

# ALTERNATIVE WAYS TO ADDRESS YOUTH Diversion in the Hungarian juvenile justice system

'AWAY' PROJECT



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# GLOSSARY

The following definitions were used throughout this research:

**Accused, suspected child:** (procedural status) a child accused or suspected of committing a crime as defined under domestic and international law.

**Authority:** court, guardianship authority, police, prosecutor, immigration authority, alien-policing agency, refugee agency; every relevant public agency or body that, according to national regulations, is entrusted with a competence and mandate to become involved in criminal proceedings.

**Child:** any person under the age of 18.

**Child-friendly justice:** justice systems which guarantee respect for and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed (in tables) below and giving due consideration to the child's level of maturity, understanding and the relevant circumstances of the case. It is, in particular, justice that is accessible, age-appropriate, speedy, and adapted to and focused on the needs and rights of the child. Furthermore, it respects the rights of the child, including the right to due process, the right to participate in and understand the proceedings, the right to be respected in his/her private and family life, and the right to integrity and dignity.

**Criminal proceedings:** the procedure under which a person is suspected or accused of having committed a crime (as defined under national or international law), that is carried out until

a final determination is reached as to whether the suspect or accused person has committed the criminal offence, and includes, where applicable, sentencing and the resolution of an appeal. As a consequence, any activity that follows a conviction, such as the period in which a person serves their sentence (i.e. post-conviction), does not fall within the scope of criminal proceedings.

**Diversion:** channelling children in conflict with the law away from judicial proceedings, towards an alternative resolution that would enable many – possibly most – to be dealt with by judicial or non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings and a criminal record. This process may start even before an arrest is made, and may proceed through the final disposition – it should ideally start as early as national legislation allows. It may have restorative and welfare aspects, and may include measures based on the principles of restorative justice – although diversion and restorative justice are two different concepts (diversion methods do not necessarily 'restore the harm caused'; for example, a warning can be used as a method of diversion).

**Juvenile delinquency:** participation in criminal activities (or behaviours defined as a criminal offence) by children (young offenders) under the age of 18 but over the age of criminal responsibility.

**Juvenile justice system:** the primary national system that addresses and deals with crimes committed by juveniles.

**Lawyer of the child:** a lawyer appointed to represent the suspected or accused child during criminal proceedings.

**Restorative justice:** a way of responding to criminal behaviour that balances the needs of the community, the victims and the offenders.

**Vulnerability:** the degree to which a child can avoid or modify the impact of safety threats based on their age, physical/ intellectual/social

development, emotional/behavioural functioning, role in the family, and ability to protect him/herself. All children, by definition, are vulnerable and require special protection appropriate to their age, level of maturity and individual special needs (see: 2012/29/EU minimum standards on victims of crime).



## LIST OF ABBREVIATIONS

AWAY – Alternative Ways to Address Youth, Research project

CEE – Central and Eastern Europe

EU – European Union

KSH – Hungarian Central Statistical Authority

OBH – Hungarian National Office of the Judiciary

UNCRC – United Nations Convention on the Rights of the Child

# INTRODUCTION

This report has been developed within the framework of the 'Alternative Ways to Address Youth (AWAY)'<sup>1</sup> project. AWAY is a regional project that has been implemented in five EU member states (Belgium, Bulgaria, Croatia, Hungary, and Romania), under the coordination of Terre des hommes Regional Office for Central and South East Europe based in Hungary.

AWAY aims to observe the regional justice systems to gather empirical evidence on the use or non-use of diversion methods. To that end, national research was conducted in the participating countries to identify the challenges and obstacles in the use of diversion, and to map the existing alternative services for children.

Through the implementation of its activities, AWAY intends to: (1) develop and deliver a self-directed e-learning course, as well as one-to-one and group mentoring with multidisciplinary professionals on child-friendly practices in diversion; (2) utilize the research findings and cumulated lessons from training sessions to develop child-friendly materials and easy-to-use information for children and adults in the target countries; and (3) inform related local and regional policies and plans of action.<sup>2</sup>

Along with diversion, AWAY investigates how three procedural directives of the European Parliament and Council (EU directives 2012/29 on the rights of victims of crime, 2012/13 on the right to information in criminal proceedings, and the EU 2016/800 directive on procedural safeguards for children suspected or accused in criminal proceedings) have been transposed in participating member states.

The objective of AWAY is to investigate the process of diversion in several countries, but as international organizations have found, there are a number of working definitions of diversion and, as a result, a spectrum of practices, which makes it difficult to compare procedures and implementation between countries and territories.<sup>3</sup> In most countries, national stakeholders use international frameworks to consider di-

version as redirecting a child in conflict with the law away from judicial proceedings; therefore a process that takes place before the first trial hearing. In some countries, however, diversion includes forms of alternative procedures instigated between the start of judicial proceedings and sentencing.

AWAY also targets hindrances to the realization of the procedural rights of suspected or accused children and the emergence of child-friendly justice.

Children face various obstacles in seeking justice and demanding respect for their rights, including their lack of legal capacity<sup>4</sup> and their particular status as minors.<sup>5</sup> Their vulnerability is further exacerbated in the course of investigations or criminal proceedings by social and administrative conditions such as living in state care or belonging to a marginalized minority group. The procedural guarantees that need to be triggered for children suspected or accused in criminal proceedings indeed raise additional challenges for national justice systems, and alternative procedures must be taken when professionals divert a child's case. Discretion of the professionals (to apply for diversion) and lack of transparency are only "the tip of the iceberg".

This report covers Hungary, one of the five participating countries in the AWAY project. The report is the combined result of desk research, analysis and semi-structured interviews with adult stakeholders and children. Developed according to the research methodology used in all five project countries, it presents Hungary-specific findings, and identifies noteworthy practices as well as recommendations. In line with the research aims, it discusses the factors that affect and hamper the effective use of diversion, as well as the transposition of the three EU directives.

The information and findings in this report and in the other national reports will serve as a basis for a regional comparative report.

<sup>1</sup> JUST/2015/RCHI/AG/PROF/9589

<sup>2</sup> According to the project proposal.

<sup>3</sup> Latimer, J., Dowden, C., Muise, D. (2005). The effectiveness of restorative justice practices. *The Prison Journal*. 85(2), 127-135.

<sup>4</sup> Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3> (accessed 03 November 2017).

<sup>5</sup> Golub, S., Grandjean, A. (2014). Promoting equitable access to justice for all children. UNICEF Insights, Issue 1/2014.

In Hungary, research was conducted by the Hintalovon Child Rights Foundation. The research team consisted of a psychologist, criminologist/lawyer, lawyer and economist/cross-border family mediator (all of whom co-authored the final report). Researchers focused on their area of expertise in relation to diversion:

1. Legislation and legal background (Dr. Nóra Sánta and Anna Rosner)
2. Child participation (Barbara Németh)
3. Restorative justice and diversion (Éva Kerpel and Dr. Szilvia Gyurkó)

## OVERVIEW

Table 1: Hungary in numbers

Capital	Budapest	Population	9,864,749 (Central Statistical Office, 2014)
Regime	Parliamentary democracy	Population under 18	1,997,904 (under 19, Hungarian Central Statistical Office, 2013) 1,797,955 (aged 0–18. Central Statistical Office, 2010)
Religions	Roman Catholic 37.1%, Calvinist 11.6%, Lutheran 2.2%, Greek Catholic 1.8%, other 1.9%, none 18.2%, unspecified 27.2% (Central Statistical Office, 2011 est.)	Children in detention	Total no. of offenders: 10,056; Convicted: 5,279; PTD: 304; Administrative detention: 525; Imprisonment: 1,595; Reformatory: 454 (2013)
IDH ranking	37 (UNDP, 2012)	Age of criminal responsibility	Since July 2012, 12 for premeditated homicide, voluntary manslaughter, bodily harm leading to death or resulting in life-threatening injuries, robbery and rolling (robbing a helpless person); 14 for other crimes.
Legal system	civil legal system influenced by the German model	Literacy	99% (aged 15+, 2011, CIA World Factbook)

In this particular research, we recognize that Hungarian legislation is, in most cases, in harmony with the basic principles of EU law, but that a gap exists between legal norms and practices. Lack of facilities and training, along with budget and personnel limitations, has created serious problems in the juvenile justice system. Lack of sensitivity towards diversion (restorative justice) and children's rights among professionals exacerbates the problem.

One of the most important findings of the Hungarian research is that both professionals and front-line workers struggle with the parallel existence of the highly standardized children's rights-based approach of legal norms, and the formal, bureaucratic, hierarchical, and seriously underfinanced operation of the juvenile justice system. In this system of dual requirements, professionals working in the field of juvenile justice often automatically apply legal regula-

tions with little regard for the individual needs of the children concerned. Therefore, diversion (and restorative justice), which considers the personal needs, interest and rights of the child, is applied significantly less frequently than 'traditional' criminal outcomes like community work, suspended prison sentences or imprisonment. Yet, some professionals use diversion without a real understanding of its purpose and philosophy, which is especially sad in cases of drug-related diversions where professionals apply methods regardless of the individual needs (family circumstances, level of addiction, etc.) of the juvenile offender. As one expert stated in an interview:

The new criminal procedure code:

- Refers *expressis verbis* to the United Nations Convention on the Rights of the Child (UNCRC) and children's rights (Section 87)
- Extends child-friendly justice principles to suspected and accused children (Section 87)
- Declares anyone under the age of 18 vulnerable (*különleges bánásmódot igénylő személy*) (Section 82(a))<sup>7</sup>
- Emphasizes the obligation to cooperate with child protection services (through mandatory reporting) (Section 679)
- Transposes directive 2016/800/EU

*The message of the new criminal procedure is clear: we declare the importance of child rights and we use a child rights approach. (A representative of the Ministry of Justice)*

Regarding diversion, the new procedural code (coming into force 1 July 2018) also contains important and promising changes for access to and diversity of diversion methods:

- More types of diversion will be applicable during an investigation (even before police formally close the investigation).<sup>8</sup> (Section 309)
- Diversion will be available at the first questioning of the accused/suspected person.
- The criminal procedure will be faster and simpler (giving public prosecutors more legal power to end the criminal process by diversion). (Section 402)
- A new type of diversion, the 'conditional suspension by the prosecutor' (*feltételes ügyészi felfüggesztés*), will be introduced (sec. LXVII, Section 416). This new legal instrument enables the public prosecutor to end the criminal procedure in case of petty crime, depending on the future (good) behaviour of the perpetrator.
- Diversion will be more widely available (not only for petty crime).

*We try to make diversion as widely available as possible. (A representative of the Ministry of Justice)*

We also need to emphasize that diversion, or any alternative conflict resolution model, cannot succeed without real political will. Legislation on its own is not enough for efficient implementation. In Hungary, public opinion is generally against what is perceived as 'soft techniques', and most politicians use harsh narratives when they speak of juvenile justice. In the past decade, the type of crime most often hit by punitive political rhetoric was drug-related crimes. One

*They use diversion regardless of the personal needs of the child. Sometimes I call the police officer and say: "listen, we both know that it won't help, please don't do this"...and then we try to find another solution. (Addiction counsellor)*

In spite of the challenges, we are confident that there is a future for diversion in Hungary. The new criminal procedure law coming into force in 2018 includes several promising regulations in relation to children's rights and procedural safeguarding of suspected and accused minors.<sup>6</sup>

of the most painful consequences of this type of rhetoric was that despite decreasing tendencies in juvenile delinquency, the Hungarian Parliament lowered the minimum age of criminal responsibility from 14 to 12 for 6 specific criminal deeds in 2012, with the justification that 'children are committing more crime'.<sup>9</sup> For other crimes, the age of criminal responsibility remained 14.

<sup>6</sup> 2017. XC. Act

<sup>7</sup> A person requiring special consideration.

<sup>8</sup> Actually, the applicability of diversion is very limited in investigation. See Table 11.

