

2 - Child rights at the police station

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A child in conflict with the law will be assigned a defence lawyer at the police station (simultaneously with the communication of the well-founded suspicion), or the child's legal representative may instruct a lawyer to defend the child.

The legal representative may be present with the child throughout the proceedings as an aide and has the same powers as his/her lawyer. All of the procedural guarantees prescribed in international instruments are also provided for in Hungarian legislation (see Articles 3, 5, 6 and 8 of the European Convention on Human Rights, and Article 6 of the Charter of Fundamental Rights of the European Union); however, the enforcement of these provisions is questionable.

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2.1 Right of defence

According to the rules of criminal procedure in force (Section 682 of the Criminal Procedure Act), the participation of a lawyer is mandatory in proceedings against a juvenile. If the parents (guardian) do not authorise a criminal lawyer to take action, the police will appoint a defence lawyer (defense counsel) for the juvenile ex officio.

This must be done at the latest by the time of the first interrogation of the juvenile as a suspect, simultaneously with the communication of the well-founded suspicion. No appeal may be lodged against the decision to appoint a lawyer, and the lawyer may not refuse the appointment.

The presence of the defence lawyer is mandatory at the following events attended by the juvenile and held prior to the making of a formal accusation:

- a. interrogation of the suspect,
- b. confrontation,
- c. presentation for identification,
- d. on-site interrogation,
- e. reconstruction of the scene of a crime; and
- f. hearing held in proceedings related to a coercive measure authorised by a judge, affecting personal liberty.

In addition to the cases listed above, the defender must be informed subsequently of the procedural act in which the juvenile was involved if the defender was not present and was not notified of it.

When defending a juvenile offender, the defence counsel must act in such a way so as to promote the juvenile's development in the right direction – however, the appointed defence counsels often fail to contact the juvenile offenders in detention. Nevertheless, it is the juvenile's fundamental right to receive assistance and support in enforcing his/her rights throughout the entire length of the criminal proceedings.

If the mandatory protection is based only on the age of the offender (under 18), this right ceases when the offender reaches 18 years of age, and the involvement of a defence counsel is no longer required in the proceedings.

Under the legislation in force, the lawyer defending a juvenile is not required to have a specific qualification (despite the recommendations of the Council of Europe for child-friendly justice).

Currently, post-graduate courses on juvenile justice are available at several universities.

2.2 Children's right to be assisted by parents/guardians

According to Section 59 of the Criminal Procedure Act, the legal representative of a child in conflict with the law may participate in the criminal proceedings as an "aide" in order to represent or protect the rights and legitimate interests of the child and to facilitate the exercise of rights or the fulfilment of obligations under the Act.

The aide has the right to obtain information from the court, the prosecution service and the investigating authority on his/her own rights and obligations in criminal proceedings and those of the person he/she is assisting.

If the child in conflict with the law is under the parental authority of both parents, either of them may act as a legal representative. They may also exercise their rights in this respect alternately.

The guardianship authority appoints a guardian ad litem if the legal representative committed the offence together with the juvenile, or if his/her interests are otherwise contrary to those of the juvenile, or if the legal representative is incapacitated, and also if the juvenile has no legal representative, or the identity of his/her legal representative cannot be established. The guardian ad litem acts as a legal representative in the proceedings. The authority with competence to appoint the guardian ad litem is the guardianship office in the territory of which the operation of the guardian ad litem is required.

In practice, the legal representative has the same powers as the defence lawyer – the only difference being that the aide is not subject to the lawyer's obligations. For example, he/she does not have to appear for investigative acts.

The rights of the legal representative persist until the juvenile offender becomes eighteen. The rights of the legal representative will also cease if the accused attains the age of majority while the proceedings are pending.

2.3 Interrogation of children by the police

It is an international standard that a special unit within the police should deal with children in conflict with the law. In Budapest, this specialisation has been implemented with a Child and Youth Protection Department, which also deals with crimes committed by juveniles. The problem is that there is no specialised unit with trained professionals in the lower-level investigative bodies.

In the case of a juvenile defendant, warnings about making a statement should be formulated in a way that is understandable to the juvenile, taking into account his/her age and maturity. Protocols and professional standards for the implementation of this rule are not yet available in Hungary.

In the course of the investigation, punishable juvenile delinquents above the age of 12 are subject to the procedural rules applicable to juvenile suspects above the age of fourteen. Compared to the latter, the only procedural guarantee for suspects between 12 and 14 is that an official witness must be present when the minutes of their interrogation are presented and also for other procedural acts listed in the law.

If the child wishes to use his/her non-Hungarian mother tongue, ethnic mother tongue or other mother tongue promulgated by an international treaty, an interpreter must be appointed. The law stipulates that an interpreter must be appointed with an adequate knowledge of the legal language if possible (Section 78(1) of the Criminal Procedure Act) However, if such an interpreter is not available, practically anyone can be appointed.

During the hearing of a juvenile as suspect or defendant, it is not compulsory for the police to record the event with an audiovisual device.

Section 87(2) of the Criminal Procedure Act stipulates that the testimony of a witness under the age of eighteen may not be examined by means of a testimony verification instrument (polygraph), even if he/she consents to that.

2.4 Length of deprivation of liberty at the police station

Under the current legislation in force, the police may deprive a juvenile of his/her liberty in two cases: short-term arrest for offence and detention for public safety (Act XXXIV of 1994 on the Police, Section 38), which are carried out in police detention facilities.

Under the Police Act, a police officer may arrest a person (Section 33) who continues to commit an offence after being ordered to stop, or against whom proceedings may be taken immediately, or from whom material evidence is to be obtained or confiscated property is to be seized. Children who have run away from foster parents or a residential home and juveniles who do not comply with the rules of the probation service may also be arrested.

The short-term arrest may last only as long as necessary, for up to a maximum of 8 hours, or, if the purpose of the short-term arrest has not been achieved, the head of the police organ may – in justified cases – extend this period by 4 hours, once.

Following the arrest, the police may, under the Police Act, detain the person caught in the act for a maximum of 72 hours for the purpose of summary judicial proceedings, provided that the offence

committed is punishable by detention.

Detention for public safety may be applied against a juvenile whose identity cannot be established, for a maximum of 24 hours; or, if the juvenile, who has been temporarily released from a reformatory institution or is on conditional release and placed under probation, is believed to be in hiding or in danger of hiding, he/she may be detained for 72 hours.

2.5 Access to medical assistance

Police stations have a medical room. In the event of an injury or sickness, youth can be accommodated there, but there is no continuous police medical service. If the doctor is not available, the youth must be accompanied to a public health institution.

In the event of pregnancy or suspected pregnancy, the young person should be accompanied to a gynaecologist as soon as possible.

A juvenile under arrest is provided medication and medical aids free of charge. The doctor's consulting hours vary from one establishment to another.

In the case of ongoing medical treatment, the young person must provide the competent authority with the relevant documentation if he/she wishes to continue the treatment.

Psychological assistance may be provided on request, subject to the availability of human resources.

Pursuant to Section 34(4) of the Decree No. 56/2014 of the Minister of Interior, in force from 2019, the medical examination of a juvenile must also be carried out if requested by the juvenile, his/her legal representative or his/her defence lawyer.

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 büntet?eljárás 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

Act XXXIV of 1994 on the Police

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

Decree No. 56/2014 (XII.5.) of the Minister of Interior

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 II of 2012 on Minor Offences

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