

5 - Fair trial safeguards for children in conflict with the law

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All of the procedural guarantees provided for in international instruments (Article 40 of the UN Convention on the Rights of the Child, Article 6 of the European Convention on Human Rights, Article 47 of the EU Charter of Fundamental Rights and Article 14 of the International Covenant on Civil and Political Rights) are reflected in the Hungarian legal system. Among the EU mandatory standards, it is in compliance with 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 merits attention. Proceedings against a juvenile must be conducted in a way so as to promote respect for the law in the juvenile, taking into account his/her age.

What constitutes a fundamental problem is enforcement and its quality. It is a particularly serious challenge to ensure that the principle of priority of decisions (out-of-turn cases) is respected, as well as to prevent delays in proceedings.

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5.1 The aim of punishment

The general “aim of a punishment is to prevent – in the interest of the protection of society – the perpetrator or any other person from committing an act of crime” (Section 79 of the Criminal Code). In comparison, “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” (Section 106 of the Criminal Code).

5.2 Independent and impartial tribunal

Hungary does not have a separate juvenile court, nor is there an exclusive jurisdiction rule. Juvenile cases are heard by courts with general jurisdiction but with a special composition (see Section 1.1).

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.

In the case of a juvenile defendant, the court must enforce the special rules on the composition of the court from the preparation of the trial (see Section 1.1). If the prosecutor also prosecutes an adult defendant in the same case alongside the juvenile defendant, only the juvenile court may decide on the issues arising within the scope of the preparation of the trial.

Section 692(1) of the Criminal Procedure Act stipulates that "in juvenile criminal proceedings, the prosecution may not be represented by a trainee prosecutor or a junior prosecutor". The participation of the prosecutor and the defence counsel is mandatory in the proceedings, thus enforcing the principle of equality of arms. The Council of Europe Recommendation on Child-Friendly Justice designates prosecutors to ensure a child-friendly approach in the first (investigative) stage of criminal proceedings. The Hungarian legislation does not formulate any specific requirements for juvenile prosecutors.

In order to ensure impartiality, the Criminal Procedure Act regulates in detail the conditions and reasons for disqualification, as well as the procedure for the handling thereof regarding all those (judges, prosecutors, members of the investigating authority, defence counsel, experts) who cannot be expected to give an impartial judgment on the case.

5.3 Presumption of innocence

"No one shall be considered guilty until the court finds him guilty by a final and binding conclusive decision", declares the Criminal Procedure Act (Section 1). "The defendant shall not be required to prove his innocence" (Section 7).

The Hungarian legislation is in line with European Parliament and Council Directive 2016/343/EU of 9 March 2016 on the strengthening certain aspects of the presumption of innocence and of the right to be present at trial.

5.4 Right to information

The Criminal Procedure Act makes it a priority task of the court, the prosecution and the investigating authority to ensure that the right to information is properly enforced. Accordingly, efforts must be made to ensure that the juvenile in conflict with the law understands the information

communicated to him/her and that he/she can make himself/herself understood.

“To achieve this goal [...], the court, the prosecution service, or the investigating authority shall, when communicating,

- a. use simple and commonly understood language,
- b. take into account the condition and personal characteristics of the person participating in the criminal proceeding, and
- c. verify that the person participating in the criminal proceeding understood the information provided to him orally, and explain the information if necessary.” (Section 74 of the Criminal Procedure Act)

5.5 Language of criminal proceedings and the right to language use

Section 8 of the Criminal Procedure Act stipulates the following:

1. Criminal proceedings shall be conducted in the Hungarian language. Members of a national minority living in Hungary and recognised by an Act may use their national minority mother tongue in criminal proceedings.
2. A person shall not suffer any disadvantage because he does not understand the Hungarian language.
3. Everybody shall be entitled to use his mother tongue in a criminal proceeding.
4. A hearing-impaired or deaf-blind person shall be entitled to use sign language in a criminal proceeding.

“If a person participating in the criminal proceeding wishes to use his mother tongue other than Hungarian, a national minority mother tongue, or other mother tongue specified in an international treaty promulgated by an Act, an interpreter, preferably one familiar with specialised legal language, shall be used.” (Section 78 of the Criminal Procedure Act). “A person may be used as an interpreter if he meets all conditions specified by law. If that is not possible, a person with adequate language competence may also be appointed as an *ad hoc* interpreter. [...] Persons attending a procedural act where an interpreter is used may move for the appointment of another interpreter due to the inadequate quality of interpreting” (Section 201 of the Criminal Procedure Act).

The translation of the document to be served shall be arranged for by the court, the public prosecution service or the investigating authority which has made the decision or issued any other document.

5.6 Rules of taking evidence

In line with international standards, the Hungarian legislation also states that “in a criminal proceeding, a person shall not be required to give a self-incriminating testimony or provide evidence against himself” (Section 7 of the Criminal Procedure Act).

Furthermore, the principle of free provision of evidence applies to criminal proceedings, which is restricted by the Criminal Procedure Act with a view to protecting juveniles and their interests, as

follows:

- Section 87(2) of the Criminal Procedure Act stipulates that “a witness testimony made by a person who has not attained the age of eighteen years may not be subject to instrumental credibility examination”, even with his/her consent.
- It also provides for authentic instruments, social environment assessments and the probation officer’s summary opinion as compulsory means of evidence. The latter is requested by the prosecutor if the juvenile has been previously placed in preventive detention.