<sup>9</sup> <https://www.ajbh.hu/documents/14315/131278/Child-friendly+justice+from+the+Hungarian+Ombudsman's+perspective/53bc5136-3d2a-40d2-b576-2ea6a5b2f979;version=1.0> (accessed 2 October 2017).

## KEY CONCEPTS<sup>10</sup>

Juvenile justice systems in Europe have undergone considerable change in the past 20 years, particularly those justice systems in the formerly socialist countries of Central and Eastern Europe (CEE). These legal and structural changes concern the implementation of alternative measures, diversion, victim-offender mediation and other restorative techniques in the majority of the CEE countries.

Despite these positive changes, juvenile justice systems still tend to focus on punishment rather than rehabilitation, prosecution rather than diversion, and detention rather than community alternatives. Indeed, none of the countries in the CEE region has a fully specialized and

separate justice system for children. The vast majority of children in conflict with the law in the region are accused of petty or non-violent offences.

This country-based research highlights the existing gaps, bottlenecks or obstacles in applying restorative approaches, and maps the availability of age-appropriate and gender- and community-based services for diversion. The research was based on participatory, child-friendly and qualitative methods involving professionals, academics, and children. It focuses on the challenges in implementing diversion measures, particularly outside of Budapest, the capital, and highlights positive practices.

## METHODOLOGY

Our research used cross-sectional, descriptive analysis (to become familiar with the data) of diversion in the Hungarian juvenile justice system. We also used applied qualitative research with diverse methods like semi-structured (in-depth) interviews and focus group discussions,

and quantitative research like desk research (including legislation and summaries of previous research studies, and statistical data), together with secondary analysis of criminal statistical data on the frequency of occurrences between 2011 and 2016.<sup>11</sup>

The primary target groups of the **qualitative research** were:

- a. Children who had been in conflict with the law and were diverted (have personal experience about diversion), and
- b. Professionals working in the juvenile justice system, or with suspected/accused children, who had experience with diversion.

During the research we conducted 13 interviews with children (10 diverted and 3 non-diverted; 5 female and 8 male, between the ages of 14 and 17), and 15 semi-structured interviews with stakeholders. The adult interviewees consisted of 2 prosecutors, 2 judges, 3 police officers, 1 probation officer, 1 child protection guardian (*gyermekvédelmi gyám*)<sup>12</sup>, 2 child protection experts, 1 human rights advocate, 1 addiction counsellor, and 2 representatives of the Minis-

try of Justice. The majority of the interviewees were female (11 people), representing the feminine character of the Hungarian justice and child protection systems (at least regarding front-line workers –top positions are still occupied mainly by men).<sup>13</sup>

Some of the interviews with diverted children took place in a calm room at the residential home for children taken from their biological

<sup>10</sup> According to the project proposal.

<sup>11</sup> The research was guided by a number of ethical principles: Informed Consent: interviewees were fully informed about the project and the way in which their information would be used in order for them to give informed consent. With regard to children, this meant that the project was explained in a manner that they could understand and that the interview questions were adapted accordingly; Data protection: data obtained during the research was kept confidential and stored securely; Purposeful use of data: data obtained from the interviews for this research was used for this research only.

<sup>12</sup> The child protection guardian represents children living away from their family (in a residential home or with foster parents). This particular kind of guardian must provide and represent the best interest of the child. Their task is supervising the foster parents, assessing the health status of the child, his/her physical, emotional, and moral development. Child protection guardians are supervised by the Guardianship Authorities.

<sup>13</sup> See Annex 2 for the research questions.

families (7 children); and others in a friendly and peaceful room at the NGO that provided diversion and treatment for children who committed drug-related crimes (3 children). The 3 non-diverted children were interviewed in a calm place at a leisure and sport centre.

We did not use audio recording. One interviewer took handwritten notes, and the other typed the child's answers. Interviews were conducted in pairs and always after having obtained the

informed consent of both the child and his/her legal representative – as required by our Child Safeguarding Policy and the ethical principles of the project.

The children's interviews lasted 30 minutes on average; the children wanted to 'go through' the questions as fast as possible. It was not easy for them to talk about the criminal procedure and the crime they committed. For most of them, these are bad, traumatizing memories.

*In our gang I was the one traumatized the most. I deeply regret that I smoked.... the consequence was awful. My father did not talk to me for weeks. (Girl, aged 16)*

For **non-diverted children**, the interviews were shorter because these children had no idea about diversion or the juvenile justice system.

- Have you ever heard the term 'diversion'?
- *No.*
- *I heard it when police reroute the traffic...but it may be not the same! (laughs)*
- What do you think, what does diversion mean if someone commits a crime?
- *Maybe the process is shorter...*
- *....and the perpetrator meets different persons, not the judge or the police... (Girl, age 14)*

According to the centralized Hungarian justice system, an official request was necessary in order to interview judges, public prosecutors, police officers, and probation officers. The head of the competent authorities selected the person to be interviewed. All of the relevant authorities provided access to a professional (and to their statistical database).

Only one interviewer conducted the interview with the adult stakeholder, and they also typed notes during the conversation. While all of the interviews with children were conducted in person, some of the adult stakeholders were interviewed via Skype, and others were only available by phone. Generally, these interviews lasted between 50 and 80 minutes.

We also organized 2 focus group discussions. One was held in Budapest, and one in the provincial town of Pécs. The group discussions focused on intersectoral cooperation and the

experiences of rural areas, especially of disadvantaged communities in Pécs, where 6 people joined from the local probation officers' service, the child protection system and the social welfare system. The other professional group discussion was organized for judges and focused on child-friendly initiatives in courts.

Concerning quantitative research, we carried out extensive desk research on all of the available official documents (national action plans, strategies, draft codes, and comments concerning juvenile justice, child delinquency, and restorative justice/diversion), previous research, reports and relevant papers.<sup>14</sup>

We also examined the national statistics according to the research matrix (see Annex 1). The relevant criminal statistics are public data and are available on the websites of the competent authorities. For all other information required in the research matrix, we asked the Public Prosecutor's Office.

<sup>14</sup> See bibliography

# LIMITATIONS

## 1. NO AVAILABLE DATA FOR 2015–2016

We worked from both publicly available data sources and specially requested statistical data. There was no data available for 2015–2016 on the legal consequences and outcomes of juvenile criminal procedures, and the National Office for the Judiciary (Országos Bírósági Hivatal) refused our special request in this field. Other sources provided limited data for 2015–2016.

## 2. LIMITED ACCESS TO CHILDREN

The most time-consuming part of our research was gaining access to children who committed a crime and had experience with diversion. It was challenging that both children and parents felt did not want to recall or be linked to the offence. Finally, we conducted most of these interviews in a residential home in the countryside for child offenders. However, the majority of Hungarian juvenile offenders live with their families.

## 3. POLITICISATION OF DIVERSION FOR DRUG-RELATED CRIMES AND JUVENILE JUSTICE

During the adult interviews we faced the challenge of politicisation. The issue of diversion in relation to drug-related crime and the opera-

tion of the juvenile justice system are affected by actual political narratives. Some interviewees made political or ideological statements instead of stating their professional opinions.

## 4. NO OPENLY CRITICAL VIEWS

In most cases, interviewees shared their critical opinion only off the record, despite being told that their opinions would appear anonymously in the research report.

## 5. CHANGING LEGAL ENVIRONMENT

There is ongoing legislative reform in Hungary.<sup>15</sup> Both during the time this report was written, and in the following years, all of the relevant legal norms have or will change. We analysed both the current and future regulations, and sometimes the professionals we interviewed appeared confused concerning the legislation.

<sup>15</sup> Since 2010, there is an ongoing codification of the most important and fundamental legal norms of Hungary. After the radical reform of the Constitutional Law (2011) and Criminal Code (2012), as well as the Civil Code (2013), the procedural regulations were also amended. The administrative procedures run under the new rules since 2017, and the new criminal procedure law comes into force in 2018.

# 1. CHILDREN IN THE JUVENILE JUSTICE SYSTEM IN HUNGARY

## PREVALENCE OF THE PHENOMENON

The number of child and juvenile offenders shows a dynamically descending tendency, even when compared to the decreasing child population.

In Hungarian law, a child is a person under the age of 18, unless the person is married. If a person is above 16 years of age, the guardianship authority may issue a marriage permit, which also means that adulthood has been attained. A child cannot be held accountable under criminal law. A person under the age of 14 at the time an act was committed cannot be tried for a criminal offence. Persons under the age of 14 at the time the criminal offense was committed shall be exempt from criminal responsibility, with the

exception of homicide, voluntary manslaughter, battery, robbery and plundering, as long as the child was at least twelve years old when the criminal offense was committed, and if they had the capacity to understand the nature and consequences of their acts. Criminal law prescribes separate rules for persons (juveniles) between the ages of 12 and 18, including more lenient sentencing, different criminal procedures, and correction rules containing specific guarantees in order to protect the interests of the minor.

The proportion of child offenders exceeds 1%, and is slightly under 8% for juveniles within the total number of offenders.

Table 2: Number of juvenile offenders according to the type of the crime<sup>16</sup>

	2011	2012	2013	2014	2015	2016
Total according to Act. No. 4/1978. (previous Criminal Code)	11 034	10 056	9542	2932	564	136
Total according to Act No. 100/2012. (new Criminal Code came into force in June 2013 )			669	5791	7224	7487
<b>Total</b>	<b>11 034</b>	<b>10 056</b>	<b>10 211</b>	<b>8723</b>	<b>7788</b>	<b>7623</b>
<b>According to the type of the crime:</b>						
Truculence (garázdaság)			120	1356	1731	1590
Property crimes			378	2724	3212	3064
Violent crimes against person			27	424	547	624
Violent crimes against property			60	380	352	401
Drug-related crimes			6	155	276	348

A new criminal code was adopted during the period investigated (2011–2016), thus Table 2 shows the number of juvenile crimes under both laws. Regarding child offenders, the most important consequence of the new code was

the lowering of the minimum age of criminal responsibility – that caused no significant change in the statistics shortly after the initiation of the new code, but 3 years later (see Table 3).

<sup>16</sup> Source: KSH, Central Statistical Authority (2017).

# PROFILE OF CHILDREN (GENDER, AGE, TYPES OF CRIMES) SUSPECTED OR ACCUSED

In accordance with general European trends, the majority of child offenders are male

Table 3: Female-male ratio among child and juvenile offenders<sup>17</sup>

	2011	2012	2013	2014	2015	2016
<b>Female</b> child offenders	482	444	419	293	239	291
<b>Male</b> child offenders	2,233	2,160	1,778	1,195	1,136	1,371
<b>Total</b> <sup>18</sup>	<b>2,715</b>	<b>2,604</b>	<b>2,197</b>	<b>1,488</b>	<b>1,375</b>	<b>1,662</b>
<b>Female</b> juvenile offenders	2040	1838	1756	1537	1451	1364
<b>Male</b> juvenile offenders	9338	8580	8715	7269	6421	6311
<b>Total</b>	<b>11378</b>	<b>10418</b>	<b>10471</b>	<b>8806</b>	<b>7872</b>	<b>7675</b>

Child and juvenile criminality is closely linked to family circumstances and environmental factors. We found the highest rates of juvenile crime in the most deprived areas outside of Budapest, where unemployment, social exclusion, material deprivation, poor education and the lack of social and child protection services are the most severe problems.

We were also interested in recidivism among juveniles. It is commonly understood that recidivism is lower in cases where diversion and restorative justice are used. Unfortunately, due to missing data we were unable to reach a valid or relevant conclusion based on the Hungarian criminal statistics. (Table 4)

Table 4: Number of first offenders and recidivism among juveniles<sup>19</sup>

	2011	2012	2013	2014	2015	2016
No previous crime (first offender)	10,078	9180	8720	1587		
Not a repeat offender	716	702	700	545	540	517
Recidivist	133	94	83	36	42	31
Special recidivist offender (committed the same crime)	88	65	46	19	21	22
Multiple recidivist offender	19	15	10	10	6	6
Missing data			652	6,526	7,179	7,047

<sup>17</sup> Source: OBH, National Office for the Judiciary (2017).

