

1- The child

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In Hungary, the specific system of juvenile courts was abolished in 2011.

The general provisions of criminal law and criminal procedural law are applicable to offenders over the age of 14 (12 for certain offences) but under the age of 18, subject to certain specific provisions applicable to them.

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1.1 Differences in the criminal justice treatment of children, juveniles and adults

At the time of the finalisation of the manuscript, according to the provisions in force, the minimum age of criminal liability is 12 and 14 years in Hungary, whereas the upper age limit is 18 years. The UN Convention on the Rights of the Child does not include an expectation regarding the minimum age of criminal liability, but in 2020, the Concluding Observations of the UN Committee on the Rights of the Child did recommend the elimination of the sectoral age of criminal liability in Hungary, as well as raising the age of criminal liability to 14 years. The current Hungarian legislation is in line with the provisions of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspect or accused persons in criminal proceedings: that is, rules applicable to juveniles may be applied till the age of eighteen.

With regards to juvenile defendants, the general provisions must be applied. Specific procedural rules are applicable if Chapter XCV of Act CX of 2017 on criminal proceedings so prescribes.

Due to reasons precluding punishment, no criminal proceedings may be brought against underage persons (under the age of 12) having committed an offence, except for offences specified in the Criminal Code (see Point 1.3). In their case, after establishing their age, the proceeding authority sends a child protection notification to the guardianship office with competence according to the child's place of residence, which then initiates child protection proceedings to establish the child's vulnerability and his/her potential taking into protection.

Since 2015, the guardianship authority may order "preventive probation" for underage offenders, which is carried out by the probation service in cooperation with the child welfare service with competence according to the child's place of residence.

According to Section 106(1) of Act C of 2012 on the Criminal Code, “The principle objective of any penalty or measure imposed upon a juvenile is to positively influence the juvenile’s development to become a useful member of society, and such penalty or measure should therefore have as a primary consideration the juvenile’s guidance, education and protection. Only measures may be imposed upon a person who has not reached the age of fourteen years at the time the criminal offence was committed. A measure or penalty involving the deprivation of liberty may only be imposed against a juvenile offender if the aim of the measure or penalty cannot otherwise be achieved.”

According to Act XC of 2017 on Criminal Proceedings (“Criminal Procedure Act”), the purpose of criminal proceedings against a juvenile (Section 677 of the Criminal Procedure Act) is “to ensure the social integration of the juvenile by promoting his/her education and physical, intellectual, moral and emotional development and to prevent the juvenile from committing further crimes”-

No juvenile proceedings may not be instituted if the offender is prosecuted for more than one offence and he/she has committed at least one of them after the age of eighteen.

Proceedings against a juvenile are only possible in the context of public prosecution. Juveniles may not be prosecuted upon substitute private prosecution, and in the case of offences to be prosecuted in the context of private prosecution, it is the prosecutor’s duty to proceed.

In juvenile proceedings, the composition of the court is a matter of paramount importance, as failure to comply with the prescribed requirements constitutes an absolute procedural irregularity resulting in the annulment of the judgment rendered in the case in question, pursuant to Section 607(1) of the Criminal Procedure Act. The judge sitting in the court of first instance must be an educator, psychologist or a person working or having worked in a position requiring a university or college degree, serving the treatment, care, employment, development, education or social assistance of children, or related to the settling of children’s destiny, in the framework of family, child and youth protection services or guardianship administration.

Although there is no written legal standard in this respect, according to the case law of the Curia (Supreme Court), it is a mitigating circumstance when imposing a sentence if the offender is only a few years older than eighteen.

1.2 The applicability of the juvenile criminal justice system

If an offence is committed by a juvenile offender, but it is tried when the offender has already reached adult age, provisions for juveniles are applicable. The same principle is to be applied if the legal sanctions are only enforced after the offender’s coming of age. The only exception to this rule is that in the case of a sentence to imprisonment, the offender may be detained in a juvenile prison or detention centre until the age of twenty-one.

If the offences committed by the offender as a juvenile and as an adult are adjudicated in the same proceedings, the offender will be convicted on the basis of the provisions applicable to adults. The juvenile offence may then be taken into account as a mitigating circumstance regarding the imposition of the sentence.

1.3 Minimum age of criminal responsibility

Pursuant to Section 105 of Act C of 2012 on the Criminal Code, “juvenile offender shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offence”.

According to Section 16 of Act C of 2012 on the Criminal Code, “Persons under the age of fourteen years at the time the criminal offence was committed shall be exempt from criminal responsibility, with the exception of homicide [Section 160(1)-(2)], voluntary manslaughter (Section 161), battery [Section 164(8)], assault on a public official [Section 310(1)-(3)], assault on a person entrusted with public functions [Section 311 if it is qualified according to Section 310(1)-(3)], assault on a person aiding a public official or a person entrusted with public functions [Section 312 if it is qualified according to Section 310(1)-(3)], acts of terrorism [Section 314(1)-(2)], robbery [Section 365(1)-(4)] and plundering [Section 366(2)-(3)], if over the age of twelve years at the time the criminal offence was committed, and if having the capacity to understand the nature and consequences of his acts.”

In order to examine one’s capacity to understand (pursuant to Section 686 of Criminal Code), experts must be appointed immediately after the communication of the well-founded suspicion who will prepare a joint expert opinion. On the basis of that, the court decides whether criminal proceedings may be initiated against the child who is older than twelve but younger than fourteen.

Further reading

Dr. Barnabás Turi: A fiatalkorúak bíróságának eljárásai, annak sajátosságai. [The Procedure and Specificities of the Juvenile Court]. Source: <https://ujbtk.hu/>

Az új büntetőeljárás törvény. [The new Criminal Procedure Act]. Source: <https://miszk.hu/index.php/260-az-uj-buntetoeljarasi-torveny>

Helsinki Committee: Children Deprived of Liberty. Country Report: Hungary (pp. 313-360) Source: https://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf

Opinion 56 of the Criminal Chamber. Source: <https://kuria-birosag.hu/hu/kollvel/56-bkv>

Act LXIV of 1991 on the promulgation of the UN Convention on the Rights of the Child

General Comment No. 24 of the UN Committee on the Rights of the Child

Act XXXI of 1993 on the promulgation of the European Convention on Human Rights

Government Decree No. 149/1997 (IX.10.) on guardianship authorities and child protection and guardianship proceedings

Act XXXI of 1997 on the protection of children and guardianship administration

Government Decree No. 331/2006 (XII.23.) on the performance of child protection and guardianship duties and powers, and on the organisation and competence of the guardianship authority;

Act C of 2012 on the Criminal Code

Act CL of 2016 on General Public Administration Procedures

Act XC of 2017 on the Code of Criminal Procedure