



Review of practices and gaps in the legal aid system for children in Hungary

Within the framework of the “CLEAR-Rights: enhancing legal assistance for children in Europe” Project

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***The views expressed in this document are solely the author's and do not necessarily reflect the official policy of the organisation*

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Executive summary

The “Review of the practices and gaps in the legal aid system for children in Hungary” is a baseline and need assessment report to guide the forthcoming phases of the project “CLEAR-Rights: enhancing legal assistance for children in Europe” funded by the Justice Programme of the European Union. The main objective of the project “CLEAR-Rights” is to enhance legal aid systems for children, more precisely to improve equal access to a lawyer for children suspected or accused of crime, through strengthening access to quality and specialized government-funded legal aid and pro bono legal assistance. The review paper is based on a qualitative approach including desktop research and interviews with lawyers and other stakeholders conducted in August – September 2021.

The study aims to identify challenges in accessing legal aid for children in conflict with the law and suggest effective remedies to ensure an equal access to free of charge legal assistance for all children. While acknowledging that arrest, detention and interrogation are traumatic experience for any child irrespective of the circumstances, it is vital that equal access to legal aid requires not only the prohibition of discrimination but also the provision of specific measures for vulnerable groups. The Hungarian legal framework provides for legal aid for children in conflict with law: children should be assisted by a state-funded defence counsel in a criminal procedure. Pro bono legal assistance is not regulated but still practiced by attorneys, who emphasized that while state-funded legal aid should be improved, pro bono networks might play a role complementing it by supporting major, lengthy cases. The review paper analyses the current situation, identifies gaps and promising practices as well as draws recommendations particularly with regard to legal aid for children in Hungary.

1. Introduction

1.1. Context

The “Review of the practices and gaps in the legal aid system for children in Hungary” was commissioned by PILnet Foundation at an early stage of the project “**CLEAR-Rights: enhancing legal assistance for children in Europe**” funded by the Justice Programme of the European Union. The main objective of the project is to enhance legal aid systems for children, more precisely to improve equal access to a lawyer for children suspected or accused of crime, through strengthening access to quality and specialized government-funded legal aid and pro bono legal assistance. Unique component of the project is the focus on pro bono legal assistance for children in conflict with law that is understood as advice or service provided at no charge to the client by private lawyers ‘for the public good.’ This is distinct from legal aid, which is government-funded, often means-tested, and is offered free or at a subsidized cost.¹ The project furthermore aims to support the overall effort of the European Commission to achieve a European area implementing child-friendly justice and to coherently implement EU legislation.

The project “CLEAR-Rights”, running from January 2021 to December 2022, is coordinated by the Regional Office of Terre des Hommes for Europe in Hungary, in collaboration with 5 partners in the 5 focus countries: Défense des enfants International in Belgium, l’Alliance des Avocats pour les Droits de l’Homme in France, PILnet Foundation in Hungary, DCI-ECPAT in the Netherlands and Terre des hommes Romania in Romania.

Through this project, the partners:

- Design a training package to build skills and improve knowledge of legal aid and pro-bono lawyers, as well as law students, based on the needs identified in the European review,
- Develop and adapt Guidelines and quality standards for child-friendly legal assistance for legal practitioners,
- Create links and implement a set of activities to consolidate a network of legal assistance in Europe and to encourage collaboration and exchange best practices in this field,

¹ European Pro Bono Legal Guide, PILnet Foundation, 2020

- Provide online tools for professionals, including database of jurisprudence and legal factsheets for lawyers related to child justice to facilitate free legal assistance to children,
- Develop a digital legal assessment tool to assess the quality of legal assistance received by children,
- Organize advocacy events to increase awareness of policy makers and service providers about legal aid and legal assistance for children in conflict with the law.

The **Hungarian review fed into to the European review** that was a baseline and need assessment report to guide the forthcoming phases of the project. Therefore, both reviews aim to identify challenges in accessing legal aid for children in conflict with the law and suggest effective remedies to ensure an equal access to free of charge legal assistance for all children, including the ones in the most vulnerable situations. While the European review has a comparative approach, this paper analyses the current situation, identifies gaps and promising practices as well as draws recommendations particularly with regard to legal aid for children in Hungary.

1.2. Methodology of the research and its limitations

This review paper is based on a **qualitative approach including desktop research and interviews** with lawyers and other stakeholders (representatives of bar associations, non-governmental organisations, policymakers and other stakeholders, social worker, psychologist and training institutes). Due to lack of time and the parallel set up of the child advisory group in Hungary, which is integral part of the CLEAR-Rights project in all five implementing countries, children were not involved in the research. Besides the summer period, another difficulty was that several attorneys refused to take part in the research because they did not feel confident enough to talk about their limited experience with child defendants. In Hungary, there are no attorneys specialized in providing legal assistance for children and most of the time when they defend children, they are appointed by the state. Nevertheless, this had a positive effect on the research: those attorneys who volunteered to participate in an interview had personal commitment to help children and were experienced in interaction with child clients.

The lawyers who took part in an interview were all specialized in criminal law (among others), and had extensive, 15-35 years of experience in defending children through mandate, appointment by the state and pro bono. According to their experience, in most of the cases

they serve as state-funded legal aid defence counsels, it is quite rare that they are mandated or approached to take such cases pro bono. Nevertheless, one of the attorneys interviewed was granted the pro bono lawyer of the year award by PILnet Foundation. All the lawyers interviewed were committed to help children, they believe that children who are offenders are in crises in their life, and their behaviour is a reaction to this situation. Some also mentioned that they are motivated to defend children because maybe “they can be still saved”. They described their role as a defence counsel in a way emphasizing that they should not be judgemental with the children from a moral point of view: “I am his mother instead of his mother!” “I am protecting his rights if I am making the best out of the situation”.

2. International standards of legal aid for children in conflict with law

The **Convention on the Rights of the Child** (Art. 37 and 40) provides the basic, fundamental guarantees for children deprived of liberty or in conflict with law to receive and have access to legal and any other appropriate assistance. These principles are reinforced in the **General Comment No. 24 of the UN Committee on the Rights of the Child** that provides: “a comprehensive child justice system requires (...) specialised defenders or other representatives who provide legal or other appropriate assistance to the child”.² In this General Comment the Committee expressed its concerns that “children are provided less protection than international law guarantees for adults” and it “recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities”. It was emphasized that “child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision”.

In Europe, **Art. 6 (3)(c) of the European Convention on Human Rights and Art. 47 of the EU Charter** guarantees the right of defendants to legal assistance and to get free legal aid to those who lack sufficient resources and when the interest of justice so requires. The Guidelines of the Committee of Ministers of the Council of Europe on Child friendly justice also mention that ensuring equal access to free and specialised high quality legal assistance will guarantee a fair and child-centred justice process for all children and ensure that the

² UN Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019 available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

principles of the best interests of the child and non-discrimination remain a primary consideration throughout the justice process³.