<sup>18</sup> The criminal statistic differ according to the source. Thus, the numbers in the KSH statistics (Table 2), do not necessarily match the numbers of the OBH (Table 3). This problem emerged in the CRC reporting in 2014, and the last Concluding Observation remarks on this problem. Source: <https://www.ohchr.org/en/countries/enacaregion/pages/huindex.aspx> (accessed 04 September, 2018)

<sup>19</sup> Source: KSH, Central Statistical Authority (2017).

## DIVERTED AND NON-DIVERTED CHILDREN

Official Hungarian statistics allows us to compare the number of juveniles sentenced by the court and the number of juveniles diverted dur-

ing criminal proceedings (Table 5). However, we were not given access to court statistics, and thus data for the last two years are missing.

Table 5: Number of juveniles sentenced/diverted

	Number of juveniles sentenced by the court <sup>20</sup>	Number of diverted juvenile offenders <sup>21</sup>
2011	5,840	1,651
2012	5,096	1,494
2013	5,181	1,754
2014	5,451	1,331
2015	no available data	1,185
2016	no available data	1,176

According to the statistics, the ratio of diverted juveniles varied between 25% and 33% in the last years compared to the total number of juvenile offenders, and there is a diminishing tendency. The total number of juvenile offenders decreased overall, as did the number of diversions.

The number of diversions varies between counties and cities. It was revealed in the stakeholder interviews that some local authorities prefer diversion more than others.<sup>22</sup>

*We try to use diversion as much as possible. We may finish the criminal procedure in about half of the cases by applying diversion and only the rest goes to court... (Prosecutor)*

Looking at the number of juvenile offenders diverted according to the type of crime (Table 6), we saw a dramatic drop in drug-related diversions. Unfortunately, it is unclear why this happened.

Table 6: Number of diverted juvenile offenders according to the type of the crime

Bűncselekmény típusok/év	2011	2012	2013	2014	2015	2016
Drug-related crime	271	200	200	114	14	7
Truculence ( <i>garázdaság</i> )	481	446	602	494	460	442
Theft	462	421	478	312	314	274
Minor assault ( <i>könnyű testi sértés</i> )	141	148	177	128	121	133
Vandalism ( <i>rongálás</i> )	64	51	65	43	28	26
Összes	1651	1494	1754	1331	1185	1176

We also looked at the gender ratio among the juvenile offenders who were diverted during criminal proceedings (Table 7) and

found no significant difference when compared to the total number of female or male youth offenders.

Table 7: Ratio of female-male juvenile offenders in diversion (M = male, F = female)<sup>23</sup>

2011		2012		2013		2014		2015		2016	
M	F	M	F	M	F	M	F	M	F	M	F
1309	342	1157	337	1369	385	1025	306	908	277	892	284

<sup>20</sup> Source: OBH, National Office for the Judiciary (2017).

<sup>21</sup> Source: KSH, Central Statistical Authority (2017).

<sup>22</sup> Read more about this in 'institutional culture', in Chapter 3.

<sup>23</sup> Source: KSH.

# CRIMINAL PROCEDURES FOR CHILDREN

Comparing the total number of juvenile offenders to the number of diversions (Table 6), and to the forms of diversion and other legal consequences (Table 8), we found that probation and punitive measures (intézkedés) were most frequently applied by the courts in the criminal procedures of juveniles. Probation was the leading diversion methods, while the most frequent alternative sanction<sup>24</sup> was work for public interest (court ordered community service).

Courts preferred punitive measures to other sanctions in juvenile cases until July of 2013,

when the new criminal code came into force and changed the structure of the sanctions. According to the Hungarian criminal code, punitive measures for juvenile offenders include: penalty (*pénzbüntetés*), suspended driving license (*járművezetéstől eltiltás*), banned from particular places (like stadiums in case of football hooliganism) (*kitiltás*), and expulsion (in case of foreign juveniles) (*kiutasítás*). After 2013, the list of legal consequences did not change, but they were renamed 'sanctions' (Section 33).

Table 8: Legal consequences for juvenile offenders in 2014<sup>25</sup>

	2014
Warning ( <i>megrovás</i> )	123
Probation ( <i>próbára bocsátás</i> )	2,561
Work performed in amends (service as restitution) ( <i>jóvátételi munka</i> )	10
Prison sentence	321
Suspended prison sentence	619
Work for public interest (court ordered community service) ( <i>közérdekű munka</i> )	973
Absence of sentencing	32
Additional sentence ( <i>mellékbüntetés</i> ) or measure ( <i>intézkedés</i> )	2,919

According to the criminal code, in cases of less serious crimes the judge should chose a punitive measure rather than a sanction, including the deprivation of liberty (Section 33. (5)).

Examining the duration of the proceedings, the average number of days from the order to investigate until prosecution was 312 in 2013, and 285 in 2014. The average number of days from the order to investigate until the legally binding court decision was 930 in 2013, and 899 in 2014. Thus, a child under the age of 18 may be the subject of a criminal proceeding for nearly 3 years, on average, until a legally binding decision is rendered. In light of this, the question arises: how can 'the imposition of legal consequences as soon as possible' be realised in these cases?

*The workload is crucial from this point of view...in cities and counties where criminal infection is high, it is almost impossible to ensure the priority of the cases that affect a minor. (Prosecutor)*

*If the criminal procedure lasts for years, it loses all its "charm"...and its educational value is minimal. (Addiction counsellor)*

*Regarding the duration of the procedures, the key person is not the police officer or the prosecutor, but the judge. If (s)he has a lot of cases, (s)he will postpone the trial or set the date for a hearing or trial months later. (Prosecutor)*

<sup>24</sup> 'Alternative' means no deprivation of liberty.

<sup>25</sup> Based on official court statistics made available 30 October 2017. Source: OBH

Children's rights are more or less uniform for all legal proceedings, such as the fundamental right to a 'fast' procedure, or the right to be accompanied by a legally responsible and trusted adult throughout the proceedings. There are, however, some special rights concerning criminal procedures that protect the best interest of child victims and witnesses, as well as the general wellbeing of any child in conflict with the law (for instance, a separate institutional system of trained professionals).

Ensuring a child's right to procedures without undue delay (a principle of child-friendly justice) is fundamental, but the effective realization of

other principles is also important. At the level of legal norms, Hungary fulfils all of the relevant requirements, but their completion is an ongoing process. Hungarian legislation mostly complies with International and European obligations according to the latest periodic reviews (UNCRC, UNCHR, etc.).<sup>26</sup> But if the realization of children's rights is hindered in any way, it is not due to lack of legislation, but a lack of implementation.

## 2. OVERVIEW OF THE JUVENILE JUSTICE SYSTEM IN HUNGARY

### INTRODUCTION TO THE ADMINISTRATION OF JUSTICE IN HUNGARY

The first legal document in the Hungarian legal system addressing a juvenile justice system and the criminal responsibility of children was the amendment to the Csemegi Code (1878. évi V. törvény) in 1908 (1908. évi Büntető Novella). Due to a new academic approach in criminology,

this regulation addressed the specific needs of children in conflict with the law, and focused on their resocialisation and education, and as such it can be considered the first manifestation of modern juvenile justice in Hungarian law.

Presently, the most important laws concerning the Hungarian juvenile justice system are:

- The **Fundamental Law of Hungary**, promulgated on 25 April 2011, which came into effect on 1 January 2012. It is the fundamental constitutional document of Hungary and contains several fundamental rights in relation to the justice system. Of the **Fundamental Law of Hungary**, the most relevant and related chapters are:

#### 1. 'Freedom and Responsibility':

- a. Section IV: right to freedom, equality before the law
- b. Section XV: equal legal capacity, prohibition of discrimination
- c. Section XVI: child's right to protection
- d. Section XXVIII: right to access to justice, right to a fair trial, right to legal representation, right to remedy, right to submit complaints and requests, limitation, and other procedural safeguards

#### 1. 'Freedom and Responsibility':

- a. Sections 25–28: courts, justice system, judges
- b. Section 29: the prosecution service

<sup>26</sup> See the relevant reports and concluding observations:  
<https://www.ohchr.org/en/countries/enacaregion/pages/huindex.aspx> (accessed 04 August 2018).

- The **Criminal Code**, promulgated on 13 July 2012, and which came into effect on 1 July 2013. From the **Criminal Code** the relevant and related chapters are:
  1. Section 16: the minimum age of criminal responsibility
  2. Section 29: active repentance
  3. Section 67: work performed in amends
  4. Section 69: probation with supervision
  5. Chapter IX: Provisions relating to young people (juvenile offenders)

While in some EU member states there is a separate criminal code applicable to juvenile offenders, in the Hungarian legal system there is only one criminal code which has a separate chapter containing special regulations/provisions for juvenile offenders. We have to mention that a concept was put forward in 2006 for a separate Juvenile criminal code for offenders between the ages of 14 and 18, which would have contained not only substantive but procedural regulations as well, but legislators did not accept the proposition.

The Criminal Code defines who a juvenile is from a criminal perspective, sets the minimum age of criminal responsibility, and determines the applicable punishment.

- The **Criminal Procedure Act** (*Büntetőeljárás törvény*), which became effective on 1 July 2013, of which the most relevant and related chapters are:
  1. Chapter XXI: Criminal proceedings against juvenile offenders
  2. Sections 222–227: postponement of the indictment
  3. Section 114/A: opinion of the probation officer

The Code of Criminal Procedure Act lays down several safeguards in connection with procedures against juveniles in a separate chapter.

- The **Child Protection Act** was promulgated on 8 May 1997, and came into effect on 1 November 1997. It regulates the ‘re-education of young offenders’, which shall be conducted in reformatory institutions aiming to reintegrate youth in conflict with the law back into society. This is a special punishment applicable only for juveniles according to the Criminal Code. From 1 January 2015, the intention of (re)education has been extended to a new legal institution, ‘Preventive Probation’ (*megeelőző pártfogás*), and can be applied to juveniles considered criminally deviant. Preventive Probation can only be ordered by the Guardianship Authority of the child protection system, and therefore without criminal court proceedings. The main purpose of this kind of probation is preventing recidivism with soft measures like family support, personal care, and so forth
- The **Misdemeanours Act** was promulgated on 6 January 2012, and came into effect on 15 April 2012. It regulates smaller criminal offences, and, like the Criminal Code, has a separate chapter outlining special safeguards in procedures involving juveniles. Furthermore, for misdemeanour offenses, the age of criminal responsibility is always 14. From the **Misdemeanours Act** the relevant and related sections are:
  1. Sections 27 and 27/A: Regulations relating to young people (juvenile offenders)
  2. Chapter XX: Provisions relating to young people (juvenile offenders)

Separate juvenile courts (young offender’s courts) do not exist in the Hungarian legal system as they do in some EU member states, instead they are part of the general organisation of the court (*általános bírói szervezet*). In Hungary, the head of the National Office for the Judiciary/National Judiciary Council has the power to assign judges adjudicating in cases where children are in conflict with the law.

Section 448 of the Criminal Procedure Act concerns the composition of the court in criminal proceedings against juvenile offenders. As there are no separate juvenile court regulations in this section, they are meant to safeguard children’s rights.

- (2) In the first instance, the presiding judge (single judge), while in the second instance, a member of the panel shall be the judge designated by the National Judiciary Council.
- (3) At the court of first instance, one of the associate judges on the panel shall be a teacher.

In Hungary, lawyers representing juvenile offenders are not specialized in representing children in criminal proceedings; they do not have a special status like ‘youth lawyer’ as some have in the Flanders region of Belgium, and which is recognized by the local bar association.

