



LA CHILD 
Enhancing legal aid for children in conflict with the law

LEGAL AID FOR CHILDREN IN CONFLICT WITH THE LAW

**National Report on Hungary
May - July 2020**



The project is funded by the Justice program of
the European Union (2014 -2020)



This research report has been written in the context of the project "Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)", financed by the Justice program of the European Commission. The content of this report does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report. If inaccuracies or mistakes are to be found in this document, they can only be attributed to the authors of this report.

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INTRODUCTION TO THE PROJECT AND THE QUESTIONNAIRE

This national research questionnaire was prepared when implementing the EU co-funded project *Legal aid for children in criminal proceedings: developing and sharing best practices (LA CHILD)*. The Project is implemented by the consortium consisting of *Law Institute of Lithuania (LIL)*, *Defence for Children International (DCI) - Belgium*) and *Center of Integrated Legal Services and Practices (CILSP, Albania)*. It started in February 2020 and will end in December 2021.

The Project' s overall objective is to contribute to enhancing protection of procedural rights of children in conflict with the law and to foster coherent implementation of Directive 2016/800 in the EU Member States as regards legal aid to children. For this purpose, the Project will develop common standards, showcase best practices and innovative approaches that can be replicated across the EU as well as organize capacity building activities.

The Project' s activities started with the evaluation of regulation and practices in European States when providing legal aid for children in conflict with the law. This questionnaire is the basis of this research. After having collected the responses, these responses will be analysed by the project researchers and a summarising report will be drafted. The prepared report will identify the main challenges encountered as well as the best approaches to achieving effective and efficient legal aid for children.

Later on, the Project team will draft Guidelines on providing legal aid to children in conflict with the law as well as a 'child friendly' version. In addition, in the end of 2020, an international conference is planned in Vilnius, where experts from different states will share their knowledge and insights. In 2021, tailored practical trainings to lawyers, judges, legal aid board members and social workers will take place in Lithuania, Belgium and Albania. The final stage of this Project will be a roundtable discussion in Brussels where key Project outcomes and best practices will be presented and discussed.

KEY DEFINITIONS

Legal aid means the provision of legal advice, assistance and representation at the expense of the State on the conditions and in accordance with the procedures established under the national law for persons detained, arrested or imprisoned; for persons suspected or accused of, charged with or convicted of a criminal offence; and for victims and witnesses in the criminal justice process. Legal aid includes legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.¹

Child is a human being under the age of 18.

A child in conflict with the law is a person who has reached the age of criminal responsibility but not the age of majority (under 18 years old), who is suspected or accused of having committed an offence under his national criminal law.² The age that needs to be taken into consideration to determine whether a child is in conflict with the law is the age at the time of committing the offence, not later than that.

Legal aid provider means any person who is providing legal aid pursuant to national law.

Legal aid authority means the authority established under the national law for the purpose of managing, coordinating and monitoring the provision of legal aid.³

¹ Model Law on Legal Aid in Criminal Justice Systems. United Nations. Vienna, 2017.: www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf

² <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

³ *Ibid.*

PART 1: AUTHORS AND GENERAL INFORMATION

1.1. Please list all the names of experts and lawyers who worked on this report.

From DLA Piper Hungary:

- Monika Horvath, Partner
- Dora Dobos, Junior Associate
- Kate Mala, Junior Associate
- Adam Szeberenyi, Junior Associate
- Mark Almasy, Junior Associate

1.2. Please name the country which this report applies to.

Hungary

1.3. Please provide a full list of acronyms used in your report, if any.

1.4. Please explain the methodology used to complete this report and sources that were used (such as internet research, legal database research, case law research) and any limitations that were experienced when undertaking this research (such as lack of enough data, resources, directives, etc.)

The research below was based on internet research utilizing the available legal database containing the applicable legal instruments and case law, as well as using other publicly available information provided by public bodies (including without limitation to ministries, authorities, bar associations, statistics offices), civil associations, foundation etc. The lack of data with respect to the questions listed in Part 6 presented considerable difficulty.

- 1.5. Please keep a list of the most useful materials that you find during your research that are applicable to your country. We are mainly looking for research studies, analyses, reports, tools, etc. relevant to the rights of access to legal aid for children in conflict with the law at the local/national level.

Please note that the following materials are only available in Hungarian:

- https://www.helsinki.hu/wp-content/uploads/A_gyermekek_vedelemhez_valo_joga_Ugyvedi_kezikonyv_final.pdf
- https://www.mjsz.uni-miskolc.hu/files/6593/21_nagyalexandra_t%C3%B6rdelt.pdf
- http://acta.bibl.u-szeged.hu/54024/1/juridpol_081_829-841.pdf
- <https://ujbtk.hu/dr-nagy-alexandra-nagyne-dr-gal-monika-a-fiatakoruak-elleni-buntetoeljaras-sajatossagai/>

PART 2: NATIONAL LEGAL AID SYSTEM

Regulation of legal aid

2.1. Please shortly describe the legal framework regulating the legal aid system in your country. (this description should not be longer than half of a page).

