budget act, currently it is HUF 5000/hour (approx. EUR 16,2/hour)⁶⁴.

3.3 Registration of legal aid lawyers

The regional bar associations are responsible for the registration of lawyers appointable as defence counsels. The jurisdiction of the regional bars is identical to the jurisdiction of regional courts,⁶⁵ hence there are 20 operating regional bar associations. However, the management and oversight is not entirely the bar association's responsibility, as it is the acting authority who appoints⁶⁶ and exempts⁶⁷ defence counsels.

There are no special obligations a lawyer representing children must fulfil in order to be registered. All attorneys are entered into the register of appointable attorneys due to the principle of equality.⁶⁸

A report prepared by the Helsinki Committee⁶⁹ highlights the flawed nature of the registration system, stating that it is general practice that the regional bar associations appoint all of their members as appointable defence counsels, and only the bigger bar associations can afford to operate the system on a voluntary basis.

⁵⁹ Sec. 48 (1) of the Criminal Procedure Act.

⁶⁰ Sec. 48 (5) of the Criminal Procedure Act.

⁶¹ Sec. 34 (3)(c) of the Attorneys Act.

⁶² Sec. 48 (4) of the Criminal Procedure Act.

⁶³ Sec. 447 (2) of the Criminal Procedure Act; see also Decree of the Minister of Justice No. 7/2002 (III. 30.)

⁶⁴ Sec. 63 (4) of Act XC of 2016 on Hungary's Central Budget for Year 2017.

⁶⁵ Sec. 102 (2) of the Attorneys Act.

⁶⁶ Sec. 48 (1) of the Criminal Procedure Act.

⁶⁷ Sec. 34 (1) of the Attorneys Act.

⁶⁸ Sec. 36 (2) of the Attorneys Act.

⁶⁹ Hungarian Helsinki Committee, *Defenceless – A Proposal for the Reform of the Hungarian Appointed Defence Counsel System*, 2007, p. 20.



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