International reports by UNCRC, UNDP and other institutions frequently criticise the Hungarian juvenile justice system for:

- Lack of separate legislation, **code and institutional system**<sup>27</sup>
- Lowering the **age of criminal responsibility**<sup>28</sup>
- Lack and/or shortage of professionals, protocols and evaluation guidelines to examine the capacity to **understand the nature and consequences of one’s acts**
- The low number of cases in which **alternative sanctions and diversion** are applied<sup>29</sup>
- The conditions of **detention facilities**<sup>30</sup>
- Changing unpaid or unsettled fines, on-the-spot penalties and imposed but unfulfilled community service to **detention for misdemeanours**, which is contrary to the international principle that detention shall be imposed only as a measure of last resort<sup>31</sup>

## CHILDREN AND CRIMINAL JUSTICE/DIVERSION IN HUNGARY

Children who cannot be prosecuted (those under the age of criminal responsibility) are subject to the Child Protection Act. Criminal proceedings against these children shall be terminated, and this should be reported to child welfare services, or other members of the reporting system (e.g. guardianship authority, *gyámhivatal*). The child protection system then decides the legal consequences (out-of-home placement, family support, defining behavioural rules, etc.) for the child’s actions at its own discretion. From 1 January 2015, the intention of (re)education has been extended to the new legal institution of **preventive probation** (*megelőző pártfogás*), which can be applied to children or juveniles accused of criminal deviancy.

Additionally, child protection is extended by law to prevention and aftercare (*utógondozás*). The realization of this part of legislation is impaired in many ways (lack of financial, human and physical resources, as well as capacity problems).<sup>32</sup>

Concerning children and criminal justice, the Hungarian Government declared 2012 the year of the **Child-Friendly Justice**, and based on the Council of Europe’s Guidelines it launched programs to protect child victims. In 2012 and in 2013, two regulation packages were put in place

with the intention of spreading the term and the legal institution of child-friendly justice via amendments to specific regulations. The aim was to guarantee a more complex and substantial protection of the child’s rights during civil and criminal procedures for children in conflict with the law.

According to the OBH (*Országos Bírósági Hivatal*, the National Office for the Judiciary), ‘Child-friendly justice is a justice system that promotes on the highest level the respect of the child’s rights, the child’s participation in every procedure, and the best interest of the child’.

Since 2012, the OBH has established child-friendly justice working groups in order to facilitate the assertion of the child’s rights during legal procedures. Moreover, child-friendly justice training has become available to judges.

In 2012, the Ombudsman explored the gaps between law and practice in child-friendly justice by conducting several inquiries and reports on the fulfilment of international obligations, victim protection with special emphasis on children, a general evaluation of the youth justice system (criminal, civil and administrative proce-

<sup>27</sup> UNCRC Concluding Observations, 2014. <http://hrlibrary.umn.edu/crc/crchungary2014.html> (accessed 30 September 2017)

<sup>28</sup> Ibid.

<sup>29</sup> Vaskuti, A., et al. Age and the capacity to understand the nature and consequences of one’s acts: Summary of the professional session of the Hungarian Society for Criminology. 26, January 2007.

<sup>30</sup> [http://helsinki.hu/wp-content/uploads/Jelentes-Tokol+-BVOP-nak\\_vegleges-anonim.pdf](http://helsinki.hu/wp-content/uploads/Jelentes-Tokol+-BVOP-nak_vegleges-anonim.pdf) (accessed 27 October 2017)

<sup>31</sup> <http://public.mkab.hu/dev/dontesek.nsf/0/F34A40E998DDD4A4C1257ADA00524CD9?OpenDocument> (accessed 26 October 2017)

<sup>32</sup> Analysis of the Situation of Children on the Move: assessing the capacity and the adequacy of the child protection system in Hungary. <https://resourcecentre.savethechildren.net/library/analysis-situation-children-move-assessing-capacity-and-adequacy-child-protection-system> (accessed 5 October 2017)

dures) from the perspective of children's rights, mediation and other forms of restorative justice in national practice, child-focused training for those working in the child protection or justice system, the situation of unaccompanied minors, and on-the-spot visits to penal institutions for juvenile offenders.<sup>33</sup>

*Child-friendly justice principles are in the interest of child victims and witnesses now...I know that there is room to improve our practice in relation to child perpetrators. (Prosecutor)*

*At this moment, child-friendly justice concerns only child victims and witnesses so the child-friendly hearing rooms at the police stations are available only for them. The new criminal procedure law will change this practice and extend the concept of child-friendly justice to juvenile offenders. (Ministry of Justice)*

According to official documents (from the Ministry of Justice and OBH), diversion is currently not a substantial part of the Hungarian child-friendly justice initiatives.<sup>34</sup>

There is no specific law in the Hungarian legal system regarding diversion. These legal documents regulate the types of diversions that exist in the Hungarian juvenile justice system:

- Criminal Code and Criminal Procedure Act
- Postponement of the indictment (*vádemelés elhalasztása*): Section 216–226 and Section 459 of the Criminal Procedure Act
- Mediation (*közvetítői eljárás*): Section 459 of the Criminal Procedure Act
- Active repentance (*tevékeny megbánás*): Sections 29 and 107 of the Criminal Code
- Warning (*figyelmeztetés*): Section 64 of the Criminal Code
- Work performed in amends/service as restitution (*jóvátételi munka*): Section 67–68 and Section 117 of the Criminal Code
- Probation with supervision (*próbára bocsátás*): Section 114/A of the Criminal Procedure Act and Section 69–71 of the Criminal Code
- Drug diversion (*elterelés*): Sections 188 and 222 of the Criminal Procedure Act, and Section 180 of Criminal Code
- Regulation of the Ministry of Health, Social and Family Affairs and Ministry of Children, Youth and Sport No. 26/2003. (V. 16.) on drug use, drug addiction treatments
- Order of the Public Prosecutor No. 21/2013. (X. 31.) on the prosecutors' activities in relation to crimes committed by children and juveniles
- Regulation of the Ministry of Public Administration and Justice No. 8/2013. (VI. 29.) regarding probation services

In Hungary, the government does not offer special training on diversion. The OBH offers child's rights trainings in the framework of child-friendly justice, mostly for judges working with family-law cases. There is no organized training from the government for lawyers representing children in criminal proceedings. Two universities, Pázmány Péter Catholic University and the University of Miskolc, offer specialized postgraduate training courses, but these are not specifically criminal justice training courses.

According to the professionals who took part in this research, diversion is still a 'new instrument' and its use depends mostly on how the public prosecutor applies it in cases of children in conflict with the law.

*"Every beginning is difficult" was hardly accepted by the prosecutors. And to be honest, if we are talking about the occurrence of diversion or restorative justice in Hungary we are talking about the commitment of the prosecutors. (Prosecutor)*

<sup>33</sup> Dr. Ágnes Lux, Special children's rights project of the Commissioner for fundamental rights of Hungary.<sup>57</sup> Ibid.

<sup>34</sup> See the 'Child-Centred Justice' webpage of the National Court Authority.

<https://birosag.hu/tudjon-meg-tobbet/gyermekkozpontu-igazsagszolgalatas/folap> (accessed 04 August 2018).

Table 11: Forms of diversion according to the phases of the criminal procedure

	Investigation	Accusation	Court procedure	Post-court decision
Postponement of the indictment		Criminal Procedure Law 222.§ and 225.§		
Postponement of the indictment + terminating criminal procedure		Criminal Procedure Law 226.§ by public prosecutor		
Mediation		<i>Criminal Procedure Law 216.§ (1) d) and 221/A.§ by public prosecutor</i>		
Active repentance	Criminal Code 29.§ (1) and 107.§			
Work performed in amends / service as restitution			Criminal Code 67-68.§ and 117.§ by the judge	
Probation with supervision			Criminal Code 71.§ by the judge	
Preventive probation	Child Protection Act 15.§ by Guardianship Authority			
Warning	Criminal Code 64.§ and Criminal Procedure Law 190.§ (1) j) by public prosecutor		<i>Criminal Code 64.§, Criminal Procedure Law 267.§ by the judge</i>	
Drug diversion	<i>Criminal Procedure Code 188.§ by public prosecutor</i>	Criminal Procedure Code 222.§ (2) by public prosecutor		

The only form of diversion actually called ‘diversion’ (*elaterelés*) is dedicated to drug-related crimes (Criminal Code, Section 180).

In Hungary, the illicit substance most commonly used by the general population is cannabis, and its use is concentrated among young adults aged 18–34 years. Data from the past few years shows a decrease in cannabis use among young adults. At the same time, the use of MDMA/ecstasy, cocaine, and amphetamines increased in 2007–2015. Moreover, following the emergence of new psychoactive substances on the Hungarian drug market, the substances mainly belonging to the group of synthetic cannabinoids, synthetic cathinones, or amphetamine derivatives have become as popular as established illicit drugs, especially among young adults.<sup>35</sup>

Hungary’s National Anti-Drug Strategy 2013–2020, ‘Clear consciousness, sobriety and fight against drug crime’, focuses on illicit drugs and was adopted in 2013. There is no specific budget attached to the Hungarian National Anti-Drug Strategy.

The new criminal code came into force on 1 July 2013. Sections related to drug-related crime have been organized to cover trafficking, pos-

session, incitement of minors to use drugs or similar substances, assisting production, precursors, use of new psychoactive substances (NPS) and performance enhancement (doping).<sup>36</sup> Use of drugs was reintroduced as a criminal offence punishable by up to 2 years in prison (it had been removed from the 2003 Criminal Code). Possession of small quantities remains punishable by up to 2 years in prison, but other penalties are now 1–5 years for a basic offence, 2–8 years if the offence is committed under certain<sup>37</sup> circumstances, and 5–10 or 5–15 years if the offence involves a larger quantity of drugs. In 2013, a number of lower maximum penalties for offences committed by drug users that were introduced in 2003 were repealed. Currently, the court may take the perpetrator’s drug use into consideration when imposing a punishment; the option to suspend prosecution in the case of treatment is available to offenders committing drug-related offences that involve a small quantity of drugs (production, manufacture, acquiring, possession for personal use). This option, however, is not available within two years<sup>38</sup> of a previous suspension.

<sup>35</sup> <http://www.emcdda.europa.eu/system/files/publications/4521/TD0616148ENN.pdf> (accessed 4 October 2017).

<sup>36</sup> *ibid.*

<sup>37</sup> Such circumstances include, for instance, committing the crime in an organized group/gang or involving a child in the crime.

<sup>38</sup> Diversion is usable only once within a two-year period, and is not an option for those who commit drug-related crimes.

The criminal procedures against an accused drug user can be cancelled if they can prove that they have participated in a 6-month drug rehabilitation program, substance abuse treatment or other preventive educational program. Drug addicts must take part in rehabilitation, but occasional drug users who do not have health problems can choose whether or not to participate in a preventive or community activity.<sup>39</sup>

According to the former head of TASZ (the Hungarian Civil Liberties Union), Andrea Pelle: *Diversion is for young people who sometimes try or occasionally use drugs but do not have any health problems. In my opinion, these diversions appear to be folly. If young people have problems due to drug use, they can visit other medical institutions. Diversion is not even school prevention. Diversion actually ensures a back door for users not to be punished. It is basically a farcical attitude of lawmakers to the drug issue: we do not want to punish users, but we do not have the courage to modify the legislation and say openly that drug taking is not a criminal act. (...) Due to recent changes in legislation, allocation of resources is unbalanced.*

*Of the total expenditure on drug policy 76% is used on the criminal procedures of drug related cases and only 24% on prevention, education, therapy and rehabilitation. I think that the same amount of money could be used in a more effective way.<sup>40</sup>*

Some professionals highlighted new trends in drug use to explain why successful diversion is so difficult to achieve:

*There is "South-America" in the isolated small communities of poor, deprived people. They use the worst drugs, because those are relatively cheap... and there is no child protection, no social services or health care there...there is nothing. Only the drug and the lack of prospects.*

(Addiction counsellor)

*There is no real drug strategy in Hungary, only the political narrative of the "war on drugs", and the consequences are horrible... unnecessary criminal procedures against teenagers and a flowering black market of real drug barons and criminals.*

(Human rights expert)

## STATE OF TRANSPOSITION OF THE THREE DIRECTIVES

### EU DIRECTIVE 2012/13 ON THE RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

The Hungarian government partially complied with the 2 June 2014 deadline for the transposition of this Directive; Act CLXXXVI of 2013 amends the rules of pre-trial detention to stipulate that the notification of pre-trial detention sent to the suspect and the defender shall be posted with a copy of the justifying pre-trial detention **investigation files**. According to Article 7 (1) of the Directive, if a person is detained at any stage of the criminal procedure, the documents in the possession of the competent authorities which are essential to challenge the lawfulness of the detention, shall be made available to the arrested person or their lawyer.

