

# 3 - Pre-trial detention of children

Author : PILnet - Last update : 29.11.2022

Arrest is the most serious coercive measure restricting personal liberty. Therefore, it may be imposed on juveniles only as a last resort and for the shortest possible duration, in accordance with the requirements of the international instrument, if the specific gravity of the offence so requires. However, contrary to the international practice (which regards the restriction of liberty as a pre-trial detention until the first instance decision), this legal instrument may be applied up until the final decision is made in the case.

The *ultima ratio* principle is observed in Hungarian legislation on the level of the Code of Criminal Procedure, and deprivation of liberty can only be applied if the aim of the measure or penalty cannot be achieved by any other means. The problem is that under the Minor Offences Act applicable in the case of less serious offences, juveniles can also be deprived of their liberty in cases where deprivation of liberty can by no means be considered as a measure of last resort under the Convention on the Rights of the Child, General Comment No. 24 of the Child Rights Committee, and the relevant UN General Assembly resolutions (Beijing Rules).

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## 3.1 The notion of pre-trial detention

Pre-trial detention is a coercive measure restricting personal liberty.

The purpose of holding a juvenile in pre-trial detention is to ensure his/her attendance at the proceedings, to promote the success of the criminal proceedings and to prevent the juvenile from committing another offence or from completing an inchoate offence.

Pre-trial detention may not be used for educational or disciplinary purposes or to facilitate proceedings or to influence the juvenile psychologically. Furthermore, no pre-trial detention may be ordered for the sole purpose of completing criminal proceedings as soon as possible.

## 3.2 Conditions for pre-trial detention

There are substantive and formal conditions for the pre-trial detention of juveniles. The formal conditions are the following: (1) the initiation of the proceedings, (2) the prosecutor's motion for pre-

trial detention in the investigative stage, (3) the hearing of the defendant, (4) the court's decision on pre-trial detention, and (5) a reasoned order.

The substantive conditions can be divided into two groups: general and special conditions. Each of the general conditions must be met in the juvenile's case, or else no pre-trial detention can be ordered. Such general conditions are the existence of a twofold reasonable suspicion and the fact that the offence which is the subject of the proceedings is punishable by imprisonment under the rules of the Criminal Code. In comparison, the Criminal Procedure Act applies a narrowing of the scope for juveniles, and establishes as a special condition that the primary grounds for arresting a juvenile shall be particularly serious attempts against life, kidnapping, a series of burglaries committed in conspiracy, on a commercial scale, robbery and acts of sexual violence.

### **3.3 Issues related to the enforcement of pre-trial detention**

The arrest of a juvenile must be carried out in a penitentiary or in a reformatory, as decided by the court, although for offenders over the age of 12 but under the age of 14, the place of enforcement may only be a reformatory.

When the arrest is executed in a reformatory, the list of institutions designated for the admission of juveniles is set out in Annex 3 to Decree No. 1/2015 (14 January 2015) of the Minister of Human Capacities (EMMI). Such institutions are the following: the correctional facilities located in Budapest, Debrecen and Nagykanizsa for boys, and the reformatory located in Rákospalota for girls.

Based on new circumstances arising during the period of arrest, the court may change the place of execution of the arrest on the motion of the prosecutor, the defendant or the defence. This is decided by the court ordering the arrest pending the decision taken in preparation for the trial, and thereafter by the court with jurisdiction and competence to hear the case on the merits, acting as a juvenile court.

During the pre-trial detention, the juvenile may wear his/her own clothes (but as a security measure, his/her personal effects and clothing may be subject to search, and his/her safe isolation may be ordered); he/she may correspond, receive visitors and parcels, participate in educational, cultural and sports activities and receive regular medical care (Section 122 of Act CCXL of 2013.) A further rule on the conditions of execution is that the solitary confinement of a juvenile held in pre-trial detention may last for ten days at the most (Section 193(4)).

In the case of juveniles between the ages of 12 and 14, the maximum length of arrest is one year, whereas for juveniles between the ages of 14 and 18, it may last for a maximum of two years. After two years (with some exceptions), the juvenile's arrest must be terminated.

### **3.4 Termination of pre-trial detention**

In any stage of the proceedings, the court may terminate the arrest at any time if the grounds for the order no longer exist. The prosecutor is also entitled to terminate the pre-trial detention pending the filing of the indictment (Section 136(4) of the Criminal Procedure Act). The prosecutor supervises the investigative work and thus is more suited to decide when the pre-trial detention of a

juvenile is no longer necessary.

Arrests may be terminated without any specific authority measures, and the defendant must be released when the maximum period stipulated by law has expired (see Point 3.3).

### 3.5 Non-custodial measures

Other coercive measures affecting personal liberty that can also be applied in the case of juveniles include criminal surveillance, restraint and preliminary coercive medical measure. These measures may restrict the juvenile's freedom of movement, freedom to choose his/her place of residence and domicile, and freedom of contact with others (Sections 272–281 of the Criminal Procedure Act). In addition to these measures, bail may also be ordered to facilitate compliance with the rules of conduct, as well as to ensure that the juvenile offender attends the procedural acts (Section 284 of the Criminal Procedure Act).

The court may order the juvenile not to leave the area, dwelling, other premises, institution or fenced place belonging to it without permission; not to visit public places of a specific nature, public events or specific public areas; and/or to report to the police at specific intervals and in a specific manner. The juvenile's movement may also be monitored with the help of a technical device (Section 283 of the Criminal Procedure Act).

All rules of pre-trial detention must comply with the provisions of 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.

### Further reading

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

Az új büntetőeljárás törvény. [The new Criminal Procedure Act]. Source: <https://misk.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](https://helsinki.hu/wp-content/uploads/BHC_2014_Children_Deprived_of_Liberty_EN.pdf)

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

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

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