



CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN
HUNGARY: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION
National Report for AIMJF's Comparative and Collaborative Research.

Niños por debajo de la edad de responsabilidad penal en Hungría: medidas, derechos,
procedimiento, participación

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

Enfants n'ayant pas atteint l'âge de la responsabilité pénale en Hongrie : mesures, droits,
procédure, participation

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

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in Hungary.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y 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 les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et 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

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to establish links between judges from different countries, promoting transnational 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 measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

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

QUESTIONNAIRE:

1. general information

1.1. What is the minimum age of criminal responsibility in your country (the **age of criminal responsibility** is the age below which a child is deemed incapable of having committed a **criminal offence**, it can also be referred as **age of accountability**, **age of responsibility**, and **age of liability for children and it is different of the age when a person becomes an adult**)?

According to the Criminal Code of Hungary, the minimum age of criminal responsibility is 14 years. However in the case of certain offences – such as homicide, voluntary manslaughter, life-threatening battery or battery resulting in death, assault on a public official, assault on a person entrusted with public functions, assault on a person aiding a public official or a person entrusted with public functions, acts of terrorism, robbery and plundering – a perpetrator may be held criminally responsible from the age of 12 if having the capacity to understand the nature and consequences of his acts at that time. The upper age limit for being considered a juvenile in the context of criminal law is 18 years.

1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?

As described in point 1.1. perpetrators between the ages of 12 and 14 may be held criminally responsible only for the specific offenses listed, and even then, only if they had the capacity to understand the nature and consequences of their acts at the time the offense was committed.

Prior to reaching the age of 12, criminal responsibility cannot be established under any circumstance – even if the individual had the capacity to understand the nature and consequences of his acts. In case of perpetrators between the ages of 12 and 14, a lack of such capacity may result in exemption from criminal responsibility. In contrast, for perpetrators who have reached the age of 14, the presence or absence of this capacity is legally irrelevant to criminal responsibility, although it may be taken into account as a mitigating factor during sentencing, provided it does not result from a pathological mental condition.

The capacity to understand the nature and consequences of one's acts must be clarified by means of an expert examination by experts qualified in forensic psychiatry or forensic medicine, and the person concerned must also undergo a clinical and mental health examination by a specialist psychiatrist in adult and child psychiatry, and a specialist consultant in child and adolescent psychiatry or equivalent.

2. age assessment

2.1. In case of application of the 'doli incapax rule', how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

In view of the above, such a case cannot arise under the Hungarian law in force.

2.2. In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

In view of the above, such a case cannot arise under the Hungarian law in force.

3. police intervention

3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?

No minor under the age of 14 may be accommodated in a police apprehension unit. If it is established during the apprehension that the person apprehended is an unaccompanied minor, the police force carrying out the apprehension shall immediately arrange his placement in a child protection institution.

3.2. In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?

See answer to question 3.1.

4. measures

4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?

Only criminal substantive measures concerning property are possible, the Criminal Code provides that confiscation, confiscation of property, irreversibly rendering electronic information inaccessible and the termination of hosting services must be ordered even if the perpetrator cannot be prosecuted for reason of minority or insanity, or due to other grounds for exemption from criminal responsibility as defined by law.

4.2. Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?

Not under criminal law, but under child protection rules, which falls under administrative competence, e.g. foster care, temporary placement, adoption, public care. In addition, placement with a third party is possible in civil proceedings where the parents are not fit to raise the child. This decision is of indefinite duration, whereas the solutions described above are generally of limited duration.

5. procedure

5.1. Who imposes such measures?

The placement of the child with a third party is ordered by the court in civil proceedings. In other cases, the guardian authority.

5.2. Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it shortly?

In proceedings for the placement of a child with a third person, the third person is still a witness in the proceedings, although the National Office for the Judiciary has already taken several initiatives to change this procedural position at the legislator.

Both administrative and judicial decisions can of course be challenged under the relevant procedural rules.

5.3. Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?

These measures usually affect children in immediate danger, so timely and immediate action is relevant.

6. assessment

6.1. Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?

The minor child can be heard either directly during the judicial or administrative procedure or with the contribution of a court-appointed psychologist.

7. legal and procedural guarantees

7.1. What are the rights of the child in this procedure (legal and procedural guarantees)?

The fundamental right to express an opinion and to have it taken into account, as well as the fundamental principle of family law adjudication which is the best interests of the child.

7.2. Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?

No, he does not.

7.3. What happens if the child does not fulfill the obligations inherent to these measures?

The child's legal representative is obliged to comply with the measures, and the minor child cannot decide independently whether or not to comply with the measures.

8. the role of the justice system

8.1. Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which



branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?

See answers above.

8.2. In case of involvement of the justice system, can you briefly describe the procedure?

See answers above.

8.3. What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?

When hearing the child as an interested party in civil proceedings, the court may appoint a lawyer to act as guardian ad litem.

For other information, see answers above.

9. assistance or support

9.1. Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?

Family and child welfare centers provide assistance, so does the Government in the area of victim protection.

10. child participation

10.1. Is the child heard in this procedure? By whom? At which stage of the procedure?

Yes, either directly by the decision-maker or through an expert psychologist appointed by the decision-maker, when this becomes necessary in the course of the proceedings.

10.2. Is the child heard more than once in this procedure? How many times?

Preferably only once, to protect the child. In exceptional and justified cases, the child can be heard more than once.

10.3. Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

The case will determine the course and content of the hearing, and decision-makers receive training on the subject.

11. legal implications

11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?

No such records are kept by the criminal investigative authorities.

11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?

A lawsuit for damages can be initiated against the child's legal representatives. The victim has no say in the measures taken against the child.

12. reforms in progress

12.1. Are there ongoing reforms on this subject?

Reforms are a legislative competence.