In the interest of the adaptation of Article 7 (4), Section 169 (1) of the Criminal Procedure was modified to make it clearer that the issuance of a copy shall not be refused without adopting a resolution on that matter. According to the general right to complaint enacted in Section 195 (1) of the Criminal Procedure, a complaint may be lodged against such a decision. The possibility to request a review against a decision dismissing a complaint, and through this, the possibility of judicial review, is created by the amendment of Section 195 (6) of the Criminal Procedure in connection with the **refusal of issuance of a copy**, and regarding this, Section 207 (2) e) detailing the investigatory judge's task, which was amended.

The reports of several non-governmental organizations have highlighted that there are still gaps in harmonizing national laws with EU

<sup>39</sup> The diversion process is regulated by the 42/2008. (XI.14.) EüM-SZMM order. See: <https://net.jogtar.hu/jogszabaly?docid=a0800042.eum> (accessed 04 August 2018).

<sup>40</sup> <http://www.visegradgroup.eu/drugs-and-law/drugs-and-law> (accessed 04 August 2018).

norms. The Hungarian Helsinki Committee, for example, announced that ‘the **content of the information** provided to the defendant does not comply with even the minimum standards set forth in the Directive, the suspects or accused persons do not receive written information even about their rights during the detention, what is more, the content of the letter of rights of the detainee is not in compliance with the content of Article 4 of the Directive’.<sup>41</sup> Moreover, this amendment to the Criminal Procedure has also been criticized because it ‘...did not eliminate the possibility of the public prosecutor attaching randomly or deliberately selected documents of the files of investigation to the submitted motion of pre-trial detention, which establish the general and special conditions of pre-trial detention and ignore those that raise doubts of the well-founded suspicion or the existence of a particular condition’.<sup>42</sup>

Act LXII of 2012 on the amendment of acts in connection with the realization of **child-friendly justice** has been amended to ensure better enforcement of a child’s right to information. Additionally, Section 67 of the Criminal Procedure has been complemented with Subsection 7: ‘In the minor’s summons and notification, information on the content of the summons and notification shall be provided taking the minor’s age and maturity into consideration, and in a way that **can be understood** by the minor.’ The rules concerning child witnesses and suspected children were also complemented with similar new provisions.

As highlighted in our research, the real prob-

- It **covers** all the provisions stipulated by law
- The information corresponds with the **age** and **discretionary ability** of the defendant
- Information adapts to the **current** situation of the defendant (for example, a trauma in many cases reduces or alters the capacity for comprehension),
- The defendant has the right to ask **clarifying**, confirmative questions during the process of receiving information
- The acting authority is confident that the defendant has understood her/his rights, the procedure, and the provisions of the substantive law
- The representatives of the acting authority ascertained that the defendant has actually understood her/his rights **before continuing** procedures (e.g. questioning of defendant).

lem is not legal regulations, but the way they are implemented in actual procedures; ‘What I need for doing my job right and meeting legal requirements is a reasonable budget, good quality staff and better cooperation with the institutions of justice’ (Probation officer).

During our interviews with children, we found that the minutes (of police interrogations) are mainly **uniform**, and in many cases **they do not reveal if the authorities in fact provided information to the accused or suspected child**. This find was also confirmed by a stakeholder.

*I spoke to the child and realized that she knows nothing about what happened at the police. I don’t mean that she forgot or was not able to understand it. I mean that they did not inform her properly about her rights. She just signed the minutes...everything went well on paper, but the reality is completely different.* (Child protection officer)

Investigating EU directive 2012/13 was challenging. On the one hand, a list of information that must be provided to the accused juvenile can be objectively determined, but on the other hand, this information can only be considered effective if the child receiving it in fact understands her/his rights and is aware of them. ‘Comprehension’ is a complex process. It includes the accused’s ability to make well-founded and responsible decisions regarding their case, and fully understanding the procedural acts which await her/him with the information they received. So the right to information is not considered enforced until:<sup>43</sup>

<sup>41</sup> Practitioner Training on Roadmap Directives project, Training of the Hungarian Helsinki Committee, June 2015.

<sup>42</sup> Ibid. Training for Lawyers about EU directives.

<sup>43</sup> Procedural Rights of Juveniles Suspected or Accused in the EU. <http://tdh-europe.org/library/procedural-rights-of-juveniles-suspected-or-accused-in-the-european-union-2/7250> (accessed 15 October 2017).

Regarding this last point, we did not find any evidence in any case for incrimination of procedural acts on the grounds that a child did not **understand** their rights. This anticipates that every child was able to understand the course of the criminal procedures and individual acts, along with their possible consequences, as well as their rights.

As the Hungarian educational system does not teach about the legal system, we assumed that the child had no previous legal knowledge, and that the **first information** they would receive on these matters would come from the police hearing.

*Neither me, nor my father knew anything about procedural rights or diversion. I watch CSI on TV, so I tried to figure out what was happening because the police said nothing. (Girl, age 15)*

The acting authorities have a legal obligation to proceed with special care when providing information to children. In the interviews we carried out we found no evidence that this was the case.

There are significant differences between the opinion of the experts helping these children (guardians, lawyers), and the police officers interviewed. While those helping the children and the adults involved in the defence claim that, 'The information is not provided in a way children can understand', police officers state that '... children get every document and information. If they do not understand something, we explain it to them'. The difference in these opinions is likely due to a fact confirmed by the police that the 'information is the same for everybody'. If information is universal, **it does not fit the suspects' individual needs** (maturity, age, cognitive skills, understanding, etc.).<sup>44</sup> Furthermore, taking into consideration that these authority figures do not receive system-wide, general training on communicating effectively in a child-friendly, child-centred way, this is understandable; without training they cannot realistically be expected to effectively communicate the necessary information in a way children can comprehend.<sup>45</sup>

In 2012, a child-friendly questioning rooms were established in each Hungarian county.<sup>46</sup> These rooms, however, cannot be used for accused

minors, only for victims of crimes. Additionally, the professionals using these rooms rarely undergo comprehensive training to make full use of these facilities. As a result, professionals working on actual cases cannot rely on a sound knowledge of the child's **cognitive, emotional and psychological maturity nor other characteristics**.

This undermines the possibility of providing adequate information, and can easily lead to **secondary victimization**.

## EU DIRECTIVE 2016/800 ON PROCEDURAL SAFEGUARDS FOR CHILDREN SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

This Directive has not yet been adapted into the Hungarian legal system. However, most of the rights determined in the Directive have been guaranteed by several Hungarian laws. With national laws already adopted or soon to be adopted in the future, the legislature endeavours to create a framework that guarantees the fundamental rights in accordance with the procedural rights of Act C of 2012 on the Criminal Code's principles of regulation, European community norms, with Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal procedure and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty, and to communicate with third persons and with consular authorities while deprived of liberty.<sup>47</sup>

This directive (2016/800/EU) uses a child's rights approach, provides procedural safeguards for children, and respects the fundamental needs, interests and rights of suspected and accused children under the age of 18. EU Directive 2016/800 states that 'children who are suspects or accused persons in criminal proceedings should be given particular attention in order to preserve their potential for development and reintegration into society'.

In relation to the aims of AWAY, the directive declares:

<sup>44</sup> *ibid.*

<sup>45</sup> The new criminal procedure law will extend the term 'child-friendly justice' to suspected and accused children.

<sup>46</sup> See more about the child-friendly hearing rooms at

<http://gyermekbarat.kormany.hu/a-gyermekbarat-meghallgatoszobak> (accessed 04 September 2018).

<sup>47</sup> Act CCII of 2015 on the amendment of Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the

Misdemeanour Registry System, and certain other laws in this context which were adopted by Parliament on 1 December 2015.

*[T]hrough their public services or by funding child support organizations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.*

The directive highlights both the crucial role of training in achieving child-friendly justice, as well as the importance of restorative justice services in this field.

- Establish contact with the defendant without delay
- Use all legal means of defence in the interest of the defendant in due time
- Inform the defendant of the legal means of defence and his/her rights
- Further the investigation of facts extenuating for the defendant or diminishing the liability thereof.

Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System sets forth that, in the interest of the suspect or accused, her/his legal representative or any other adult authorized by her/him or by the legal representative in writing, can proceed in any part of the misdemeanour procedure. The act stipulates that any facts or materials pertaining to the case obtained by the authorities in a manner that restricts the suspected or accused person's procedural rights cannot be admitted as evidence. Under the act, the detainee is informed of his or her right to defence, the right to inform the consular authorities, as well as a relative or other person nominated by her/him.

Decree 23/2003. (VI. 24.) of the Ministry of Interior and the Ministry of Justice, the scope of which applies to criminal procedures conducted by the Police, sets forth the right of the suspect to authorize a defence lawyer. If the child suspect does not have a duly authorized attorney, the investigative authority shall assign an attorney, and inform the authority responsible for the protection or welfare of children about the criminal procedure against the child.<sup>49</sup>

The relevant scopes of Directive 2016/800<sup>48</sup> have already been mentioned, so now we turn our focus on the child's right to legal representation.

Section 450 of the Hungarian Criminal Procedure Act states that *the participation of a defence counsel is statutory in the proceedings against a juvenile offender*. As mentioned earlier, no lawyers are specialized in representing juvenile offenders in the Hungarian justice system, and thus, the general rules for the counsel for the defence defined by the Criminal Proceedings Act apply to cases involving juveniles as well. According to Section 50 of the Criminal Procedure Act, the lawyer must:

The accused minor shall be entitled to the assistance of a lawyer for her/his defence. However, with respect to criminal procedures, a legal aid system (in the traditional sense) does not exist in Hungary. If the minor cannot hire an attorney, the police, the prosecutor or the court will appoint him/her one from the register of appointed attorneys. Each regional bar association has such a register, which consists of attorneys willing to act as appointed defenders in criminal proceedings. It is not mandatory for attorneys to take part in the register.<sup>50</sup> Those that do offer their services are required to have an adequate university degree, but no other special qualifications, trainings or post-gradual vocational trainings are necessary.

*Now the defence lawyers are appointed by the authorities, but according to the new criminal procedure act, this process will be "automatized". The bar associations will operate a digital system of the available defence lawyers. In our opinion, this system should store information about the special qualifications of the lawyers too. For instance, if someone is specialized in juvenile justice.* (Ministry of Justice)<sup>51</sup>

If the child does not have a lawyer, a defence lawyer will be assigned to her/him. According to

<sup>48</sup> Right to information, as mentioned in Directive 2012/13/EU.

<sup>49</sup> *ibid.*

<sup>50</sup> The role of the youth lawyer in the juvenile justice system in Hungary. National Report. DLA Paper.

[http://www.mylawyermyrights.eu/wp-content/uploads/2016/05/National-Report\\_HUNGARY\\_EN.pdf](http://www.mylawyermyrights.eu/wp-content/uploads/2016/05/National-Report_HUNGARY_EN.pdf) (accessed 4 November 2017).