Act XC of 2017 on Criminal Procedure ('**Code of Criminal Procedure**') establishes the defendant' s (and victim of a crime' s) right to legal aid if the financial circumstances do not allow him/her to cover for the costs of the proceedings. Legal aid covers the costs of the 'public attorney.'

The detailed rules of the abovementioned provisions are set out in Act LXXX of 2003 on Legal Aid ('**Legal Aid Act**'). This Act constitutes the underlying legislation for the framework of the legal aid system in Hungary. The State either covers or advances legal costs. In the framework of legal aid, the Hungarian State provides those entitled to assistance under the relevant provisions of the Legal Aid Act with legal aid providers. In general, legal aid providers give legal advice, draft court submissions or other documents, and inspect official documents if authorized by the aided person. Their work is reimbursed by the State. Legal aid is provided regardless of the citizenship of the applicant.

One may apply for legal aid in civil/administrative proceedings and criminal proceedings. The service encompasses non-litigious as well as litigious proceedings.

The legal aid system is operated by the Ministry of Justice and the metropolitan and county government offices together. The two institutions together make up the legal assistance service.

Attorneys (attorneys-at-law, law firms, European Community lawyers permanently working in Hungary) or organisations (associations, foundations and minority nationality

self-governments engaged in activities related to the provision of legal protection, and universities offering legal education) become entitled to provide legal aid – in the framework of the Legal Aid Act – pursuant to the conclusion of a service agreement with the legal assistance service. The above organisations must enter into a contract with an attorney, who provides legal aid by its mandate and on its behalf. The legal assistance service keeps a public register of legal aid providers.

The essence of the Hungarian legal aid system is as follows: the legal assistance service decides on the applications for legal aid based on the applicant's financial circumstances and, if approved, the provision of legal aid itself is performed by attorneys/organisations listed in the register. The party approved for legal aid chooses the legal aid provider. In criminal procedures, the State covers the fees and costs of the legal aid provider.

In addition to the legal aid detailed above aimed at the provision of representation of those in need, there are further services that fall within the scope of legal aid.

First of all, the Probation Officer Service supports juvenile delinquents in their everyday life. [Please note, that throughout this questionnaire we refer to children in conflict with the law as "juveniles" , since the Hungarian legal system utilizes this term. In accordance with the Hungarian Criminal Code, juveniles are persons between the age of 14 (and in certain crimes 12) and 18. Therefore, the lowest age of criminal responsibility may be 12 years in case of serious crimes.]

Secondly, there is the Victim Support Service, the main task of which is the provision of information and a variety of support services to victims of crimes. The Victim Support Service provides information on the rights and obligations of the victim in criminal proceedings, on the available services and assistance, on the whereabouts of state and non-state service providers, and on the means of avoiding revictimisation. The Service also provides legal advice for victims. For victims in crisis as a consequence of the crime, financial aid is available in order to abolish or ease the critical situation. State

compensation may be provided by the Service for indigent victims of intentional crimes against the person.

2.2. Which laws or/and policy documents regulate legal aid? Please describe briefly the objectives and content of regulation of each legal act or policy document.

- Charter of Fundamental Rights of the European Union, Article 47: 'Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'
- The Fundamental Law of Hungary Article XXVIII Paragraph (3) provides that 'Anyone indicted in criminal proceedings shall be entitled to defense at all stages of such proceedings.'
- Act XC of 2017 on Criminal Procedure encompasses the entirety of criminal proceedings, including the investigation and judicial phase, and thus it provides for rules with respect to the legal aid provided to the parties of the criminal procedure. The objective of these specific rules is to ensure the integration of juvenile defendants into society by applying specific procedural rules taking into consideration their emotional, ethical etc. circumstances and the protection of children when they are victims of or witnesses to a crime.
- Act CXXXV of 2005 on the Assistance of Victims of Crimes and of State Compensation provides support for victims of crimes through the Victim Support Service.
- Act LXXX of 2003 on Legal Aid ensures access to justice for the socially disadvantaged so they will be able to receive professional legal advice and representation in court in the course of asserting their rights and resolving legal disputes.
- Act XXXI of 1997 on the protection of children and the administration of guardianship establishes a comprehensive protection system for children.
- Government Decree 421/2017. (XII. 19.) on the approval, provision and refund of services provided in the framework of legal aid provides the detailed rules of the Legal Aid Act, implementing the provisions of said Act.