The **Directive 2016/800/EU** on procedural safeguards for children who are suspects or accused persons in criminal proceedings clearly established the right to legal assistance and imposed more obligations to the State. According to Art. 6 of Directive 2016/800/EU, “children who are suspected or accused persons in criminal proceedings have the right of access to a lawyer in accordance with Directive 2013/48/EU⁴”. Article 18 prescribes that “Member States shall ensure that national law in relation to legal aid guarantees the effective exercise of the right to be assisted by a lawyer”. The **Directive 2013/48/EU** grants every person suspected or accused in a criminal proceeding the right of access to a lawyer, while Directive 2016/800/UE even imposes an obligation to provide the assistance by a lawyer for the child, which is independent of the will of the child.

Hungary is state Party to both UN Convention on the Rights of the Child and the European Convention on Human Rights and as an EU member states, furthermore, it transposed both EU Directives mentioned above.

3. Hungarian legal framework of state-funded legal aid for children

3.1. Key concepts of the child justice system in Hungary

First, it is important to clarify the different terms related to child justice used in the Hungarian legislation. According to the incorporating law of the UN Convention on the Rights of the Child, Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship, the term of ‘**child**’ equals ‘**minor**’ defined by the Civil Code as a person under the age of 18, unless they attained majority earlier through marriage (which is possible from the age of 16 with the authorization of the child protection agency). At the same time, the Criminal Code and the Criminal Procedure Code uses systematically the term of ‘**juvenile**’ for children between the age of 12 and 18 (based on 105. § (1) of the Criminal Code). Although the UN Committee on the Rights of the Child called upon Hungary to raise the minimum age of criminal responsibility, it is 12 years in case of serious crimes (such as homicide, severe bodily harm, act of terrorism and robbery); for all other crimes, it is 14

³ See paras. 37-43 and Explanatory Memorandum 93-94, 101-105, Council of Europe Guidelines on child-friendly justice

⁴ 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 proceedings 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

years (16. § of the Criminal Code). Nevertheless, in the context of the current research, Hungarian legal professionals referred to ‘juveniles’ because a married child at the age of 17 is considered an adult with regard to civil matters but he or she is still a juvenile and therefore entitled to special arrangements in the justice system.

The Criminal Code lays down the restorative approach to juvenile justice: any punishment imposed upon a juvenile shall aim to positively influence their development to become a useful member of society and therefore provide guidance, education and protection for them (106. § (1)). The Criminal Code applies to juveniles in line with the specific provisions set out in Chapter XI regarding penalties and measures. The Criminal Procedure Code reaffirms the principle of restorative justice by emphasising that the objective of punishment is to support the juvenile’s inclusion in society and prevent them to commit a crime again (677. §).

3.2. Access to state-subsidized legal aid for children in conflict with law

According to Article XXVIII of the Fundamental Law of Hungary, **everyone is entitled to have the criminal charges against them to be adjudicated within a reasonable time, in a fair and public trial conducted by an independent and impartial court.** Furthermore, the Fundamental Law establishes the presumption of innocence and the right to defence at all stages of the criminal procedure for everyone, including children above the age of criminal responsibility. The defendants either defend themselves, mandate a defence counsel to represent them during the criminal procedure or request legal aid from the state. Defence counsel can be an attorney registered at one of the regional bar associations.

In Hungary, legal aid within the context of the criminal procedure means that **the state advances or even covers fully or partly the fees and costs of the defence counsel appointed** (17. § (1) of Act of LXXX of 2003 on legal aid). If the defendant is found guilty, the court obliges him or her to pay the costs of the criminal procedure, including the fee of the appointed defence counsel, depending on whether the defendant requested and granted personal cost exemption or reduction. Any person suspected or accused of committing a crime who is eligible for legal aid can only rely on their defence counsel because the government offices of legal aid and private providers contracted by the state can assist only victims of crime with legal representation (69.§ (3) of Act of LXXX of 2003 on legal aid).

The general provisions of the Criminal Procedure Code lay down **three cases when a state-funded defence counsel has to be or might be appointed.** First, the authorities (court, public prosecutor, law enforcement) appoint a defence counsel if it is mandatory at the

criminal procedure (for example in case of certain crimes) and the defendant has not mandated a counsel for their defence (46. § (1) of the Criminal Procedure Code). Second, defence counsel can be appointed if it is deemed necessary to ensure effective defence of the defendant by the authorities (46. § (5) of the Criminal Procedure Code). Third, if the defendant is unable to cover the costs of the attorney and requests the appointment of a defence counsel, after the examination of their financial situation, the authorities might grant them personal cost exemption and appoint the defence counsel (46. § (6) of the Criminal Procedure Code).

Chapter XCV of the Criminal Procedure Code prescribes **the special rules of juvenile justice including the right to defence counsel**. The presence of the defence counsel is mandatory in a criminal procedure against a juvenile (682. § (1)), including certain investigative acts taken before filing the charges such as the interrogation of the suspect, confrontation with the witness, identity parades, presentation of evidence, interrogation at the crime scene, reconstructions of the scene of a crime as well as in proceedings in relation to measures with the deprivation of liberty taken by the decision of a judge (682. § (2)). In case of any other action taken before filing the charges with the participation of the juvenile, the defence counsel has to be informed afterwards if he or she was not present and was not informed beforehand (682. § (3)).

4. Pro bono legal assistance for children in conflict with law

Pro bono legal assistance is professional legal work undertaken voluntarily and without payment but delivered with the same standard of quality and ethics as any other paid work. It is similar to state-subsidized legal aid in a sense that it provides access to lawyers for those who otherwise would not be able to access them; however, it does not exempt the government from its obligation to ensure access to justice for all. Although pro bono legal assistance is not regulated in Hungary, it can be considered to fill up the gaps of the state-subsidized legal aid system and to enhance and supplement existing legal capacities of civil society organisations.

In general, lawyers have a well-formulated opinion about pro bono legal assistance. The attorneys interviewed for the purpose of this research explained that **they consider legal aid as pro bono legal service in practice because of the low fees and the high number of hours invested in such cases**. In the countryside, where only a handful of lawyers are working and they already stretch beyond their capacity, it is more difficult to find pro bono

lawyers. As one of the interviewees pointed out, “one has to understand that the lawyer is also a business actor”. Another attorney, who is based in Budapest, mentioned that pro bono cases find him; he does not need any references.

Nevertheless, the attorneys emphasized that since the presence of the defence counsel is mandatory in case of juveniles, the system in place should be improved instead of developing a parallel system. They also raised attention to the fact in most of the cases the defence counsels have to be contacted promptly and rush to the authorities where the child is subject to investigative acts, therefore, there is no time to connect pro bono lawyers with clients. In any case, such a pro bono system could work in major cases where charges have been filed and court procedure takes place over a period of time.

