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Child Protection and Legal Standards for Children in Criminal Justice with Regards to the EU Strategy on the Rights of the Child²

Children are the most vulnerable members of our society and cannot manage the risk of poverty and social exclusion alone. Crimes against children are common. The European Union's (EU's) Strategy on the Rights of the Child is a policy framework that enforces children's rights as a horizontal issue in EU policies and legislation. The implementation aims to support European and national efforts to promote children's well-being and reduce child poverty. The issue of age is of paramount importance from the point of view of criminal prosecution and applicable legal consequences, notably whether we speak about child protection or a criminal justice case. The EU Strategy on the Rights of the Child follows a holistic approach, and its overall goal is to create a better society in the EU and worldwide in six major areas, containing the child-friendly justice, which is in the focus of this study. The aim of the study is to explore the deepening of children's rights in criminal proceedings, to list some relevant case law of the European Court of Justice (CJEU) and the European Court of Human Rights (ECtHR), and to point out that the incorporation of European legal standards into Hungarian jurisprudence is crucial for improving the protection of children's rights. The relationship between EU standards and child-friendly justice in Hungarian criminal proceedings is complex and requires careful consideration; it can help to ensure a more child-centred enforcement of children's rights, while at the same time highlighting the European requirements already in place in our criminal proceedings.

Keywords: children's rights, EU policy framework, child-friendly justice, special treatment, criminal procedure, international legal norms

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Introduction

Making the justice system child-friendly is not an end in itself, as it provides an important cornerstone for the rule of law, the protection of our children, and can serve as a yardstick for future generations of adults in terms of social responsibility as well. In my opinion, child-friendly justice prevails not only at the level of legislation, but also in everyday life, at the level of practice, i.e. the application of the law.³ The role of children in society is of particular importance. The decisive role of age is also highlighted by the research results, according to which the younger the crime occurs, the greater the chance of recidivism and the development of a criminal lifestyle. The decisive role of childhood experiences in our adult life is emphasised by the research results, according to which abuse suffered in childhood and becoming the victim of a crime increase the chance of becoming a repeat victim in the future.

We establish our trust in the justice system in childhood or we lose. It is a requirement that prevails both at individual level and at the level of society, that we can take responsibility for our actions with dignity while respecting our rights, and the law enforcement power of the state is given space in this way from childhood.

Children's rights

Children's rights are the human rights of those under the age of 18. Article 3(3) of the Treaty on European Union (TEU) and Article 24 of the Charter of Fundamental Rights of the European Union state that the protection of children's rights is one of the goals of the European Union (EU). The Council of Europe supports and protects the human rights of children based on the European Convention on Human Rights, the children's rights strategy and other relevant legal standards. The Charter of Fundamental Rights is also important in the field of European criminal law, as the provisions of the Charter may have a fundamental impact on legislation, interpretation and application of the law. The Charter summarises and codifies (state of the art) the *acquis* of EU fundamental rights protection and does not in principle create new rights or extend the scope of protection, but merely confirms it. The Charter aims to limit EU power directly to the limits of fundamental rights, i.e. to ensure that this *acquis* is not only indirectly enforced through the protection of Member States' fundamental rights and the protective functions of the ECHR.

The Charter does not provide for the protection of fundamental rights in general, but only within its scope (Article 51).

If a provision of a Member State (in the context of the implementation of EU law) is in conflict with the Charter of Fundamental Rights, the national authority (court) is obliged, as with other primary sources of law, to ensure the full application of the Charter, to interpret national provisions in the light of the Charter and, if necessary, within its own competence, to refrain from applying, even *ex post*, provisions of national law which are contrary to the Charter, without having to seek or wait for their annulment

³ GYURKÓ 2013: 240.