2.3. Do those general laws or/and policy documents on legal aid refer to specifics of legal aid to children? Please describe briefly and present the relevant extracts from those documents.

The Code of Criminal Procedure establishes special procedural rules with respect to criminal procedures affecting juveniles [i.e. those between the age of 14 (in certain cases 12) and 18].⁴ In juvenile criminal procedures attorney representation for the defendant is mandatory.⁵

The Code of Criminal Procedure ensures compliance with Directive 2016/800/EU by introducing specific types of evidence that have at their centre the objective of the individual assessment of the juvenile defendant, thus meeting the standards set out in the Directive. The means of the individual assessment of the juvenile defendant are, without limitation, as follows: “household study” of the juvenile; various expert opinions; and witness testimony of the legal representative of the juvenile. If the circumstances changed significantly or the latest evidence regarding the individual assessment was procured more than 2 years before, the individual assessment of the juvenile shall be performed again not later than the final decision of the court.⁶

In compliance with the obligation to treat cases in a timely and diligent manner, the Code of Criminal Procedure prescribes that the investigational phase shall not be longer than 1 year (if the accused crime is threatened with no more than 5 years of incarceration) or 2 years (if the accused crime is threatened with more than 5 years of incarceration).⁷

⁴ Chapter XCV of the Code of Criminal Procedure.

⁵ Section 682 of the Code of Criminal Procedure.

⁶ Section 683 of the Code of Criminal Procedure.

⁷ Section 687 of the Code of Criminal Procedure.

With respect to alternative measures, the Code of Criminal Procedure provides for diversion possibilities. The state prosecutor may suspend the criminal procedure for a period of 1-3 years. The requirements for such diversion for juveniles are more moderate than those applicable for adults.⁸

The Code of Criminal Procedure also establishes rules for persons (victims and witnesses) requiring special treatment in the criminal procedure.⁹ Persons under the age of 18 are deemed to require special treatment without further decision.

The Code of Criminal Procedure regulates the institution of special treatment on two levels. On the first level, the authorities must help persons requiring special treatment to exercise their rights and perform their obligations. The authorities shall perform their tasks to spare such persons from the hardships of the criminal procedure. The Code of Criminal Procedure provides a non-exhaustive list of the measures to be taken by authorities to help the abovementioned persons. This means that the authorities may apply measures that are not listed explicitly in the Code if said measure is deemed to be compliant with the objectives of special treatment.¹⁰

The second level includes measures that are actually protective. Such persons are provided protection if their life, physical integrity, or personal freedom is endangered, and in order that they shall be able to exercise their rights and perform their obligations. These measures mainly aim to prevent the defendant from knowing the identity of the witness, e.g. making of the looks of the person unintelligible (if the procedural measure is conducted via telecommunication means); witness protection programme, etc.¹¹

⁸ Section 690 of the Code of Criminal Procedure.

⁹ Chapter XIV of the Code of Criminal Procedure.

¹⁰ Section 85 of the Code of Criminal Procedure.

¹¹ Section 86 of the Code of Criminal Procedure.

The Code of Criminal Procedure also sets out separate rules for persons under the age of 18¹² and for persons under the age of 14.¹³ In addition to the above, the police have to set up a room for persons requiring special treatment (e.g. children) for their interrogation in accordance with Decree of the Minister of Justice no. 13/2018.

The Legal Aid Act has limited specific provisions regarding children: victims under the age of 18 are entitled to the above legal aid regardless of their financial circumstances.

2.4. Are there any laws or policy documents specifically addressing legal aid for children adopted in your country? If yes, please describe objectives and content of regulation of these laws or policy documents and provide their texts (if the texts are long, no translation for the texts is requested).

No, only the above general laws contain specific provisions, there is no separate law addressing legal aid for children.

2.4 bis. Does your country have a law that specifically regulates or limits access to legal aid for terrorist suspects or perpetrators? Does such a regulation also apply to minors and what does it provide for?

No such provision is in effect in Hungary.

¹² Section 87 of the Code of Criminal Procedure.

¹³ Section 88 of the Code of Criminal Procedure.

Management and administration of legal aid

2.5. How the legal aid system is organised nationally, regionally or locally? Who is in charge of the management and oversight? Please describe status and functions of the legal aid authority (legal aid board or similar body) institution.

At first instance, the competent authorities are the district offices of the metropolitan and county government offices. The metropolitan and county government offices hear cases on appeal. The venue is determined based on the domicile of the applicant.

The State acts as the sole general service provider for victims of crimes. The metropolitan and county offices of the Victim Support Service („*Áldozatsegítő Szolgálat* ") provides such services. The Ministry of Justice serves as the professional governing body of the legal aid system, providing supervision.

