



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Hungary

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

In Hungary, specialised prosecutors and judges deal with cases where children are involved as suspects or defendants. In cases with children as victims or witnesses, specialised prosecutors and judges are not required. Police officials who deal with children are not required to possess specialised knowledge or expertise. However, in practice, instead of police officers, children are often examined by police psychologists.

As regards child victims and witnesses, Hungarian law follows a protective/paternalistic approach, which limits the role and involvement of children in judicial proceedings. Thus children, during the criminal procedure, can act in certain cases only through their legal representatives. One of the exceptions to this rule relates to the questioning of child victims and witnesses. Children can be questioned on their own and the authorities may address questions directly to them. During the interview, children are informed in a child-friendly manner about their rights and obligations, including the right to refuse to give testimony. Rules applicable to child victims and witnesses are not codified in a specific chapter of the [Criminal Procedure Code](#).

Under Hungarian law, children under the age of 14 years cannot be held criminally liable. If a crime is committed by a child who is under 14 years old, the court of guardians (*'gyámhatóság'*) may impose certain child protection measures on the child.

It is noted that the New Criminal Code, which will enter into force only in July 2013, lowered the age of criminal responsibility from 14 to 12 years. According to the new rules, in the most severe criminal offences (e.g. homicide, homicide committed with diminished responsibility, battery causing danger to life or death, and, in limited conditions: robbery, or robbery through inebriation or intimidation¹) children could also be punished if they are at least 12 years old on the day of the commission of the crime. For less severe criminal offences, the minimum age of criminal responsibility remains 14 years old.

Children, who are at least 14 years old, but are less than 18 years on the day of the commission of the crime, are considered as 'juveniles' (*'fiatalkorú'*) under Hungarian law. Substantive criminal law provisions regulating the criminal liability of 'juveniles' are set out in Chapter 7 of the [Criminal Code](#), whereas criminal procedure rules are provided by Chapter 21 of the [Criminal Procedure Code](#).

Compared to victims and witnesses, child suspects/defendants from 14-17 years of age (henceforth referred to as child suspects/defendants) can have a more proactive role during the criminal proceedings. Thus, in most cases they do not need to rely on their legal representatives and can act in their own right.

Overview of children's involvement before, during and after judicial proceedings

Under Hungarian law, there are no special or separate procedures for criminal proceedings involving children. There are however a number of special measures in place to ensure the protected status of children during the criminal proceedings.

Child victims and witnesses may receive information about their rights and obligations at any stage of the criminal procedure. Such information may be provided to them by the investigating authorities, the prosecutor or the judge. There are several measures in place to ensure the protection of child victims and witnesses from harm. These include special rules for the questioning of children (e.g. child victims under the age of 14 are interviewed in special child-friendly rooms, children under the age of 14 can only exceptionally be 'confronted' by the suspect or defendant etc.), the possibility for children to participate in protection programmes or to be protected by a court order requiring the defendant to stay away from the victim. These measures, together with the possibility of referring criminal cases to mediation as well as to hold trials *in camera* or in the absence of the child, contribute to preventing the secondary victimisation of children.

Child suspects and defendants can participate in criminal proceedings in their own right and are thus entitled for example, to brief their own defence counsel, file a complaint or lodge an appeal. Police

¹ Article 1 of the [New Criminal Code](#).

officers, prosecutors and judges dealing with child suspects and defendants are legally obliged to take into account the suspect's age and characteristics and to contribute to the child's respect for the law. The authorities and courts should provide information to child suspects/defendants about their rights and obligations, the state of play of the procedure and the main characteristics of the given stage of the procedure.

During the investigation phase, children might be interviewed. In order to minimise the burden of the interview on children, both the defence counsel and the legal representative of the child may attend. The child suspect may refuse to testify or to respond to questions if the defence counsel is not present. To minimise the burden of judicial proceedings, Hungarian law allows for the referral of the criminal procedure to alternative procedures, including mediation.

Prior to the trial, the child can be placed in custody, or a judge may order the pre-trial detention of the perpetrator. In order to ensure the protection of children from harm, pre-trial detention is in corrective educational institutions or in prisons. In prisons, children are separated from adults.

The [Criminal Procedure Code](#) also contains measures that are in place to support the child perpetrator during the trial phase. These measures include the requirement that the presence of the defence counsel is mandatory at the trial phase, that the presiding judge may decide to hold the trial *in camera*, or even in the absence of the child if this is in the best interests of the child suspect.

[Law Decree 11 of 1979](#) contains the rules applicable to the carrying out of criminal sanctions and measures. The Law Decree contains rules specific to children. The biggest difference between the rules applicable to adult perpetrators and children relate to the fact that criminal sanctions and measures that involve deprivation of liberty are taken in child friendly places, including in corrective educational institution or penal institutes for children.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

The main strength of the Hungarian system relates to the fact that children are provided with a protected status during the whole criminal procedure. The aim of the Hungarian system is to minimise the secondary victimisation of child victims and witnesses, thus the [Criminal Procedure Code](#) contains several measures to ensure that child victims and witnesses are involved in the proceedings only to the extent necessary. By way of example, in principle children are questioned only once during the criminal procedure. Where there are many procedures, the child's presence is replaced by the mandatory presence of his/her legal representative (e.g. mediation procedure) etc.

It is also considered to be a strength that child suspects and defendants can participate in the proceedings in their own right, thus can brief their own lawyer, decide on the filing of complaints and appeal. Compared to adult suspects, child suspects and offenders are treated differently, i.e. in a way that takes into account the maturity and the age of the child perpetrator as well as the purpose of ensuring that the child respects the law. There are various provisions in place to ensure the protection of children from unnecessary harm (e.g. pre-trial detention in child-friendly places, imprisonment in penal institutes for children).

One of the measures is that in case of child suspects/defendants, legal representation is mandatory². In cases where the child fails to mandate a lawyer, the prosecutor, police or the court must appoint a defence lawyer for the representation of the child (*'kirendelt védő'*).

Shortcomings of the current system relate to the fact that children (regardless of their role in the procedure) are not provided with a sufficient level of information by the authorities, thus they do not always understand fully their rights and obligations. This partially results from the fact that children during the investigation phase are often examined by police officials who are not specialised in child cases³.

With the removal of the exclusive competence of certain courts (i.e. the Pest Central District Court and local courts seated at the county capital) to carry out a juvenile procedure, all judges at all levels are

²

³ Information gathered through an interview with a University Professor.

expected to deal with cases involving children, irrespective of their specialist knowledge or experience with children. Under the current rules it depends on the severity of the case⁴, whether district courts or courts of law adjudicate⁵.

The lowering of the minimum age of criminal responsibility to 12 for a limited number of crimes as of July 2013 must also be noted here.

Another weakness lies in the fact that certain phases of the criminal procedure, including the interview of the child, take place in the same building where the authorities deal with adult perpetrators. This can be a problem in particular with respect to certain coercive measures, including the custody of children, since they are located in the same place as adults. In addition, since pre-trial detention can be extended, child suspects often spend a long time in detention. It is noted that the rules applicable to the maximum duration of pre-trial detention have recently been amended. In accordance with the amended provision⁶, which will enter into force on 1 July 2013, the maximum length of pre-trial detention cannot exceed one year. As a final element, it is noted that in Hungary there are no rules for ensuring that criminal cases that involve child perpetrators are handled by authorities within the shortest possible time-frame. Moreover under Hungarian law, there exists no rule for reducing delays in enforcement.

⁴ Articles 15 and 16 of the [Criminal Procedure Code](#).

⁵ In 2011, the Hungarian judicial system underwent substantial changes, which involved the renaming of courts as follows: courts that were previously called as local courts are now called as district courts, whereas county courts are called courts of law.

⁶ Article 455 of the [Criminal Procedure Code amended by Article 455 of Act CCXXIII of 2012 on provisional rules linked to the entry into force of Act C of 2012 \(New Criminal Code\) and on the amendment of related laws](#).



Abbreviations

No abbreviations have been used.

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

Institutions involved

The main investigating authority in Hungary is the **Police**. The Police do not have specialised departments dealing with children. Moreover, police officials do not receive specialised training, although some initial training for officers in charge of children (four officers from each county) took place in March 2013. Each police station has at least one psychologist. In cases which concern children, often these psychologists are asked to question the child. If possible, the psychologists questioning the children are female.

The **Prosecution Service** constitutes the prosecuting authority in Hungary. The prosecutor is in charge of filing indictments and presenting the charges to courts. There are no specialised departments within the Prosecution Service dealing with cases in which children are involved. Certain prosecutors however are given specialised training. In principle, prosecutors dealing with child suspects and defendants are chosen from these trained prosecutors. Stakeholders have noted that specialised prosecutors barely receive training on child psychology⁷. Ordinary prosecutors are involved in cases where only the victim or the witness is a child.

In order to ensure that the **court** which adjudicates cases against child perpetrators understands the specific needs and characteristics of children, the National Judicial Council will designate at least one of the responsible judges (the presiding judge at first instance) based on their experience in child cases (often such judges have undertaken specialised training organised by the Hungarian Judicial Academy). Moreover at first instance one associate judge of the panel is a teacher. The newly formed National Judicial Office has prepared webpages on www.birosag.hu⁸ on child-centred justice. Stakeholders noted that judges receive hardly any training on child psychology. Ordinary judges and courts sit in cases, where the victims and witnesses are children. Children who are under the age of 14 years cannot be held criminally liable and cannot be subject to criminal sanctions. Instead of the court, the **Guardian's Court** may impose certain child protection measures against the perpetrators, which include putting the child under temporary or permanent child protection care. It is noted that following the entry into force of the [New Criminal Code](#), the rules applicable to the minimum age of criminal responsibility will be changed so that for the most severe crimes, children who are at least 12 years old on the day of the commission of the crime could also be held criminally liable⁹.

The Guardian's Court also plays a role when there is a conflicting interest between the child victim/witness and his/her legal representative. If such conflict occurs, the Guardian's Court may assign a temporary ward who can represent the child.

In addition, the following authorities may also play a role in proceedings that concern children:

- Office of Public Administration and Justice (*'Kozigazgatasi es Igazsagugyi Hivatal'*) through the Judicial Services (*'Igazsagugyi Szolgalatok'*), which consists of three services, i.e. the Probation Service (*'Partfogo Felugyelet'*), the Legal Aid Service (*'Jogi Segitsegnyujto Szolgalat'*), and the Crime Victim Support Service (*'Aldozatsegito Szolgalat'*).
 - The **Probation Service**: Prior to adjudicating in child cases, the court is obliged to request that the probation service prepare a study on the living conditions of the

⁷ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

⁸ <http://www.birosag.hu/tudjon-meg-tobbet/gyermekkozpontu-igazsagszolgalatas/folap>

⁹ Article 105 of the [New Criminal Code](#).

child. Such studies contain information about, for example, the family situation or educational background of the child. This information is used by the courts when deciding on the type and level of penalty to be imposed against the child, and in particular on whether the separation of the child from his/her family is necessary.

- Probation officers are also involved in the mediation process in criminal cases and in the carrying out of certain criminal penalties, including when the court orders suspended imprisonment, community service work or probation.
- The **Legal Aid Service**: Child victims are eligible for free legal aid provided by the Legal Aid Service, regardless of their income or financial situation.
- The **Victim Support Service**: It provides services to those who were harmed or injured as a result of the crime. The Service provides victim assistance. Victim assistance covers victim support (facilitates the protection of victims' interests, grants instant monetary aid and provides legal aid) and state compensation. Victim support services are available for victims of every type of crime and misdemeanor against property. Nonetheless only victims of violent intentional crimes against the person may be eligible for state compensation. Widespread information and advice is given to anybody for free. The Victim Support Service does not have services specialised in child cases, but a special signalling system is operated in order to protect the child's best interests.

Whenever the victim support service receives information on a child exposed to a threat of crime, it is obliged immediately to alert the child welfare agency. If the circumstances disclosed by the service seem to expose the child's life or physical integrity to serious threats or risks, the victim support service simultaneously initiates the proceedings of the guardian authority.

In case of adult perpetrators, the execution of imprisonment can take place in three different kinds of penal institutes: high security prison ('*fegyhazi*'), prison ('*borton*') and low security prison ('*foghaz*').

The detention of a child can be executed in either a prison for children ('*fiatalkoruak bortone*') or a low security prison ('*fiatalkoruak foghaza*') for children. Instead of imposing the criminal sanction of imprisonment, courts may decide to impose a criminal measure consisting of sending the child to a corrective educational institution. Prisons for children operate under stricter rules than low security prisons for children. For example, while the prison plans and supervises closely the life of perpetrators, in low security prisons the perpetrators have the possibility to decide on the way they would like to spend their free time¹⁰. Compared with penal institutes for children, corrective educational institutions give more freedom to children and focus more on the education and personal development of the child perpetrator.

Regular vetting

Under Hungarian law, **judges** are subject to regular vetting. The rules applicable to the regular vetting of judges are set out in [Act CLXII of 2011](#) (and in particular in its Chapter V). Judges are typically evaluated in every third year, in a way that an evaluation committee goes through their files. In addition to checking their judgments, the evaluation committee may ask for the feedback of higher courts who have sat on appeal against their judgments. They not only evaluate the reasoning skills of judges, but also, for example, the number of cases where the higher court has repealed their decision. The consequences of this evaluation might be severe for judges, as they may be forbidden from adjudicating in specific types of cases or their appointment might be withdrawn.

Police officials are also subject to regular vetting¹¹. In case of police officials the regular vetting is skill based.

¹⁰ Articles 27 and 28 of [Law Decree 11 of 1979](#).

¹¹ Article 101(1)(b) of [Act XXXIV of 1994](#) on Police.

Prosecutors are subject to regular vetting under conditions similar to judges. The first evaluation of prosecutors takes place within 3 years from their appointment. Consecutive evaluations take place every 8 years. The aim of the evaluation is to judge the prosecutor's professional performance, his/her capacities, knowledge, personality and to give feedback on his/her career path¹².

Persons working for the Hungarian public administration have the legal status of public officials. Public officials are subject to regular vetting. Similarly to in the cases of prosecutors, the aim of the evaluation is to judge the performance of the public official, his/her knowledge, personal skills and to evaluate his/her career path¹³.

Multidisciplinary approach

There is no legal provision requiring those involved in criminal judicial proceedings to follow multidisciplinary approaches.