by legislative or other constitutional means. The same applies, *mutatis mutandis*, to criminal law. Finally, it should be noted that the ECHR – its jurisprudence in criminal matters – must be fully respected, since the Charter of Fundamental Rights itself clearly regulates its relationship with the ECHR in Article 52(3). This provision creates consistency between the Charter and the ECHR and continues to impose an obligation on Member States’ legislatures and law enforcement authorities to operate their legal systems in the light of the ECtHR *acquis* and to introduce restrictions on fundamental rights only in the context of the systems developed by the ECtHR. However, there is a possibility for the EU to provide a higher level of protection than the ECHR, as is typical in the area of criminal justice (e.g. transnational recognition of *ne bis in idem*).⁴

According to the United Nations (UN) Convention on the Rights of the Child (UNCRC), everyone in the world under the age of 18 is entitled to the same rights. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the United Nations Sustainable Development Goals (UNSDG) also affect this issue.

The annual children’s rights forum is a platform, which started in 2007 and enables dialogue and monitors EU actions on children’s rights every year. In 2011, the European Economic and Social Committee (EESC) adopted the EU Roadmap for the Rights of the Child, in which it invited member states to support children in all possible ways.

In 2013, the European Commission adopted recommendations to strengthen children’s rights. In 2015 the European Parliament (EP) called on the European Commission and EU Member States to introduce the Child Guarantee and provide programs that offer support and opportunities to help parents break out of social exclusion and enter the labour market.

In 2017, the EP, the Council and the European Commission announced the European Pillar of Social Rights, which prioritises “child care and support for children” (Principle 11). It also declares the right to protection against poverty, as well as the right to concrete measures to improve equal opportunities. The European Commission launched after a public consultation the implementation of the EU Strategy on the Rights of the Child in August 2020.

In 2021 the European Commission, with the EP, adopted the first comprehensive EU Strategy on the Rights of the Child for the period 2021–2024.

The EU Strategy on the Rights of the Child

The EU Strategy on the Rights of the Child stands out as a policy framework specifically designed to anchor the protection and promotion of children’s rights in the EU area.

The aim of the strategy is to reduce the number of children at risk of poverty or social exclusion and to promote equal opportunities. During the preparation of the two initiatives, the Commission, in cooperation with leading global children’s rights organisations, sought the opinions of more than 10,000 children.⁵

⁴ KARSAI 2023: [43]–[44].

⁵ European Commission 2021a: 1.



The overall goal of the strategy is to create the best possible conditions for children in the European Union and worldwide. It reviews children's rights and their role in our society. Children are at least as much citizens and leaders in the present as they will be leaders in the future. This strategy seeks to fulfill our shared responsibility to join forces to respect, protect and promote the rights of all children; and to build together with children healthier, more resilient, fairer and more equal societies for everyone.⁶

By adopting this first comprehensive children's rights strategy, the Commission undertakes to place children and their paramount interests at the center of EU policies, both internally and through its external actions also ensuring the principle of subsidiarity. The aim of the strategy is to unite all new and existing EU policy, legislative and financing instruments in one comprehensive framework.

It proposes a series of targeted measures in six thematic areas, each of which sets the priorities for EU action in the coming years:⁷

1. Children as catalysts of change in democratic and civil life: The Commission proposes a number of measures ranging from the development of child-friendly legal texts to the implementation of the green deal for example.
2. The right of children to fully realise their talents, striving to improve EU-level standards for early childhood education and care and to create inclusive, high-quality education, combating child poverty.
3. Children's right to non-violence: The Commission calls on Member States to develop and improve integrated child protection systems, strengthen responses to school violence and adopt national legislation to end all forms of corporal punishment.
4. Children's right to child-friendly justice, which they are entitled to as a victim, witness, suspect or accused of committing a crime. The Commission invites Member States to support training or the development of effective alternatives to court proceedings, such as mediation.
5. The right to use the digital environment safely and take advantage of its potential: The Commission recently updated the European strategy on a child-friendly internet and the proposed legislation on digital services⁸ in order to ensure a safe online experience. The Commission also urges IT businesses⁹ to handle harmful online behaviour and remove illegal content.
6. Children's rights worldwide: The EU reaffirms its commitment to enforce these rights at the global level and in the context of multilateral relations.¹⁰

⁶ European Commission 2021b: 1.

