

# 4 - Conditions of child detention

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For the purposes of detention, juveniles are also understood as being between 18 and 21 years of age (Section 82 of Act CCXL of 2013 on the Enforcement of Penalties etc.).

Act CCXL of 2013 on the Enforcement of Penalties etc. (“Penitentiary Act”) stipulates that the enforcement of penalties and measures must be organised in such a way so that it also serves the enforcement of children’s right in the case of juveniles (Section 1). Juveniles are entitled to special protection during detention (Section 122(j) of the Penitentiary Act).

With regard to rights, particular attention must be paid during detention to ensure that juveniles are informed in a plain, clear and comprehensible manner in a language that they understand, and that their legal representatives are duly informed of their rights. The procedural rights of juveniles’ legal representatives are governed by the rights of the defence counsel.

Relevant international instruments include Article 37 of the UN Convention on the Rights of the Child, and General Comment No. 24 on children’s rights in juvenile justice, as well as Article 3 of the European Convention of Human Rights, and in fact, the Hungarian regulation does refer to them.

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## 4.1 Institutional conditions and circumstances of detention

During the enforcement of imprisonment, juveniles must be separated from adults (Section 99 (1) c) of the Penitentiary Act). Since 2015, this may refer not only to placement in a separate institution, but also placement in a separate unit of the institution (Section 192 of the Penitentiary Act).

During the enforcement of correctional education, boys must be separated from girls, and juveniles may be grouped according to their age and health and educational aspects. Juveniles under the age of 16 and juveniles over the age of 16 must be placed in separate residential units in the correctional institution, unless the director decides otherwise in the best interests of the juvenile (Section 348(1) of the Penitentiary Act).

The furnishing of the residential rooms and cells accommodating juvenile offenders in correctional institutions may be adapted – depending on the possibilities of the correctional institution – in

consideration of the juvenile's behaviour, academic progress and diligence.

For juveniles, the establishment draws up an individual development plan. To this end, it requests a pedagogical opinion from the educational establishment or child protection institution in order to learn more about the juvenile, in particular as regards information on behaviour, diligence, areas for improvement and family background. The data may only be used for the purposes of the individual development plan, the protection of the juvenile, and risk assessment.

The penitentiary institution may develop its educational programme and the juvenile's individual development plan in cooperation with the professional experience of correctional institutions under the supervision of the Minister responsible for the protection of children and youth, in order to promote the juvenile's social integration, to alleviate his/her integration problems, to improve his/her mental state, to improve his/her education and professional qualifications, to adopt basic moral standards and to prepare him/her for a healthy lifestyle (Section 193 of the Penitentiary Act).

A juvenile is required to contribute to the costs of his/her maintenance only if he/she is in employment or receives regular financial support (Section 202 of the Penitentiary Act).

Solitary confinement may be imposed on a juvenile. However, in the case of a juvenile, the institutional doctor, with the assistance of a psychologist, examines the juvenile before the enforcement of solitary confinement begins and also at regular intervals during its enforcement, as stipulated by law. If the prison doctor or the psychologist does not recommend the commencement or continuation of solitary confinement on account of the health condition of the prisoner, the execution of solitary confinement is postponed or interrupted. The period of postponement and interruption is not counted into the duration of solitary confinement.

The duration of solitary confinement may be up to 10 days in juvenile prisons and up to 5 days in juvenile detention centres. A juvenile sentenced to solitary confinement cannot be excluded from school lessons and reintegration programmes (Section 193(4) of the Penitentiary Act).

## **4.2 Enforcement of the right to health care**

The juvenile is provided medication and medical devices free of charge (Section 192(5) of the Penitentiary Act). As a rule, health care is provided to him/her within the institution unless the necessary care cannot be provided in this way. In this case, the juvenile must be transferred to a public health institution.

Education for a healthy lifestyle is one of the objectives of the penitentiary for juveniles. Accordingly, a juvenile under the age of eighteen is not allowed to possess tobacco products, and smoking is not permitted even with the consent of his/her legal representative. However, in light of the realities, the legislator has provided that failure to comply with this obligation does not constitute a disciplinary offence.

In the case of placement in a reformatory, in order to ascertain the personality, mental capacity and state of health of the juvenile, the reformatory – in accordance with its rules of operation laid down by law – has a team of experts, including a psychologist, a special needs teacher and a doctor, who carry out the necessary examinations upon admission (Section 350(2) of the Penitentiary Act). Based on the results of the examination, the expert team makes a proposal to the director of the correctional institution for the placement of the juvenile in a permanent group and indicates if the juvenile requires special education due to his/her disability, or if his/her personality disorder or state of health necessitates special education, training or treatment.