As the experience shows, highlighted by the representatives of non-governmental organisations, it is crucial to set up a **partnership in the form of a platform for coordination of pro bono lawyers and potential cases and for organisation of training and capacity development**. The PILnet Foundation promotes pro bono and public interest law in Hungary, among others, by setting up a clearinghouse that connects organisations seeking legal assistance to legal practitioners who are willing to help on a pro bono basis. Furthermore, the Foundation is currently designing a course for lawyers on pro bono legal assistance, which will raise awareness and make sure that lawyers understand the concept of pro bono.

Good practice identified by the research is the **Child’s Rights Center of the Hintalovon Foundation**, a children’s rights NGO. Between 2017-2021, the Center provided information in 1000-1200 cases, mostly to parents who sought legal advice in relation to custody, divorce, school issues or sexual abuse.⁵ The Foundation set up a pool of pro bono lawyers, who were selected and trained by the means of practical, small group and role plays exercises. After each training, they discussed individually with the pro bono lawyers their personal motivation and expectations. The Foundation sent cases from time to time to the pro bono lawyers for legal advice but they also provided representation at court. It is worth to mention that the PILnet Foundation assisted the Hintalovon Foundation to approach big law firms at the beginning, which were not specialised in issues related to children but interested to give back to society in some ways.

⁵ How does the Center works? Information based on the [website of the organisation](#) and interview with the representative of Hintalovon Foundation.

According to the practice of the organization, the pro bono lawyer meets the child client several times throughout the procedure and explain some of the critical aspects of the procedure (for example who will be present at the interview or the court, what is going to happen, how many times, whom can be called to the room, etc.). Thanks to this programme, the lawyers improve their interpersonal skills, they become more confident working with children and their dedication grows so strong that they always find the time within their busy schedule to reply to requests of the Center. Since the beginning of the programme, professional supervision has been offered for every pro bono lawyer, first in groups, then individually, but no one has taken this opportunity so far. The reason probably is that professional supervision providing an opportunity for workers to reflect on their practice is not common among legal professionals in Hungary.

In 2020, due to the fast-growing demand and after learning about the tendencies and most typical questions, the Hintalovon Foundation decided to re-think the operation of the Child's Rights Center. As a result, **they set up a chatbot with artificial intelligence software** to replace the practice of replying each request individually via email.⁶ In the last five months, 300-400 conversations took place and since the chatbot asks about the age of the person at the beginning, it is known that in 85-90% of the cases, the users are adults. Nevertheless, there are questions and explanations prepared for children about the criminal procedure, the investigation, how to file a police report, and the role of police and the courts. Since 2021, the Center provides opportunity for individual consultation only if children themselves request legal advice by email or filling out an online survey. Over the past year, 10-11 children requested assistance in cases when they wanted to understand their own rights and, on some occasions, when they had conflict of interest with their parents or legal representatives.

Although the Child's Rights Center had very few cases of children in conflict with law, it proved that **the concept of pro bono legal assistance could be put into practice in Hungary**. First, the success can be attributed to their extensive database of child-friendly information on different children's rights topics and their online chat services, that makes them well-known among children and parents. Second, the organisation is known to the wider public as well, therefore law firms and lawyers who are willing to provide services pro bono approach them with interest and trust. Third, the organisation developed a strong relationship with a few key law firms paired with the capacity building activities which were closely linked to this collaboration.

⁶ The chatbot is available at <https://hintalovon.hu/chat-mukodese/>

5. Challenges to access to legal aid for children in conflict with law

5.1. Identifying gaps: background data

It is worth looking at the statistics first to understand how the juvenile justice system is functioning now in Hungary.⁷ According to the data provided by the law enforcement and the public prosecutor office, in 2019, 7861 juvenile offending were registered, while in 2020, 8064 offences.⁸ At the same time, 2906 cases of juveniles were closed by courts in 2019 (2858 cases with condemnation, 28 cases with acquittal and 20 cases with termination).⁹ In 2020, 2353 cases of juveniles were closed by courts in 2019 (2304 cases with condemnation, 36 cases with acquittal and 13 cases with termination).¹⁰

Today, **the number of attorneys who can be appointed as defence counsels in Hungary** is 2066.¹¹ This data is interesting when disaggregated by geographical location and compared to the statistics of juvenile offending (see the table below). For example, in case of Szabolcs-Szatmár-Bereg county, the number of offences committed by juveniles is very high, third highest in the country, while the number of attorneys available for appointment is very low, one of the lowest in Hungary. In some areas (sub-county level), there are only 2 or 3 attorneys practicing. This means that on the one hand, these attorneys are more likely to be appointed for defending juveniles and they have more cases than lawyers in other counties. On the other hand, they have more experience with children and accordingly they might have different training needs. The lawyers who participated at the interviews mentioned that, since the introduction of the automated appointment system, the number of legal aid cases has increased, both the appointment to defend juveniles and adults. The attorneys based in Budapest estimated that around 10% of their cases are juveniles, while one attorney based in the countryside said it is more around 30%.

Counties of Hungary	Number of registered offences committed by juveniles (14-17) in 2020	Number of registered offences committed by juveniles (14-17) in 2019	Number of lawyers available to be appointed as state-funded defence counsels
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⁷ See the database the unified criminal statistics of law enforcement and public prosecutor office available at <https://bsr.bm.hu/Document>

⁸ For more information on the unified criminal statistics of law enforcement and public prosecutor office see the Methodology of data collection available at http://ugyeszseg.hu/pdf/statisztika/ENy%C3%9CCBS18_Modszer_tan_i_utmutato.pdf

⁹ Available at the website of the courts: <https://birosag.hu/statisztikai-adatok/revizio-utan/2019>

¹⁰ Ibid.

¹¹ The list of lawyers who can be appointed as defence council ex officio is available at <https://kirendeles.magyarugyvedikamara.hu/kirendeles/>

Budapest	1142	1019	523
Baranya	446	405	72
Bács-Kiskun	492	466	138
Békés	213	210	67
Borsod-Abaúj-Zemplén	1072	990	135
Csongrád-Csanád	300	369	104
Fejér	202	243	60
Győr-Moson-Sopron	242	266	80
Hajdú-Bihar	521	564	142
Heves	308	251	51
Komárom-Esztergom	197	150	43
Nógrád	219	294	21
Pest	582	427	105
Somogy	326	296	67
Szabolcs-Szatmár-Bereg	666	668	55
Jász-Nagykun-Szolnok	294	312	119
Tolna	274	218	42
Vas	151	196	118
Veszprém	238	305	70
Zala	166	205	54
Abroad	13	7	-
Total	8064	7861	2066

5.2. Shortcomings of the child justice system

At the most recent review, **the Hungarian Child Rights NGO Coalition** raised attention of the UN Committee on the Rights of the Child that, although the Hungarian legislation is mostly in harmony with the basic principles of EU law, children face several obstacles when they get into contact with the justice system. “The lack of facilities and trainings, together with limits in budgets and personnel, cause the most serious problems at a systemic level. 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 in out-of court, alternative procedures when professionals divert the children's case.¹²

