



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN HUNGARY

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales en Hungría

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Hongrie

Rapport national pour la recherche comparative et collaborative de l'AIMJF

Daniel Szücs¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Hungary.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Hungría

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Hongrie.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational

¹ Legal Officer at the Department of Research Organisation and Documentation, National Office for the Judiciary, Hungarian Academy of Justice



judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. Right to be heard

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, but under the Criminal Procedure Code they are (ipso iure) included in the category of so-called "persons requiring special treatment", without any formal decision by the authority/judge.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

In general, no, but a person who is obviously not expected to give a correct statement because of his or her physical or mental condition should not be heard as a witness, and age is a relevant factor in this respect.

Under the lower level rules of investigation, a witness under the age of 14 must be given a witness warning in such a way that, if questioned, it is clear that he or she cannot be charged with perjury (since the minimum age of criminal responsibility is 14).

1.3. Are children allowed to refuse to make a statement? If so, in which cases?



The general rules apply to them (mainly the exemption for relatives and the prohibition of self-incrimination. Knowledge of classified information, media-related exemption, and professional confidentiality clearly cannot be applied in their case).

2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes, they fall into the category of "persons requiring special treatment," which includes special rules for persons aged between 14 and 18 and for persons under the age of 14. Additional special rules apply for victims of sexual offences under the age of 18.



2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

The Criminal Procedure Code states that those procedural actions that involve a child can only be carried out if the expected evidence cannot be replaced by any other means, and all participants strive to involve the minor as few times as possible.

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

Investigation (which is the primary forum for questioning the child) – indictment – trial (where the judge primarily takes the child's testimony from the investigation into evidence by reading out the child's statement or watching a video of the interview, and in exceptional cases, if it is necessary for the evidence, the child is questioned again, but not necessarily in court, rather for example by a delegated judge).

2.4. In which moment(s) can a child be heard in this procedure?

According to the law, at any stage of the procedure.

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

A child does not have full criminal procedural capacity, so for example, a private motion must be submitted by their legal representative.

An important rule is that, according to the law, a minor with limited legal capacity under civil law may act in person in the matter of refusing to testify or to consent to a confrontation/ cross examination, but must be given the opportunity to consult his or her legal representative before making this statement.

(Otherwise, in the Hungarian legal system, the complaint and the private motion cannot be withdrawn.)

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

Yes, it is available online: <https://birosag.hu/birosagokrol/gyermekkozpontu-igazsagszolgalatas/valaszolunk-kerdeseidre>



3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

The subpoena/summons will include the URL of the court's central website, where additional information can be found (e.g. [this link](#)), and the information form sent with the subpoena/summons will also include the rights and obligations of witnesses.

In general, the law states that the court, the prosecution and the investigating authority, when communicating with a person involved in criminal proceedings, shall endeavour to ensure that the person involved in criminal proceedings understands what is being communicated to him or her and that he or she makes himself or herself understood, by

- communicating in a simple and clear manner,*
- taking into account the condition and personal characteristics of the person involved in the criminal proceedings; and*
- ensuring that the person participating in the criminal proceedings has understood what has been communicated to him or her orally or, if not, explain it.*

Among the rules on special treatment, the legislator also emphasises the need to ensure that the person concerned can properly exercise his or her rights and fulfil his or her obligations under the procedural law, despite the obstacles arising from the circumstances justifying the special treatment.

At the beginning of the procedural action, both during the investigation and in court, the person in charge of the procedural action (investigator, examiner, prosecutor, judge) informs the person concerned in detail of his or her procedural rights and obligations.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

Usually no, but it is possible for the authorities to make or have made such an assessment (e.g. police report on housing conditions, obtaining medical documents, and even to send a forensic expert to examine them), or to order the presence of a forensic psychologist at the procedural action.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

The legal representative may exercise the rights of the represented person under the Procedural Code (requesting information, making a motion in the matter concerning the



represented person), and in addition, the adult person having the care of the minor shall be notified of the summons of the person under 18 years of age with a request to ensure the appearance of the minor. If the minor is under 14 years of age, the summons shall be issued or notified through the adult person having the care of the minor. In addition to the foregoing, the summons and notification of the minor shall also be communicated to his or her legal representative, who may be present at the procedural act.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

There is no invitation, but there is no obstacle to such a request.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

The above-mentioned presence of a forensic psychologist expert can be included here.