2.6. Is there an institution who is working particularly with legal aid for children? Is there a department (division) within the main legal aid institution that is specialised in legal aid for children? If yes please describe in more detail.

No, there is no such institution in Hungary.

Funding of legal aid

2.7. How is the legal aid system financed?

The system is financed by the Hungarian State from the budget.

2.8. How are legal aid providers (including lawyers) paid? What are legal aid providers' (lawyers') fees for legal aid?

Legal aid providers shall apply for their fees at the legal aid service.

The hourly rates are established in the yearly Budgetary Act, for 2020 it is HUF 6,000 per hour (ca. EUR 17.2, exclusive of VAT). The fee consists of the actual working fee and the incurred costs. Different legal acts regulate the fees in case of litigious and non-litigious matters.

If the legal aid provider represents the client in a non-litigious matter, then the fee is determined in accordance with Decree of the Minister of Justice no. 11/2004. The legal aid provider is entitled to a 15% flat rate cost reimbursement.

If the case is a litigious matter, then the detailed provisions for the payment of legal aid providers' fees is established in the Decree of the Minister of Justice no. 32/2017. If the client loses, then this decree shall apply, i.e. HUF 6,000 per hour (ca. EUR 17.2, exclusive of VAT). If the client wins (in civil or administrative cases), then said decree refers to another legal act, namely the Decree of the Minister of Justice no. 32/2003. In criminal cases, the maximum of the fees covered by the State is six times the amount of the above referenced hourly rate (i.e. HUF 6,000) until pressing charges, and the same until the end of procedure at first instance. In either case, legal aid providers are entitled to reimbursement of the incurred costs, or a flat rate of 25%, calculated from the fee.

2.9. Are there any differences between fees provided for legal aid for children compared with legal aid for adults? If yes please describe in more detail.

No, there is no such differentiation in place.

2.10. Are there different fees for a representation of a child in criminal (juvenile justice) proceedings as compared to representation in civil or administrative cases?

No, the above (under 2.8) shall apply.

PART 3. RIGHTS OF BENEFICIARIES OF LEGAL AID

Access to legal aid

3.1. What are the general criteria for accessing legal aid? Who is entitled to legal aid?

Aid may be granted to

- Hungarian citizens;
- a person requesting legal aid in connection with obtaining a visa, obtaining authority to reside or permanent resident status, or in a naturalization case, if the party's ascendant is or has previously been a Hungarian citizen, furthermore, if the party is engaged in repatriation or an asylum procedure,
- a person not being a Hungarian citizen and their state has concluded an international agreement to this effect with Hungary or reciprocity exists between their state and Hungary;
- a person having the right of free movement and residence in accordance with the Act on Admission and Residence of Persons with the Right of Free Movement and Residence;
- a person falling under the scope of the Act on the Admission and Residence of Third-Country Nationals who is domiciled or has a habitual and legal residence in the territory of Hungary, in any Member State of the European Union, or in any State that is a party to the Agreement on the European Economic Area, furthermore, in any other country whose citizens are enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area by virtue of an agreement between the European Community and its Member States and a State that is not a party to the Agreement on the European Economic Area;
- a person falling under the scope of Act II of 2007 on the Admission and Residence of Third-Country Nationals, however, he/she has no permanent residence or habitual and legal residence in the territory of Hungary, and who is subject to expulsion ordered by the immigration authority under Subsection (1) of Section 42 or Subsection (2) of Section 43 of Act II of 2007 on the Admission and Residence of Third-Country Nationals;

- a person granted residence permit on humanitarian grounds.

Legal aid, where the state either covers or advances legal costs, is granted as a general rule based on a means test for persons who are indigent. However, the Legal Aid Act automatically considers some persons indigent (e.g. minors; homeless people; refugees) who do not have to show that their financial situation is below the limit set by the Legal Aid Act. Moreover, legal aid in the form of deferred payment (with the state advancing the legal costs) is also available for persons whose financial situation is only slightly better than the set limit.

The State shall pay a party's legal services fees if the party's monthly net income (wage, pension, or other regularly paid cash allowances) does not exceed the current amount of full old-age pension benefits (HUF 28,500, ca. EUR 81) and the person does not have any property.

In the private non-profit sector, victims in particular can receive legal aid completely free of charge. This includes organizations that only deal with special matters. For example, the 'TASZ – Társaság a Szabadságjogokért' specializes in violations related to minorities and the breach of liberties and the Hungarian Helsinki Committee deals with prison conditions, law enforcement measures and matters related to asylum seekers. The 'NANE' protects women's rights, and 'Utcajogász' primarily helps homeless people with legal advice. The 'Jogpont' network is also noteworthy; they deal mainly with labour law and tax law and are primarily present in rural areas, having built a national network. In the non-profit sector, everyone can get free advice and legal protection if they meet certain specific criteria.

