

9 - Sentencing

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Hungarian legislation provides for the imposition of sentences in the case of juvenile offenders under 18 in harmony with the international standards (Articles 37 and 40 of the UN Convention on the Rights of the Child, General Comment No. 24 of the UN Committee on the Rights of the Child, Beijing Rules 28).

“The 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).

“A penalty shall be imposed upon a juvenile when the application of a measure appears to be impractical. 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” (Section 106 of the Criminal Code).

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9.1 The aim of punishment

“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). Accordingly, sanctions applicable to juveniles are lighter, and there is more room for diversion (see 8.1) and applying educational, supportive legal consequences.

The system of penalties and measures applicable to juveniles (Section 33 of the Criminal Code):

Measures

Correctional education

Reprimand ?

Probation with supervision ?

Penalties

Imprisonment

Detention

Community service work ?

Work performed in amends ?

Fine ?

Supervision ?

Disqualification from employment ?

Confiscation ?

Disqualification from driving ?

Confiscation of property ?

Disqualification ?

Permanent inaccessibility of electronic data ?

Banning from attending sporting events ?

Involuntary treatment in a mental institution
(coercive medical measure)

Expulsion ?

Additional penalty: disqualification from public

? legal consequences not involving deprivation of liberty

“A juvenile may be deprived of his/her civil rights only if sentenced to a term of imprisonment over one year” (Section 115 of the Criminal Code).

The minimum term of **imprisonment** for a juvenile for any offence is one month. The longest term of imprisonment for an offence punishable with life imprisonment is fifteen years. According to the legislation in force since 2020, the possibility of conditional release may also be excluded in the case of a juvenile offender if he/she was older than sixteen at the time of the commission of the offence, and he/she was sentenced to a prison term of ten years or more (Section 109(5) of the Criminal Code).

For a prison sentence of two years or more, or if the juvenile is a repeat offender, imprisonment is carried out in a juvenile detention facility. In all other cases, the custodial sentence is carried out in a juvenile prison.

“The minimum duration of custodial arrest to be imposed upon a juvenile shall be three days, its maximum duration shall be thirty days” (Section 111 of the Criminal Code).

A juvenile may be sentenced to **community service work** if he/she has reached the age of 16 at the time of the final decision (Section 112 of the Criminal Code).

“A fine may be imposed on a juvenile if he/she has independent earnings, income or sufficient assets” (Section 113 of the Criminal Code). “In the case of juvenile offenders the fine expressed in daily units shall be not less than fifteen and not more than two hundred and fifty days. The amount of fine for one daily unit shall be minimum five hundred and maximum fifty thousand forints.” If the fine cannot be enforced, it is substituted by community service work or imprisonment. “The length of community service work imposed in substitution of a fine shall be determined where one day’s worth of fine shall correspond to two hours of community service work.”

If the juvenile fails to comply with the work obligation voluntarily, the court will change the community service work or its remaining part into imprisonment.

According to the rules in force, a juvenile may be **prohibited from exercising his/her profession** if he/she “has committed a criminal offence through the violation of the rules of his/her profession requiring professional qualifications; or knowingly, by using his/her profession” (Section 52 of the Criminal Code). The court may dismiss the application of this penalty against a juvenile in cases meriting special consideration (Section 113/A of the Criminal Code).

Driving privileges may be suspended with respect to a juvenile “who committed a criminal offence through the violation of regulations relating to the controlled operation of a motor vehicle, or uses a motor vehicle for any criminal activity. The court must impose a driving ban on the juvenile who was driving under the influence of alcohol or drugs. (In cases meriting special consideration, the mandatory driving ban may be dismissed.)” “Driving ban may be ordered for a definite term, or permanently” (Sections 55–56 of the Criminal Code).

A juvenile whose presence endangers the public interest may be banned from one or more municipalities or from a specified part of a municipality or of the country. The shortest period of **prohibition from residing in a particular area** is one year and the longest is five years. A juvenile who lives in an appropriate family environment may not be banned from the municipality in which his family is residing (Section 118 of the Criminal Code).

A juvenile having committed a criminal offence during a sports event, or during the time of commuting to or from the sports event, in connection with the sports event, may be banned by court order from visiting any sport event held within the framework of competition organised by any sports association. “The minimum duration of the ban shall be one year, its maximum duration shall be five years” (Section 58 of the Criminal Code).

Expulsion (Section 114 of the Criminal Code) may be imposed on juveniles of non-Hungarian nationality if they have been sentenced to a prison term of ten years or more, if their stay in the country seriously endangers public security and if their right to respect for family life is not violated.

A **warning** is served to a juvenile “who engages in an act that represents a negligible degree of danger to society at the time of judgment or none at all, rendering unnecessary even the most lenient penalty or measure applicable in accordance with this Act – other than confiscation, confiscation of property and irreversibly rendering electronic information inaccessible – shall be given a warning. In issuing a warning the court or the public prosecutor expresses its disapproval and conveys its admonition advising against engaging in any criminal activity in the future” (Section 64 of the Criminal Code).

The court may postpone the imposition of a sentence for a **probationary** period if there are reasonable grounds to believe that the purpose of the sentence can also be achieved by using a measure. Probation may be imposed on juveniles for any offence (Section 116 of the Criminal Code). The duration of the period of probation may be one to two years.

The court may postpone the imposition of the sentence for one year and order work performed in amends if there are reasonable grounds to believe that the aim of the sentence can also be achieved in this way. A juvenile may be ordered to perform work in amends if he/she was over 16 at the time of sentencing” (Article 117 of the Criminal Code).