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

Risk assessment is not a task and competence of the judiciary.

4.2. In case of identification of risks, what kind of protective measures are available in your country?

Guardianship/ Child protection (administrative) proceedings, as a result of which the following may be ordered:

- protective custody, with which at the same time the guardianship authority instructs the child welfare center to provide ongoing assistance for the child's care, support parental upbringing, and take measures to eliminate the cause of endangerment,*
- temporary placement (i.e. placement with a parent or other relative or person suitable for the child's upbringing or, if these options are not available, with a foster parent or, if this is not possible, in a children's home, a special group in a children's home, a special residential home, a home for disabled or psychiatric patients or in so-called supported housing) and if necessary*
- taking the child into care (i.e. providing the child with home-based care and legal representation).*

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

See already explained above.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

In addition to what is described in section 4.2, domestic violence can be dealt with immediately by the so-called "restraining order for violence between relatives". During the period of the order, the person against whom it is imposed is obliged to

- (a) keep himself or herself at a distance from the abused person,*
- (b) keep away from the property where the abused person is habitually resident,*
- (c) keep himself or herself at a distance from any other person specified in the decision; and*
- d) refrain from having direct or indirect contact with the abused person.*

If the abused person shares the use of the property of his or her habitual residence with the abuser, irrespective of the legal title of the use, the abuser shall keep himself or herself at a distance from the property of his or her habitual residence if the abused person has a legal title to the use of the property other than the use of the property as a dwelling for his or her own benefit or if he or she has a child in common with the abuser.

In addition to the measures that can be taken in criminal proceedings, procedural remedies are available in civil proceedings for the wrongful removal or abduction of a child (e.g.: in ongoing proceedings, even ex officio, interim measures, and if there is no ongoing proceeding, interim measures before the proceedings are brought). In addition, proceedings for the extradition of the child may be brought against the person unlawfully keeping the child.

Hungary is also a member of the Hague Convention on Child Abduction.

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

It is possible to carry out the procedural action in a designated or suitably adapted room, provided that the facilitation and consideration of the affected person's rights and obligations cannot be ensured by other means or measures. This is a mandatory requirement in the case of persons under 14 years of age.



5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child-specific building, but separate entrance for children; separate interview/hearing room for children)

We are aware of the existence of special child-friendly interrogation rooms in the police stations, and there are specially equipped child interrogation rooms in most courts, the use of which is constantly monitored in the context of administrative tasks.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

Rooms for interviewing the children should be as reassuring and comfortable as possible for them, and furnished with objects (toys, books) that will help them relax.

<https://balassagyarmatorvenyszek.birosag.hu/galeria/20131103/torvenyszeken-belul-gyermekmeghallgato-szoba>

5.4. Is there a specific waiting area for the child?

It depends on the internal layout of each building.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

According to the Procedural Code, it must be ensured that the victim does not meet unnecessarily with another person participating in the criminal proceedings during the procedural action and at the place of the procedural action, if the special treatment is based on his or her relationship with that person. It is possible to use a telecommunication device, during which distortion may be ordered, and to make audio and video recordings of the procedural action (this is mandatory for persons under 14 years of age), which is later played back at the court hearing to avoid the need to summon the victim.

5.6. In case identification of the offender is needed, how is this conducted, and where?

A person under 18 years of age may be cross-examined (either with a witness or a person under investigation) only with his or her consent, while a person under 14 years of age cannot be cross-examined, but may participate in identification by means of photographs or by live persons, in such a way that the person presented for identification cannot recognise or perceive the witness (e.g. in a room with a detective mirror).

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

Arranging the travel for the child is an option, but it is also possible to have a remote hearing where the child stays in his or her own city.



5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

Yes, it can be ordered, the law determines who can be present at each endpoint.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

Only in exceptional cases. The general rule is that the child's testimony from the investigation is read out at the trial phase.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

In Hungary, there is the legal institution of a children's rights representative, to whom children can directly address their complaints. There is also the court assistance day for free in every court, where children can go either directly or through their legal representative.

6.1.1. What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

A guardian ad litem may be appointed for the child during the investigation if there is a conflict of interest between the child and his or her legal representative.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

Yes, most of the time he or she is supported by his or her legal representative.

6.3. What is the role of parents/legal representative?

If the child is a victim in the proceedings, the legal representative has the same rights as the victim. Where the child is involved as a witness, this right of the legal representative is more limited, ultimately restricted to accompanying the child.

