

# 7 - Right to adequate legal representation

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With regard to criminal proceedings, the Hungarian legislation is in line with the principle enshrined in Articles 37 and 40 of the Convention on the Rights of the Child that children have the right to legal aid or other appropriate assistance.

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## 7.1 Right to (free) legal aid

According to the current rules of criminal procedure (Section 682 of Act XC of 2017), the participation of a defence counsel is mandatory in proceedings brought against a juvenile. If the parents (guardian) do not instruct a criminal lawyer to represent the juvenile, the police will appoint a defence lawyer for him/her ex officio.

In defending the juvenile offender, the defence counsel must act in such a way so as to promote the juvenile's development in the right direction.

Under the current legislation, a lawyer defending a juvenile is not required to have special qualifications, although training as a specialist lawyer in juvenile matters is already available at several universities.

Trainee lawyers may not act as a substitute for a lawyer in defence of a juvenile before the court.

## 7.2 Beginning of the right to a defence counsel

The lawyer must be appointed or instructed to represent the juvenile at the latest by the time of the juvenile's first interrogation as a suspect, at the same time as the reasonable suspicion is communicated. No appeal may be lodged against the decision to appoint a lawyer, and the lawyer may not refuse the appointment.

If the mandatory protection is based only on the age of the accused (under 18), this right ceases to exist when the person reaches the age of 18 and the participation of the lawyer is no longer required in the proceedings.

## 7.3 Rules pertaining to the participation of the defence counsel

The attendance of a defence counsel is mandatory at the following events involving a juvenile before the indictment:

- a. interrogation as a suspect,
- b. confrontation,
- c. presentation for identification,
- d. on-site interrogation,
- e. reconstruction of the criminal offence, and
- f. a court session in a proceeding relating to a coercive measure affecting personal freedom subject to judicial permission. In addition to the situations specified above, “the defence counsel shall be notified ex post of any procedural act carried out with the participation of the juvenile concerned, provided that the defence counsel did not attend, nor was notified of, the procedural act” (Section 682 of the Criminal Procedure Act).

A juvenile is considered a “special defendant subject” and the participation of the defence counsel is mandatory in criminal proceedings against him/her. Violation of the rules on the mandatory participation of the defender in the trial constitutes an absolute ground for annulment under Section 608(1)d) of the Criminal Procedure Act.

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

If the juvenile’s authorised defence counsel does not appear at the trial, the accused may appoint 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.

## 7.4 Effective legal representation of children

Practical experience shows that the effective legal representation of children is hindered if the lawyer fails to make personal contact with the child before the hearing, if he/she does not devote sufficient time and attention to the child’s case, and if the lawyer appointed/instructed to represent the child does not have special training in and knowledge of juvenile law.

### Further reading

Dr. A. Nagy – Dr. M. Gál Nagy: A fiatalkorúak elleni büntetőeljárás sajátosságai [The Specificities of Juvenile Criminal 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/>

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)

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