Following the examination of the state report, civil society reports, and a contribution submitted by children, and the country review that took place in Geneva, the Committee put forward the following recommendations with regard to the administration of child justice:

- (a) Ensure that specialized and well - trained judges and judicial staff deal with cases involving children;
- (b) Amend the law to re-establish a standardized minimum age of criminal responsibility of 14 years, regardless of the crime;
- (c) Abolish the practice of sentencing children to prison terms for petty crimes;
- (d) Train professionals on and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, non-custodial sentences such as probation or community service;
- (e) In cases in which detention is unavoidable, ensure that children are detained in separate facilities, and that pre-trial detention is regularly and judicially reviewed, with a view to its withdrawal, and is subject to a strict limit on its extension;
- (f) Provide children accused of criminal offences with information about their rights and how to report abuses.¹³

It is important to mention that the **Hungarian Helsinki Committee has been working on to improve the legal aid system since long time**. Their advocacy measures have been addressing systematic issues which are inherent in the whole system, therefore also apply to cases of child defendants. Nonetheless, they also implemented projects focusing on the effective defence of juveniles in criminal procedures (see Chapter 6.2.). In their individual submission to the Universal Periodic Review of Hungary in the third cycle, they summarised these systemic challenges and proposed the following recommendations:

¹² The full text of the submission is available at

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/INT_CRC_NGO_HUN_40918_E.pdf

¹³ Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, 3 March 2020

- Ensure the necessary funding for legal aid lawyers' activities.
- Introduce a quality assurance system for legal aid lawyers and interpreters.
- Abolish the possibility of appointing interpreters who do not fulfil statutory criteria.
- Introduce a written, easy-to-understand Letter of Rights that covers all rights required by Directive 2012/13/EU.
- Include plain language skills into the training of criminal justice professionals.¹⁴

The **Hungarian Commissioner for Fundamental Rights**, the national human rights institution of Hungary, is assigned to defend children's rights as a priority as well as he acts as the National Preventive Mechanisms under the Optional Protocol to the Convention against Torture. Although the courts are excluded from the Commissioner's mandate, it happens from time to time that he deals with cases related to child-friendly justice. For example, case No. AJB-472/2017 concerned a 14-year-old boy with disabilities who was accompanied to the police station from his home and had been interviewed without having his parents informed or a defence counsel appointed.¹⁵ The Commissioner found that with such treatment the police infringed the best interest of the child, his right to fair trial and to protection as a child. Furthermore, he raised attention to the fact that interviewing a child as a witness cannot be used as a mean to gain information and evidence if the police have a suspicion. The police accepted the findings of the report and took several steps to avoid such children's rights abuses in the future including organizing a compulsory training for all the policemen in the region concerned. If the Commissioner has to reject an application due to lack of mandate, he still sends a detailed explanation how the human rights of the applicant are concerned and informs them about further opportunities to seek justice or redress (in front of other authorities).

5.3. The right of access to lawyer

The Council of Europe Guidelines states **that children should have “the right to their own legal counsel and representation, in their own name**, in proceedings where there is, or could be, a conflict of interest between the child and the parents or other involved parties”. Accordingly, “children should be considered as fully fledged clients with their own rights and

¹⁴ The full text of the submission is available on the website of the NGO at https://helsinki.hu/wp-content/uploads/2021/03/HHC_UPR2021_Hungary_criminal_justice_web.pdf

¹⁵ The description of the case is available at the Annual Report of the Commissioner, page 78-80. <http://www.ajbh.hu/documents/10180/2811425/AJBH+besz%C3%A1mol%C3%B3+2017/60b3d968-ac8e-d28e-058b-64d0eb7e6d69?version=1.2>

lawyers representing children should bring forward the opinion of the child”.¹⁶ The EU Directive 2016/800 sets out further standards of this right: children are assisted by a lawyer without undue delay once they are made aware that they are suspects or accused persons.

The presence of the defence counsel is mandatory in cases of juvenile defendants, if the child or their family do not mandate an attorney, the authorities will appoint one according to the following procedure. The authority takes the decision to appoint a defence counsel and send it to the competent regional bar association through the electronic system of the Hungarian Bar Association along with relevant information such as that the defendant is a juvenile (1. § (1) and 2. § (1) f) of 12/2018. (VI. 12.) Regulation of the Ministry of Justice). As of 1 July 2018, the **competent regional bar association appoints the defence counsel using an automated system** that chooses the next attorney in the alphabet or based on another arrangement who cannot be appointed again before all the other attorneys from the same list had already been appointed at least once. Members of the Budapest Bar Association have the option to register for the list, while members of all other regional bar associations are listed in the registry by default and therefore can be appointed as a defence counsel anytime. Nevertheless, in both cases, no specific requirement, training or accreditation are necessary to be listed in the registry. The only special provision is that the defence council has to be notified about the fact that the defendant is a child. The database of the regional bar associations of the attorneys to be appointed as defence counsel is accessible for information via a public website¹⁷.

The regional bar association informs the relevant authority who has been appointed along his or her contact details, then within 24 hours, **the authority notifies the attorney and the defendant** about the decision regarding the appointment of the defence counsel (4. § of 12/2018. (VI. 12.) Regulation of the Ministry of Justice). If the regional bar association fails to appoint a defence counsel within one hour from receiving the decision of the authority, or there is a conflict of interest with regard to the attorney appointed, or the attorney cannot be reached, the authority appoints a substitute defence counsel (47. § (1)-(2) of the Criminal Procedure Code). Substitute can be appointed later in the procedure as well if the defence counsel fails to participate in a procedural act that has to be carried out without delay, and he or she does not excuse himself or herself or does not take care of his or her substitution (49. §

¹⁶ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

¹⁷ For further information see <https://kirendeles.magyarugyvedikamara.hu/kirendeles/>

(1) of the Criminal Procedure Code). The mandate of the substitute defence counsel is valid until the particular procedural act is carried out (49. § (5) of the Criminal Procedure Code). Some professionals pointed out during the interviews that the regulations regarding the substitute defence counsel basically recalls the old practice of appointing acquainted attorneys on a discretionary basis (as it was the practice before 1 July 2018).

Although, the decision of the authority to appoint a state-funded defence counsel cannot be appealed, **the defendant (the juvenile or their legal representative) can request the appointment of another attorney from the court, public prosecutor or law enforcement** - depending on in front of which authority the case is pending (46. § (7) of the Criminal Procedure Code). In case of a pro bono lawyer, the mandate needs to be withdrawn and if no new attorney is mandated, the authority will appoint a state-funded defence counsel for the child according to the general procedure. In case the attorney violated the Ethical Code of the bar association, for example by failing to uphold the child's right to privacy or infringing the rules of confidentiality, disciplinary proceedings can be initiated against him or her (6/2018. (III. 26.) Rules of the Hungarian Bar Association on the ethical rules and norms of the attorney profession). Since there is no child safeguarding protocol in place, and as all attorneys highlighted, the obligation to keep the child client safe can be derived from the Ethical Code.