<sup>51</sup> This was the first we had heard of this system.

the interviews we held with children, although a defence lawyer is always appointed, in some cases they failed to appear, even when summoned. In this case, the acting authority informed the child that the defender's absence would not hinder the criminal proceedings. In the new Criminal Procedure Code, the defence lawyer's participation is obligatory in criminal procedures involving a minor (Section 682, 1), but the presence of the defence lawyer is only compulsory during the hearing, and some (not all) procedural acts (Section 682, 2).

*I met my lawyer 10 minutes before the hearing. He told me only one thing, that I have the right to be silent. He was there but did nothing.* (Boy, age 17)

*There were two hearings and I had no lawyer during the first one. My father was there with me. The lawyer said almost nothing at the second hearing except that I have the right to say nothing or to say "I do not know" or "I do not remember".* (Boy, age 15)

According to those we interviewed, parents or legal guardians were always informed about the fact that their child was accused or suspected of a crime by the authorities, or at least there was an attempt made to inform them. Furthermore, based on the interviews, it is clear that for children living in residential homes or with foster parents, the role of their guardians, legal representatives, or child protection guardians is crucial. And while an ad hoc guardian is always appointed to such children, this is only a formality; in many cases temporary guardians do not attend the questioning of the child, but child protection guardians always attend.

*My foster mother always punished me and hit me... from the very beginning. Then I also became violent. My first guardian did not give a shit when I told him about the abuse...but then I got a new guardian and she is very good. She always calls me and escorts me when I have to go to the police.* (Boy, age 17)

Professional cooperation between the judiciary and child protection works well in some cases. However, there are some factors that hinder cooperation (e.g. lack of information), and in some cases, there is no cooperation at all. Naturally, this depends on the acting authorities, on the motivation of the assigned defender and the temporary guardian. The lawyers and tempo-

rary guardians/child protection guardians generally do not know each other and do not know who is acting in these cases, their workload, or formation.

*I have a guardian and a lawyer but I still have the feeling that I am alone.* (Child, age 16)

Regarding workload, it can safely be stated that there are few professionals and they are overloaded with work.

*Sometimes the prosecutor has a feeling that the probation officers are overloaded... and the workload effects the quality of diversion.* (Probation officer)

Whether or not they are open to such cases, and how important it is to them that the child's rights are enforced and respected will often depend on the individual lawyer's personality and career aims, and can be seen in the effort they put into the case. Aside from vocational or personal drive, it is important that these professionals can find a common language with the child.

According to the police officers we interviewed, '[...] defence lawyers are not trained to work with children [...] it is up to the defence lawyer how (s)he represent the child [...] sometimes the lawyer does not want to speak to the child in advance [...] thus, I inform the child instead of the lawyer'.

What most impedes these proceedings is formality. Everyone is cautious about following the rules: appointing a defender, informing the child's legal guardian, appointing a temporary guardian if necessary. The proceedings, however, are often conducted only for the sake of appearances, and questioning is frequently based on a cookie-cutter pattern rather than tailored to the case or the individual needs of the child.

*I got the minutes from the police and my guardian realized that they messed it up...my name was wrong...there were sentences maybe from another questioning absolutely out of the blue...I think they copy these minutes to save time or maybe they are just lazy.* (Child, age 16)

In proceedings involving children, public prosecutors play an important role in legal protection – in recognizing and rectifying deficiencies.

*The prosecutors represent the state BUT they also represent legality, rule of law and they have to ensure the principles of fair trial...even against other*

*authorities. They have rights to instruct the police.*  
(Human rights expert)

The implementation of EU Directives aimed at minors is a major challenge for the Hungarian legal system. The most serious factors impeding the enforcement of the rights granted in the Directives were identified as:

- The suspected or accused child is not considered vulnerable;
- A previous provision (2013/48/EU) was applied only formally and not in the spirit of the law;
- Law enforcement does not seem to be fulfilling its responsibility in a meaningful way (comprehension of information, representation by a lawyer)
- Access to information and legal representation of a proper quality is not ensured
- Lack of the adequate operational and professional standards;
- Lack of training
- Lack of multidisciplinary cooperation between authorities involved in criminal procedures.

## EU DIRECTIVE 2012/29 ON THE RIGHTS OF VICTIMS OF CRIME

EU Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime to ensure that persons who have fallen victim to a crime are recognised, treated with respect and receive proper protection, support and access to justice. Hungary played a part in the birth of this Directive (it is part of the 'Budapest Roadmap' adopted by the Council in 2011 under the Hungarian EU presidency), and Hungary amended several laws and regulations to transpose it by the deadline in 2015.<sup>52</sup>

- The Victim Support Services Act ( 2005. évi CXXXV. törvény a bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről) ,
- The Child Protection Law ( 1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról) ,
- The Criminal Procedure Act ( 2017. évi XC. törvény a büntetőeljárásról)
- The Act on Legal Aid (2003. évi LXXX. törvény a jogi segítségnyújtásról),
- The Act on Criminal Cooperation with EU Member States (1996. évi XXXVIII.törvény a nemzetközi bűnügyi jogsegélyről)

Legislative tasks are assigned to the Ministry of Public Administration and Justice (*Közigazgatási és Igazságügyi Minisztérium*). The National Police Chief is entitled to issue binding orders for the organization or officers. The professional leadership and administration of tasks directly related to the provision of victim support services is carried out by the Office of Public Adminis-

tration and Justice (*Közigazgatási és Igazságügyi Hivatal*), and its metropolitan and regional offices (*igazságügyi szolgálatok*). In practice, victim support services are under the auspices of the metropolitan and local government offices (*kormányhivatal*), which are supervised and administered by the Ministry of Justice.

As a result of the transposition of this Directive, since 2015 Hungarian victim support services:

- must pay more attention to the personal needs of the victim
- operate a new service (psychological/emotional support, [*érzelmi támogatásnyújtás*])
- set up a new court service for witnesses (*tanúgondozó*)
- established a free-of-charge, 24/7 helpline (06 80 225 225) for victims.

<sup>52</sup> Act No. 2015/151. (2015. évi CLI. törvény a bűncselekmények áldozatainak jogaira, támogatására és védelmére vonatkozó minimumszabályok megállapításáról és a 2001/220/IB tanácsi kerethatározat felváltásáról szóló, 2012. október 25-i 2012/29/EU európai parlamenti és tanácsi irányelv átültetése érdekében szükséges egyes törvények módosításáról)

According to these amendments, the authorities must regard all children as 'vulnerable' (*különleges bánásmódot igénylő*). Child vulnerability should be considered from a number of perspectives. Along with age, the following should be assessed: a child's ability to protect him/herself, a child's ability to communicate, the likelihood of serious harm given the child's development, the provocativeness of the child's behaviour or temperament, the child's behavioural and emotional needs, any physical special needs, the visibility of the child to others/child's access to individuals who can protect him/her, family composition, the child's role in the family, the child's physical appearance/size and robustness, the child's resilience and problem-solving skills, the child's prior victimization, and the child's ability to recognize abuse/neglect.

Despite these efforts, the quality, inclusivity and accessibility of Hungarian victim support services are still insufficient for child victims. We asked a 17-year-old victim of assault whether any victim support services were provided to her: 'At first I got in contact with the police and reported my ex-boyfriend. He was violent with me and I couldn't do anything against it. When I broke my leg in an accident I thought that this is the time to get his hands off of me...but the police investigation found that I lied, so I got a one-year suspended prison sentence...'(Girl, age 17).

Our research shows that professionals involved in these cases recognize that suspected or accused children are also victims. This conclusion is abundantly clear when they see that children in conflict with the law rarely understand or follow the content or the meaning of the proceedings against them. Their lack of understanding of the procedures and knowledge of their rights, such as access to proper legal defence and to have a third party informed of the deprivation of their

liberty, means not being able to ask for these things themselves or taking steps to ensure that these rights are guaranteed in the future.

*They (the police) did not say anything about my rights, they just took me to the police station. It was horrible. The officers blamed me and talked to me in a very humiliating and degrading way.....It was obvious that they wanted me to remember that night till the end of my life. They also told me that diversion is nothing, but I will never forget their face and what happened with me at the police station. I suppose they were right. (Boy, age 17)*

They treat children like perpetrators.

*I lost my family. I have lived in residential homes since I was 5. I was under psychological treatment...I took pills because I couldn't cope with my aggressive intentions...I dropped out of school...and yes, I hit that bro' at the railway station because he called me a name...police did not protect me before but caught me at the very moment when I committed my first crime. (Boy, age 16)*

*We wandered around supermarkets...there is a TESCO close to our residential home....so we took the shop trolleys back to the row and kept the coin...it is not much...once a police car arrived and the officers started threatening us to make us leave the parking lot...and when I shouted back, they took us to the police station. (Girl, age 15)*

*Juveniles can be very harsh but they are primarily children. Even if they pretend to be older and as mature as adults. (Child protection guardian)*

It is hoped that the new criminal procedure law (coming into force in 2018) will bring changes not only in writing, but with its child's rights approach, in practice too.

# 3. OVERVIEW OF DIVERSION IN HUNGARY

## FACTORS CONTRIBUTING TO THE ENJOYMENT OF DIVERSION

### INTERNAL (SYSTEM-RELATED OR GENERATED)

#### 1. Legal background

The realization of children's rights in Hungary is not hampered by a lack of legislative provisions; Hungarian legislation mostly complies with international and European provisions (see Table 10).

#### 2. The new criminal procedure law

The new criminal procedure law coming into force in 2018 contains several promising regulations related to children's rights and the procedural safeguarding of suspected and accused minors.<sup>53</sup>

#### 3. Local initiatives of multisectoral cooperation

The quality of multisectoral cooperation varies in Hungary, but we found promising practices and initiatives at the local level.

#### 4. Child-friendly justice reforms

2012 was the year of 'Child-Friendly Justice' in Hungary, and there is some evidence of the implementation of this initiative.

*We reformed the process of appointing judges (trainees). We test not only their legal knowledge, but also their attitudes and sensitivity. I believe that due to this new system we can appoint more competent judges. (Focus group)*

*We started a so-called "open court" program where we invite high school students to visit us and learn more about the justice system. (Focus group)*

*There is a working group within the National Office for the Judiciary which develops child-friendly materials to inform children about their rights. (Focus group)*

*There are 56 child-friendly hearing rooms in the courts now. We know that we have to improve their rate of utilization, but still, they are here and we are going to motivate the judges to use them. (Focus group)*

#### 5. Local initiatives to increase the inclusivity and efficiency of the juvenile justice system

*I have been working in the field for more than 20 years. I know everyone and I have good professional relationships with the colleagues. We can manage the problems or any actual issue via phone or other, less formal ways....I work in a small city, so I do not know what is going on in big cities...but it works here. (Prosecutor)<sup>54</sup>*

<sup>53</sup> <http://www.parlament.hu/irom40/13972/13972.pdf>

<sup>54</sup> We faced the limits of this research at this point. It would be important to properly understand the details and validate the prosecutor's statement since the children we talked to had very different experiences. We also do not know whether those bad experiences occurred in smaller settlements, where the system might function relatively well.

## EXTERNAL (SITUATIONAL, CIRCUMSTANTIAL, PERSONAL AND OTHER)

### 1. Committed professionals

There are more limits and hampering factors to Hungarian juvenile justice than factors which support or favour it in the Hungarian system, but we did meet committed professionals, which is promising.

*I know that this is not an easy job, but I believe that we can help children...at least in some cases.* (Probation officer)

### 2. Avoiding stigmatization

Most of the professionals who took part in our research were sensitive to the stigmatizing effect of the criminal procedure on suspected and accused child. According to these professionals, avoiding stigmatization is the leading reason to use diversion.