Definition of the child

In Hungary, rules applicable to criminal proceedings are codified in one law, the [Criminal Procedure Code](#). Instead of the term 'child', the [Criminal Procedure Code](#) uses the terms 'minor', 'any person under the age of 14' or 'persons who cannot judge the consequences of their acts'. Some of these terms (e.g. minor) are civil law terms and are defined in the [Civil Code](#). The term 'minor' refers to persons who have limited capacity to act ('*korlatozottan cselekvokepes*') or have no capacity to act ('*cselekvokeptelen*'). 'Minors' who are above 14 years old have limited capacity to act, whereas 'minors' under the age of 14 have no such capacity. The [Criminal Procedure Code](#) does not define the meaning of the term 'persons who cannot judge the consequences of their acts', nevertheless practitioners understand this term as covering 'minors' under the age of 18¹⁴.

Child suspects and defendants are referred to as 'Juveniles' in the [Criminal Procedure Code](#). 'Juvenile' is a substantive criminal law term that refers to children who are less than 18 years old, but more than 14 years old on the day of the commission of the crime. Children, who are under 14 years of age on the day of the commission of the crime, cannot be held criminally liable. It is noted, that the [New Criminal Code](#) decreases the age of criminal responsibility from 14 to 12 years in case of certain crimes (e.g. homicide, bodily harm, robbery).

Main principles and objectives; and the evolving capacity of children

As regards victims and witnesses who are under 18 years old, the Hungarian law follows a protective/ paternalistic approach, which limits the role and involvement of children in the judicial proceedings. Thus the [Criminal Procedure Code](#) often requires a child to be represented by his/her legal representative. As an example, children cannot report a crime in their own right, nor can they file a complaint or an appeal during the criminal procedure.

The Criminal Procedure Code provides extra protection to those victims and witnesses who are younger than 14 years old. As such, questioning of these children should only occur if absolutely necessary and in particular, if the evidence expected from them cannot be obtained by other means. If it is deemed necessary to interview a child below the age of 14 during the investigation phase, the interview takes place in a special child-friendly room. The [Criminal Procedure Code](#) contains several measures to ensure that children under the age of 14 years are examined only once. As an example, upon request of the prosecutor, the child can be questioned by an investigating judge, if it is foreseen that the presence of the child at the trial may negatively influence the child's personal development. If the questioning of the child who is under 14 years old cannot be avoided during the trial phase, the court may order the holding of the trial *in camera*, in the absence of the defendant or via closed-

¹² Chapter VI of [Act CLXIV of 2011](#) on the status of the prosecutor general, prosecutors and the prosecution employees and the protection career in Hungary.

¹³ Article 40 of [Act XXXIII of 1992](#) on the legal status of public officials.

¹⁴ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

circuit communication system. If a child is questioned via a closed-circuit communication system, only the presiding judge may pose questions directly to the child.

It is also noted that due to the fact that children under the age of 14 years have no capacity to act and are not deemed mature enough to understand the consequences of their acts, they cannot be subject to disciplinary sanctions. For example, if a child who is under 14 years does not attend an investigatory action, despite the fact that he/she has been requested to attend by a subpoena, he/she cannot be subject to a warrant.

Child victims who are between the age of 14 and 18 years are provided with less protection than children under 14 years old. This is linked to fact that children between the age of 14 and 18 years are more likely to have developed intellectually and emotionally and therefore be more mature and, have some, **limited capacity to understand the consequences of their acts** (e.g. consequences of giving a testimony). Thus, the authorities can address subpoenas and notices directly to them with the condition that the guardian/ person with parental responsibility also receives a copy of the subpoena or notice. A child, who is 14 years or older, who does not attend an investigatory action despite the subpoena, can be subject to disciplinary sanctions. Children are entitled to file a [legal challenge](#) against the disciplinary sanction ordered.

Child suspects/offenders between 14 and 18 years old are also treated differently by the authorities. For example, they are not interviewed in child-friendly places and are warned about the consequences in criminal law of giving false testimony. Children can be interviewed more than once during the criminal procedure, including during both the investigation and the trial phase.

The [Criminal Procedure Code](#) acknowledges the vulnerability of children by allowing the courts to order the holding of the trial *in camera*, in the absence of the defendant or via closed-circuit communication system. Unlike in the case of children who are younger than 14 years old, children between the age of 14 and 18 years may receive questions from persons other than the presiding judge when questioned via closed-circuit communication system. Moreover, cases that concern children between the age of 14 and 18 years can be subject to mediation. During mediation, children are represented by their legal representatives but are provided with the right to be heard in their own right.

As a general rule, child witnesses are treated in the same way as child victims, with the exception that witnesses between the age of 14 and 18 years cannot be party to a mediation procedure as mediation is a procedure between the victim and the suspect/defendant.

Compared to victims and witnesses, child suspects and defendants can have a more proactive role during the criminal proceedings. Thus, in most cases child suspects and defendants can act in their own right during the proceedings. By way of example, child suspects/defendants can brief a defence counsel, file a [legal challenge](#) (*'kifogas'*) or any other complaint in their own right.

The [Criminal Procedure Code](#) takes into account that children have an evolving capacity and that some children could be more mature than others. Thus, investigating authorities, prosecutors as well as courts are under the legal obligation to conduct the criminal procedure in a manner that takes into account the child's age and maturity and that contributes to the respect of laws by the child. This obligation plays a particularly important role when interviewing the child, when assessing the need to order coercive measures against the child in the form of custody or pre-trial detention and when sentencing.

The [Criminal Procedure Code](#) contains several measures which aim to minimise the burden of criminal procedures on the child. For example, the legal representation of children is statutory during proceedings. Children who are subject to pre-trial detention are separated from adult perpetrators. Moreover during the trial phase, courts may order the holding of the trial *in camera*. In contrast to adult perpetrators, courts are required to impose a sanction that contributes to the positive development of the child and that enables the child to become a useful member of society. With this objective, the [Criminal Procedure Code](#) provides for the imposition of a variety of criminal measures and/or sanctions, which include measures and

sanctions that cannot be imposed against adult perpetrators, such as education in corrective educational institution or imprisonment in specific penal institutes for children.

Discrimination

The [Criminal Procedure Code](#) does not provide protection against negative discrimination. This however does not mean that victims of discrimination have no rights to legal remedy. Pursuant to [Act CXXV of 2003](#), authorities and courts are under the legal obligation to provide equal opportunities to those involved in proceedings. A child victim or witness whose right to equal treatment has been breached may initiate a civil procedure before a court and claim compensation for material or immaterial damages but only through his/ her legal representative. A child perpetrator can file such a complaint in his/her own right.

A procedure can also be initiated before the Hungarian Equal Treatment Authority ('*Egyenlő Bánásmód Hatóság*'), under the same conditions as a court procedure. As a result of the procedure, the Authority may for example order the termination of the breach or impose a fine against the person or authority carrying out the discrimination¹⁵.

The [Criminal Procedure Code](#) does not provide specific protection for vulnerable children. Instead, it provides protection to certain vulnerable groups (e.g. those suffering from impaired hearing, speaking disorder or blindness). Persons belonging to vulnerable groups may be provided with interpretation, or other types of assistance. If the suspect or defendant belongs to a vulnerable group, the cost of assistance is covered by the State. Interpretation is also provided free of charge to suspects or defendants who have insufficient knowledge of Hungarian¹⁶.

¹⁵Source : http://nonprofit.hu/sites/default/files/study/2012/1/diszkrimin%C3%A1ci%C3%B3-elleni-k%C3%BCzdelem-m%C3%B3dszerei/A%20DISZKRIMIN%C3%81CI%C3%93%20ELLENI%20K%C3%9CZDELEM%20M%C3%93DSZEREI_0.pdf.

¹⁶Article 339(2) of the [Criminal Procedure Code](#).

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

Under Hungarian law, children who are between the age of 14 and 18 years (minors) have limited capacity to act (*'korlatozottan cselekvőképes'*), and children under the age of 14 years lack such capacity¹⁷ (*'cselekvőképtelen'*). Consequently, children cannot report a crime in their own right. Thus, their legal representatives may report a crime on their behalf.

In case of a conflict of interest between the child and the legal representative, child welfare authorities may assign a temporary ward. The temporary ward is entitled to report a crime¹⁸.

2.1.2 Provision of information

Victims of crime, whether adults or children, are entitled to receive information about their rights and obligations at any stage of the criminal procedure¹⁹. Such information can be provided to them by the investigating authorities, the prosecutor, the court or their lawyer.

Providing information to child victims in a child-friendly manner is a requirement when the subpoena (*'idezes'*) and notice (*'ertesites'*) are sent to the victim²⁰. Subpoenas are sent to persons whose presence is required during proceedings, whereas notices are served to those who may be present but whose attendance is not required by law. Subpoenas and/or notices can be sent at any stage of the criminal procedure.

Subpoenas/notices that concern child victims between the age of 14 and 18 years could be addressed and served directly to them. Wards (*'gondozo'*) of these child victims are notified of the fact that a subpoena/notice has been served on the child together with a request that the ward should ensure that the child attends the relevant procedure.

In case of child victims who are under the age of 14 years, the subpoenas and notices are addressed and served to the minor's ward. If the ward of the minor is not the same as his/her legal representative, notices and subpoenas are also served to the legal representative²¹.

Subpoenas/notices should contain information about the subject matter of the subpoena/notice (e.g. When, where and in what capacity the victim should attend; the timing and expected duration of the action; warnings on the consequences of absence etc.) in a manner that, in the light of the age and maturity of the child, is understandable for the child²².

As a general rule, a victim can be questioned (*'kihallgat'*) as a witness at any stage of the criminal procedure (including during the investigation and trial phases). Children under the age of 14 years can only be questioned if the evidence expected from them cannot be obtained by other means. While interviewing child victims, the following persons may attend: the lawyer of the victim and his/her legal representative and ward²³. The child's lawyer may provide information to the victim about his/her rights and obligations, but cannot intervene during the interview. Children should be warned in an understandable manner (taking into account their age and maturity) about the obligation to tell the truth and the legal consequences of falsely accusing someone. This latter warning does not need to be communicated to a child under the age of 14 years, as they cannot be held criminally liable

¹⁷ Articles 11-13 of the [Civil Code](#).

¹⁸ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

¹⁹ Article 51(1) of the [Criminal Procedure Code](#).

²⁰ Articles 67-68 of the [Criminal Procedure Code](#).

²¹ Articles 67-68 of the [Criminal Procedure Code](#).

²² Article 67 of the [Criminal Procedure Code](#).

²³ Article 86 of the [Criminal Procedure Code](#).

under Hungarian law²⁴. In practice, however, the authorities explain to the children in an understandable manner that they should tell the truth²⁵. Furthermore, children cannot be questioned without the consent of their legal representative²⁶. If there is a conflict of interests between the legal representative and the child victim, the consent of the Guardian's Court is necessary prior to the questioning of the child.

The general requirement to provide information to the child's ward/legal representative is not detailed in the Criminal Procedure Code per se. However, as described above, wards/legal representatives receive information about the criminal procedure via the subpoena/notice as well as while attending the different investigating actions and the trial. Legal representatives may also receive information from the lawyer of the minor.

Moreover, upon request, legal representatives receive copies of expert opinions and other documents produced during the investigation phase. The latter documents can only be provided to the legal representative if he/she attended the investigatory action. Other documents can exceptionally be provided to the legal representative, i.e. only if the provision of such documents to the legal representative does not interfere with the interests of the investigation²⁷.

2.1.3 Protection from harm and protection of private and family life

Protection of personal data

Under Hungarian law, it is a general requirement to avoid the unnecessary disclosure of personal data of those involved in the criminal procedure. The data of victims and witnesses have increased protection in Hungary. Documents produced during the investigation phase cannot contain information on the identity/personal data of the victim/witness (including the identity of a child victim)²⁸.

Child victims/witnesses may request in their own right, or through their legal representatives or lawyers the investigating authority, the prosecutor, or the court that their data be handled confidentially and separately from other documents (*'tanu szemelyiadatainak zartan kezelese'*)²⁹. Data that are handled in this way are accessible only to the court, prosecutor and investigating authority.

As described below, in order to protect the child from intimidation or other negative influences, the court may order the holding of the trial in camera. Where a trial is held in camera trial, the court's judgment cannot contain data that concerns the reason why the in camera trial was ordered³⁰.

Interviewing the child victim

Child victims can be questioned as witnesses during the criminal procedure. In order to avoid the secondary victimisation of children and protect them from harm/intimidation, the following measures are in place:

1. Interview of children before the trial
 - Children under the age of 14 years: Children under the age of 14 years can only be interviewed if the evidence expected from their testimony cannot be obtained by any other means³¹. If an interview is deemed necessary, the [Criminal Procedure Code](#) aims to ensure that such children are interviewed only once. Thus the [Criminal Procedure Code](#) provides the possibility for the investigating judge to carry out the interview, upon

²⁴Articles 85-86 of the [Criminal Procedure Code](#).

²⁵ Interview conducted with university professor from the University of Miskolc on 17 January 2013. This practice has been mentioned in one of the decisions of the Hungarian Curia (previously called as Supreme Court).

²⁶Article 86(2) of the [Criminal Procedure Code](#).

²⁷ Article 70/B(2) of the [Criminal Procedure Code](#).

²⁸Article 186(4) of the [Criminal Procedure Code](#).

²⁹ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

³⁰Article 239 of the [Criminal Procedure Code](#).

³¹ Article 86 of the [Criminal Procedure Code](#).

request of the prosecutor, if it is foreseen that the presence of the child at the trial would negatively impact on his/her personal development. The prosecutor could be asked by the child's legal representative, ward or legal counsel to send such a request to the investigating judge. If the child is questioned by an investigating judge, the interview cannot be repeated during the trial phase³².

- The [Criminal Procedure Code](#) also allows for the audio-visual recording of the interview of the child (e.g. video recording), which can be replayed during the trial. [Ministerial Decree 32/2011. \(XI.18.\) of the Ministry of Public Administration and Justice](#) regulates the suitable circumstances for the hearings of children. If possible, a recording should take place in a special room for children (with toys and child-friendly furniture), where cameras and microphones are hidden³³. Their legal representative must be present. These child-friendly hearing rooms are being created throughout the country. Such hearing rooms should be available at all 19 county seats by 2014. It is noted that for the time-being there are 13 such rooms in Hungary³⁴.
- The presence of the child's legal representative is statutory during the interview of the child.
- Children between the age of 14 and 18 years: Children between the age of 14 and 18 years are interviewed both during the trial and the investigation phases. It is noted that children between the age of 14 and 18 years are not interviewed in special child-friendly rooms. Upon request of the legal representative or legal counsel, the children can be questioned via a closed-circuit communication system³⁵. The child's legal representative may be present during the interview of the child.