The introduction of mandatory representation of children coincided with the launch of the **new automated system for the appointment of the state-funded defence counsels**. In practice, this means that the distribution of cases among the attorneys are more balanced, and any attorney can be appointed to defend a juvenile. According to most of the lawyers interviewed, the authorities request the appointment of the attorney from the bar association when they realize that the requirements of the mandatory participation of the defence council have been met (more or less in a timely manner).

Nevertheless, the aspect of mandatory presence might have a downside observed in the countryside: the authorities might prefer to interrogate the child only once and avoid carrying out other investigative acts when a defence attorney has to be called to assist again. This is even more complicated, if it is a group of children, because they have to call in 3-5 attorneys. Another practiced shared by one of the interviewed lawyers is that, the public prosecutor, following one interrogation suspends the criminal procedure with condition and postpone filling the charges for at least one year (416. § of the Criminal Procedure Code), after that the

case will be closed. However, if the child commits an offence again, they open the suspended case and merge it with the new one. This entails the risk of being condemned for something that the child did not commit, because after 1 – 1,5 years already passed, it is almost impossible to reconstruct what happened in reality and investigate the first case properly. It is in the best interest of the child as well as the authorities to have the investigative acts carried out promptly.

5.4. Equal access to free legal aid

In accordance with all relevant human rights instruments, **the child in conflict with law should not be subject to discrimination on any ground and vulnerable children should be granted specific assistance and protection in the criminal procedure.** According to the standing of the UN Committee on the Right of the Child, effective legal representation should be provided for free of charge, while EU Directive 2016/800 prescribes that children should be assisted by a lawyer and this should be guaranteed by the national legislation on legal aid. The CoE Guidelines states that “children should have access to free legal aid, under the same or more lenient conditions as adults” (para. 38.).

With regard to state-funded legal aid, it has to be explained that **the attorneys appointed ex officio are eligible for a fee and the reimbursement of their costs** (travel, accommodation, parking and administrative costs) that is advanced and borne by the state (32/2017. (XII. 27.) Regulation of the Ministry of Justice). The fee is currently 6000 HUF (~16,9 €) and calculated per hour for the participation of the defence counsel in procedural acts, furthermore, 20% of the fee is awarded to cover the preparation of the participation in each procedural act. In case of a consultation with a client deprived of liberty, 70% of the fee is granted per hour. Nevertheless, the time spent drafting written documents, travelling to the place of the procedural act or contacting other professionals working with the child (such as the head of the childcare institution, social worker or head teacher) is not included. It consequently also happens that attorneys in Budapest decide to opt out from the list and not to take appointments ex officio.

If the child is found guilty of the intentional commission of a crime, the court obliges him or her or their caretaker to fully or partly reimburse the costs of the criminal procedure that were advanced by the state, including the fees and costs of the appointed defence counsel (693/A. § of the Criminal Procedure Code). Personal cost exemption or reduction can be requested and granted following the examination of the financial situation of

the convicted person, be it an adult or a child, however, it is a discretionary decision of the responsible state secretary on behalf of the Ministry of Justice. If the attorney does not raise the attention of the child and their family for the opportunity and the formalities of the application, probably they will not get information from any other source. Furthermore, the application is subject to fees. Accordingly, it is not ensured that the legal aid for the child defendant is always provided free of charge.

Several professionals, along with the attorneys, emphasized that **most of the children who are in need of legal aid are marginalized, coming from a socially disadvantaged situation** that can be exacerbated by drug abuse or being subject to prejudice for affiliation to a national minority. Middle class parents can afford mandating an attorney and pay for the fees and costs; therefore the social background of the family is important. Furthermore, children in care, who have been removed from their family and placed in a childcare institution by child protection authorities are also highly vulnerable. The psychologist expert explained that there are development lines towards juvenile criminal behaviour described in Hungary, but these are not determined unless more than one factor is present. For example, the son of a drug abuser mother will not necessarily offend, but he is more likely to commit an offence if he is placed in a childcare institution.

During the interviews, child protection guardian working in the capital estimated that **5 % of children in care are in conflict with law and most of them commit 3-4 offences**. Furthermore, while only 1 % of the child population of this area is in care, the 30 % of the offences are committed by juveniles who are placed in alternative care. An attorney working in the countryside shared a similar experience: many of his young clients are children on the run after escaping from a childcare institution, therefore they do not show up for interview at the police station even if their case would be easy to handle. The situation of these children is a complex issue, and despite the codification of restorative justice, in practice the focus is on the commission of the offence and juveniles are treated accordingly.

5.5. Best interest of the child and multidisciplinary approach

One of the overarching principles of the UN Convention on the Rights of the Child is that the best interests of the child should be a primary consideration in all matters involving or affecting them, including in the criminal procedures. In practice, this means that the child is listened to, all their rights are respected, and their psychological and physical well-being and legal, social and economic interests are assessed through a comprehensive approach. If more

than one child is involved in the same procedure, their best interests need to be assessed separately.

During the research, representatives of civil society organisations raised attention to the fact that **the best interest of the child has to be assessed from a multidisciplinary point of view**; therefore, the defence counsel should rely also on the other professionals working with the child defendant. In order to support this approach, the interviewed non-legal professionals shared some case studies. A 16-year-old child, living in a childcare institution had been tried for offences he committed before being placed in care. The defence council was arguing for the lightest possible punishment, in this case, for one year in a correctional facility, but this did not necessarily serve the best interest of the child because then he has to change environment several times before he turns 18 years old (from the childcare institution to the correctional facility, then back). In another case, the attorney gained important information from the child protection guardian who explained that the child is taking part in development classes at the school next to the childcare institution. Therefore, it was in the best interest of the child to be confined to a wider area than their residence (which are different measures under Hungarian law). Furthermore, the attorney can learn it from other professionals if there is a conflict between his or her client and other children residing in the same childcare institution, which makes justifiable to request confinement to be implemented at the residency of a family member in order to avoid further tensions.

On the contrary, the attorneys explained during the interviews that they focus more on the parents and most of the time they do not deem necessary to contact other professionals. Nevertheless, child protection guardian experienced that even though they are the legal representatives of children in care and therefore take the place of the parents, it is rare that the state-funded defence councils are cooperative with them. The guardian shared his experience that he tried to contact the defence counsel several times, without success, they were usually available for a quick discussion before the interrogation or the court trial. One attorney acknowledged that it would be great to have a **closer cooperation with professionals working with children**, but they are also underpaid and exhausted. In some cases, it is even more difficult because the children commit offence against their teachers or caretakers. Attorneys tend to seek assistance from other professionals merely in cases where there is a suspicion that the child is not of sound mind or not mature enough, as it would happen in case of an adult who cannot understand the consequences of their actions due to a disability or a disease. In such cases the lawyer initiates an examination carried out by a certified expert

whose fees and costs will constitute part of the costs of the criminal case to be reimbursed by the child if he or she is found guilty of the intentional commission of a crime (see Chapter 5.4).