⁷ European Commission 2021b: 3.

⁸ European strategy for better internet for kids.

⁹ Information technology (IT) is a synonymous term with the concept of information and communication technology (ICT).

¹⁰ European Commission 2021b: 1.



In terms of the concept, child-friendly justice:

“refers to justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.”¹¹

The guidelines apply to all situations in which children engage with the justice system in criminal, civil or administrative law for any reason and in any capacity.

By placing this priority in the justice system, an institution that by its very nature is not child-centered, it is inevitable that we will encounter many difficulties and insoluble contradictions in practice. Such an institution, especially the institution of criminal justice, is inherently not particularly child-friendly and it is difficult to imagine it as such, or to make it so in practice.¹²

Children play a key role in our society and cannot manage their fate alone. We must underline that the Covid-19 pandemic has led to an intensification of some forms of violence in many Member States. In total, five children’s rights organisations collected the opinions of more than 10,000 children during this period. These findings also made it clear that the EU’s policy frameworks and priorities should be shaped with the help of children’s opinions.

The EU Strategy on the Rights of the Child follows a holistic approach with the overall goal to create a better society in the EU in six major areas: 1. the participation of children in the political and democratic life of the EU; 2. socio-economic integration, education and health; 3. preventing and protecting against all forms of violence and discrimination; 4. child-friendly justice; 5. children in the digital age; and 6. the global dimension of children’s rights. The proposal for a Council Recommendation on the establishment of a European Child Guarantee focuses on socio-economic integration and ensuring that children in need have access to key services: early childhood education and care (ECEC), education and school activities, health care, healthy nutrition and adequate for housing. The proposal contributes to the EU Strategy on the Rights of the Child, focusing on children living in the EU.

It aims to ensure that children grow up in an environment free from violence and exploitation. According to International Labour Organization (ILO) reports, many children are forced into forced labour on the labour market, including sexual exploitation and prostitution. The strategy also calls for a child-friendly justice system and points out that court procedures must be adapted to the age and needs of children, and that the child’s best interests must be kept in mind. In order to fully recognise and enforce children’s rights, access to justice must be ensured for children, while maintaining the

¹¹ Council of Europe 2010: 17.

¹² SOLT 2018: 49.



effectiveness of court procedures, including specialised training of court officials.¹³ The framework of the strategy is in line with the core values set out in the EU Charter of Fundamental Rights and reinforces the EU's commitment to the UN Convention on the Rights of the Child, ensuring that these rights are not just aspired to, but actively pursued and incorporated into EU law through its own legal standards, supporting and reinforcing it.

Child-friendly justice

Child-friendly justice is a key element in criminal proceedings involving children. In relation to child-friendly justice, a general problem arises in practice if the focus of criminal proceedings is not on ensuring the best interests of the child.¹⁴

However, Convention on the Rights of the Child Article 3. stipulates that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".¹⁵ However, if the child's interest 'disappears', then we can only speak of the formal fulfillment of the legal obligations without the application of the guarantee principles.¹⁶

During the enforcement of the criminal claim, the justice system is forced to face the complex difficulty that the past can never be reconstructed in its entirety during the discovery of the facts. Another difficulty is that it is not possible to check the correctness of the facts with purely objective methods, and the role of human judgment and the subject in establishing the truth cannot be replaced and may even have a distorting effect.¹⁷

The purpose of the criminal law investigation is not to fully understand the past, since in terms of the events that took place, it is the relevance that gives the answer to which facts are significant from the point of view of the criminal material and procedural rules and as such can be the subject of proof. Sometimes, however, it is precisely the method of verifying these relevant facts that poses the biggest problem.¹⁸ We can agree that this is especially true in the child-friendly justice system, in which the primary goal of the investigating authorities is often at odds with the questioning that requires the child's safety.