2. Questioning of children during the trial

- Children under the age of 14 years: As described above, children under the age of 14 years are typically questioned only once during the criminal procedure, which usually takes place during the investigation. If the child is not questioned during the investigation phase by an investigating judge, but this becomes necessary at the trial phase, the child can be questioned by a 'delegated' judge ('kikuldott biro') or at a court (typically a court different from where the trial takes place, which is close to the place where the child lives). Despite this requirement, presiding judges often prefer to question the child themselves, and thus order the child to come to the court where the trial takes place. In order to avoid the secondary victimisation of children, the judge questions the child well before the defendant arrives at court³⁶.
- If the child has not been interviewed during the investigation phase, but this becomes necessary at the trial phase, the presiding judge may also decide to question the child via a closed-circuit communication system. Only the presiding judge may pose questions to the child directly in this case and the interview is recorded³⁷. The child must be accompanied by his/her legal representative or ward. In order to avoid causing harm and intimidation to children, they can only see the judge and hear only his/her questions and the child must be in a child-friendly place during such questioning³⁸.
- Children between the age of 14 and 18 years: Children who are between the age of 14 and 18 years might be heard at the trial. If necessary (e.g. due to the child's maturity or to safeguard its health/development) and upon request of the legal representative, ward or legal counsel of the child, the court may order the questioning of the child via a

³²Article 207(4) of the [Criminal Procedure Code](#).

³³Source: [University of Eotvos Lorand: on the child friendly justice](#).

³⁴[Ministerial Decree 32/2011 \(XI.18.\)](#) on the obligation of the Police to establish child friendly rooms for questioning.

³⁵Article 207(5) of the [Criminal Procedure Code](#).

³⁶ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

³⁷ Ibid.

³⁸Article 244/A-244/D of the [Criminal Procedure Code](#).

closed-circuit communication system. In this case, the child will be in the court but in a room separate from the court room. Any person who attends the trial may see and hear the questioning of a child who provides testimony³⁹. In order to protect the child from potential harm (e.g. from emotionally disturbing images, or information) and to protect his/her personal data, the presiding judge may order the transmission of the testimony and examination to take place in a way that distorts the individual features of the child (e.g. distortion of face, voice) to prevent their identification⁴⁰.

If a child is examined during the trial, sound and video recordings can only be made if the presiding judge permits it.

The presiding judge may also decide to hold the trial *in camera*, in which case no information can be given to the press and the press cannot disclose any information gathered during the proceedings⁴¹.

If it deems it necessary, the court may order the accused to leave the room while the examination of the child takes place. The child's legal representative may attend the questioning of the child.

Ordering the evidentiary procedure of 'confrontation'

'Confrontation'⁴² (which can be ordered at any stage of the criminal procedure) of the defendant and the child victim (as witness)⁴³ can happen only if the testimony of the defendant and the victim are contradictory. Child victims under the age of 14 can be 'confronted' by the defendant only if it does not cause them fear⁴⁴.

Protection Programme

If it is deemed necessary for the protection of the child victim or witness and his/her family members as well as of other persons closely associated with the child, such persons can be put into protection programmes⁴⁵. [Act LXXXV of 2001](#), which contains the rules applicable to protection, provides a broad definition of the term 'family member', since in the case of children it covers not only the family members of the victim but also the person who is responsible for the constant care of the child.

Protection programmes can be requested at any stage of the criminal procedure, as well as after its termination. This can happen if the child is questioned in a criminal procedure which concerns the commission of a serious crime and in particular if, for example:

- the child gives evidence that is necessary for the investigation of the crime or the identification of the perpetrator and
- it is presumed that such evidence could not be gathered otherwise; or
- the child has been subject to or is likely to be subject to a life threatening crime etc⁴⁶.

Child victims and their family members can be put under protection upon their request. Considering that children have only limited capacity to act or are incapable, the request should be filed by the legal representative, ward or guardian of the child. The request should be initiated in the Witness Protection Service ('*Tanuvédelmi Szolgálat*'), which upon receipt of the approval from the Head of the National Police Headquarters, concludes the agreement for protection with the legal representative, ward or guardian of the child⁴⁷.

³⁹ Ibid.

⁴⁰ Article 244/C of the [Criminal Procedure Code](#).

⁴¹ Article 74/B of the [Criminal Procedure Code](#).

⁴² This is a controlled procedure in which both the victim and suspect/ defendant are brought together to allow questions to be posed both by the prosecutor, judge, lawyers and by the victim and suspect.

⁴³ Reference [Csaba Fenyvesi: Criminal aspects of confrontation](#).

⁴⁴ Article 124 of the [Criminal Procedure Code](#).

⁴⁵ Article 1, point 1 of [Act LXXXV of 2001](#).

⁴⁶ Article 2 of [Act LXXXV of 2001](#).

⁴⁷ Articles 5-7 of [Act LXXXV of 2001](#).

The request for protection should be filed and agreed by another legal representative/ward/guardian where protection is necessary due to the child's relationship with his/her legal representative, ward of guardian or where there is a conflict of interests between the child victim/witness and his/her legal representative, ward or guardian. In the absence of such person, a temporary ward must be appointed⁴⁸. The agreement contains a description of the measures that the Witness Protection Service will apply during the period of the protection (e.g. changing the name, address, identity of the witness, ordering the witness's personal protection). The Witness Protection Service is integrated within the National Police⁴⁹.

The Witness Protection Service informs the child's legal representative, ward or guardian of any measures it will or is using for the protection of the child⁵⁰. The legal representative, ward or guardian of the child victim may suggest protection measures to the Witness Protection Service⁵¹. The application of certain measures (e.g. the changing of the identity of the child) is subject to the prior approval of the legal representative, ward or guardian⁵².

The protection programme terminates if the conditions for protection no longer exist, the Witness Protection Service withdraws the agreement (e.g. the person under protection failed to comply with the conditions of the protection) and if the legal representative, ward or guardian of the child renounces the need for protection.

Data about persons under protection cannot be disclosed to anyone. In cases where data is requested, the authorities concerned should notify the request to the Witness Protection Service⁵³.

Preventing contact between the child and the defendant

The Criminal Procedure Code provides for a no-contact order to be imposed on the defendant with respect to the victim. The court may order such a measure if it is likely that in the absence of such an order the defendant would:

- by influencing or intimidating the victim frustrate, complicate or endanger the evidentiary procedure;
- commit the attempted/prepared crime, or a new crime against the victim that is punishable by imprisonment.

If the victim is a child (i.e. has limited capacity to act or has no such capacity), the legal representative may ask the court to issue a no-contact order. The length of the measure ranges from 10 to 60 days. No-contact orders can be made in cases where pre-trial detention is not possible. Such an order can require the defendant to leave a specific dwelling or keep away from it; stay away from a specific person, stay away from the child's place of residence, work or the educational institute visited etc⁵⁴.

Finally, if there is a conflict of interest during the criminal procedure between the child witness and his/her legal representative, ward or guardian, the Guardian's Court ('*Gyamhatóság*') may appoint a temporary ward⁵⁵. If the defendant is the child's legal representative, the court is requested to order the measure of 'keeping away' by the temporary ward.

If such conflict appears during the questioning of the minor, a representative of the guardian authority attends the questioning instead of the legal representative, the ward or close relative of the minor⁵⁶.

⁴⁸Article 8 of [Act LXXXV of 2001](#).

⁴⁹Article 9 of [Act LXXXV of 2001](#).

⁵⁰Article 19 of [Act LXXXV of 2001](#).

⁵¹Article 20 of [Act LXXXV of 2001](#).

⁵²Article 29 of [Act LXXXV of 2001](#).

⁵³Articles 21 and 22 of [Act LXXXV of 2001](#).

⁵⁴Article 138/A and 138/B of the [Criminal Procedure Code](#).

⁵⁵Article 225 of the [Civil Code](#).

⁵⁶Source: [University of Eotvos Lorand: on the child friendly justice](#).

Special preventive measure when the alleged perpetrator is the child's parent, a member of his/her family or a primary caregiver

If the perpetrator is the child's family member, parent or primary caregiver and due to the commission of the crime the child remains without supervision, the Court of Guardians may order the child to be placed under the care of a relative or an appropriate institution. This measure can be ordered following the placing of the child's relative, caregiver or parent into custody⁵⁷.

Reporting of harm to children

In order to prevent and terminate the endangerment of the child, the following authorities and organisations must notify the child welfare service of the endangerment of a child and/or initiate regulatory proceedings in case of the abuse or gross neglect of a child or the existence of other severe cause of endangerment, or the severe endangering conduct of the child : a) health care service providers, in particular, the district nurse service, family doctors, family paediatricians, b) providers of personal care services, in particular the family support service, family support centres, c) institutions of public education, in particular institutions of education and instruction and the educational and behavioural counselling service, d) the police, e) the prosecution, f) courts of law, g) refugee centres, temporary accommodations of refugees, h) social organisations, churches, foundations⁵⁸.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

The [Criminal Procedure Code](#) contains general measures (i.e. not specific to minor victims) for avoiding lengthy procedures. For example, it contains deadlines for the police to start and terminate investigations⁵⁹, and for the prosecutor to file the indictment⁶⁰. No specific deadline is set for the termination of court procedures in the Criminal Procedure Code, except for a general requirement that courts should adjudicate within a reasonable time. If courts omit to perform a procedural act or adopt a decision within the deadline, a legal challenge can be filed⁶¹. In accordance with the general rule, victims as private parties are entitled to file a legal challenge ('*kifogas*'). A private party is a victim who enforces a civil claim during the criminal procedure⁶². Child victims cannot act as private parties in their own right and thus cannot file a legal challenge. The legal representatives may file such a legal challenge on behalf of children. In case of a conflicting interest between the child and his/her legal representative in this respect, the Guardian Court may appoint a temporary ward, who could file the legal challenge.

If the crime committed was against life, physical integrity or health, or a crime against marriage, family life, youth or sexual morality and was committed to the detriment of a child, then the criminal procedure should be conducted promptly ('*oron kivulieljaras*'). The same rules apply if a violent crime was committed against the child victim and if it is in the interest of the victim to conclude the criminal procedure as soon as possible⁶³.

Rules applicable to protecting children from secondary victimisation and to ensuring that criminal procedures happen in a child-friendly manner are described under [Section 2.1.3](#).

⁵⁷ Article 128(2) of the [Criminal Procedure Code](#).

⁵⁸ Act XXXI of 1997 on the protection of children and on public guardianship administration: A.17.

⁵⁹ Article 170 of the [Criminal Procedure Code](#) in accordance of which as a general rule, the Police has 3 days to start the investigation. Pursuant to Article 176 of the [Criminal Procedure Code, unless the investigation is extended, it needs to be terminated within 2 months](#).

⁶⁰ Article 216 of the [Criminal Procedure Code, as a general rule the prosecutor should file the indictment within 30 days from the conclusion of the investigation. This deadline can be extended and is not applicable when the investigation was conducted by the prosecutor, in which case the prosecutor shall file the indictment immediately after the termination of the investigation](#).

⁶¹ Article 262/A of the [Criminal Procedure Code](#).

⁶² Article 54 of the [Criminal Procedure Code](#).

⁶³ Article 64/A of the [Criminal Procedure Code](#).

As referred to above, the legal representative, ward or close relative of the child should attend the interview of a child who is under 14 years old. The presence of such persons is not statutory during the questioning of children who are older than 14 years old. The presence of such persons provides emotional support to children.

Children have limited or no capacity to act, thus are not entitled to mandate a lawyer on their own. Consequently, lawyers are mandated by their legal representatives. The costs of the lawyer could be covered by the legal representative or by the defendant if the court finds the defendant guilty and orders him/her to cover the costs of criminal proceedings⁶⁴. Lawyers can attend the questioning of a witness who is a child and if needed explain to the witness his/her rights at any stage of the procedure⁶⁵.

Apart from the measures describe above, the Criminal Procedure Code does not contain additional measures for the psychological, emotional and practical support of child victims. According to a recent report on child friendly justice, current legislation does not require specialised knowledge or expertise from those who are involved in the examination of children during the investigation phase. Moreover, in practice not all prosecutors and judges involved in child criminal procedures receive training on the psychological aspects of examining children. There is no guidance document or code of conduct that such persons could follow during the criminal proceedings. This, according to the stakeholders interviewed, increases the risk of secondary victimisation of child victims⁶⁶.

Under Hungarian law, mediation is a mechanism for restorative justice. Mediation is a conflict resolution procedure, which is conducted by an independent third person (mediator), with the aim of resolving the conflict between the perpetrator and the victim, mitigating the damages suffered by the victim and ensuring that the perpetrator abides by the law in the future.

A child under the age of 14 years cannot be a party to the mediation procedure⁶⁷. The child's legal representative is entitled to initiate the mediation procedure as well as to sign the agreement reached as a result of the mediation procedure. The presence of the legal representatives of children under the age of 14 years is therefore required by statute during the mediation process.

Child victims between the age of 14 and 18 years can decide to refer a criminal case to mediation. Because children between the age of 14 and 18 years (unless they become adults due to marriage) are deemed to have limited capacity to act, it is obligatory for the child's representative to attend the mediation. Although the presence of legal representatives is statutory during the mediation process, the child can communicate directly with the perpetrator and the perpetrator can address his/her questions directly to the child. Agreements reached as a result of mediation should be signed by the victim, the perpetrator and the child's legal representative⁶⁸.

Act CXXIII of 2006 requires the mediator to provide information to the parties of the mediation process about their rights and obligations, the legal consequences of the mediation process and the rules applicable thereto⁶⁹. The Act does not require mediators to provide this information to child victims in a child-friendly manner.

2.1.5 Protecting the child during interviews and when giving testimony

Descriptions of the ways children are examined/interviewed and methods used while examining children are provided under [Sections 2.1.2](#) and [2.1.3](#). The method of examining children is not detailed in policy documents (e.g. in guidance documents).

⁶⁴ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

⁶⁵ Source: [University of Eotvos Lorand: on the child friendly justice](#).

⁶⁶ Ibid.

⁶⁷ Article 8 of [Act CXXIII of 2006](#).