6.3.1. When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

If for some reason the legal representative is unable to act (conflict of interest, disability, etc.), a guardian ad litem (lawyer) will be appointed.



6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

In the event of the absence/exclusion of one legal representative (parent), the other may act if there are no grounds for exclusion or if he or she is not prevented from doing so.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

The public may be excluded from the trial. This exclusion is mandatory in the case of a procedural action requiring the presence of a victim under 18 years of age of a crime against sexual freedom and sexual morality.

6.5. Is the child allowed to plea for cautionary measures?

The child can apply for a restraining order.

6.6. Does the child have the right to appeal any decision?

In the case of children, the legal representative has the right of appeal.

7. Interviewing structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

The police investigator or examiner, or the judge during the trial phase (or a single delegated judge, out of court). The procedure should be designed to avoid the need to repeat the procedural action, but there is no legal limit on the number of interrogations.

7.2. Is it mandatory that this professional has specific training for child interviews?

It is not mandatory, however they do attend training courses.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

Within the limits set by the Criminal Procedure Code, the judge presiding over the case determines this. The use of intermittent summonses is typical to avoid keeping the child waiting and avoiding direct contact with the defendant. Also the child is interrogated separately from the defendant.



7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

It may be ordered that an expert in forensic psychology be present at the procedural action or that the procedural action be carried out with the assistance of a service provider as defined in the Act on the Protection of Children and Guardianship Administration or other expert adviser as defined by law.

During the investigation, the investigating authority ensures that the procedural action is carried out by the same person each time.

A victim of a crime against sexual freedom and sexual morality under the age of 18 may be questioned only by a person of the same sex as the victim, and the investigating authority must also require the presence of a person of the same sex as the victim at other procedural actions in the presence of the victim.

The accused and the defence counsel may not be present in person at the scene of a procedural action requiring the participation of a person under the age of 14. If the hearing of a witness under the age of fourteen has been requested by the accused or the defence, the court, the prosecution or the investigating authority may ensure the personal presence of the accused and his or her defence counsel at the procedural action requiring the participation of the witness.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

In addition to the above rules, in the case of a victim of a crime against sexual freedom and sexual morality under the age of 18, the court, the prosecution and the investigating authority shall make a video and audio recording of the procedural action.

The accused and the defence counsel may not be present in person at the place of the procedural action requiring the participation of the victim.

When using a telecommunication device (videoconferencing), it must be ensured that the victim can only see the judge, prosecutor or member of the investigating authority, unless an exception is provided for by law.

After the indictment, the court may carry out the procedural action requiring the participation of the victim through a delegated judge or a requested court.

Persons present at a procedural action requiring the participation of the victim has a limited right to ask questions, they may only propose their questions to be asked.



7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

Under the general rules, yes, if the question contains the answer or includes instructions how to reply, or includes a promise inconsistent with the law, an untrue statement of fact, or is irrelevant to the case. Also the questions may be rephrased without altering their merits.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

It may be ordered, or in the cases cited above it is compulsory, for the purpose of using it as evidence. The witness statement may also be used in other proceedings, and the witness must be warned of this at the time of questioning, before making the statement.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc.)?

Distortion, a separate location can be used or it can be arranged that only the person conducting the interrogation can be seen at the scene of the procedural action.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

The recordings are generally of good/excellent quality, digitally recorded.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

The confession can be read at the end of the interrogation, and there is a possibility for clarification and correction. The witness or his or her legal representative may request a copy of the statement.

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

There is no special procedure.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

See what was written earlier.



8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

It is possible for the witness to answer via a delegated judge or even a written statement, or to be questioned at the court if it is necessary.

9. Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

In criminal proceedings, a statement or confession made in other proceedings constitutes documentary evidence, while only a statement made in a criminal case can be considered as a witness statement, and is therefore primary in this sense.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

In practice, coordination does occur, however there is no strictly regulated procedure.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

The testimony/statement can also be used in other criminal cases.

10. Training

10.1. Are judges and magistrates trained to deal with child victims?

There are optional judicial training courses to prepare judges and also they can get a specialised post-graduate diploma. The central administration places emphasis on the continuous training of judges in the treatment of children.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

Yes, psychologists, doctors, representatives of other disciplines and partner organisations.



11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

Yes, it is in the form of a draft law, but it is primarily aimed at making criminal law stricter.