The regulations require that following the interrogation of the suspect, the social environment assessment, which includes information on the juvenile as recorded and managed by his/her school or workplace, and the juvenile’s risk assessment from a crime prevention perspective be obtained as soon as possible. The social environment assessment is to be prepared by the probation officer. In the social environment assessment, the probation officer provides a comprehensive picture of the juvenile’s lifestyle, personality, intellectual and emotional development, family relations and friends, etc., and describes the link between the facts and circumstances found and the commission of the offence.

These systems of evidence, in accordance with Directive (EU) 2016/800, provide a comprehensive framework for the individual assessment of the juvenile and enable the court to gain an insight into the juvenile’s personality, intellectual development and immediate environment, to expose the reasons that led to the offence and thus to apply the most appropriate penalty or measure.

Since major changes in personality and circumstances commonly occur in childhood and adolescence, “before passing a conclusive decision at the latest, arrangements shall be made to carry out the individual assessment of a juvenile repeatedly if any data arises during a proceeding suggesting any significant change in the circumstances underlying the individual assessment of the juvenile concerned or if over two years passed” since the last individual assessment (Section 683(4) of the Criminal Procedure Act).

5.7 Certain characteristics of the proceedings, especially concerning the right to appeal

No preparatory meeting or trial may be held in the absence of the juvenile defendant.

Since the juvenile defendant can make an informed decision as to whether or not to admit guilt and as to the further course of the proceedings, the law creates a possibility to enter into a plea agreement under Chapter XCIX of the Code of Criminal Procedure and thus, divert the proceedings also in the case of a juvenile defendant (see 8.1).

In juvenile proceedings, only the chair of the panel may question the accused and the witness during the trial. This takes place in accordance with the provisions of Section 523(4) of the Criminal Procedure Act, i.e. the accused and the witness may be questioned by those entitled to do so following the interrogation conducted by the chair of the panel.

The judgment and the final order of the court of first instance may in each case be challenged by appeal independently, but in the case of a non-conclusive order, such an appeal may be lodged only if it is not excluded by law. The accused, the prosecutor and the defence have full rights of appeal, with the restriction that the accused and the defence may appeal only in favour of the

accused. The court of second instance may review the judgment appealed against and the previous proceedings in their entirety.

If the judgment is pronounced in the absence of the juvenile defendant's legal representative, the decision must be served on him/her, and the legal representative may lodge an appeal within eight days of service. The consent of the juvenile defendant is not required for an appeal lodged by the legal representative.

The juvenile's guardian must also be served with the judgment, but he/she has no right of appeal, and if the court fails to serve the judgment on him/her, there are no procedural consequences involved.

Proceedings at second instance may also be held in the absence of the juvenile accused if the juvenile accused fails to appear before the court hearing the case despite having been duly notified to do so, or if he/she has not reported a change of address and cannot therefore be notified of the place and date of the trial.

The prohibition of aggravating circumstances applies to appeals in Hungary. This principle allows the accused and the defence to exercise their right of appeal without risk, excluding the possibility that if only they appealed, the court of second instance render a decision that is less favourable to the accused.

5.8 Right to protection and legal representation

The decision on the person of the authorised representative may also be made by the juvenile's legal representative or his/her adult relative. When defending the juvenile offender, the defender must act in such a way so as to promote the juvenile's development in the right direction.

A juvenile is considered to be a "special defendant subject", thus the participation of a defender in criminal proceedings against him/her is mandatory. Violation of the rules concerning the defender's mandatory participation in the trial is an absolute ground for annulment under Section 608(1)d) of the Criminal Code (see 2.1 on the rules on the appointment of the defender and the defender's role in the investigative phase).

The defence counsel must be present not only at the trial but also at the evidentiary hearing and inspection during the trial phase, but he/she is not obliged to appear during the court proceedings in which he/she is summoned or requested.

If the juvenile's authorised defence counsel does not appear at the trial, the accused may authorise another defence counsel, or the court may appoint another defence counsel for the juvenile accused, allowing time for preparation. Attendance of a defence counsel is also mandatory at the appeal hearing, even if the juvenile is not obliged to appear in person.

The legal status of the legal representative is the same as that of the defender, the difference being that the legal representative is not subject to the defender's obligations. For example, there is no obligation for the legal representative to appear at the trial.

5.9 Length of proceedings

The Code of Criminal Procedure provides for an out-of-turn procedure for aggrieved parties and accused persons requiring special treatment (Section 79 of the Criminal Procedure Act) and stipulates that “(1) An investigation shall be concluded within one year after a juvenile is interrogated as a suspect, provided that the proceeding was instituted against the juvenile concerned for a criminal offence punishable by imprisonment for not more than five years. (2) If an investigation is in progress against a juvenile for a criminal offence punishable by imprisonment for more than five years, the time limit for the investigation may not be extended beyond two years after the juvenile concerned is interrogated as a suspect” (Section 687 of the Criminal Procedure Act).

Criminal proceedings against juveniles are limited in time due to fixed investigation time limits, which may be four years, or up to six years for certain offences. As it transpires from the above, due to the passing of time, the special provisions applicable to juveniles often cannot be applied throughout the entire proceedings (as they become older than eighteen).

Further reading

Dr A. Nagy – Dr M. Gál Nagyné: A fiatalkorúak elleni büntetőeljárás sajátosságai [The Specificities of Juvenile Proceedings]. Source: <https://ujbtk.hu/>

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

EU Charter on Fundamental Rights

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

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 C of 2012 on the Criminal Code

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

Act XC of 2017 on the Code of Criminal Procedure