⁶⁸ Article 11 of [Act CXXIII of 2006](#).

⁶⁹ Ibid.

According to stakeholders, authorities and courts do not always provide a sufficient level of information to children about the process of interviewing or giving testimony. This constitutes one of the shortcomings of the current system. Moreover, authorities and judges dealing with children are not always specialised in dealing with cases involving children⁷⁰.

A description of measures in place to ensure a child-friendly environment is provided under [Sections 2.1.2](#) and [2.1.3](#).

Admissibility and value of evidence

In accordance with the general rules applicable to adults, the testimony of the child victim constitutes evidence. Unless the child was examined in a way that is contrary to the rules set out in the Criminal Procedure Code, his/her testimony should be considered as valid⁷¹. The fact that children have limited or no capacity to act does not affect the validity of the testimony. When evaluating evidence, courts may take into consideration the personality of the person who provided the evidence.

Instead of taking an oath, child victims who are older than 14 years old need to state whether they have understood the legal consequences of giving a false testimony. The rules applicable to warning a child about the potential legal consequences of testifying are described under Section 2.1. This warning does not need to be communicated to a child who is under the age of 14 years, as children cannot be held criminally liable under Hungarian law.

2.1.6 Right to be heard and to participate in criminal proceedings

When the presence of the child is necessary during the criminal procedure, the investigating authorities, the prosecutor or the court sends a subpoena (*idezes*) or a notice (*ertesites*). Rules applicable to the serving of subpoenas and notices are described under [Section 2.1.2](#).

Wards who fail their legal obligation of ensuring that the child attends the interview can be sanctioned. As a disciplinary sanction against wards, the [Criminal Procedure Code](#) set out a fine and the ordering of the ward to reimburse the costs resulting from the absence of the child. The ward may prove that he/she is not culpable for the absence of the child⁷².

If a child victim who is older than 14 years old does not attend an interview, the investigating authorities, the prosecutor or the court may issue a bench warrant (*elovezetes*) against the child⁷³. The bench warrant is carried out by the police, which as a result of the bench warrant may arrest the child and accompany him/her to the place designated⁷⁴.

Because children are deemed to have limited or no capacity to act, a child victim cannot file an action or act in judicial proceedings on his/her own right, but must be represented by his/her legal representative. The only exception under this rule is the interview of the child. Under Hungarian law, child victims can be examined in their own right. Hence, questions during the interview can be addressed directly to the victim. It is noted however, that in order for a child to be examined, the consent of the legal representative is necessary.

The presence of legal representatives is required by statute during the questioning of children who are under 14 years old. Legal representatives may also attend the examination of child victims who are older than 14 years old. Except for attending the questioning of the witness, and informing the minor about his/her rights and obligations, lawyers/legal representatives/wards cannot perform other activities.

Following the questioning, lawyers/legal representatives/wards may inspect the minutes and comment on them⁷⁵.

⁷⁰ Interview conducted on 13 December 2012, with a University Professor.

⁷¹ Articles 75 and 77 of the [Criminal Procedure Code](#).

⁷² Article 69 of the [Criminal Procedure Code](#).

⁷³ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

⁷⁴ Article 162 of the [Criminal Procedure Code](#).

⁷⁵ Article 85 of the [Criminal Procedure Code](#).

2.1.7 Right to legal counsel, legal assistance and representation

Children under the age of 18 years cannot mandate a lawyer to act on their behalf in their own right. Instead, typically the child's legal representative mandates a lawyer. The rules applicable to covering the costs of lawyers are described under [Section 2.1.4](#).

Child victims are eligible to receive free legal aid regardless of their income or financial situation. No aid, however, may be granted to them if the victim has already received the costs of legal representation or effective legal representation has already been provided to the victim in a particular case via another state support system.

The Hungarian Legal Aid Service (*'Jogi Segítsejnyujto Szolgalat'*) has issued a legally binding resolution authorising child victims to claim legal aid. In the case of children under the age of 14 years, such resolution is issued upon request of the child's legal representative. Children between the age of 14 and 18 years may request free legal aid with the consent of their legal representative.

Within 30 days of the receipt of the resolution, the victim (or his/her legal representative) may grant a power of attorney to any person providing legal aid.

If no person is found to provide legal aid to the child and represent him/her as a state-provided advocate and this could - with respect to the time limits of the criminal procedure - prejudice the victim's rights, then the victim may submit a petition for excuse in regard to the matter. Following the receipt of the petition for excuse, the legal assistance service must, at the victim's request, appoint a legal aid provider, an attorney or law firm to act as a state-provided advocate.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

As referred to under [Section 2.1.4](#), child victims cannot file [legal challenges](#) (*'kifogas'*) in their own right as they are deemed to have only limited or no capacity to act.

Pursuant to the [Criminal Procedure Code](#), victims are not in a position to lodge complaints against court decisions, unless they act as private parties. As described under [Section 2.1.4](#), child victims cannot act as private parties in their own right. On behalf of children, the legal representatives may act as private parties and thus are entitled to lodge complaints and file appeals.

As referred to under [Section 2.1.6](#), the investigating authorities, the prosecutor or the presiding judge may issue a bench warrant against a child who is older than 14 years and who fails to attend the interview. Child victims who are subject to bench warrant are quasi in the position of a 'defendant'; thus under Hungarian law, they are entitled to file a complaint in their own right against the order of the above mentioned authorities⁷⁶.

2.2 The child as a witness

2.2.1 Reporting a crime

The same rules apply to child witnesses as to child victims, as described under [Section 2.1.1](#).

As referred to under [Section 2.1.1](#), in case of certain criminal offences (e.g. violation of right of autonomy concerning medical procedures, trespassing, insulting, violation of private secrets, violation of the secrecy of correspondence, defamation, slander, etc.) a crime can be reported only by the victim⁷⁷. In other words, such crimes cannot be reported by witnesses.

⁷⁶ Interview conducted with university professor from the University of Miskolc on 17 January 2013.

⁷⁷ Article 31 of the [Criminal Code](#).

2.2.2 Provision of information

The same rules apply to child witnesses as to child victims, as described under [Section 2.1.2](#).

2.2.3 Protection from harm and protection of private and family life

Except for the coercive measure of ‘keeping away’ and ‘placement’ that can only be applied for the protection of child victims, the same rules apply to child witnesses as to child victims, which rules are described under [Section 2.1.3](#).

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

With the exception of rules applicable to mediation and filing a legal challenge (*‘kifogas’*), the same rules apply to child witnesses as to victims, set out in Section 2.1.4. Legal challenges can only be filed by the accused, his/her defence counsel, or the private party⁷⁸ (i.e. the victim who enforces civil claims during the criminal procedure⁷⁹). Mediation is a voluntary procedure between the perpetrator and the victim. Witnesses play no role in mediation procedures⁸⁰.

2.2.5 Protecting the child during interviews and when giving testimony

The same rules apply to child witnesses as to child victims, and these are set out under [Sections 2.1.2](#) and [2.1.3](#).

2.2.6 Right to be heard and to participate in criminal proceedings

The same rules apply to child witnesses as to child victims, as set out under [Section 2.1.6](#).

2.2.7 Right to legal counsel, legal assistance and representation

The same rules apply to child witnesses as to child victims, with the exception that child witnesses cannot be eligible to receive free legal aid. Relevant rules applicable to child victims are provided under [Section 2.1.7](#).

2.2.8 Remedies or compensation for violation of rights and failure to act

Child witnesses (unless the child witness is a victim), in accordance with the rules applicable to adult witnesses, are not entitled to claim remedies or compensation under Hungarian law. As an exception under this rule, child witnesses may claim for reimbursement of their travel costs through their legal representatives.

Moreover, similarly to child victims, a child witness who is older than 14 years old may file a legal challenge against the bench warrant ordered by the investigating authorities, the prosecutor or a court.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Under Hungarian law the minimum age of criminal responsibility is 14 years⁸¹. This implies that children under 14 years cannot be held criminally liable. In cases, where a child under the age of 14 years commits a crime, the Guardians Court (*‘gyamhatóság’*) may impose certain child protection measures, including e.g. putting the children under temporarily or permanent child protection care.

⁷⁸Article 262/A of the [Criminal Procedure Code](#).

⁷⁹Article 54 of the [Criminal Procedure Code](#).

⁸⁰Article 221/A of the [Criminal Procedure Code](#).

⁸¹Article 107 of the [Criminal Code](#).

Persons who are at least 14 years old on the day of the commission of the crime but are less than 18 are considered as 'children' (*fiatalkoru*) under Hungarian law⁸². Substantial criminal law provisions regulating the criminal liability of children are set out in Chapter 7 of the [Criminal Code](#), whereas relevant criminal procedure rules are provided by Chapter 21 of the [Criminal Procedure Code](#). If specific rules are not contained in the Chapters dedicated to the criminal liability of children, it means that the same rules apply to children as to adult suspects/defendants. Under current legislation, the age of criminal responsibility does not vary depending on the type of offence or the circumstance of the crime.

However Hungary's [New Criminal Code](#), which has already been adopted but will enter into force only in July 2013, lowers the age of criminal responsibility from 14 to 12 years⁸³. According to the new rules, in the most severe criminal offences (e.g. homicide, homicide committed with diminished responsibility, battery causing danger to life or death, and, in limited conditions: robbery, or robbery through inebriation or intimidation) children could also be punished if they are at least 12 years old on the day of the commission of the crime. The age of criminal responsibility will depend on the type of offence committed. The upper age limit to fall under child justice remains 18 years.

Under Hungarian law, the age of the perpetrator determines the level of penalties that the courts can impose. As an example, child perpetrators can be punished by imprisonment, the maximum length of which depends on whether the perpetrator has turned 16 on the day of the commission of the crime or not⁸⁴:

- if the perpetrator is 16 years old when he/she commits the crime, the maximum length of imprisonment is:
 - 15 years, if an adult perpetrator could be punished by life imprisonment for the crime committed;
 - 10 years, if an adult perpetrator could be punished by more than 10 years of imprisonment for the crime committed.
- if the perpetrator is less than 16 years old when he/she commits the crime, the maximum length of imprisonment is:
 - 10 years, if an adult perpetrator could be punished by life imprisonment for the crime committed;
 - 5 years, if an adult perpetrator could be punished by more than 5 years of imprisonment for the crime committed⁸⁵.

In accordance with the rules applicable to adult perpetrators⁸⁶, a child perpetrator cannot be held criminally liable if he/she is mentally incapable (*'koros elmeallapotu*), committed the crime under pressure (*'kenyszer*) or menace (*'fenyegetes*), was in error (*'tevedes*) while committing the crime, was in a situation of legitimate defence (*'jogos vedelem*) or of emergency (*'vegszukseg*), etc.

Finally, the Hungarian [Criminal Code](#) does not contain separate rules applicable to young adults (adults between the age of 18 and 21). Thus the same rules apply to young adults as to adults.

⁸² Ibid.

⁸³ Article 105 of the [New Criminal Code](#).

⁸⁴ Article 110 of the [Criminal Code](#).

⁸⁵ It is noted that the [New Criminal Code](#) amends this provision by adding a point c.), which goes as follows: the maximum length of imprisonment is 5 years, if for the crime an adult perpetrator could be punishable by more than 5 year of imprisonment.

⁸⁶ Article 22 of the [Criminal Code](#).

2.3.2 Provision of information

Provision of information to child suspect/defendant

General rules

The fact that no specific rules on the provision of information to children are set out in Chapter 21 of the [Criminal Procedure Code](#) implies that the same rules apply to child perpetrators as to adults.

Despite the same rules, investigating authorities and prosecutors as well as competent courts are under a legal obligation to conduct the criminal procedure in a way that takes into account the characteristics of the perpetrator's age and that contributes to the respect of the law by the child perpetrator⁸⁷. This provision suggests that officials dealing with children should not only be aware of the applicable legislation, but also be experienced in dealing with children and have the necessary pedagogical and psychological skills⁸⁸. Stakeholders interviewed emphasised that persons in contact with child perpetrators in Hungary do not always possess the necessary skills and often provide limited information to children⁸⁹.

The obligation of the authorities to provide information to suspects/accused/perpetrators is twofold: on the one hand the authorities need to inform such persons about their rights and obligations at any stage of the criminal procedure as well as about the 'state of play' of the procedure and the main characteristics of the given stage of the criminal procedure. As stakeholders pointed out, authorities often fail to provide detailed information to children about the given step of the criminal procedure (e.g. which authority is involved, what can be expected to happen during the given phase of the procedure etc.) Children are entitled to request the provision of in-depth information from the authorities. As children are not always aware of all their rights and due to the fact that they are often under stress, these requests in practice are not common⁹⁰.

The way the authorities provide information to children is not prescribed in the [Criminal Procedure Code](#); however in practice this can happen both in writing and/or orally⁹¹.

If during the criminal procedure the presence of the child suspect/defendant is obligatory, the investigating authority, the prosecutor or the court may serve a subpoena to the child. Rules applicable to serving subpoenas are provided under [Section 2.1.2](#).

Rules applicable to each phase of the criminal procedure

Under Hungarian law, the criminal procedure starts with an investigation. The main investigating authority is the Police; however, certain cases can also be investigated by the prosecutor (e.g. crimes committed against public officials, judges, prosecutors, inspectors, etc.) As part of the investigation, the investigating authorities may examine/interview ('*kihallgat*') the suspect if on the basis of the data gathered a reasonable ground exists that the suspect committed the crime. Children (before becoming suspects) can be examined as simple witnesses. Rules applicable to witnesses are described under [Section 2.2](#).

At the beginning of the interview, the suspect should be informed about the nature of the suspicion as well as about the applicable legislation. The suspect at this stage of the procedure is also informed about his/her right to a defence⁹². If at any stage of the investigation, on the basis of the information collected the nature of the suspicion changes, the investigating authorities should inform the suspect about such changes during the next examination⁹³.

⁸⁷ Article 447 of the [Criminal Procedure Code](#).

⁸⁸ Source: [Szilvia Endrefi: Research on the practices followed by judges and prosecutors specialised in cases with juvenile offenders.](#)

⁸⁹ Interview conducted on 13 December 2012, with a University Professor.

⁹⁰ Ibid.

⁹¹ Source: [Hungarian Country Report on the right to access to effective defence and on effective defence.](#)

⁹² Article 179(1) and (2) of the [Criminal Procedure Code](#).