In addition to reducing child poverty and improving appropriate policy measures, the importance of post-sentence social reintegration measures in terms of both human rights and children's rights should not be neglected. Whether it is the field of criminal law, civil law or administrative law, it can be said in general that the border line of state responsibility in the enforcement of children's rights needs to be extended as far as where or in which procedure children appear.

¹³ Opinion of the European Economic and Social Committee 2021.

¹⁴ UNCRC Article 3.

¹⁵ UNCRC Article 3.

¹⁶ NÉMETH et al. 2017.

¹⁷ KIRÁLY 2000: 218.

¹⁸ KUHL 2021: 52.



It is fundamental that the enforcement of children's rights cannot be examined in particular in one segment, since the cooperation between child protection, social services and victim protection cannot be separated either, but more attention is paid to the enforcement of children's rights in criminal proceedings.

The reason for this is the vulnerability of children, primarily due to their age characteristics, from which malpractices in this area can take a more serious form and strike the future generation, and their personal development also shaping the society. The higher the figure indicating the malpractices, the more decisive the procedural malpractice can be, which determines both the structure and development opportunities for the society as a whole. Therefore, in my opinion, a suitable framework is needed to monitor the procedural malpractices. The EU has put in place standards and regulations to ensure that children receive adequate protection and support in criminal proceedings. Where these are not enforced, concerns are raised and criminal proceedings do not comply with these standards, leading to children's rights being violated in the proceedings.

In criminal proceedings, more attention is needed regarding the enforcement of children's rights, the reason for this lies in the specificity and purpose of the institutional system. The risk of violation of fundamental rights, children's rights and procedural guarantees is even greater in the case of persons under the age of 18 who belong to a marginalised minority or have a cultural background different from the majority of society, especially if they engage with the justice system.

Although the situation of children in the justice system is regulated by general human rights provisions and the enforcement of their rights cannot be examined in isolation, independent of individual policies, it is typically necessary to proceed with more caution in their cases during judicial or official fact-finding, primarily due to their vulnerability resulting from their age characteristics.

The protection and promotion of children's rights is one of the main objectives of the European Union¹⁹ within and outside its borders. This main objective is laid down in the Charter of Fundamental Rights of the European Union,²⁰ and it also guarantees the promotion and protection of children's rights during the implementation of EU law.

Criminalisation of children

In Europe, there are two different trends regarding the criminalisation of children. One of the trends is the lowering of the criminal age limit and thus the implementation of locking up as many children as possible for as many acts as possible. On the other hand, the other direction in accordance with the spirit of the United Nations (UN) Convention on the Rights of the Child strives to provide a family or other community-based alternative to imprisonment and to avoid criminalisation.²¹

¹⁹ Article 3 of the Treaty on European Union (TEU) (3) requires the Union to promote and protect the rights of children. Paragraph 5 of Article 3 of the TEU states that the Union contributes "to the protection of human rights, in particular the rights of the child" in its relations with the rest of the world.

²⁰ Charter of Fundamental Rights of the European Union.

²¹ Thomas Hammarberg a gyermekközponú igazságszolgáltatásról 2013: 17.



The protection and enforcement of children's rights has been increasingly emphasised in the EU since the entry into force of the Treaty of Lisbon.²² Article 24 of the Charter of Fundamental Rights recognises that children have rights independently and emphasises – following the basic principle of the UN Convention on the Rights of the Child – that the “best interests of the child” must be kept in mind primarily in all cases and procedures involving children.

The Commission has created structures that aim to strengthen the capacities of EU institutions to deal with children's rights issues, thus creating the foundations for fact-based policies.