In the case of a juvenile, **probation with supervision** is required (Section 119 of the Criminal Code) if the juvenile has been placed on probation, released on parole, suspended on probation,

temporarily released from a reformatory or is under conditional suspension by the prosecutor (see 8.1) and regular monitoring is necessary for the effective completion of the period. The juvenile on probation with supervision must comply with the rules of conduct laid down by law and the decision, to maintain regular contact with the probation officer and to cooperate. The court – or in the case of probation, the prosecution service – may impose prohibitions and obligations on the young person as specific rules of conduct in order to further the purpose of the probation with supervision.

The court shall **confiscate** from the juvenile any object “which is actually used or intended to be used as an instrument for the commission of a criminal offence; which is created by way of a criminal act; for which the criminal act was committed, or that was used for the transportation of this object in connection with the criminal act after the fact; the possession of which is assessed as posing a potential risk to public safety, or is illegal”. The ownership of the confiscated object passes to the State (Section 72 of the Criminal Code).

The court orders **confiscation of property** for any financial gain resulting from criminal activities, obtained by the juvenile in the course of, or in connection with, a criminal act (Section 74 of the Criminal Code). Confiscation and confiscation of property may also be ordered by the court if the offender is a child who cannot be prosecuted.

“Data disclosed through an electronic communications network shall be rendered irreversibly inaccessible:

- a. the publication or disclosure of which constitutes a criminal offence;
- b. which is actually used as an instrument for the commission of a criminal act; or
- c. which is created by way of a criminal act.”

This measure may be ordered by the court even if the offender is a child who cannot be prosecuted (Section 77 of the Criminal Code).

A juvenile “engaged in a violent crime against the person or in a punishable criminal offence that endangers the public shall be subjected to treatment in a mental institution if he cannot be prosecuted due to his mental condition, and there is reason to believe that he will commit a similar act”. This measure may be applied if the same crime carries a penalty of imprisonment of one or more years for offenders with criminal responsibility (Section 78 of the Criminal Code). “**Involuntary treatment in a mental institution** shall be terminated if it is deemed devoid of purpose.”

“The court shall order **placement in a reformatory institution** if proper education of the juvenile can only be provided in an institution. Placement in a reformatory institution may not be ordered against a person over the age of twenty years at the time of sentencing” (Section 120 of the Criminal Code). “The duration of placement in a reformatory institution may be between one year to four years.”

“(1) In ordering placement in a reformatory institution the court shall establish that the juvenile offender may be released from the reformatory institution temporarily after half of the duration of placement as ordered:

- a. having spent at least one year in the institution, and
- b. if there is reason to believe that the aim of the measure may also be achieved without further confinement in the reformatory institution.

(2) The duration of temporary release shall be the remaining part of confinement, but at least one year.” (Section 121 of the Criminal Code)

No custodial sentence, detention or community service work may be imposed in addition to placement in a reformatory institution.

9.2 Fundamental principles of sentencing

MB Recommendation No. 11 (2008) on sanctions and measures for juvenile offenders (European rules) states that it is the best interests of the youth and the principle of proportionality that should be given primary consideration when determining the legal consequences.

According to the opinion of the Curia No. 4/2007 BK, the educational purpose must be the starting point in order to decide whether, in a specific case, it is necessary to deprive the youth of his/her personal liberty, i.e. to apply reformatory education, or whether the legal objective can be better achieved by imposing a penalty.

In the case of a juvenile who is brought before the court for the first time, and the offence committed by him/her is not of a very serious nature, if he/she has confessed his/her guilt, has shown repentance or has committed the offence at an age close to childhood, the punishment objectives can usually also be achieved with the use of a measure.

The court can decide whether the use of a measure is sufficient or whether a penalty is necessary in a particular case on the basis of a careful assessment of the aggravating and mitigating circumstances, the behaviour of the juvenile after committing the offence and during the proceedings, his/her personal and family circumstances and the testimony of his/her guardian.

In general, a custodial sentence may be justified for a juvenile who is a repeat offender and who has committed a series of serious offences (e.g. violent crimes against the person).

If the court concludes that the juvenile accused has committed a criminal offence, it will establish the juvenile's criminal responsibility, and impose a penalty or a measure. In special cases, it may refrain from imposing a sentence.

In the choice of penalty, the court takes into account the need to promote in some way the development of the juvenile accused in the right direction and his/her integration and reintegration into society.

With this in mind, the court considers whether the imposition of a sentence or the use of a measure is the best suited to achieving the general aims of punishment. If the measure is correctional education, its extent (as well as the extent of the sentence) may not be proposed by the prosecutor in his/her pleading at the trial, but only in his/her alternative motion pertaining to the preparatory session.

This, however, does not preclude the possibility for the prosecutor to make a reference in his/her pleading to the type and extent of penalty that he/she deems appropriate.

There are special rules on cumulative and total sentences in juvenile cases (Section 123 of the Criminal Code). Even in the most serious cases, a juvenile may be sentenced to a maximum of 20 years of imprisonment. In the case of a combination of reformatory education and imprisonment, imprisonment must be executed as a collective sentence. The court may prolong it by up to one

year.

Further reading

Dr. Barnabás Turi: A fiataalkorúak 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

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

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

MB Recommendation No. 11 (2008) on sanctions and measures for juvenile offenders

Curia Opinion No. 4/2007 Bk.

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