3.2. In which circumstances are children in conflict with the law entitled to legal aid?

Legal representation of juveniles is mandatory in criminal proceedings.

3.2bis. Are foreign children entitled to legal aid in your country when they are in conflict with the law (is access to legal aid conditioned by nationality or residency status for children)?

Children of foreign nationality are also entitled to free legal aid in Hungary.

3.3. Is legal aid to children in conflict with the law always free or partial payment can be requested?

Children victims shall be entitled to support regardless of their income conditions; however, no aid may be granted if the costs of legal representation have been received by the client as aid provided under another aid scheme provided by the Hungarian State.

3.4. Can children victims of crime access free legal aid in your country?

Yes. Children who are victims of crime may access free legal aid in Hungary in accordance with the Legal Aid Act.

3.5. Is the representation of a lawyer mandatory for any alleged child offender? In which case and at what point in the proceedings?

In accordance with Section 682 of the Code of Criminal Procedure, legal representation is mandatory for juveniles from the very beginning of the proceedings.

3.5bis. Is there a mandatory lawyer participation for children who are suspected or accused of terrorism?

There is no such specific provision as legal representation is mandatory for juveniles in general, as described above under 3.5.

3.6. Is there a mandatory lawyer participation for children victims of crime provided in your country? In which cases?

No, but children victims of crimes are entitled to legal aid free of charge, without the inspection of their indigence.

3.7. If a child benefits from legal aid, can he/she choose his/her lawyer? What is the legal role of the parents in this regard?

In juvenile cases, legal representation is mandatory. The authorities contact the regional bar association, which appoints a lawyer to serve as the public defender of the offender.

In the case of child victims, legal representation is provided upon application, to which children are entitled by law. In this regard, the applicants shall choose from the list of legal aid providers and authorize them.

3.8. If the child benefits from legal aid, can he/she change lawyer during the same proceedings? In which circumstances? What is the procedure? Please explain the answers in more detail.

Offenders in general may apply for a different lawyer in the same proceedings, but it is a very narrow possibility as the mere quality of the work performed by the lawyer might not be enough grounds for replacement.

3.9. Does a child have the right to access free interpreter if he/she needs one when meeting with provided lawyer?

Yes, in every instance an interpreter has to be provided free of charge in these cases.

Access to information about legal aid

3.10. Does the State play a role in giving information to a child regarding legal aid system? Are there any initiatives (media or educational campaigns, etc.) to inform children about the legal aid system?

Mostly flyers and posters are placed in certain institutions by State-financed organizations, informing children of possible ways to receive legal aid when needed. Also, the Victim Support Service provides information on the rights of and other possibilities for victims.

3.11. Are there any organisations or associations that give information and facilitate a child's right to legal aid?

Yes. For example, the Hintalovon Gyermekjogi Alapítvány (Hintalovon Children's Rights Foundation), who deals with providing help to children in Hungary.

The key areas of the Foundation:

- protection of children from violence;
- right of children to education;
- right of children to participation in every matter in which they are affected.

3.12. If a child is deprived of liberty in the context of a criminal proceedings (e.g. held on remand at a prison, held at the police station or a hospital etc.) how does he/she receive information on his/her right to legal aid?

In Hungary, a juvenile can only be detained in certain justified cases. Whether to place the juvenile in custody must be decided within a maximum of 72 hours. Parental or guardian participation is mandatory during criminal proceedings. The police must provide information to the juvenile regarding their rights at all times. The guardian or child rights representative must be informed of the possibility to use legal aid.

3.13. Is there an obligation to provide the information in child-friendly language?

Yes, information should be provided in a manner appropriate to the child's age and physical and mental stage of development. It is important to use terms that the child understands. In addition to child-friendly language, the police have to set up a room for persons requiring special treatment (e.g. children) for their interrogation in accordance with Decree of the Minister of Justice no. 13/2018. On 31 December 2014, the National Judicial Office ordered the establishment of children's hearing rooms in all courts with more than 7 members in line with Child-centered Law Enforcement.

3.14. If a child cannot speak the official language of the country, is there an obligation to provide the information in the child's mother tongue or in a language spoken/understood by the child?

Yes, in Hungary, the child must be provided an interpreter free of charge if the child does not speak Hungarian.

Also, in accordance with the Code of Criminal Procedure, nobody shall be disadvantaged due to their lack of knowledge of the Hungarian language.

3.15. If the information needs to be translated or an interpreter needs to be provided, who covers the costs for the interpretation/translation?

The Hungarian State covers the costs of translation/interpretation.

Protection of child interests

3.16. Is there a legal mechanism or a rule to address a conflict of interests between the child and his parents (e.g. when a child is a suspect and a parent is a victim)? Is there a legal mechanism or a rule to address a conflict of interests between the child and his lawyer? If yes, please describe in more detail.