5.6. The right to information and the right to participation

In its General Comments, the UN Committee on the Rights of the Child Committee emphasized that the provision of an official document for the child in the criminal procedures is not sufficient, the authorities need to ensure **the child understands the charges, options and processes** by explaining everything orally, even if the child is assisted by a parent or another supporting adult. The Council of Europe Guidelines on child-friendly justice declares the right of all children to be informed about their rights and to be consulted and heard in proceedings involving or affecting them by giving due weight to their views. Any information during the criminal procedure “should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive”. The Guidelines furthermore recommends that “child-friendly materials containing relevant legal information should be made available and widely distributed, and special information services for children such as specialised websites and helplines established”.¹⁸ In 2020, the UN Committee on the Rights of the Child recommended Hungary to provide children accused of criminal offences with information about their rights and how to report abuses.¹⁹

All interviewees agreed that it is important that **the child has to be explained in a child-friendly language what is the suspicion and the procedure, and the lawyer has to make sure that they understood it** (for example by asking follow-up questions). Children who do not know their rights in the criminal procedure and do not understand the legal jargon are vulnerable. Some mentioned that it does not matter if the client is a child or an adult, you always have to explain everything in a way and language they can understand. Another crucial element of the interaction is that the lawyer has to gain the trust of the child in a relatively short time and under difficult circumstances. According to one of the lawyers, it is always good to have a small talk at the beginning to make the child feel at ease with their defence counsel. Another mentioned that he thinks the child starts trusting him when things

¹⁸ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies). https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

¹⁹ Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, 3 March 2020

are happening in the procedure the way he predicted or explained. Therefore, if the child does not want to cooperate, he keeps doing his job until they will understand that he is there to defend the child interests. Another attorney experienced that even if the children pretend not to listen, they do so, therefore the lawyer has to explain everything properly, and then the cooperation will be a different question. Nevertheless, if the child uses as a mother tongue a language other than Hungarian or prefers to use their minority language, an interpreter will be appointed, and the costs will be advanced and borne by the state. The same rule applies to children with hearing or speech impairment (78. § (1)-(6) of the Criminal Procedure Code).

One of the gaps identified is the **lack of child-friendly information materials on national legislation**. The whole system is designed to deal with adults who themselves might be struggling to understand the documents or procedures. The Hungarian Helsinki Committee developed short booklets targeting citizens that explains the rights of the defendant in case of suspicion or detention.²⁰ The Hintalovon Foundation developed several child-friendly information materials in their ChiLLS project, including one on “What are your rights?”,²¹ but this booklet focuses on the presentation of the EU Directive without references to the national legislation. The attorneys interviewed agreed that a similar material could be developed for children, in a child-friendly language that would be used by authorities and defence counsel, furthermore, made available online where children have access to it easily. The bar associations can also encourage the use of such materials by distributing them.

Since children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, attorneys mentioned that **defence counsel should assess the relationship between the parents and the child** to better understand the family situation and how the child relate to their parents. In accordance with legislation, the parents or legal representatives have to be informed and present in case a criminal investigation is opened against a child. However, it happens that the children do not tell the truth to the defence counsel in the presence of their parents or legal representatives because they do not want to let them down. This makes the job of the attorney more difficult, especially, if he or she has to learn what happened from witnesses or evidence presented later on. Therefore, before the first interrogation, some lawyers talk to the child client, separately from the parents, in a distance that they cannot hear the conversation. Another lawyer mentioned that he has been

²⁰ See the booklets, in Hungarian and in English at <https://helsinki.hu/milyen-jogai-vannak-buntetoeljaras-es-fogvatartas-soran/>

²¹ See the booklet in English at https://hintalovon.hu/wp-content/uploads/2020/11/eu_direktivak_CHILLS_2020.10.06_EN.pdf. Other child-friendly materials developed in this projects are available at <https://hintalovon.hu/en/2020/11/13/child-friendly-materials-chills/>

approached by his young clients on social media where they could talk more freely, but he did not find it strange since his impression is that children nowadays feel more confident to text than to call. Nevertheless, it has to be pointed out that the platform of communication does not matter, even though social media, it is still a conversation between the defence counsel and his clients.

6. Training needs and opportunities of defence lawyers working with children

6.1. Why defence lawyers of children need special training?

At the most recent review, the Hungarian Child Rights NGO Coalition raised attention of the **UN Committee on the Rights of the Child** to the fact that “the lack of facilities and trainings, together with limits in budgets and personnel, cause the most serious problems at a systemic level”.²² In addition to its country specific recommendation on training of judges and judicial staff for Hungary, the Committee emphasized that:

It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings.²³

As it was explained above, the lawyers who took part in an interview were skilled to work with child clients and had experienced of that, but at the same time, they articulated that training would be necessary for lawyers who defend children in criminal procedures. One said that **lack of training and accreditation** are issues and consequently “some attorney

²² The full text of the submission is available at

https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/HUN/INT_CRC_NGO_HUN_40918_E.pdf

²³ UN Committee on the Rights of the Child, General Comment No 24 on Children’s rights in the child justice system

makes more harm than good”. However, there was no agreement on whether any kind of training should be or could be **mandatory** for attorneys who are registered to be appointed as defence counsels for juveniles. On one hand, attorneys would need training on defence in criminal procedure in general, because specialization in criminal law is not a requirement to register to the list of the Budapest Bar Association, while in the countryside it is not relevant because all attorneys are registered automatically on the list. On the other hand, mandatory training cannot be justified for legal aid lawyers if any attorney can accept a mandate to defend a juvenile or provide legal assistance for children pro bono without training. It is important to mention that other professionals gave ideas for further training similar to the ones put forward by the lawyers themselves.

The psychologist expert explained that arrest, detention and interrogation is a **traumatic experience for any child irrespective of his/her particular circumstances**, not to mention punishment to be served in a correctional facility or prison. The police are in general polite with children, but they usually treat them like “little adults” and use advanced language while informing them about their rights and the procedure. As in any other country, informal talk takes place in the police car on the way to the station regarding that it is easier for everyone if they confess the commission of the offence. Typically, when children are taken to the police station, they have to stay alone without food, toilet, talking to their family for 2-3 hours, so they are already upset when the defence counsel arrives. Their situation can be exacerbated if they used drugs, or they are experiencing withdrawal symptoms. It happens also that children offenders are victims of crimes themselves, which is not discovered by the authorities and suffer from the trauma of revictimization. Then, the defence counsel arrives at this complex situation and he or she has 4-5 minutes to build trust with the child client who might not trust any system at all. This can be extremely difficult for the lawyer, too. Therefore, the psychologist emphasized that lawyers need to be trained not only to how to communicate effectively with children but also to recognise, understand and deal with the symptoms of trauma and effects of drug abuse.