The need to make the judiciary child-friendly is based on the European Convention on Human Rights and the case law of the ECtHR, together with the UN Convention on the Rights of the Child, according to the directive of the Council of Europe dated November 2010. The rights that make up the concept of child-friendly justice are basic rights in democratic societies that equally belong to children. The basis of the concept is the right to a fair trial, access to the law, and other related rights, such as the right to hearing, information, protection and representation.

The content elements of child-friendly justice appeared in international documents and recommendations much earlier than the concept itself had come to life primarily through its application.

In the UN's norm-making process for juvenile justice, the following can be considered as precedents: the minimum rules for the juvenile justice system, the so-called Beijing Rules (1985); the rules for the protection of juveniles deprived of their liberty, the so-called Havana Rules (1990); guidelines for the prevention of juvenile delinquency, the so-called Riyadh Guidelines (1990); the rules on the minimum rules for non-custodial sentences, the so-called Tokyo Rules (1990).

In 2005, the UN Directive on the Protection of Child Victims and Witnesses of Crime²³ was adopted, followed by guidelines on justice for children, and on alternative care in 2009. These documents still do not use the term “child-friendly justice” *expressis verbis*, but in their content they show the validation of the children's rights approach in the judicial system, prioritising the application of law according to the needs of children.

The 2008 UN document defines juvenile justice and emphasises – in accordance with the provisions of the Convention on the Rights of the Child – that the rights and fundamental interests of all children under the age of 18 must be respected. Either as a victim, as a witness or as a defendant, one can come into contact with the justice system, or perhaps within the state administration, a party involved in proceedings initiated to settle the issue of supervision, care, or protection.

Accordingly, the basic principles of the UN Convention on the Rights of the Child are:

- to ensure that the best interest of the child is taken into account first
- to ensure a fair and equal process for all children – free from all forms of discrimination
- to help the child to express his opinion freely and to be heard

²² Thomas Hammarberg a gyermekközpontú igazságszolgáltatásról 2013: 13.

²³ See also as UN Directive on the Protection of Child Victims and Witnesses of Crime (ECOSOC Res 2005/20).



- to protect all children from abuse, exploitation and violence
- to treat all children with respect for their dignity
- ensuring legal guarantees and protection in all procedures
- emphasising the preventive approach (prevention) in the penal policy for juveniles
- deprivation of the child's liberty may only be used as a last recourse

The scope of special treatment in criminal proceedings

The European Court's decisions are binding on countries that ratify the ECHR and force them to adapt their national laws and practices to the Court's interpretations. This dynamic interaction between national jurisdictions and the ECtHR ensures that criminal proceedings in Europe continue to evolve towards greater respect for human rights and fundamental freedoms, thus promoting a common European standard of criminal justice which Member States strive to uphold.

These principles are integral in ensuring that criminal proceedings within Europe meet the highest standards of justice and fairness, reflecting a collective commitment to the rule of law and respect for human rights. According to the Act XC of 2017 on Criminal Procedure, the law basically details the rules for persons requiring special treatment in a separate chapter, unlike the previous regulations, although we can find relevant rules outside the chapter.

A comparison of the current provisions on special treatment with previous laws and regulations shows significant improvements in the legal framework for the protection of individuals in criminal proceedings. The modern approach is more holistic and inclusive, recognising a range of circumstances and conditions that may require special treatment.²⁴

Unlike previous laws, which focused narrowly on victims as the primary beneficiaries of special treatment,²⁵ current legislation recognises the diversity of individuals who may require such consideration, including vulnerable witnesses and suspects. This development reflects the need to ensure justice and fairness for all participants in the criminal justice system, in line with contemporary human rights standards and societal expectations of fair treatment.

Looking at the differences and inequalities that manifest according to age, the disadvantaged position of children can be clearly established, which lays the foundation for the enforcement of positive rights, as well as the necessity of positive discrimination in the case of the persons with disabilities or the disabled. An interesting question is, depending on the recognition of the disadvantaged situation, positive discrimination and its placement in the effective law, how the special treatment is enforced, i.e. its form and scope beyond the general procedural guarantees.