Yes, if the parent is involved as a counterparty in a case, the role of parent (i.e. being the legal representative of the child) shall be taken over by an appointed guardian. If the child's lawyer is the opposing party, the court should be notified, and another lawyer should be appointed.

3.17. Is the child protection institution involved in criminal proceedings when a child is suspect or accused? In case, please describe in more detail.

Yes. If the child is a resident of a child protection institution, the educator and the guardian are also asked to make a description of the child. Their circumstances and physical and mental condition are taken into account, including family background and relationship (if any) with their family. In each case, who is involved in the criminal proceedings depends on the nature of the crime and the way it is committed.

At the same time, in each case, the age characteristics of the child are taken into account and as well as their stage of mental development.

3.18. Are experts such as psychologists, social workers, medical staff or others involved in criminal proceedings when a child is suspected or accused? In which cases? Are they paid by the State or by the child or his/her parents?

Yes. In the case of a juvenile, a criminal forensic examination must be performed in all cases by a psychologist. If necessary, additional professionals will be involved in the criminal proceedings. The child rights representative, the guardian, and other professionals are always paid by the State. In the case of a juvenile who has reached the age of twelve but has not reached the age of fourteen, an expert shall be appointed immediately to examine the mental state of the juvenile following the communication of a well-founded suspicion. A combined forensic psychiatrist expert and psychologist expert

opinion must be obtained for this purpose.

It is necessary to include a child psychiatrist in the study as a consultant.

In order to carry out the expert examination, the environmental study, pedagogic and school characterization, medical documents and documents concerning possible child protection measures, and previous illnesses, physical and mental condition must be obtained. After all of this, it is possible to take a position on the existence of the necessary mental state for recognizing the consequences of his or her act and on such grounds to terminate the criminal proceedings.

PART 4. LEGAL AID PROVIDERS (LAWYERS)

General requirements for legal aid providers

- 4.1 What professionals are entitled to provide legal aid to children in conflict with the law in your country? Please describe the status and functions (duties) of legal aid providers.

Legal aid may only be provided by lawyers registered with the Bar Association. Lawyers are the main actors as they serve as professional legal representatives.

In addition to representation duties performed by lawyers, there are assistance-type of duties. In this regard probation officers play an important role, as probation is a well-established institution in Hungarian law. Probation officers can be assigned to assist and oversee the juvenile's everyday life and to provide him or her with advice as to how to find a job and a place to live, as well as assist him or her with knowledge development and schooling, or simply advise how to fix and maintain a good relationship with the family. It is the juvenile's duty to report to and cooperate with the probation officer. Before the indictment the investigating authority, and after the indictment the court, will request the probation officer's expert opinion.

- 4.2 What are the requirements to be a legal aid provider in your country?

Legal aid is provided by lawyers registered with the Bar Association mainly on a voluntary basis by registering their interest. It is a voluntary process. The legal assistance service keeps a public register of legal aid providers. Attorneys (attorneys-at-law, law firms, European Community lawyers permanently working in Hungary) or organisations (associations, foundations and minority nationality self-governments engaged in activities related to the provision of legal protection, and universities offering legal education) become entitled to provide legal aid – in the framework of the Legal Aid Act – pursuant to the conclusion of a service agreement with the legal assistance service.

The Hungarian Bar Association keeps a register of those attorneys who are willing to be a public defender – based on court, prosecutor, investigative authority request – as and when required.

4.3 In the legal aid system, is there any type of registration requirement for lawyers who want to represent children in criminal proceedings (with bar association or another body)?

No, there is no registration requirement in this regard.

4.4 In your country, are there any legal entities (any associations/organisations) who provide legal assistance to children in criminal proceedings? If yes, can you please provide some information on such legal entity' s activities.

Yes. There are foundations providing legal aid to juveniles in Hungary. One of them, Hıntalovon Foundation, specialises in helping juveniles by not only providing them with legal assistance but also by offering trainings to judges, lawyers, and police officers on an *ad hoc* basis.

Education and qualification of legal aid providers (requirements for becoming legal aid providers)

4.5 What are education requirements for legal aid providers?

Qualified lawyers registered with the Hungarian Bar Association can provide legal aid, should they have the capacity and willingness to do so.

4.6 Are there any specific requirements for legal aid providers who provide legal aid for children? Are they required to undergo specific trainings (e.g. on juvenile justice, children' s rights, psychology, communication with children, etc.)?

Currently, the legal aid system is not divided into legal aid providers for adults and for minors/juveniles.

Continuous training

4.7 Is there a continuous training on juvenile justice offered/mandated throughout a legal aid provider' s (lawyer's) career?