Still, there was an agreement that **multidisciplinary training courses** covering the relevant fields of psychology would be crucial for defence counsels working with children. Furthermore, they would also need to learn more about the situation of vulnerable children such as children in socially disadvantaged situation, children belonging to national minorities, children with disabilities and children with addiction. With regard to this, sensitization would be also a goal besides describing their life situation and difficulties. Based on the experience

of non-legal professionals, attorneys are aware of prejudices towards marginalized children, because they often give practical advice to their juvenile clients such as to dress up clean and nicely for the court hearing (for example in a suit). Another crucial subject mentioned was effective communication with children because building trust is essential and can be learnt. Some highlighted that there has to be at least one professional in the procedure whom the child can trust. The most effective way to improve interpersonal skills is through practical exercises: role plays, simulations and situation games (with the means of drama pedagogy). Certainly, such kind of training need to take place in person and with the active participation of the student.

Some **risks** have been identified with regard to the introduction of courses for lawyers on the defence of juveniles. In case of compulsory training, the lawyers might opt out from the list in Budapest and there would be less legal aid attorneys available. If the compulsory training would be difficult to accomplish because it takes place in several panels or the exam is hard to pass, they would need to expel the lawyers who fail and that would not be good for the lawyers neither for the bar associations. Furthermore, in Budapest, it is easy to find enough participants to fill up a specific training course, but in sub-county levels, it is more difficult to find attorneys who are interested. The bar associations are open for initiatives coming from civil society actors with regard to the organisation of particular in-house courses, but they are moving towards more online courses that consist of a lecture and few monitoring questions at the end.

6.2. Trainings opportunities available for defence lawyers of children

A practicing attorney in Hungary has three options for professional training with regard to any specialization in law: **post-graduate training programme** at the faculty of law of a university, **in-house training courses offered by the bar associations** or **trainings organized by civil society organisations**. There are several training programmes that are relevant for the purpose of the current paper, unfortunately not all of them run on a permanent basis and most of them are paid.

Since 2017, **post-graduate training programme on “Children’s rights”** is offered by the Law Faculty of Eötvös Loránd University (based in Budapest).²⁴ The programme is optional and open for law graduates and other professionals working with or interested in children’s rights and paid by the student (who can be sponsored by their employer in practice). The law

²⁴ Website of the training programme: <https://jotoki.elte.hu/content/gyermekjogi-szakjogasz.t.428>

graduates earn a Master of Laws (LL.M.) degree by completing the three semester studies, submitting their thesis and passing the final exam. The training is predominantly theoretical and legal, but there are courses offered by other professionals such as psychologists and communication experts in order to implement a multidisciplinary approach. Even though it is a general training on children's rights, the child justice system is one of the main courses offered after completing the course "Psychology of the child, the child victim" and crucial part of the final exam. Children do not take part in the training, however, practical exercises with regard to the legal representation of children and communication with child clients are part of the curriculum. The course "Rights of children in a special situation" intends to cover the rights of children with special needs such children with disabilities and Roma children. Among the students and graduates, there are attorneys, public prosecutors and judges specialized in criminal law, besides child protection officers and social workers.

The Faculty of Law of the Pázmány Péter University (based in Budapest) offers a **post-graduate training programme specialized in "Cases of juveniles"** solely for law graduates.²⁵ It is an optional, paid training that can be completed in two semesters, after submitting their thesis and passing the final exam. This programme focuses on child justice, therefore the curriculum contains specific legal courses such as "Criminal Law", "Criminal Procedure Law", "Petty offences", "Implementation of penalties and measures", "Prevention of crimes and protection of victims". Two courses are offered on "Child protection" and one course on "Child psychology and child psychiatry". The subject on "International framework of the protection of the rights of the child" encompasses all the relevant child justice guidelines of the UN, the Council of Europe and the European Union. It is a legal, theoretical programme open for attorneys, but most of students are coming from other fields of law (for example judges, junior judges and court clerks who can also request their employer to sponsor the training).

According to the Act LXXVIII of 2017 on Legal Practice, legal practitioners shall develop their expertise by **self-training and further compulsory training** (1.§(4)). The Hungarian Bar Association, public body and the national organisation of legal practitioners, is responsible for compiling the themes of professional trainings and further trainings, providing for accreditation of places of training and setting the regulations regarding compulsory training and the training cycles (155. § (1) e)-f)). All attorneys, who are member of a bar

²⁵ Website of the training programme:

<https://jak.ppke.hu/deak-ferenc-intezet/erdeklodoknek/kepzesek-jogaszoknak/szakiranyu-tovabbkepzesek/fiatalkoruk-ugy-einek-szakjogaszai>

association, are obliged to gain 80 credits within the five-year training cycle and at least 16 credits per year. The first training cycle has started on 1 January 2020, and last until 31 December 2024. Credits can be earned primarily by participating at courses organized by the bar associations, but also by publishing articles or holding presentations at conferences. The regional bar associations keep track of the trainings completed and monitor the fulfilment of the training obligations of the attorneys. In case the attorney fails to earn the minimum credit without proper justification, he or she will be deleted from the registry and lose his or her membership at the bar association and cannot practice anymore (149. § (1) f)).

The training programme developed by the Hungarian Helsinki Committee on “**Effective defence of juvenile defendants in the criminal procedure**” within the framework of a project supported by the European Commission (Rights, Equality and Citizenship Programme) was referred as a good practice by several professionals interviewed.²⁶ The aim of the project was to support the transposition of the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, particularly Article 20 that prescribes training to lawyers who deal with criminal proceedings involving children. In May 2018, two, one-day long practical trainings were organized for attorneys who were interested or who had previous experience with child clients. Since the transposition of the EU Directive coincided with the entry into force of the new Criminal Code, the topic of child justice was also discussed. According to the feedback of the participants, the most interesting presentation was held by a clinical psychologist explaining the psycho-social and cognitive development of children, attachment styles, conflict situations, risk-taking and peer-pressure during adolescence. The presenter explained the basics of effective communication in order to understand the ways to interact and build trust with children, even if they are indifferent or not cooperative, furthermore explained the advantages of having interviews with children in special, child-friendly interrogation rooms. The practical part of the training consisted of role plays and situation games, with the participation of paid actors.