⁹³ Article 8(2) of [Statement no. 11/2003 \(UK 7\) of the Office of the Chief Public Prosecutor.](#)

Information on the evidence gathered during the investigation phase is not fully available to the child suspect. During the first examination, the investigating authorities should communicate the nature of the suspicion without providing details about the evidence gathered. During the investigation phase only the evidence gathered during an investigatory action where the suspect and/or his/her defence counsel attended are communicated to the suspect or his/her defence counsel⁹⁴.

On the basis of the information gathered through the investigation, the prosecutor may decide to press charges against the suspect by filing the indictment with the court. The indictment serves as an important source of information to the accused person as it contains information inter alia on the description of the act being subject to the indictment, the applicable criminal law rules and the description of the evidence. The accused receives this information in writing, in a language that the suspect understands (e.g. his/her mother tongue)⁹⁵. In this respect the same rules apply to children as to adult perpetrators.

At the beginning of the court procedure the judge must ask the accused if he/she has understood the charges and, if not, explains it. At the same time the judge provides information about the rights and obligations of the accused⁹⁶.

During the examination of the child at the trial phase, the child must be provided with the same types of information by the authorities as during the investigation phase. The child is entitled to receive information about his/her rights and obligations from the defence counsel at any stage of the criminal procedure.

Provision of information to the legal representative ('torvenyes kepvisele') and defence counsel ('vedo')

In order to ensure the proper defence of child suspects/defendants, the participation of a defence counsel is statutory in criminal proceedings against children⁹⁷. Defence counsels are entitled to file inquiries in the case and may collect and obtain certain data⁹⁸.

During the investigation phase, the defence counsel may receive information about the investigation in the form of copies of expert opinions and documents produced as a result of those investigating actions, where he/she attended. Following the conclusion of the investigation, the legal counsel can have access to all documents and data collected that serve as the basis for pressing the charges⁹⁹.

More information about the charges against the accused is provided to the defence counsel via the indictment, one copy of which needs to be made available to him/her¹⁰⁰.

The legal representative of the child (typically the parents of the child) may inspect the documents of the case after the conclusion of the investigation phase of the criminal procedure. During the course of the investigation only those documents prepared as a result of the investigating actions that he/she attended can be inspected by the legal representative. In other respects, in terms of receiving information the same rules apply to legal representatives as to defence counsels¹⁰¹. Stakeholders noted that legal representatives may receive information about the rights and obligations of the child from the defence counsel and from the authorities/courts (indirectly) while attending the interview of the child¹⁰².

⁹⁴ Article 186 of the [Criminal Procedure Code](#).

⁹⁵ Article 217-219 of the [Criminal Procedure Code](#).

⁹⁶ Article 288 of the [Criminal Procedure Code](#).

⁹⁷ Article 450 of the [Criminal Procedure Code](#).

⁹⁸ Article 50 of the [Criminal Procedure Code](#).

⁹⁹ Article 193 of the [Criminal Procedure Code](#).

¹⁰⁰ Article 219 of the [Criminal Procedure Code](#).

¹⁰¹ Article 451 of the [Criminal Procedure Code](#).

¹⁰² Interview conducted on 13 December 2012, with a University Professor.

2.3.3 Immediate actions following first contact with police or other relevant authority

The first time the relevant authorities come into contact with a child suspect, they are obliged to explain the rights and obligations of the child, including his/her right for a defence counsel. If the child does not have a defence counsel, the investigating authorities should assign one ex-officio¹⁰³.

The participation of a defence counsel is statutory in child criminal procedures¹⁰⁴. Despite this requirement, it often happens that defence counsels do not attend certain investigating actions, including when the child suspect is interviewed/examined¹⁰⁵. If the defence counsel is absent, the child suspect (in accordance with the rules applicable to adults) has the right to refuse to testify or respond to questions posed during the interview¹⁰⁶. The presence of the defence counsel is obligatory during the trial phase as well as when the court decides on the pre-trial detention of the child suspect. If the defence counsel is absent, the trial is postponed¹⁰⁷.

The Criminal Procedure Code does not specify if the child suspect has the right to contact his/her parent the first time he/she comes in contact with the investigating authorities. In practice, however, the legal representatives of children are informed directly by the investigating authorities and are requested to attend the interview of the child. Those legal representatives who attend the interview have no right to ask questions or otherwise intervene¹⁰⁸. If the legal representative decides not to attend the questioning, the authorities may conduct the interview in his/her absence.

As referred to above, the first real contact between the police and a child suspect is the interview, the result of which can be taken into consideration as evidence during the later stage of the criminal proceedings. At the beginning of the questioning, the suspect is cautioned that he/she is not under obligation to testify, thus he/she may refuse to testify or respond to certain questions. The suspect is also cautioned that whatever he/she says may be used as evidence and that falsely accusing others of the commission of a criminal offence is punishable. Authorities must provide such information to child perpetrators, in a manner that is understandable to the suspect considering his/her age and maturity¹⁰⁹. Child suspects are entitled to sign their testimony in their own right¹¹⁰.

If there is a reasonable suspicion that the child has committed the criminal offence which is subject to imprisonment and it is likely that the child will be put in pre-trial detention, the investigating authorities, the prosecutor or the court may take the child into custody (*'orizeŕ'*). The Criminal Procedure Code does not contain specific rules for the custody of children, which implies that similarly to adult suspects, children can be detained in custody for a maximum period of 72 hours. After the lapse of this period, the child is released, unless the court orders pre-trial detention. Child offenders are entitled to contact their relatives. In case they fail to do it so, the authorities ex officio inform the relative of the offender within 24 hours about the fact that the child is in custody¹¹¹.

Under Hungarian law, children can be subject to pre-trial detention (*'elozetes letartoztatás'*) only if it is necessary due to the gravity of the criminal offence in question¹¹². Pre-trial detention can be served in a corrective educational institution (*'javítóintézet'*) or a penal institution (*'büntetés végrehajtási intézet'*). The length of pre-trial detention is two years from

¹⁰³ Article 62 of the [Criminal Procedure Code](#).

¹⁰⁴ Article 450 of the [Criminal Procedure Code](#).

¹⁰⁵ Article 184 of the [Criminal Procedure Code](#).

¹⁰⁶ Article 117(2) of the [Criminal Procedure Code](#).

¹⁰⁷ Article 275(2) of the [Criminal Procedure Code](#).

¹⁰⁸ Source: [TASZ \(Hungarian Civil Liberties Union\) of brochure on the right of juveniles in criminal proceedings](#).

¹⁰⁹ Article 117(6) of the [Criminal Procedure Code, as amended by Act LXII of 2012 on the amendment of certain acts in order to realise child-friendly justice](#).

¹¹⁰ Interview conducted on 13 December 2012, with a University Professor.

¹¹¹ Article 128(1) of the [Criminal Procedure Code](#).

¹¹² The gravity of the crime can be derived from the sentences rendered for the various criminal offences and the different classification of the alleged criminal offence that shows the particular seriousness of the alleged crime.

the commencement of its execution, unless the pre-trial detention was ordered or maintained by the conclusive decision of the competent court, or if there is an on-going repeated procedure due to the procedure of the court of third instance or a repeal procedure¹¹³. Stakeholders noted that as a result of these exceptions, pre-trial detentions are often quite long in Hungary¹¹⁴. It is noted that as of 1 July 2013, the rules applicable to the maximum length of pre-trial detention will be amended in a way that its length cannot exceed one year¹¹⁵.

2.3.4 Conditions for pre-trial detention/ custody

Custody can be ordered by the police, the prosecutor or the court. Despite the lack of specific legal requirement in the [Criminal Procedure Code](#), children [in practice are separated from adult perpetrators during custody](#)¹¹⁶.

Pre-trial detention is ordered by a judge. Child offenders are separated from adult offenders. The place of the pre-trial detention (i.e. whether it will take place in a corrective educational institution or a penal institution) is decided by the judge, who must take into consideration the personality of the child offender as well as the nature of the criminal offence in question¹¹⁷.

Rules applicable to ensuring the safety and security of penal institutes/corrective educational institution are set out in [Section 3.1.3](#).

Protection of private and family life

Prior to being examined (both during the investigation and the trial phases) the child perpetrator, in accordance with the general rules applicable to adult perpetrator, is asked to provide the following information to the authorities in order to verify his/her identity: name, date and place of birth, mother's name, place of residence and stay, number of personal identity document¹¹⁸ and citizenship¹¹⁹.

Protection of personal data

As regards the personal data ('*szemelyes adat*') of child offenders, the Criminal Procedure Code does not contain specific rules, which implies that the general rules for adult age perpetrators apply.

Unless necessary, the personal data of offenders are not disclosed¹²⁰. Investigating authorities, prosecutors and courts use the personal data of offenders to the extent necessary for performing their duties and refer to the offender's personal data in the recorded reports only if absolutely necessary. Personal data recorded during the course of the criminal procedure could be used for statistical purposes, but only if the personal data are indicated in a way which makes it impossible to identify the offender¹²¹.

Investigating authorities, prosecutors or courts may request special data ('*kulonleges adat*') from the competent authorities. Special data are data that relate to the health condition, addiction, criminal personal data of a person, or personal data that concern a person's racial or ethnic origin, political opinion or party membership, religion or other belief, sexual orientation or membership in an interest group. The provision of such data cannot be refused by the competent authorities.

¹¹³ Articles 454-455 of the [Criminal Procedure Code](#).

¹¹⁴ Interview conducted on 13 December 2012, with a University Professor.

¹¹⁵ Article 455 of the [Criminal Procedure Code amended by Article 455 of Act CCXXIII of 2012 on provisional rules linked to the entry into force of Act C of 2012 \(New Criminal Code\) and on the amendment of related laws](#).

¹¹⁶ Interview conducted on 13 December 2012, with a University Professor.

¹¹⁷ Article 454(3) of the [Criminal Procedure Code](#).

¹¹⁸ It is noted that obtaining a Hungarian identity card is compulsory for Hungarian citizens from the age of 14.

¹¹⁹ Article 117(1) of the [Criminal Procedure Code](#).

¹²⁰ Pursuant to Article 63(1) of the Criminal Procedure Code, the court, the prosecutor, the investigating authority, the expert, and the authority consulted by the court or the prosecutor may inspect and manage the personal data of individuals participating in the proceedings to the extent necessary for the performance of their respective duties.

¹²¹ Articles 60-63 of the [Criminal Procedure Code](#).

Despite the legal requirements in place, in practice it has happened that the personal data of child offenders have been disclosed by Hungarian media.

The child has the right of complaint if the authorities abuse his/her personal data, including when they disclose data to those not entitled to access it¹²².

2.3.5 Protection from harm, protection of family life

Protection from harm during investigating actions

During the investigation phase, one of the measures that ensure the protection of child suspects from harm is the possibility of attendance by the legal representative and defence counsel. In order to protect child suspects from harm, specific rules apply to the interview of children, which are described under [Section 2.3.2](#) in details.

The Criminal Procedure Code has no specific rules with respect to the presence of child suspects during the investigation phase.

The presence of the general public or media is not allowed during the investigation phase. Only persons specified in the Criminal Procedure Code can be present during the performance of investigating actions, which include the defence counsel, the legal representative, the child suspect and the representative of authorities.

Section 7 of the Criminal Procedure Code provides the rule on presumption of innocence which prevails concerning child offenders as well.

Protection from harm during trial

Children have the right to be heard within a closed trial, from which the general public and the media is excluded, if such trial is deemed to be in the best interests of the child perpetrator¹²³.

If the trial is conducted in camera, no information can be provided to anyone and consequently no information can be disclosed by the press¹²⁴.

If in the best interests of the child offender and in particular if necessary for his/her personal development, the judge may decide to hold the trial in the absence of the child offender. In such cases, the presiding judge should summarise the main elements of the trial to the child offender¹²⁵.

Protection Programme

Child suspects/defendants can participate in the Protection Programme ('Vedelmi Program'). In this respect the same rules are applicable to child perpetrators as to child victims, as described under [Section 2.1.3](#).

The only difference identified relates to the termination of the protection programme, which terminates also in cases where the perpetrator refuses to make a testimony or withdraws his/her testimony¹²⁶.

2.3.6 Alternatives to judicial proceedings

Mediation ('kozvetitoi eljaras')

Since 2006, perpetrators (including child perpetrators) are provided with the right of accessing mediation as an alternative dispute resolution method. Similarly to the case of adult perpetrators, referring a case to mediation is possible if the criminal offence concerned by the act of the child is punishable by less than 5 years of imprisonment and if the criminal procedure was instituted for criminal offences committed against persons or property or are

¹²² Interview conducted on 13 December 2012, with a University Professor.

¹²³ Article 460 of the [Criminal Procedure Code](#).

¹²⁴ Article 238(4) of the [Criminal Procedure Code](#).

¹²⁵ Article 460 of the [Criminal Procedure Code](#).

¹²⁶ Article 36 of [Act LXXV of 2001](#).

traffic related offences. Mediation can be initiated by the victim in his/her own right or by the suspect, including the child suspect in his/her own right, or with the voluntary approval of one of them¹²⁷. Mediation is possible until the moment the prosecutor presses the charges.

In case the prosecutor decides that a case is suitable for mediation, he/she suspends the criminal procedure for a period of six months¹²⁸. Prosecutors often allow mediation, if it is deemed necessary for the individualisation of the procedure and if it is likely that the mediation procedure will have a positive impact on the future development of the child¹²⁹.

Procedural rules applicable to the mediation procedure are set out in [Act CXXIII of 2006](#) on mediation in criminal law cases (Mediation Act) and in the [Criminal Procedure Code](#). Rules specific to children¹³⁰ provided by [Act CXXIII of 2006](#) concern victims only, which implies that as regards suspects, the same rules apply to children as to adults. The Criminal Procedure Code does contain certain child specific rules, which are described below.

In order to protect the rights of suspects, the person in charge of the mediation procedure (i.e. the probation officer, or lawyer who is entitled to provide mediation services on the basis of his/her contractual relationship with the Probation Service) informs the suspect about the main elements of the mediation procedure as well as his/her rights and obligations. The legal obligation of mediators to inform children in a manner appropriate to their age/maturity is not spelled out in [Act CXXIII of 2006](#).

A suspect can be questioned by the mediator either in the presence or absence of the victim. The child suspect has the right to be represented by a defence counsel, whose participation is statutory in the mediation procedure. In order to protect the rights of child suspects, the presence of legal representatives is also statutory during the mediation procedure¹³¹.