*Children in conflict with the law are in trouble and they are stigmatized the very moment the procedure starts.* (Police officer)

*Diversion is not perfect, but it is the less harmful way.* (Addictologist)

## LIMITATIONS HAMPERING CHILDREN'S ACCESS TO DIVERSION

### INTERNAL (SYSTEM-RELATED)

#### 1. Appointment, eligibility, professional experience, training

Regarding the **eligibility** of juvenile justice professionals, we found there are no special requirements. According to the interviews, the formal head of a particular justice organization can freely appoint anyone s/he wants to work with children.

*I am not qualified to work with children, but I do not believe that it matters. It is all about empathy...* (Police officer)

Without specialized training, those working with children in conflict with the law **learn the profession through practice**. Consequently, the quality of their professional work varies from organization to organization, and there is a good chance of bad practices surviving through informal learning.

*There is no particular training or professional education on children's rights, child protection, or the special needs, interests of juveniles...After obtaining a legal degree, I started working immediately as a public prosecutor...of course, I started as a trainee [fogalmazó] and then, 2 years later I was appointed as prosecutor secretary [ügyészégi titkár] and then I became a prosecutor.* (Prosecutor)

*I have no qualification to work with children...in most of my work I deal with serious crimes, like murder or serious assault – only a small percent of my job is about child suspects.* (Police officer)

*Every trainee spends his/her time dealing with different legal subjects: economic affairs, traffic crimes, violent crimes, juvenile cases....the purpose is to get a complex picture of our work...but, yes, it would be good if the trainees could specialize in a particular legal subject, like juvenile justice.* (Prosecutor)

**Lack of training** on children's rights, child protection or child-friendly/child-centred justice is one of the most challenging problems facing the Hungarian juvenile justice system. According to directive 2016/800/EU:

*Member States shall ensure that staff of law enforcement authorities and of detention facilities who handle cases involving children, receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.*

To meet this directive, Hungary will need to greatly improve its practice concerning children's rights-specific training for all professionals working in the juvenile justice system needs.

The National Office for the Judiciary launched special training courses on child-friendly justice and child abuse to sensitize judges. It is yet unknown how many criminal judges can participate in these training courses as they were designed for judges specialized in family or civil law.

*Our training program for judges is a real success. They asked for more and we try to provide more training for them.* (Focus group)

There are similar initiatives for police, but participation is voluntary. The topic of diversion in juvenile justice is not sufficiently covered in these training courses.

*There were some trainings, presentations and a one-day conference about children and juveniles in the last few years. But it is not compulsory and we need more training.* (Police officer)

Regular trainings would be important because of fluctuation.

*The professional staff changes a lot in the child protection system... the problem is severe among child protection guardians...and among probation officers too.* (Focus group)

## 2. The spirit of the law

The previous provision concerning diversion (2013/48/EU) was applied only on paper, not in the **spirit** of the law. If diversion is only a formal decision, without real understanding on both sides (juvenile justice professionals – children in conflict with the law), the consequences are serious.

*Children just laugh at diversion. They do not think that this is serious or useful...they do not even understand what it is for.* (Child protection guardian)

The *preambulum* of the Hungarian Criminal Code declares prevention the purpose of all criminal procedures: to prevent the offender from recidivism (special prevention) and to stop others from committing a crime (universal prevention). For young offenders, the code has additional purposes: education and resocialization. If we accept that this is the spirit of the law, we also need to accept the importance of diversion because it is the best known legal instrument of primary and tertiary prevention. But, as one probation officer put it, ‘...without understanding this, we only apply the law’.

## 3. Quality of the services provided

The quality/**quality assurance** of the enforcement of law (information, representation by a lawyer, mediation, forensic investigations) is not

specifically measured. It is not easy for practicing professionals to evaluate the **quality of the services they provide** to suspected and accused children. However, they realize its importance:

*I know that there can be huge differences between mediation and mediation...* (Judge)

*There are not enough forensic experts. We need more child psychologists, for instance, good ones.* (Police officer)

*I am a workaholic and I can manage my job, but I see my colleagues. They usually suffer from burn-out, for instance. At the beginning I had no computer and cell phone, which are essential to run this job. There were times when I had to share a desk with a colleague...the working environment affects the way our job is done, of course.* (Child protection guardian)

## 4. Child-friendly language

**Access** to information is not properly ensured in each case. Professionals meet the legal requirements formally, but it’s challenging for them to communicate properly with an accused or suspected child if (s)he is traumatized, has limited cognitive skills, is mentally or emotionally immature, etc.

*It is up to the skills and experience of the professional...how (s)he explains the law to the child. It took years for me to achieve this level...how I can choose my words properly adjusted to the age and maturity of the child.* (Prosecutor)

*It would be good to know more about the emotional and cognitive development of children...to learn how I can inform them about their rights – and be sure that they understood me.* (Guardian)

*I cannot ensure that the police officer who questions the child is properly trained and uses a language that is non-violent and respects the fundamental rights of the child.* (Police officer)

## 5. Soft law

The lack of adequate operational and professional standards in Hungary was clear from previous research.<sup>55</sup>

*We have no protocol on how to cope with the situation if the child commits a crime...we decide on a case-by-case basis whether we report the case or*

<sup>55</sup> Procedural Rights of Juveniles Suspected or Accused. Available in English at: <http://tdh-europe.org/library> (accessed 30 October 2017).

*not...it is up to the type of crime, but sometimes we also take into account the personality of the child... it would be good to use restorative techniques in-house, but we have no protocol for this either... sometimes we regret if we report because the criminal procedure is so traumatizing for the child.*  
(Social worker/focus group)

Additionally, we found that even if a justice organization has a protocol, it is not necessarily applied properly or on a wide scale.

*We have a protocol that we do not conduct child hearings after 10 pm. (Police officer) They took me to the police station around 11 pm and started questioning me almost immediately –I spent more than 8 hours there.* (Boy, age 17)

## 6. Cooperation

*We do not cooperate. We send requests for information, data...according to the law we do not have to cooperate.* (Police officer)

*It is up to the leaders, I suppose. If they support cooperating with professionals of the child protection system, we will do it...Honestly, it is hard to cooperate with the guardianship authorities for instance, because they do not run an "on-call service" [ügyelet] so they cause delays for us sometimes when we have to order a legal guardian...it would be good if they changed their attitude.* (Police officer)

The lack of multidisciplinary **cooperation** between the authorities involved in criminal procedures is a general problem. However, professionals participating in this research emphasized some promising local practices.  
*In general, we have no contact with the probation officers...it is only an administrative relationship. We send papers and we get papers.* (Police officer)

*In my opinion, the probation officers are very important...and also the information coming from them. They provide information for us about the family and school circumstances of the suspected child...I can't work without their assistance.*  
(Prosecutor)

Some forms of cooperation are written into law (for instance, between prosecutors and probation officers), but other forms are up to the professionals.

Those working in social/child protection services highlighted the problem of ad-hoc cooperation and the lack of systematic collaboration.

*We work together mostly on case by case basis. I think this is not cooperation.* (Focus group)

*It is only "symptomatic cooperation" [tüneti együttműködés] meaning that we call each other if there is an actual case, but there is no permanent, institutional cooperation among us.*  
(Focus group)

Problems with the '**mandatory reporting system**' also impact diversion in juvenile justice. According to the Child Protection Act, any professional working with children who suspects child abuse (including delinquency, deviancy, and potential risks to the child in their family or environment) must report. Obviously, this reporting system is about prevention, and lack of cooperation (reporting) among professionals may lead to more severe consequences if the child commits a crime, it may also negatively affect the possibility for diversion.

*The schools do not report. There are fewer and fewer children, so at first the schools protect their reputation. They need a sufficient number of children to run the next year and be maintained...so they report very late, only when the child has very serious problems, and then it is hard to convince the prosecutor to use diversion...or the child just commits such a serious crime that diversion is simply excluded by the law.* (Focus group)

## 7. Administration, bureaucracy, hierarchy

The juvenile justice system has a strong **hierarchy**, and everyone working in it is expected to respect this.

*I have no right to decide with whom I want to work in the juvenile justice department. It is the discretionary right of the head of our organization.*  
(Police officer)

They are expected to follow the rules, internal norms, and orders sometimes more strictly than national acts or laws. This does not mean that institutional orders can oppose the law. But regarding diversion, it seems that this hierarchical institutional culture inhibits professionals from applying diversion, or more *precisely*, from making a decision for which they would have to take personal responsibility; hierarchy does not favour individual decisions or taking personal responsibility for professional decisions.

*Hierarchy kills the creative use of the law...I do not want them to not respect the written law of course, but it would be so good if they could use diversion*

*even if the case is not crystal clear, or the child has some risk and there is a chance of repeating the offence, or something.* (Child protection expert)

*There is military discipline [vasfegyelem] here...I am applying the law, I have to follow the orders.* (Prosecutor)

*I know that the written law is strict, but I believe that there would be room to use diversion in more case...we do not use our whole playing field.* (Police officer)

**Bureaucracy** can also be part of the institutional culture, and **administrative burdens** can affect the willingness (and potential) of professionals to spend more time investigating the special needs and interest of the accused or suspected child.

*The administrative burden is extreme if we complete all of the forms. Officially (according to our boss) there is less bureaucracy, but I have to say that now we do more administration and we have less time for real work.* (Focus group)

*In my opinion, probation is mainly about administration now...* (Addiction counsellor)

*In my case, I have a probation officer (whom I never met, honestly), a social worker (who regularly calls my mother because they are friends, but I met her only once)... Two weeks ago I had to pop into the child welfare service, but they want me only to sign a paper. My only real support in this diversion is the psychologist here in this addiction centre.* (Girl, age 16)

## EXTERNAL (SITUATIONAL, CIRCUMSTANTIAL, PERSONAL AND OTHER)

### 1. Understanding vulnerability

The suspected or accused child is not considered **vulnerable**<sup>56</sup> criminal procedures, yet most of the professionals who participated in this research recognized the vulnerability factors of child delinquency.

*The profiles of child delinquents are very clear: bad family, the parents pay no attention to the child, school failures or drop-out...I have my limits in my job to prevent these risk factors, but I can use di-*

*version and mediation to educate the child and to prevent recidivism. This is why I believe so strongly in diversion.* (Prosecutor)

*Diversion is good because the child remains in the family, but sometimes it is worse for the child, if the main risk factor is the family itself.* (Probation officer)

*I believe that if a child commits a crime it has life-long consequences, especially if (s)he gets a prison sentence. Reformatory institutions and juvenile prisons are like "schools for a criminal career.* (Police officer)

*It's not useful if I know that the child is vulnerable...I can do nothing with their family or the bad peer pressure. It is out of my competence.* (Prosecutor)

We believe that the new criminal procedure law will mitigate this hampering factor by treating each person under 18 as vulnerable.

### 2. Workload

Sometimes professionals in the juvenile justice system work under extreme pressure. But it takes time to improve personal skills, learn new methods, or set up professional networks – all of which are necessary factors in using diversion in juvenile justice.

*We work with a staff smaller than the minimum number required by law.* (Focus group)

*We work a lot, which is true. But the real problem is that we only work. We have no time to attend a training, to learn something new, to innovate...this is the real problem.* (Focus group)

### 3. Racism, xenophobia

We did not find any proof of racism or xenophobia in the Hungarian juvenile justice. However, our interviews suggested suspicious practices that always referred to other professionals.

*[S]chool segregation is a real thing.* (Addictologist)  
*[I]n general, the police catch child suspects with ethnic backgrounds.* (Prosecutor)

*[T]hey know where they find the suspects.* (Prosecutor)

*I know that their thinking is really stereotyping* (Probation officer)

<sup>56</sup> The new criminal procedure law recognizes the 'vulnerability' factor of every person under the age of 18 (Section 81) [különleges bánásmódot igénylő személy].