Within the framework of this project, the Hungarian Helsinki Committee developed a **Handbook for lawyers**²⁷ and a **Practical Guide for lawyers**²⁸ on ensuring the child’s right

²⁶ Description of the programme and tools developed are available on the website of the Hungarian Helsinki Committee: <https://helsinki.hu/a-fiatalokor-vedencek-hatekony-kepviselete-a-buntetoeljarasban/>

²⁷ The publication is available at https://helsinki.hu/wp-content/uploads/A_gyermekek_vedelemhez_valo_joga_Ugyvedi_kezikonv_final.pdf

²⁸ The publication is available at https://helsinki.hu/wp-content/uploads/A_gyermekek_vedelemhez_valo_joga_gyakorlati_utmutato_2_oldal-1.pdf

to defence. Both publications set the international framework of child justice and explain in detail the domestic regulations and their implementation in practice. The main principles of child protection such as the best interest of the child and the right to be heard are also elaborated on. One chapter focuses on effective communication, another one on cooperation with parents and other professional working with the child. These tools were published in 2019, hence they are quite up-to-date, and they address several topics relevant for attorneys defending children.

Even though the project of the Hungarian Helsinki Committee had come to an end, one of the attorneys who participated in the trainings decided to organize further courses for lawyers based on the curriculum and the publications referred above. In 2019, he held the first practical training which was successful, thus, in 2020, he accredited the course “**Effective defence of juveniles**” at the Bar Association of Budapest (among the criminal law courses) with limited number of places (20-30). It was a training combining theoretical approach with the practical approach through interactive role-plays. The attorney highlighted that accreditation is important because any kind of training is more attractive for practicing lawyers if they can earn credits within the framework of their compulsory training cycles. In 2021, due to the COVID restrictions, it has not been possible to implement in person trainings, but the attorney is considering the organization of this course in the upcoming years as well.

7. Conclusions

In accordance with the international and European Union standards, the Hungarian legal framework provides for legal aid for children in conflict with law: children should be assisted by a state-funded defence counsel in a criminal procedure, including certain investigative acts taken before filing the charges. Since the presence of the defence counsel is mandatory, if the child or their family do not mandate an attorney, the authorities will appoint one through an automated system using registry of the bar associations. However, it is not ensured that the legal aid for the child defendant is always provided free of charge, because if the child is found guilty of the intentional commission of a crime, the court obliges him or her to fully or partly reimburse the costs of the criminal procedure. Pro bono legal assistance is not regulated but still practiced by attorneys, who emphasized that while state-funded legal aid should be improved, pro bono networks might play a role complementing it by supporting major, lengthy cases.

As regards to the gaps in the state funded legal aid system, it has to be recalled that all the systemic problems concern children as well: low fees for legal aid lawyers, lack of evaluation and quality assurance system and the need for further training including the improving of soft skills and competencies of the legal aid lawyers. No specific requirement, training or accreditation are necessary to be listed in the registry, and in cases of most of the bar associations is it obligatory. The only special provision is that the defence council has to be notified about the fact that the defendant is a child. The set-up of a separate registry or accreditation for attorneys to be appointed to defend children, along with appropriate and ongoing training and funding, would ensure that children are provided with effective legal representation tailor-made to their needs.

Equal access to legal aid entails not only the prohibition of discrimination but also the provision of specific measures for vulnerable groups. Most of the children who are in need of legal aid are marginalized, coming from a socially disadvantaged situation that can be exacerbated by drug abuse or being subject to prejudice for affiliation to a national minority. Furthermore, children in care, who have been removed from their family and placed in a child care institution by child protection authorities are also highly vulnerable. Nevertheless, arrest, detention and interrogation are a traumatic experience for any child irrespective of the particular circumstances, not to mention punishment to be served in correctional facility or prison. The situation of these children is a complex issue, and despite the codification of restorative justice, in practice, the focus is on the commission of the offence and juveniles are treated accordingly. All professionals working with children, including the defence lawyers, need to be trained to assess the best interest of the child from a multidisciplinary point of view that requires cooperation between them.

Even though it is not established by law, all lawyers and other professionals stress that the child has to be explained in a child-friendly language what is the suspicion/charge and the procedure while they make it sure that they understood it. Another crucial element of the interaction is that the lawyer has to gain the trust of the child in a relatively short time and under difficult circumstances. One of the gaps identified is the lack of child-friendly information materials on national legislation. The whole system is designed to deal with adults who themselves might be struggling to understand the documents or procedures. Short booklet explaining the rights of the child defendants and the role of the defence counsel can be developed in a child-friendly language to be used by authorities and defence counsels,

furthermore, made available online where children have access to it easily. The bar associations can also encourage the use of such materials by distributing them.

Although the lawyers agreed that special training would be necessary for attorneys to defend child clients, there was no agreement on whether it should be or could be mandatory. Post-graduate training programmes at university and in-house training courses offered by the bar associations are available but focusing more on expanding the legal knowledge of lawyers in relation to children's rights and child criminal justice. Multidisciplinary training courses covering the relevant fields of psychology and the situation of vulnerable children would be crucial for defence counsels working with children. Another important subject would be effective communication with children because building trust is essential and can be learnt.

Annex No. 1

Main international legal standards related to legal aid for children in conflict with law	
Hard law	Art. 14.3 International Covenant on Civil and Political Rights (ICCPR - 1966) Art. 37 d and 40 ii UN Convention on the rights of the child (CRC – 1989)
Soft law	UN Principles and guidelines on access to Legal aid in criminal justice systems (2012) UN Basic Principles on the Role of Lawyers (1990) Rule 15.1 Beijing rules (1985) Rule 18 Havana Rules (1990) Guideline 16 UN Guidelines for Action on Children in the Criminal Justice System General comment No. 24 on children’s rights in the child justice system (2019)
Main European legal standards related to legal aid for children in conflict with law: Council of Europe	
Hard law	Art. 6.3 (c) The European Convention on Human Rights (ECHR)
Soft law	Guidelines of the Committee of Ministers of the COE on a Child-Friendly Justice (2010) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment’ Standards (CPT Standards) on Juveniles deprived of their liberty (2015) Recommendation CM/Rec(2008)11 of the Committee of Ministers to member States on the European Rules for juvenile offenders subject to sanctions or measures
Main European legal standards related to legal aid for children in conflict with law: European Union	
Hard law	Art. 47.3 European Union Charter of Fundamental Rights (EUCFR - 2000) Art. 3.1 Directive 2012/13/ EU on the right to information in criminal proceedings Art. 11 Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings Directive 2016/800/EU on procedural safeguards for children suspected or accused Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings
Soft law	European Commission recommendation on the right to legal aid for suspects or accused persons in criminal proceedings (C(2013) 8179/2) European Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (C(2013) 8178/2)

Annex No. 2

Trainings opportunities available for defence lawyers of children in Hungary				
Title of the training	Organizer of the training	Level of accreditation	Regularity	Paid
“Children’s rights”	Faculty of Law of Eötvös Loránd University	Post-graduate (LLM)	Yearly	Yes
“Cases of juveniles”	Faculty of Law of the Pázmány Péter University	Post-graduate (LLM)	Yearly	Yes
Professional training of attorneys (various topics)	Bar associations and other organisations	Professional training	Regular	It depends
“Effective defence of juvenile defendants in the criminal procedure”	Hungarian Helsinki Committee	-	Two trainings in 2018	No