Mediation is successful if the victim and the suspect reach an agreement on the way the victim is to be compensated for the damages suffered. The child suspect always needs to sign the agreement¹³². If the legal representative of the child is present he/she may also sign the agreement. If the legal representative is absent, the legal representative receives the agreement via post¹³³.

It is noted that the agreement reached as a result of mediation does not prevent the parties from exercising their right of access to justice. It is also possible that the mediation procedure terminates without the agreement of the parties, which occurs for example when one of the parties states that he/she considers the procedure to be finished¹³⁴. In such cases, the criminal procedure continues.

The prosecutor terminates the criminal procedure against the child suspect if the parties manage to reach an agreement as a result of the mediation procedure, on the basis of which the child suspect meets his/her obligations and compensates the victim during the course of the mediation procedure. If the child suspect begins to fulfil the agreement reached as a result of the mediation procedure, the prosecutor postpones the filing of the indictment for a period of between one to two years¹³⁵.

If the mediation process is successful, the prosecutor terminates the criminal procedure. Upon termination of the criminal procedure, the personal data of the accused are deleted from the criminal register (*'bunugyi nyilvantartas'*). This implies that in case of successful mediation, the fact that a criminal procedure was under way against the perpetrator is not

¹²⁷ Article 221/A of the [Criminal Procedure Code](#).

¹²⁸ Ibid.

¹²⁹ Article 459 of the [Criminal Procedure Code](#).

¹³⁰ Articles 12 and 12/A of the [Civil Code](#).

¹³¹ Article 459(3) of the [Criminal Procedure Code](#).

¹³² Article 13 of [Act CXXIII of 2006](#).

¹³³ Article 13 of [Act CXXIII of 2006](#).

¹³⁴ Article 15 of [Act CXXIII of 2006](#).

¹³⁵ Article 459 of the [Criminal Procedure Code](#).

shown in his/her criminal record. This rule is not specific to child perpetrators; thus the same rules apply to children as to adult perpetrators¹³⁶.

Active repentance ('tevekeny megbanas')

As described above, a child offender is not punished if he fulfils his obligations following an agreement reached via mediation¹³⁷.

It is noted that in accordance with the [New Criminal Code](#), mediation and therefore active repentance will be possible in case of criminal offences committed against life, limb and health, freedom, human dignity, fundamental rights, property, intellectual property or in case of traffic related offences, if the crime committed by the child is punishable with imprisonment of a maximum of five years¹³⁸.

Postponing the filing of the indictment ('vademeles elhalasztasa')

Even where there is a suspect, not all investigations lead to a trial. In cases where the criminal offence in question is punishable by imprisonment of up to five years the prosecutor may postpone the filing of the indictment. This may happen only if it is in the interest of the child, i.e. if it is likely that the postponement will have a positive impact on the future development of the child¹³⁹.

The duration of the postponement is between one to two years¹⁴⁰. During the period of postponement the prosecutor may order the child suspect to keep certain rules or fulfil certain obligations. The fulfilment of such obligations is controlled by a probation officer ('partfogo felugyelo'). It is noted that before deciding on the postponement of the indictment, the prosecutor is obliged to obtain the opinion of the probation officer. In accordance with the rules applicable to adults, if the duration of the postponement lapses and the suspect has fulfilled his/her obligations, the prosecutor terminates the criminal procedure¹⁴¹. Otherwise (e.g. if the suspect committed another intentional crime, if the child did not fulfil his/her obligations etc.) the prosecutor files the indictment.

If the prosecutor decides to postpone the filing of the indictment, the fact that a criminal procedure was underway against the suspect is not shown in the criminal record of the perpetrator. This rule is applicable to both adult and child suspects.

Omitting the trial ('targyalas mellozese')

In certain cases, upon the initiative of the prosecutor, trials can be omitted. The omission of the trial is often seen as beneficial for children as they do not need to go through the often emotionally disturbing court trial¹⁴².

In accordance with the general rules applicable to adult perpetrators (there are no rules specific to children), omission of trial is ordered when the laws allow for the application of probation, the facts of the case are simple, the accused confessed the commission of the crime and the objective of the punishment can be obtained without a trial¹⁴³. The most severe penalty in case of omitted trials that the courts may impose is imprisonment, the length of which cannot exceed two years.

Omitting the trial has no effect on the criminal record of the perpetrator, which means that if the court imposes a sanction against the perpetrator it is then indicated in his/her criminal record.

¹³⁶ Article 221/A of the [Criminal Procedure Code](#) and Article 25 of [Act XLVII of 2009](#) on the on the system of the criminal records.

¹³⁷ Article 107/A of the [Criminal Code](#).

¹³⁸ Article 107 of the [New Criminal Code](#).

¹³⁹ Article 459 of the [Criminal Procedure Code](#).

¹⁴⁰ Ibid.

¹⁴¹ Article 226 of the [Criminal Procedure Code](#).

¹⁴² Source: [Szilvia Endrefi: Research on the practices followed by judges and prosecutors specialised in cases with juvenile offenders.](#)

¹⁴³ Article 544 of the [Criminal Procedure Code](#).

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

Proceedings without delay

No specific rules are set out in the [Criminal Procedure Code](#) to ensure that criminal procedures against children are dealt with by the authorities as quickly as possible. The general rules set out in the [Criminal Procedure Code](#) apply.

Investigation in Hungary starts either *ex-officio* (e.g. when the suspect of a crime came to the knowledge of the police without a complaint) or upon receipt of a complaint. The [Criminal Procedure Code](#) does not contain a time-frame for starting an *ex-officio* investigation. Following receipt of a complaint the Police have 3 days to order an investigation. Within 24 hours from the ordering of the investigation the Police notify the prosecutor about the commencement of the investigation or the rejection of the complaint¹⁴⁴. As a general rule, an investigation should be concluded within two months from the moment it was ordered or started. Exceptionally (e.g. when the case is too complex) this period may be extended by the competent prosecutor. The same time-frame applies to the prosecutor if he/she conducts the investigation.

Following the conclusion of the investigation, the prosecutor has 30 days to file the indictment. If the investigation was carried out by the prosecutor, he/she must immediately file the indictment upon conclusion of the investigation. Exceptionally, the deadline set for filing the indictment can be extended by the head of the prosecutor's office by 30 days; the superior prosecutor may exceptionally permit a longer, maximum 90 days deadline¹⁴⁵.

If the investigating authorities or the prosecutor fail to comply with the deadlines set out in the [Criminal Procedure Code](#), the suspect/defendant (including the child¹⁴⁶) may file a complaint. In practice instead of the child suspect/defendant, the legal representative may file the complaint¹⁴⁷.

The [Criminal Procedure Code](#) has no general provision on the time-frame for the court to take a decision. Courts however are under the legal obligation of adjudicating within a reasonable time. If the court fails to comply with its legal obligation the accused (including the child accused on his/her own right), the defence counsel and the private party may file a demurrer¹⁴⁸.

Rules applicable to 'child friendly' places

In Hungary, only certain proceedings take place at spaces dedicated to child perpetrators, which are:

- As described under [Section 2.3.3.](#), pre-trial detention takes place either in a corrective educational institution or a penal institution. When the pre-trial detention takes place in a penal institution, the child suspect should be separated from adults. The authorities may impose specific safety measures for child perpetrators who are under pre-trial detention, which include the search of the belongings and clothes of the child and separation of the child from other suspects (*'biztonsági elkülönítés'*).
- As described under [Section 4](#), imposing a penalty that involves the deprivation of liberty of the child offender is a last resort. Hungarian law operates with a dual system of criminal penalties in accordance with which courts may impose either criminal measures or criminal sanctions against perpetrators. As a general rule, courts need to impose criminal measures against child perpetrators instead of criminal sanctions. As compared to criminal sanctions, criminal measures are less severe.

¹⁴⁴ Article 170(3) of the [Criminal Procedure Code](#).

¹⁴⁵ Article 216 of the [Criminal Procedure Code](#).

¹⁴⁶ Article 196(2) of the [Criminal Procedure Code](#).

¹⁴⁷ Interview conducted on 13 December 2012, with a University Professor.

¹⁴⁸ Article 262/A of the [Criminal Procedure Code](#). This information was also confirmed via an interview conducted on 13 December 2012, with a University Professor.

As a criminal measure, the court may order the child perpetrator to be detained in a corrective educational institution (*'javítóintézet'*). If such measure would not be proportionate and dissuasive enough, the court may impose the criminal sanction of imprisonment, which needs to be executed in a special penal institute for children.

The court may sentence the child perpetrator to prison for children (*'fiatalkorúakbörtöne'*) for committing a felony punishable by imprisonment of at least two years; or if the court sentences the child perpetrator who is a recidivist to imprisonment of at least one year; or if prior to the commission of the intentional crime the child perpetrator had already been sentenced to education in a corrective educational institution for committing another intentional crime.

In less severe cases, the child perpetrator can be detained in a low security prison for children (*'fiatalkorúak fogháza'*). It is noted that if it deems necessary for the proper functioning of the penal institute, a limited number of adult perpetrators (e.g. as librarians or cooks¹⁴⁹) can be detained in penal institutes for children¹⁵⁰.

Other stages of the criminal procedure take place at places dedicated to all perpetrators (including adult perpetrators). As an example, child perpetrators in custody are detained in the same place as adult perpetrators. In Hungary child cases are tried in the same buildings and rooms as adult cases.

Supporting children during the interview, court trial

As described under [Section 2.3.2.](#), in order to ensure that children are adequately informed, the authorities must provide information about the rights and obligations of child suspects/defendants at any stage of the criminal procedure, in a way that takes into account the characteristics of the child's age and that contributes to the respect of laws by the child¹⁵¹. In addition to providing information on the rights and obligations of children, the authorities must also inform (at least to a certain extent) the child about the state of play of the procedure and the main characteristics of the given stage of the criminal procedure.

The Hungarian criminal justice system is based on the assumption that children are not completely aware of their rights/obligations and not familiar with the judicial system¹⁵², and thus the participation of a defence counsel is statutory in child proceedings¹⁵³. As explained under [Section 2.3.2.](#), the obligation of defence counsel to participate does not mean that certain procedural actions cannot be carried out in their absence.

The [Criminal Procedure Code](#) provides for the right of legal representatives to be present at each stage of the criminal procedure. If the legal representatives choose to, they can accompany the child during the proceedings. As explained under [Section 2.3.6.](#), the participation of the legal representative of the child is statutory in mediation procedures.

As described under [Section 2.3.5.](#), for the child's best interests the courts may decide to hold the trial *in camera*. Also in the best interest of the child, and in particular in cases where the hearing would be too disturbing for the child (e.g. emotionally disturbing images or information is involved), the judge may decide to hold a trial in the absence of the child offender¹⁵⁴. Children are also entitled to be tried in a procedure that takes into account the characteristics of their age¹⁵⁵.

In order to ensure that the court adjudicating the case understands the specific needs and characteristics of children, one of the associate judges (*'ulnok'*) on the panel at first instance is a teacher. At second and third instances one judge on the panel is a specialist judge experienced in child cases (often judges who have undertaken specialised training organised

¹⁴⁹ Source: Interview conducted on 13 December 2012, with a University Professor.

¹⁵⁰ Article 48(3) of [Law Decree 11 of 1979](#).

¹⁵¹ Article 447 of the [Criminal Procedure Code](#).

¹⁵² Source: [Dr Agnes Papai-Tarr: Juveniles in judicial proceedings](#).

¹⁵³ Article 450 of the [Criminal Procedure Code](#).

¹⁵⁴ Article 460 of the [Criminal Procedure Code](#).

¹⁵⁵ Article 447 of the [Criminal Procedure Code](#).

by the Hungarian Judicial Academy¹⁵⁶), who is designated by the National Judicial Council ('*Országos Bírószági Hivatal*'). The requirement of being specialised in child cases is also applicable to the prosecutor involved in the child case. Such a prosecutor is designated by a superior prosecutor. According to a recent report on child-friendly justice, current legislation does not require specialised knowledge or expertise from those who are involved in the questioning of children during the investigation phase¹⁵⁷.

The stakeholders interviewed noted that by organising more specialised training for police officials, prosecutors and judges, the current system could be further improved¹⁵⁸.

2.3.8 Protecting the child during interviews and when giving testimony

In order to protect children during the interviews/examinations and while giving testimony, the [Criminal Procedure Code](#) orders each participant in the criminal procedure to take into account the characteristics of the child's age and in particular to explain his/her rights and obligations as well as inform him/her about the procedure in a manner that takes into account the maturity of the child and is understandable for him/her.

In accordance with the rules applicable to adults, children are warned at the beginning of the examination that whatever they say can be used as evidence. Child perpetrators are entitled to be provided with legal assistance during the course of the criminal procedure, as under Hungarian law the participation of a defence counsel is statutory. In order to enable children to better understand the criminal procedure and to protect them from unnecessary stress, the [Criminal Procedure Code](#) enables the legal representatives of children to be present at any stage of the criminal procedure. If during the investigation phase the defence counsel of the child suspect is not present, the authorities must inform the child that he/she is not under the obligation to provide testimony or respond to questions. As referred to above, this information should be provided to the child in a manner that is understandable for him/her and which is adjusted to the age and maturity of the child.

If the child suspect/defendant does not understand Hungarian or uses sign language, he/she is entitled to be assisted by an interpreter. The rules applicable for the involvement of an interpreter in child cases are the same as in adult cases¹⁵⁹. The cost of interpretation is covered by the State.

2.3.9 Right to be heard and to participate in criminal proceedings

Children, in their own right, have the right to be provided with information, including on the state of play of the proceedings, the main characteristics of the proceedings as well as on their rights and obligations related to the procedure. Moreover, children, so as adults are entitled to defend themselves at any stage of the procedure¹⁶⁰.

During the investigation phase, the child may ask to receive certain documents, which include expert opinions, documents produced as a result of investigating actions where his/her presence was authorised or any other documents, provided that the receipt of such documents is not contrary to the interest of the investigation. Access to such documents can also be requested by the legal representative of the child¹⁶¹.

Children can be heard during the investigation phase through interview. Questions can be put directly to the child; however he/she may refuse to answer questions put forward by the authorities. The legal representative and defence counsel of the child suspect can attend the interview, but it can be held even in the absence of such persons if the child agrees.