As part of this research, we contacted the Budapest Bar Association and a foundation (Hintalovon Alapítvány, <https://hintalovon.hu/en>). We enquired whether there are any continuous trainings provided by the professional body (the Bar) or in cooperation with NGOs or foundations. We contacted the Budapest Bar Association but have not received any response to date.

We also arranged a phone call with Hintalovon Foundation' s representative and provide a short summary here. Based on a discussion with one of the lawyers working for the Foundation, which deals with young children, there are various trainings held for (1) the judges, mediators, (2) investigative bodies (police) and (3) the lawyers working with young children.

(1) the judges – there is a compulsory training held by the „Magyar Igazságügyi Akadémia” once a year. As part of their yearly compulsory training they attend a 2.5 hour-long session relating to young children. At this training judges hearing young offender cases explain the stress the children go through when they become part of criminal proceedings, either as suspects or accused; they also try to explain the children' s special needs stemming from their young age and lack of knowledge as to what is legal/illegal, forbidden by the law. The main aim of the training is to show how best to assist the children through the legal processes by speaking their language, explaining the procedural steps, and helping them to avoid experiencing the trauma again.

(2) Trainings provided for the Police – the foundation held ad hoc trainings for the police force. Thanks to the foundation’s good relationship with a Belgian University, a Belgian Policeman held a five day voluntary training for the Budapest police force. The training was free of charge and the aim was to share the Belgian Policeman’s experience with Hungarian policemen and policewomen.

It bears mention that a few years back there was an initiative called “gyermekbarát kihallgató szoba,” which set the requirement for every police station to set up a room suitable for juveniles’ cross-examination and to train officers specialising in working with juveniles. Due to lack of funding and follow-up checks, this initiative only led to the children (suspects/accused) being questioned in separate rooms.

(3) Last year on 2 occasions, the Hintalovon Foundation held trainings for lawyers in cooperation with the Budapest Bar Association. These were free of charge, voluntary to attend, and proved very popular. They provided an insight into the foundation’s work which deals with young children by sharing true anonymised cases. Unfortunately, due to lack of funding, the foundation is unable to provide continuous training free of charge and to this day no further trainings were held.

4.8 Are there any materials (e.g. manuals, self-training tools, reports) that exist at the national level on the role and mission of lawyers who represent children in criminal proceedings?

Based on the legal research we have carried out, there are no materials or manuals on a national level.

Specialisation of legal aid providers

4.9 Is specialisation on children cases for legal aid providers established in your country? If yes, is the specialisation mandatory? Please describe in more detail.

There are no special courts that would only hear juvenile cases.

4.10 Is there a network or a list of specialised legal aid providers (lawyers) available to beneficiaries? Please describe in more detail.

As mentioned above, on the occasion a defence lawyer is required by law, the court, prosecutor or investigative authority requests (usually by court order) one from the Hungarian Bar Association.

If a lawyer is needed and approached through the Legal Aid Service, then it is done by filling in a form as described above. A list of legal aid providers and the application form can be downloaded from the Ministry' s official website (here, only available in Hungarian: <https://szakrendszer.im.gov.hu/nevjegyzek/>; <https://igazsagugyiinformaciok.kormany.hu/jogi-segitsegnyujtas>

4.11 If the specialisation exists, what is the role of these lawyers at the different stages of the criminal proceeding? Where is it defined? How does it differ from the role of a lawyer who is not specialised to represent children in criminal proceedings?

N/A. Specialisation does not exist.

PART 5. QUALITY AND ASSESSMENT OF LEGAL AID

Legal aid quality standards (guidelines)

5.1 Are legal aid standards (or guidelines) for legal aid (in general) established in your country?

No, there are no such standards in Hungary.

5.2 Are there special standards on providing legal aid for children (guidelines on child-friendly legal aid) established in your country? If yes, please describe in more detail and present the text if possible (no translation of the text is required).

No.

Complaints

5.3 What is the procedure for a child/parent/guardian to present complaints about the lawyer' s actions in your country (complaints to the bar, legal aid authority, etc.)?

In accordance with Act LXXVIII of 2017 on Legal Practice, anyone may present complaints about the lawyer' s actions towards the lawyer' s regional bar association. If the president of the regional bar association deems the lawyer' s action a disciplinary infraction, then the president refers the case to the regional disciplinary committee (disciplinary body of first instance). In case of appeals, the second instance is formed on the national level, at the Hungarian Bar Association.

5.4 Can a child make a complaint about his/her lawyer? How?

Yes, as anyone, not just clients, is allowed to make a complaint against the lawyer, as discussed above. The process is the same as described under Question 5.3.

Assessment of legal aid quality

5.5 How is lawyers work quality assessed in your country?

There is no centralised quality assessment procedure in this regard.