## **4.3 Enforcement of the right to education during detention**

During the execution of the custodial sentence, special attention must be paid to the juvenile's education, personality development and physical development, the enforcement of compulsory education and the possibility of access to a first profession (Section 192(4) of the Penitentiary Act). It must be ensured that the juvenile participates in vocational training or apprenticeship, and he/she must be allowed to pursue secondary education. The juvenile must pursue his/her compulsory education until the age defined by a specific law (Section 193(1) of the Penitentiary Act). According to the regulation in force, this age is 16 years in Hungary.

Even after his/her admission to the correctional facility, the juvenile may maintain contact with the teachers of his/her educational institution in the interest of his/her academic and examination obligations and personal development. With the permission of the commander of the penitentiary institution, the juvenile may also establish a student relationship with an educational institution outside the penitentiary institution, whereby he/she may attend school and take examinations in that particular educational institution. In the case of a juvenile who has begun his/her studies, the penitentiary institution must, at the request of the juvenile and in order to fulfil the obligation to take examinations, arrange for his/her attendance if the head of the educational institution and the commander of the penitentiary institution jointly agree to this (Sections 197–198 of the Penitentiary Act).

If the penitentiary institution does not have a contractual relationship with any primary schools, the school located in the area of the penitentiary institution's competence will provide primary education on the basis of a cooperation agreement with the penitentiary institution, according to an individual work schedule (Section 200 of the Penitentiary Act).

A prisoner who takes part in primary education, vocational training or further training is entitled to a cash allowance equal to one third of the basic work allowance during the period of training. Scholarships are an effective means of encouraging prisoners over the age of compulsory schooling to continue their studies. At the prisoner's request, the commander may authorise participation in secondary education and the pursuit of higher education, the costs of which may be covered for the participants. In principle, the possibility of obtaining higher education while serving a custodial sentence is also open to juveniles.

## **4.4 Enforcement of the right to rest, leisure and cultural education**

During the period of detention, the juvenile's right to cultural education, rest, leisure and regular paid leave is not suspended; their enforcement must be guaranteed. In the event of placement in a reformatory, the juvenile must be provided with appropriate sports, cultural or other leisure activities. Juvenile detainees may run voluntary organisations (under supervision) to organise programmes.

The law also stipulates that individual and group activities and various programmes, whether inside or outside the institution, must be organised or provided for juveniles in order to develop their personality.

Interestingly, the right to use the Internet, and even its duration, is also prescribed by law: juveniles are entitled to use the Internet service with filtered content once a week for a period of thirty minutes (Section 355(2), (3) of the Penitentiary Act).

There are also several provisions to ensure proper physical development. These include providing each detainee, if possible, with six cubic metres of air space and, in the case of juveniles, preferably with three and a half square metres of exercise space (more than for adults). They must also be allowed to take a daily hot shower. To ensure the food necessary for proper physical development, the food standard per day for juvenile detainees is also higher.

## 4.5 Contacts

The assistance of the guardianship authorities and other public bodies, NGOs, educational institutions, the probation officer and the juvenile's relatives must be sought to help the juvenile's social integration.

At the juvenile's own request or at that of his/her legal representative and with the permission of the penitentiary, the juvenile may attend family consultations every three months, which are a form of informal contact within the institution (Section 193 of the Penitentiary Act).

The juvenile may also attend family therapy sessions at his/her own request or at that of his/her legal representative, subject to the authorisation of the institution. The number of these sessions is determined by the therapeutic needs and may be held outside the institution.

Family counselling and family therapy sessions are not considered to be part of the visits and may be authorised among detainees.

In addition to contact with family members outside the institution, the law also provides for the possibility of placement of a juvenile detainee with his/her same-sex sibling, if requested by the juvenile detainee, if this is in the best interests of both juveniles and if there is a possibility for it within the institution (Section 195 of the Penitentiary Act).

In the case of co-placement, the offenders' criminal history and the offence committed must be taken into account, as well as the possible impact of co-placement on the order and security of detention, the juvenile's vulnerability and his/her intellectual and emotional development.

Contacts are also part of the juvenile's social reintegration, but not the exclusive means thereof. The probation officer may organise family or group decision-making meetings to help the juvenile to develop his/her life plan after release and to support its implementation, if the host environment is receptive, in order to ensure his/her effective reintegration into society (Section 203/A of the Penitentiary Act). The meeting may be organised outside the institution as well, and a leave of maximum three days may be authorised. Even if such a preparatory meeting does not take place, the legal representative must be informed sixty days before the release of the juvenile under the age of eighteen (Section 205 of the Penitentiary Act).

If the measures taken to return the juvenile to his/her parent or guardian bring no result, the penitentiary institution contacts the guardianship authority in order to take the necessary child protection measures.

## Further reading

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](https://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf)

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 CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention of Misdemeanours

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

Act XC of 2017 on the Code of Criminal Procedure