¹⁵⁶ Source: [Szilvia Endrefi: Research on the practices followed by judges and prosecutors specialised in cases with juvenile offenders.](#)

¹⁵⁷ Source: [University of Eotvos Lorand: on the child friendly justice.](#)

¹⁵⁸ Interview conducted on 13 December 2012, with a University Professor.

¹⁵⁹ Article 114 of the [Criminal Procedure Code](#).

¹⁶⁰ Article 43(2) of the [Criminal Procedure Code](#).

¹⁶¹ Article 70/B of the [Criminal Procedure Code](#).

The child can attend the trial on his/her own right and can be heard. At the trial, it is a statutory obligation for the defence counsel to be present. If the defence counsel is absent, the court hearing cannot be held.

As referred to above, Hungarian law ensures that the characteristics of the child's age and his/her maturity are taken into account while providing them information and performing the different actions of the criminal procedure. This is particularly the case when the child is subject to examination, when the indictment is presented, as well as when the court announces its final decision.

As described above under [Section 2.3.5.](#), the best interests of children are taken into account by judges when presiding at court: if needed they may order a closed trial or even hold the trial in the absence of the child.

2.3.10 Right to legal counsel, legal assistance and representation

The participation of legal counsel in cases involving children is statutory. The child perpetrator may choose his/her lawyer, or such person could be chosen by the child's legal representative¹⁶². As with adults and in accordance with the general rules applicable to adults, if a child does not have a mandated defence counsel, the investigating authority, the prosecutor or the court assigns one *ex-officio*¹⁶³. A defence counsel (*'kirendelt vedo'*) can already be assigned *ex-officio* the moment the suspicion that a crime has been committed is communicated to the child¹⁶⁴. The costs of assigned lawyers are as a general rule covered by those bodies that order the assignment. In other words the costs of assigned defence counsels as a general rule are covered by the state, as these bodies are considered as public bodies. In this respect the involvement of an assigned defence counsel could be considered as a type of legal aid. It is noted however, that the costs of assigned defence counsels should be covered by the defendant/suspect, if he/she is found guilty by the court¹⁶⁵. Exception under this rule lies with cases, where the defendant/suspect is provided with a personal exception from the obligation of paying the costs of criminal proceedings, which costs include also the costs of assigned defence counsels. Personal exception can be granted upon request of those who due to their financial situation cannot cover the costs of the proceeding¹⁶⁶. The defendant/suspect in addition to filing a request should file a statement proving his/her financial situation. If the defendant/suspect is a child, his/her legal representative files the statement to the authorities¹⁶⁷.

The means (e.g. whether the legal representative or the child pays, when and how) of covering the costs of the defence counsel are subject to the agreement of the defence counsel and the child or his/her legal representative¹⁶⁸.

In the case of conflicting interests between the child and his/her legal representative, the Guardian's Court (*'gyamhatóság'*) replaces the legal representative with an ad-hoc ward upon request of the prosecutor (before filing the indictment) or the court (after the indictment is filed). The same procedure applies if the child does not have a legal representative or the legal representative cannot be identified.

¹⁶² Interview conducted on 13 December 2012, with a University Professor and Article 47 of the [Criminal Procedure Code](#).

¹⁶³ Article 48 of [Criminal Procedure Code](#).

¹⁶⁴ Source: [Dr Agnes Papai-Tarr: Juveniles in judicial proceedings](#).

¹⁶⁵ See also: https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-hu-en.do?member=1.

¹⁶⁶ Article 74 of [Criminal Procedure Code](#).

¹⁶⁷ Article 3(7) of Ministerial Decree 9/2003 (V.6.) [on the applicable of personal exceptions from the duty of paying costs in the criminal proceedings](#).

¹⁶⁸ Interview conducted on 13 December 2012, with a University Professor.

2.3.11 Remedies or compensation for violation of rights and failure to act

The same legal remedies are available to child defendants as to adults. The Criminal Procedure Code does not contain rules specific to children, which implies that the general rules set out for adults apply.

Perpetrators (including children in their own right) are entitled to lodge an appeal procedure against the first and/or second instance decisions of the courts. In addition to an appeal procedure, Hungarian law allows for other types of second/third instance procedures, which are repeated procedure¹⁶⁹, re-trial procedure¹⁷⁰, review procedure¹⁷¹, constitutional complaint procedure¹⁷², legal remedy on legal grounds¹⁷³ and harmonisation procedure¹⁷⁴. Most of these procedures (except for legal remedy on legal grounds, constitutional review procedure and harmonisation procedure) can be initiated by *inter alia* the defendant, or by his/her defence counsel¹⁷⁵. The defence counsel may lodge a motion for second/third instance procedure even without the consent of the perpetrator.

Unlike in the case of adults, the legal representative of the child perpetrator is also entitled to submit a motion for judicial review. By such motion, the legal representative may request the re-trial¹⁷⁶ or the review¹⁷⁷ of the final court decision.

As referred to under [Section 2.3.7](#), child suspects and defendants are entitled to file a demurrer in case of undue delay of the criminal proceedings¹⁷⁸.

¹⁶⁹Chapter XVI of the [Criminal Procedure Code](#).

¹⁷⁰Chapter XVII of the [Criminal Procedure Code](#).

¹⁷¹Chapter XVIII of the [Criminal Procedure Code](#).

¹⁷²Chapter XVIII/A of the [Criminal Procedure Code](#).

¹⁷³Chapter XVI of the [Criminal Procedure Code](#).

¹⁷⁴Chapter XX of the [Criminal Procedure Code](#).

¹⁷⁵Example to provision that allow the defence counsel to lodge a judicial review procedure without the consent of the perpetrator. Article 324 of the [Criminal Procedure Code](#).

¹⁷⁶Article 409 of the [Criminal Procedure Code](#).

¹⁷⁷Article 417 of the [Criminal Procedure Code](#).

¹⁷⁸Article 262/A of the [Criminal Procedure Code](#).

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

No specific rule applies for providing information to children after the judicial procedure. The same rules apply to children as to adult perpetrators, with the condition that while providing information, the competent authorities and courts should take into account the characteristics of the perpetrator's age and the aim of contributing to the respect of the law by the child perpetrator¹⁷⁹.

As with adult perpetrators, the child is informed about the possibility of appeal by the judge adjudicating in the case at the time the court decision is announced or by the defence counsel. Under Hungarian law, *inter alia* the following persons have the right to appeal: the defendant, the prosecutor, the private party, and the defence counsel (even without the consent of the defendant). These persons can file an appeal immediately after the decision is announced or within three days from the announcement. If the decision is sent as a notice, there are eight days to file an appeal¹⁸⁰.

In addition to the appeal procedure, Hungarian law allows for other types of second/third instance procedures, the applicable rules of which are set out in [Section 2.3.11](#).

In terms of providing information to the defence counsel and the legal representative, the same rules apply as set out in [Section 2.3.2](#).

As a general rule, children in the role of a victim or witness are not involved in the part of the criminal judicial proceeding that follows the court decision. Thus there are no legal provisions contained in the [Criminal Procedure Code](#) with respect to the provision of information to children after the judicial proceedings.

As explained under [Section 2.1.8](#)., children involved in the criminal proceedings as private parties may file appeals against the decisions of courts. [A private party is a victim who enforces a civil claim during the criminal procedure](#)¹⁸¹. Child victims cannot act as private parties in their own right, thus need to be represented by their legal representative. The child's legal representative files the appeal against the court decision on behalf of the child. Private parties can appeal against the part of the court decision that concerns the civil claim. Considering this element, reference to children as private parties is not provided elsewhere in this Section. Children as private parties may receive information about their right to appeal from their legal counsel or the court (e.g. in the form of the court decision).

3.1.2 Sentencing

While adjudicating, courts are under the legal obligation to take into account the gravity of the crime that the perpetrator committed, the danger that the perpetrator constitutes to society as well as the culpability of the perpetrator and other aggravating and mitigating factors¹⁸². In addition to these general requirements, in child cases, the courts must aim to impose a sanction that contributes to the positive development of the child and that enables the child to become a useful member of society¹⁸³.

In order to allow the courts to fulfil their legal obligation and impose sanctions that are individualised to the need, age, mental well-being, etc. of the child, the [Criminal Code](#) contains a variety of types and levels of criminal penalties and requires the court to order the probation officer to prepare a study on the living conditions (*'kornyezettanulmány'*) of the

¹⁷⁹Article 447 of the [Criminal Procedure Code](#).

¹⁸⁰Article 325 of the [Criminal Procedure Code](#).

¹⁸¹Article 54 of the [Criminal Procedure Code](#).

¹⁸²Article 83 of the [Criminal Code](#).

¹⁸³Article 108 of the [Criminal Code](#).

child¹⁸⁴. Such studies contain information *inter alia* about the health situation, educational background and family situation of the child perpetrator. Information about the family background of the child is often a reason why courts decide to impose sanctions that involve deprivation of liberty, if they consider the removal of the child from his/her family as a measure that is in the best interests of the child (as children are provided with education and are in a safe environment).

Courts can impose the same types of sanctions on children as on adult perpetrators, with the exception of imposing the criminal measure of putting a child into a corrective educational institution, which can be imposed only on child perpetrators.

The Hungarian criminal law system is based on the dual system of sanctions, where a court may impose criminal sanctions and/or criminal measures against perpetrators. Criminal sanctions are the more severe. In accordance with the Criminal Code courts may impose the following criminal sanctions against perpetrators (including against child perpetrators): imprisonment, community service, fine, suspension of licence to practice a profession, suspension of driving licence, expulsion, banishment, prohibition from public affairs. It is noted that children are unlikely to have professions the practising of which is subject to licensing, thus in practice the courts would not impose the criminal sanction of suspension of licence to practice. Under Hungarian law, the followings constitute criminal measures: reprimand, probation, forced medical treatment, seizure, seizure of property, supervision by probation officer¹⁸⁵. As referred to above, imposing the criminal measure of placing a child into a corrective educational institution is specific to child perpetrators.

When the perpetrator is a child, the court is under the legal obligation of first considering the imposition of criminal measures. If imposition of the criminal measure would not be sufficient to achieve the aim of the punishment (i.e. to contribute to the development of the child in the right direction and to ensure that the child becomes a useful member of society), the court may impose criminal sanctions. Criminal sanctions and measures that involve deprivation of liberty should be imposed only as a last resort¹⁸⁶.

As explained under [Section 2.3.1.](#), the [New Criminal Code](#), which will enter into force in July 2013, lowers the age of criminal responsibility from 14 to 12 years¹⁸⁷. [In addition to lowering the minimum age of criminal responsibility, the New Criminal Code introduces differentiation with respect to the type of sanctions that could be imposed against children in a way that it allows courts to impose both criminal sanctions and measures against children who are at least 14 years old.](#) Children who are less than 14 years old, but more than 12 years old on the day of the commission of the crime cannot be subject to criminal sanctions. This implies that in accordance with the new provisions of the [New Criminal Code](#) courts can impose only criminal measures against children who are less than 14 years of age, but more than 12 years old¹⁸⁸. The New Criminal Code does not introduce new provisions with respect to the rules applicable to offenders who are younger than the minimum age of criminal responsibility. So as under the current rules children under the minimum age of criminal responsibility can be subject to educational measures imposed by the Court of Guardians (see [Section 2.3.1](#)). Regarding the level of sanctions, specific rules are contained in Chapter 7 of the [Criminal Code](#). These specific provisions relate only to certain types of criminal sanctions and measures, implying that for other measures and sanctions, the general rules apply. Compared to adults, the sanctions and measures that courts may impose against child perpetrators are less severe.

¹⁸⁴ Article 453 of the [Criminal Procedure Code](#).

¹⁸⁵ It is noted that specific criminal measures can be imposed against legal persons. As legal persons are not relevant in the context of this study, the list of criminal measures does not contain reference to these specific measures.

¹⁸⁶ Article 108 of the [Criminal Code](#).

¹⁸⁷ Article 105 of the [New Criminal Code](#).

¹⁸⁸ Article 106(2) of the [New Criminal Code](#).

The [Criminal Code](#) contains the following specific rules on criminal sanctions and measures applicable to child perpetrators¹⁸⁹:

- Imprisonment (*'szabadsagvesztes'*): the minimum length of imprisonment is one month, whereas the maximum length depends on the age of the child perpetrator when the crime was committed. Rules applicable to the maximum length of imprisonment are described under [Section 2.3.1](#).
- Community service (*'kozerdeku munka'*): this can only be imposed if the child perpetrator is 16 years old at the time the court pronounces the sentence.
- Fine (*'penzbuntetes'*): the court may impose a fine as a sanction if the child perpetrator has his/her own income, or appropriate property. The level of fine is calculated based on daily units, the amount of which depends on the child perpetrator's financial and personal situation, but is at least HUF 500 (EUR 1.7) and not more than HUF 5,000 (EUR 17.6). Upon determination of the daily unit, the court decides on the number of days during which the perpetrator needs to pay, which in case of child perpetrators cannot be fewer than 15 days or more than 250 days. In cases where the child perpetrator fails to pay the fine, the court may impose community service or imprisonment instead. Although it is not spelled out *per se* in legislation, it is unlikely that courts would change the sanction of a fine to imprisonment, as this latter sanction can only be used as a last resort (i.e. when the removal of the child from his/her family is considered to be in the best interests of the child).
- Banishment (*'kitiltas'*): A child cannot be banished from the locality in which his/her family is living, if he or she is in a suitable family situation. Banishment can be imposed in cases where the presence of a person threatens the public interest.
- Probation (*'probara bocsatas'*): In case of children, probation can be imposed regardless of the type of criminal offence¹⁹⁰ committed by the perpetrator. The length of probation should be between one and two years.
- Corrective educational institution (*'javitointezet'*): Education in a corrective educational institution is ordered by the court if necessary for the successful education of the child perpetrator. The length of this criminal measure is between one and three years. After serving one year in the corrective educational institution the court may temporarily release the child, if he/she has served at least half of the education ordered, and it can be assumed that the aim of the criminal measure can be achieved without keeping the child in the corrective educational institution. The child who has turned 19 years old must be released from the corrective educational institution.
- Supervision by probation officer (*'partfogo felugyelet'*): a child who has been sentenced to suspended imprisonment is under probation, or who has been temporarily released from detention or prison, as well as the child in the case of whom the prosecutor has postponed the filing of the indictment shall remain under the supervision of a probation officer.