5.6 Are there any legal aid quality assessment measures (e. g. peer review) established and implemented in your country? Please describe in more detail (e .g. who are responsible for assessment, what are the procedures and criteria of assessment etc.).

No.

5.7 Does such assessment include children cases in criminal proceedings? Are there special rules of procedures for assessment of children cases? Please describe in more details.

N/A

PART 6. STATISTICS

6.1. Please provide the following statistics of the year 2019 (or data of the last year available)

- The number of persons who benefited from legal aid.

No data available.

- The number of children who benefited from legal aid and the number of cases.

No data available.

- The number of legal aid providers (lawyers) in general.

Currently there are 1778 lawyers who can be assigned as legal representatives.

- The number of legal aid providers (lawyers) who provided legal aid to children (if available).

No data available.

- Number of complaints about legal aid per year (total, including cases not related to children).

No data available.

- Number of complaints where the beneficiary of legal aid was a child (if available).

No data available.

- If you have data, please provide statistics representing backgrounds of complaint?

No data available.

PART 7: CASE LAW

7.1. Please present national case law of higher courts for the period 2015-2020 (focusing on appeal and supreme court decisions) dealing with the access to legal aid for children in criminal proceedings (for example cases dealing with difficulties to access legal aid, absence of access to a lawyer etc.). Please discuss 5-10 most important decisions/rulings. If less than 3 cases can be found in this period, please refer to the years 2010-2020.

Please use this table. Attach the full text of decisions (no translation required).

Case reference (court, decision number and date)	Bf.223/2019/19.
Main issue of the case	Criminal proceeding committed against a minor victim.
Summary of the facts	The minor victim's court hearing was conducted through the judge with the exclusion of the public.
Summary of the findings	The victim was a minor, which can be the legal basis of the exclusion.
Conclusion	The public may be excluded from the court hearing if the criminal procedure is against a minor.

Case reference (court, decision number and date)	BH2016. 113.
Main issue of the case	Physical abuse committed by a child.
Summary of the facts	The child committed physical abuse and an assistant judge decided on the application of the sanctions against the child.
Summary of the findings	The assistant judge cannot decide on the criminal case of the child.

Conclusion	Assistant judges cannot decide on the sanctions applied against children in criminal proceedings. Only the judge appointed by the National Office for the Judiciary may do so.
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Case reference (court, decision number and date)	BH2016. 112.
Main issue of the case	Drug abuse committed by a child.
Summary of the facts	The child committed several crimes related to drug abuse. Some crimes were committed as a child and some crimes were committed as an adult.
Summary of the findings	If the crimes committed by the child are assessed in one criminal proceeding, and some crimes were committed as a child, and the rest is committed as an adult, the specific provisions concerning children shall be applied and respected.
Conclusion	If the crimes are assessed in one criminal proceeding, the specific provisions concerning children shall be applied.

Case reference (court, decision number and date)	BH2015. 61.
Main issue of the case	Theft committed by a child.
Summary of the facts	The child committed theft and the court held a court hearing in the absence of the child.
Summary of the findings	The child cannot waive his/her right to be present at the court hearing even if the child reaches the age of 18 at the time of the court hearing.

Conclusion	The court hearing cannot be held in the absence of the child in the criminal proceeding against the child.
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Case reference (court, decision number and date)	BH2014. 43.
Main issue of the case	Extortion committed by a child.
Summary of the facts	The child committed extortion and the child' s parent (i.e. legal representative) did not participate at the court hearing therefore could not exercise his/her legal rights.
Summary of the findings	One of the child' s parents who does not exercise custody rights were present at the court hearing and this is sufficient for the protection of the child' s rights.
Conclusion	If the parent who exercises the custody rights is absent from the court hearing, it does not necessarily result in the unlawfulness of the criminal proceeding.

Case reference (court, decision number and date)	Fkf.536/2015/22.
Main issue of the case	Physical abuse committed mainly by children against another child.
Summary of the facts	The court excluded the public from the court hearing for the protection of the children.
Summary of the findings	The exclusion of the public was necessary for the moral improvement of the children.
Conclusion	The exclusion of the public from the court hearing may be necessary for the protection of the child.

Case reference (court, decision number and date)	Bf.18/2019/18.
Main issue of the case	Criminal proceeding committed against a minor victim.
Summary of the facts	The court excluded the public from the court hearing for the protection of the child and excluded the defendant from the hearing of the victim.
Summary of the findings	The victim of the sexual abuse was a child which can be the legal basis for the exclusion of the public.
Conclusion	The exclusion of the public from the court hearing may be necessary for the protection of the child.

LA CHILD

Enhancing legal aid for children in conflict with the law



The project is funded by the Justice Programme of the European Union (2014-2020)

Coordination of the project



Project partners



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