# 4. CONCLUSIONS AND RECOMMENDATIONS

This research recognizes that Hungarian legislation is mostly in harmony with the basic principles of EU law, but there is a gap between legal norms and practices. At the systemic level the most serious problems are caused by the lack of facilities and training, along with a limited budget and shortages in personnel. We also found problems with

attitudes and lack of sensitivity towards diversion (restorative justice) and child's rights issues. In terms of Hungarian juvenile justice, we found that the following factors contribute to the enjoyment of diversion, meeting the three EU directives discussed here, and the implementation of child-friendly justice principles:

- The legal norms are mostly in harmony with international requirements
- There is ongoing legal reform and a new criminal procedure law is promising from the perspective of diversion and child's rights
- There are grassroots, local initiatives to improve multisector cooperation
- The implementation of child-friendly justice principles is ongoing in the court system
- Most professionals recognize the most important values of diversion (avoiding stigmatization and respecting the rights and needs of the child).

We discovered the following factors limit and hamper Hungarian children's access to diversion, the implementation of the investigated EU directives, and child-friendly justice principles:

- Lack of training
- Formal law enforcement (as opposed to in the spirit of the law)
- No child-friendly language/access to information ensured only formally
- Lack of protocols, standards
- Poor cooperation among competent authorities
- Bureaucratic operation of the relevant organizations
- Poor understanding of the factor of vulnerability in child delinquency
- Heavy workload of professionals

In spite of these challenges, we are confident of the future of diversion in Hungary. The new criminal procedure law coming into force in 2018

contains several promising regulation in relation to children's rights and procedural safeguarding of suspected and accused minors.

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## ANNEX 1 – RESEARCH MATRIX

Questions	Indicators	Data source	Means of verification
<p>1. Contextual overview (Description of the overall juvenile justice system at a national level and elements of context with a focus on children accused or suspected in criminal proceedings and who could be diverted by the law)</p>			
Prevalence of children's involvement in criminal proceedings ( <i>per year in the past 5 years</i> )	<p>Number of children involved in criminal proceedings (as far as possible) Including:</p> <ul style="list-style-type: none"> <li>• Number of children arrested by law enforcement</li> <li>• Number of children accused</li> <li>• Number of children held in pre-trial detention</li> <li>• Number of children detained (after adjudication of their case)</li> <li>• Number of diverted and non-diverted children in different brackets (age groups, gender, type of crime)</li> </ul>	Desk research	<ul style="list-style-type: none"> <li>• National statistics agency</li> <li>• National crime statistics</li> <li>• FRA</li> <li>• Eurostat</li> <li>• Childrenincriminalproceedings.eu</li> <li>• Government, NGO and GoNGO reports</li> <li>• Other reports</li> </ul>
Profile of children involved in juvenile justice proceedings	<p>Proportion of children involved in system of juvenile justice who are</p> <ol style="list-style-type: none"> <li>1. below the minimum age of criminal responsibility (e.g. questioned at a police station before determination of age)</li> <li>2. First-time accused</li> <li>3. Multiple-time accused</li> <li>4. EU nationals or third country nationals</li> </ol>	Desk research Interviews with authorities and professionals	<ul style="list-style-type: none"> <li>• National statistics agency</li> <li>• FRA</li> <li>• Eurostat</li> <li>• Childrenincriminalproceedings.eu</li> <li>• Government report</li> <li>• Other reports</li> <li>• Transcripts of interviews</li> </ul>
At what stage of the proceedings does diversion take place?	<p>At what stage of the proceedings does diversion take place? Proportion of children involved in system of juvenile justice who are</p> <ol style="list-style-type: none"> <li>1. Diverted by the police</li> <li>2. Diverted by the prosecutor</li> <li>3. Diverted by the court</li> <li>4. Diverted by non-judicial bodies</li> <li>5. Non-diverted</li> </ol>	Desk research	<ul style="list-style-type: none"> <li>• National criminal statistics</li> <li>• FRA</li> <li>• Eurostat</li> </ul>
Context of Justice System and its particularities applicable to children suspected or accused in Criminal Proceedings	<ul style="list-style-type: none"> <li>• Availability of a child-specific criminal justice system (i.e. a juvenile justice system, including <i>inter alia</i> specialised juvenile courts).</li> <li>• Conditions of diversion</li> <li>• Availability of specific provisions, services or procedures for children in the criminal justice system (juvenile justice system)</li> <li>• System of probation applicable for children</li> </ul>	Desk research Interviews Focus Group	<ul style="list-style-type: none"> <li>• National legislative and policy framework</li> <li>• Eurostat</li> <li>• Childrenincriminalproceedings.eu</li> <li>• Government report</li> <li>• Other reports</li> <li>• Interview transcripts</li> <li>• Focus group session(s) transcript(s)</li> </ul>

Questions	Indicators	Data source	Means of verification
<b>1. Contextual overview</b> (Description of the overall juvenile justice system at a national level and elements of context with a focus on children accused or suspected in criminal proceedings and who could be diverted by the law)			
Description of the relationship(s)/intersection(s) existing between the criminal justice and the child protection systems	<ul style="list-style-type: none"> <li>• Availability and use of a mandatory reporting system between different agencies/ministries (e.g. notification and involvement of an 'appropriate adult', such as guardians, in case of crime committed by minors)</li> <li>• Existence (and use prior to final adjudication) of a right to 'individual assessment' of children accused or suspected in criminal proceedings</li> <li>• <i>Who fills out the report (probation officer, social worker, etc.) and how they get the information (i.e. who do they speak to?)</i></li> <li>• Probation and guardian's cooperation</li> </ul>	Desk research Interviews	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Regulations</li> <li>• Protocols, standards</li> <li>• Guidance, etc.</li> <li>• Professionals</li> <li>• Interview transcripts</li> </ul>
Outcomes of the criminal proceedings for children suspected or accused	Proportion of children suspected or accused per type of <i>criminal proceeding</i> 1. Discharged and/or acquitted 2. Sentenced (broken down by type of sentence) 3. Beneficiaries of diversion measures 4. Other types of outcome (for example, suspension of the judgement)	Desk research Interviews Focus Group	<ul style="list-style-type: none"> <li>• National statistics agency</li> <li>• FRA</li> <li>• Eurostat</li> <li>• Childrenincriminalproceedings.eu</li> <li>• Government report</li> <li>• Other reports</li> <li>• Interview Transcripts</li> </ul>
Outcomes of diversion for children suspected or accused	Proportion of cases of diversion per type of outcome Postponement of accusation Ignoring of accusation Restorative justice forms (mediation, etc.) Attorney's reprimand Other outcomes of diversion depending on the national context	Desk research	<ul style="list-style-type: none"> <li>• National statistics agency</li> <li>• FRA</li> <li>• Eurostat</li> <li>• Childrenincriminalproceedings.eu</li> <li>• Government report</li> <li>• Other reports</li> </ul>
<b>Core research</b>			
Do accused or suspected children have the right of access to a lawyer and the right to be assisted by a lawyer before court and in detention as set out in EU directive 2016/800	<ul style="list-style-type: none"> <li>• Statistics – (Number of lawyers, Number of specialized youth lawyers)</li> <li>• Rules and regulations on access to a lawyer and legal aid</li> <li>• Rules and regulations on access to a lawyer and legal aid for children</li> <li>• Availability of the lawyer throughout the entire proceedings (i.e. from the moment of questioning right after their arrest or accusation/suspicion, including during evidence gathering or investigative acts, until final adjudication of the case) or limited to court hearing,</li> <li>• Access to lawyer in appeal and upper proceedings.</li> <li>• Role of the lawyer in the diversion process, and is he/she present?</li> <li>• Access to the individual assessment</li> <li>• Financial barriers with regard to access to a lawyer</li> <li>• Experiences of lawyers, children and other relevant professionals</li> </ul>	Desk research Interviews	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Regulations</li> <li>• Protocols, standards,</li> <li>• Guidance, etc.</li> <li>• Transcripts of interviews with children and stakeholders</li> </ul>

Questions	Indicators	Data source	Means of verification
<b>Core research</b>			
Are suspected and accused children informed promptly about their rights according to the standards set out in EU directive 2012/13?	<ul style="list-style-type: none"> <li>• Rules and regulations on child's right to information on their rights (access to a lawyer, free legal advice, to be informed about the accusation, interpretation and translation, the right to remain silent)</li> <li>• Letter of rights in child-friendly language</li> <li>• Experiences of lawyers and other relevant professionals</li> <li>• Right to information about the accusation</li> <li>• Right to access case materials</li> </ul>	Desk research Interviews	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Regulations</li> <li>• Protocols, standards, Guidance, etc.</li> <li>• Stakeholders' and children's interview transcripts</li> </ul>
Have suspected and accused children been recognised as a victim of a crime prior to their last accusation according to the standards set out in EU directive 2012/29?	<ul style="list-style-type: none"> <li>• Rules and regulations on victim identification</li> <li>• Profile and number of children who were previously victims of crimes</li> <li>• At the time of victimization what rights were guaranteed, or did children have the right to have their case heard in court; review a court's decision not to prosecute; have their expenses reimbursed; receive legal aid; recover stolen property.</li> </ul>	Desk research Interviews	<ul style="list-style-type: none"> <li>• Legislation</li> <li>• Regulations</li> <li>• Protocols, standards, Guidance, etc.</li> <li>• Stakeholders and children interview transcripts</li> </ul>
What are the personal specifics of accused or suspected children – who could be diverted – that affect their capacity to exercise the rights enshrined in the three procedural directives?	Personal experience Prior victimization Trauma Gender and gender sensitivity Sexual orientation	Interviews Focus Group	Interview transcripts Focus Group session(s) transcript(s)
Which particular personal circumstances affect accused or suspected children's capacity to exercise the rights enshrined in the three procedural directives?	Personal situation Administrative status (e.g. migration status, [e.g. unaccompanied minors or foreign children in family, asylum seeking or not etc.] victim's status, etc.) Role of the family or role of other holder of parental responsibility such as guardians or other trusted persons Availability of a social network	Interviews Focus Group	<ul style="list-style-type: none"> <li>• Interview transcripts</li> <li>• Focus Group session(s) transcript(s)</li> </ul>

## ANNEX 2A – LIST OF QUESTIONS FOR MINORS

- Do you know what a diversion measure is? What does it mean in your own words?
- Do you or did you benefit from one or more diversion measures? If so, which one(s)?
- How would you describe your personal experience with the juvenile justice system and of this/those diversion measure(s)?
- Did you know what was happening in the judicial process? How did you know it?
- Did you have access to a lawyer? When and how did he/she contact you for the first time? How often did you meet?
- What kind of information did you receive?
- Do you know what crime and victims mean? Please tell us.

## ANNEX 2B – LIST OF QUESTIONS FOR ADULT STAKEHOLDERS

- Personal data (job, experience, competence, education, training background)
- The institutional, structural framework of his/her work
- Do you have specialized training in interacting or working with youth? If yes, what type (legal, psychological, sociological, etc.) Who organized the training?
- What is your experience with diversion measures and/or restorative justice?
- What are the main diversion methods in Hungary? What is the prevalence of diversion? Please describe the situation outside of Budapest; under what circumstances can diversion be used and when is it used in reality?
- What kind of training do stakeholders receive in the field of diversion (how many, who, who holds them? (If not specifically about diversion, please tell us any similar or relevant training you participated in, for example, in juvenile or child-friendly justice, etc.)
- What are the rules and regulations on access to a lawyer and legal aid for children? Is the lawyer available throughout the entire proceedings?
- In which parts of prosecution process is diversion applicable and who can initiate it?
- How is diversion used and experienced in different stages of the criminal procedure?
- To what extent is a child-specific criminal justice system available?
- To what extent are specific provisions, services or procedures for children available in the criminal justice system?
- Who does the individual assessment of suspected or accused children? What happens when someone is a victim of a crime? What is the protocol of identification and his/her referral to the support system?
- How does the media represent juvenile offenders, are there explanatory articles on the topic of crimes committed by children, law enforcement and on the court processes? How is diversion explained by the media?
- Suggestions to improve the present situation. How can positive factors be built upon and how can those obstacles be overcome?





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