The [New Criminal Code](#) has introduced new types of criminal sanctions that can be imposed against child perpetrators, i.e. detention and expulsion. Detention (*'elzaras'*) can be imposed for a period of minimum three and maximum 30 days. Detention takes place in the penal institutes for children, where child perpetrators are separated from adults¹⁹¹.

Expulsion (*'kiutasitas'*) is a criminal sanction that can be imposed against non-Hungarian citizens. As a result of a criminal sanction, the non-Hungarian citizen is expelled from the territory of Hungary. Child perpetrators can be subject to expulsion only if the court has imposed at least 10 years of imprisonment against them and if their presence on the national

¹⁸⁹ Articles 108-119 of the [Criminal Code](#).

¹⁹⁰ As oppose in adult cases, where probation can be imposed only if the perpetrator committed a misdemeanour.

¹⁹¹ Article 122 of [Law Decree 11 of 1979](#). It is noted that Article 122 will enter into force in July 2013.

territory constitutes a significant risk to public security. While imposing the sanction of expulsion the court should respect the child's right to family life¹⁹².

In addition to criminal sanctions, the New Criminal Code has introduced a new criminal measure called compensatory work (*jovateteli munka*) that can be imposed against child perpetrators, who are at least 16 years at the time the court takes its decision¹⁹³. As in the case of adult perpetrators, compensatory work can be imposed only if the perpetrator has committed a misdemeanour, which is punishable by a maximum penalty of three years. The maximum length of compensatory work is one year, during which no other penalties can be imposed against [the perpetrator](#)¹⁹⁴.

From the length of criminal sanctions and measures that involve deprivation of liberty, the court should reduce the period that the child has spent in custody and/or pre-trial detention¹⁹⁵.

Under Hungarian law, no rule exists for reducing the delays of enforcement.

3.1.3 Deprivation of liberty

Rules applicable to deprivation of liberty are described under [Section 3.1.2](#).

Children who are sentenced to deprivation of liberty can be detained in corrective educational institutions or in penal institutes for children. As explained under [Section 2.3.7](#), penal institutes are of two main types in Hungary, i.e. prisons and low security prisons for children. Prisons for children operate with stricter rules compared to low security prisons. The main rules that courts need to take into consideration while deciding upon the types of the penal institute for the child are described under [Section 2.3.7](#). Once the perpetrator starts serving the punishment, the perpetrator or his/her defence counsel may ask the penal executive judge (*büntetés-vegrehajtási bíró*) to change the type of the penal institute where the imprisonment is served and potentially to put the child perpetrator in a low security prison.

Corrective educational institutions detain only child perpetrators, thus there is no need to separate adult perpetrators from children. Penal institutes for children also detain mostly child perpetrators. However, under exceptional circumstances, when it is deemed necessary for the proper functioning of the penal institute, a limited number of adult perpetrators (e.g. as librarians or cooks¹⁹⁶) can also be detained.

[Law Decree 11 of 1979](#)¹⁹⁷ contains the rules applicable to the execution of criminal sanctions and measures, including the execution of imprisonment in penal institutes for children and education in corrective educational institutions.

In penal institutes for children, children have the same rights and obligations as adult perpetrators, with the difference that children are entitled to receive basic education and vocational training (i.e. vocational training to become skilled workers). If needed, penal institutes may also provide secondary education to children¹⁹⁸. As with adult perpetrators, children are entitled to keep in contact with their relatives via ordinary mail, to have visitors at least once a month, to paid work, to practise their religion, to receive in every third month a package from their relatives, etc.¹⁹⁹. Perpetrators (including child perpetrators) are obliged to serve their punishment in a place ordered by the court, to carry out the work that they are assigned to do, to assist the cleaning of the prison occasionally, to undertake medical examination and treatment if necessary, etc.

¹⁹² Article 114 of the [New Criminal Code](#).

¹⁹³ Article 117 of the [New Criminal Code](#).

¹⁹⁴ Article 67 of the [New Criminal Code](#).

¹⁹⁵ Article 120/B of the [Criminal Code](#).

¹⁹⁶ Interview conducted on 13 December 2012, with a University Professor.

¹⁹⁷ Law decree as a source of law was abolished in 1989. As of today, only a few law decrees are still in force, including [Law Decree 11 of 1979](#) on the execution of criminal penalties and criminal measures.

¹⁹⁸ Article 50 of [Law Decree 11 of 1979](#).

¹⁹⁹ Article 36 of [Law Decree 11 of 1979](#).

In order to ensure the safety of the penal institute, prisons may search (*'motozas'*) the perpetrator's body, his/her clothing and personal belongings and if needed may impose security measures against the perpetrator, including the detention of the perpetrator for at most six months in a special safety cell (*'kulonleges biztonsagizarka'*). If necessary during the search, the prison staff member may restrain the perpetrator with e.g. handcuffs. For safety reasons the number and scope of the perpetrator's personal belongings can be limited.

Perpetrators who intentionally breach the internal rules (including if the perpetrator breaches safety requirements) of the penal institute can be punished by the following measures: reprimand (*'feddes'*), reduction of the amount that the perpetrator can spend while being in the penal institute (*'szemelyes szuksegletekre fordithato osszeg csokkentese'*), private detention (*'maganelzaras'*)²⁰⁰. The length of solitary detention in the case of child perpetrators cannot be more than 20 days if the perpetrator is detained in prison or 10 days if the perpetrator is detained in a low security prison²⁰¹.

Perpetrators who are deemed to deserve it are entitled to rewards as follows: e.g. short term release (*'rovidtartamu eltavozas'*), receipt of additional money (*'penzjutalom'*), receipt of objects (*'targyjutalom'*), an increased amount that the perpetrator might spend while being in the prison (*'szemelyes szuksegletekre fordithato osszeg novelese'*), release of the perpetrator for 24 hours (*'kimaradas'*)²⁰².

If during the detention the perpetrator turns 21 years old, the penal executive judge decides on the type of the penal institute where the perpetrator should continue to serve his/her punishment

Courts may order the criminal measure of educating the child perpetrator in a corrective educational institution. Compared to penal institutes for children, corrective educational institutions give more freedom to children and focus more on the education and personal development of the child²⁰³.

While being in the corrective educational institution, children are entitled to receive treatment and to participate in programmes adjusted to their age, to live under healthy (including mentally healthy) conditions, to be provided with information about their rights and obligations when arriving to the corrective educational institution, to keep in contact with family members via ordinary mail, to have visitors, to receive and send packages, to receive education and vocational training, to choose the activity that they would like to do in their free time, etc.²⁰⁴.

Children must undertake group activities assigned by the corrective educational institution, to seek the approval from the head of the corrective educational institution each time they want to leave, to continue basic education even after the age of 16, to cooperate with the staff members of the corrective educational institution and to respect the order of the corrective educational institution²⁰⁵.

In order to ensure the safety of the corrective educational institution, girls are separated from boys and groups are created on the basis of age, health condition and educational needs of children. In cases where it is necessary for ensuring the safety of the corrective educational institution, the head of the corrective educational institution may order the child to be detained in a separate part of the centre.

Children can be temporarily released from the corrective educational institution if it can be assumed that the aim of the punishment can be achieved outside the corrective educational institution. When deciding on the release of the child, the court orders a probation officer to supervise the child. The temporary release becomes permanent automatically when the child

²⁰⁰ Article 42 of [Law Decree 11 of 1979](#).

²⁰¹ Article 52 of [Law Decree 11 of 1979](#).

²⁰² Article 41 of [Law Decree 11 of 1979](#).

²⁰³ Article 105 of [Law Decree 11 of 1979](#).

²⁰⁴ Article 109 of [Law Decree 11 of 1979](#).

²⁰⁵ Ibid.

turns 19 years old. Children who turn 19 years old during their education in the corrective educational institution need to be released by the head of the corrective educational institution after their birthday²⁰⁶.

3.1.4 Criminal records

The criminal record of the child perpetrator is cleared by the force of law:

- on the day the court suspends the criminal sanction of imprisonment; or
- on the day when he/she serves the sanction or the day the sanction ceases to be executable, if the child offender was sanctioned to a maximum one year of imprisonment for committing an intentional crime; or
- after three years from the moment he/she has served the sanction or the day when the sanction ceases to be executable, if the child perpetrator was sentenced to imprisonment of between one and five years²⁰⁷.

The criminal record of the child perpetrator can, for good behaviour, also be cleared by the court, after the child has served a term of one year or more for an intentional crime. Such request can be filed by the child perpetrator²⁰⁸.

Thus it can be concluded that under Hungarian law the criminal record of the child is not necessarily cleared automatically at the age of 18.

²⁰⁶ Article 112 of [Law Decree 11 of 1979](#).

²⁰⁷ Article 121 of the [Criminal Code](#).

²⁰⁸ Interview conducted on 13 December 2012, with a University Professor.

4 Strengths and potential gaps

The main strength of the Hungarian system lies with in fact that it provides protected status to children during the criminal procedure. In particular, the [Criminal Procedure Code](#) contains several measures introduced to protect **child victims and witnesses** from secondary victimisation. These include the option for child witnesses and victims to participate in protection programmes, the possibility for courts to order the defendant to keep away from the victim, measures to ensure that children are examined only once during the criminal procedure, the hearing of child victims or witnesses *in camera* or through a closed-circuit communication system during the trial phase, etc. It is noted that in order to provide increased protection to those who are under 14 years of age, the Hungarian Government has recently introduced the possibility of questioning children under 14 years old in special child-friendly rooms. Some of these measures (e.g. being heard via a closed-circuit communication system during the trial phase, participation in the protection programme) are also applicable to child suspects/defendants.

Under Hungarian law, children **under the age of 14** years old cannot be held criminally liable, noting also that as of **July 2013**, children can be found criminally liable for certain crimes from the age of 12. This report contains the rules applicable to child suspects/defendants between the age of 14 and 18 years. In order to ensure the protection of child suspects and defendants during the criminal proceedings, only specialised prosecutors and judges can be involved in child cases. Investigating authorities, prosecutors and judges are under a legal obligation to take into account the characteristics of the child's age and maturity while dealing with them, and in particular in providing information about their rights and obligations. The [Criminal Procedure Code](#) also provides alternatives to judicial proceedings through for example mediation or active repentance.

Another strength of the Hungarian legal system is that it contains reference to various criminal sanctions and measures amongst which the courts may choose while adjudicating. This characteristic allows courts to personalise the sanction to be imposed against the child and choose the one that serves the best the purposes of rehabilitating the child and reintegrating him/her into the society.

With the purposes of ensuring the rehabilitation and rehabilitation of the child into the society, Hungarian law allows for the imposition of the criminal measure of ordering the education of the child in a corrective educational institute. Moreover, courts must order a study about the personal circumstances of the child when imposing criminal penalties that contribute to the child's personal development (e.g. while ordering the education of the child in a corrective education institution). Finally, sanctions that deprive a child's liberty are carried out in special penal institutes for children or in corrective educational institutions.

Although investigating authorities, prosecutors and judges are required to provide **information to children in a child-friendly manner**, in practice the provision of information is not always adjusted to the maturity and age of the child. This is particularly the case during the investigation phase, as police officers who examine children are not required to possess any specific knowledge or expertise. Stakeholders interviewed also noted that children are not always provided with a sufficient level of information about their rights and obligations and are not always questioned by specialists in all cases²⁰⁹.

Another weakness relates to the length of pre-trial detention of children. Stakeholders pointed out that because the length of pre-trial detention can be prolonged there have been cases where children were kept in pre-trial detention for too long. It is noted that as of 1 July 2013, the rules applicable to the maximum length of pre-trial detention will be amended so that its length cannot exceed one year²¹⁰.

²⁰⁹ Ibid.

²¹⁰ Article 455 of the [Criminal Procedure Code amended by Article 455 of Act CCXXIII of 2012 on provisional rules linked to the entry into force of Act C of 2012 \(New Criminal Code\) and on the amendment of related laws.](#)



With the removal of the exclusive competence of the county courts to carry out a juvenile procedure, all judges at all levels are expected to deal with cases involving children, irrespective of their specialist knowledge or experience with children.

The lowering of the minimum age of criminal responsibility to 12 for a limited number of crimes as of July 2013 must also be noted here.

Finally, only certain proceedings take place at spaces dedicated to child perpetrators. As an example, child perpetrators in custody are detained in the same facilities as adult perpetrators. Moreover, child cases are tried at the same building as adult cases.

Conclusions

In Hungary specialised prosecutors and judges deal with cases involving children defendants. However there is no specialised court or prosecution service dealing exclusively with cases involving children. Police officers who deal with children as victims, witnesses and defendants do not receive specialised training.

In accordance with the **current** [Criminal Code \(see above for information on July 2013 changes\)](#), the minimum age of criminal liability is 14 years. Children who are less than 14 years old at the time of the commission of the crime can be subject to child protection measures imposed by the Guardian's Court. Children who are at least 14 years old, but not more than 18 years old on the day of the commission of the crime are considered as children under Hungarian law. Most of the specific measures that protect child suspects and defendants are set out in Chapter 7 of the [Criminal Code](#) and Chapter 21 of the [Criminal Procedure Code](#).

Rules specific to child victims and witnesses are not contained in separate chapters, but can be found in different chapters of the [Criminal Code](#) and the [Criminal Procedure Code](#).

The Hungarian system provides protected status to children regardless of their role in the criminal proceedings.

The effective functioning of the current system is hindered in that children are not always provided with a sufficient level of information about their rights and obligations. It is also a weakness that police officers involved in the interrogation of children do not possess specialised knowledge.

Annex – Legislation reviewed during the writing of this report

- Act C of 2012, Criminal Code (Criminal Code repealing Act IV of 1979), 1 July 2013
- Act CLXII of 2011 on the legal status and remuneration of judges, 1 January 2012
- Ministerial Decree 32/2011. (XI.18.) of the Ministry of Public Administration and Justice on child-friendly interview rooms to be set up at the investigation authorities of the Police Service, 19 November 2011
- Act CXXIII of 2006 on mediation in criminal matters, 1 January 2007
- Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, 28 January 2004
- Act LXXXV of 2001 concerning the Protection Program for those taking part in a penal procedure and helping jurisdiction, 1 April 2002
- Act XIX of 1998, Criminal Procedure Code, 1 January 2000
- Law Decree 11 of 1979 on the execution of punishments and measures, 1 July 1979
- Act IV of 1978, Criminal Code, 1 July 1979
- Act IV of 1959, Civil Code, 1 May 1960