Special treatment includes, but is not limited to, victims, witnesses and suspects who may have special vulnerabilities or needs that must be addressed in order to preserve

²⁴ KISS 2021.

²⁵ LENCSE 2018.



the integrity of the judicial process and to protect their rights and welfare.²⁶ The ultimate aim of these provisions is not only to facilitate the smooth conduct of criminal proceedings, but also to ensure that justice is administered with respect for the dignity and rights of all parties concerned and in accordance with the broader principles of human rights and legal fairness.²⁷

In the case of a severely disabled person with special communication needs, for example, even despite the existing complex forensic medical expert opinion, the court regrets holding the trial in the absence of a specialist dealing with speech therapy or deaf-mute treatment, who could have played the role of an interpreter.²⁸ Such measures are critical in preserving the integrity of the judicial process and protecting the rights of all individuals, particularly those who may be disadvantaged by their circumstances. Highlighting these requirements underlines Europe's commitment to human rights and to the principles of fairness, equality and respect within the legal system.

Pursuant to § 81 of the Act on Criminal Procedure, a witness is a person requiring special treatment if, based on his personal characteristics or the nature and circumstances of the crime he is unable to understand, to exercise the rights or to fulfil the obligations specified in this Act, or hindered in his effective participation in the criminal proceedings. The circumstances justifying special treatment are, in particular, the age, the mental, physical and health condition of the person concerned, the violent nature of the act that is the subject of the procedure, and the relationship of the person concerned in the criminal proceedings to the other person participating in the procedure.

The court, the prosecutor's office and the investigative authority, starting from the contact with the person concerned, examine by virtue of the office (*ex officio*) or at the request of the person concerned whether he is classified as a person requiring special treatment, and always decide on the establishment of special treatment based on an individual assessment, according to the law.

According to § 82, a person who requires special treatment without a separate decision is a person who has not reached the age of eighteen, a person with a disability defined in the Act LXII of 2013 amending Act XXVI of 1998 on the rights of disabled persons and ensuring their equal opportunities, as well as anyone who can be classified as such, as well as freedom of sexual life and sexual victim of a crime against morality. The court, the prosecutor's office and the investigative authority shall apply a measure that is appropriate and proportionate to the circumstances justifying the special treatment in order to facilitate and protect the exercise of the rights and fulfillment of the obligations of the person requiring special treatment. It should be emphasised that, based on the current regulations, the rights of individuals classified under special treatment can only extend to the point where the rights of other participants in the procedure, such as those charged, begin, i.e. the extra rights granted to them cannot be asserted at the expense of others.

According to the measures listed in § 85, the court, the prosecutor and the investigating authority facilitate the exercise of the rights of the person who requires special

²⁶ 12/2018 (VI. 12.) IM Decree.

²⁷ NAGY 2023.

²⁸ Kúria Bfv. II/760/2015.



treatment taking also into account the interests of the procedure in accordance with the basic principle of the UN Convention on the Rights of the Child. According to which social protection is and its private institutions, the courts, the administrative authorities and the legislative bodies take into account the best interests of the child first and foremost in all their decisions concerning the child.²⁹

The court, the prosecution and the investigative authority acts by taking into account the personal needs of the person concerned during the planning and execution of procedural acts, and conducts certain procedural actions requiring the participation of the person concerned without delay. During the special treatment, gentleness includes the possibility of excluding the public, increased protection of personal and especially health data, and the use of assistance. Other such requirements are the making of video and audio recordings of the procedural act with the emphasis on avoiding repetition, the closed handling of case files related to the initiation and investigation of the determination of special treatment, and other requirements of this law that ensure the facilitation and gentleness of the exercise of the rights and fulfilment of the obligations of the person requiring special treatment. European directives and standards on the protection of vulnerable persons in criminal proceedings stress the importance of personalised treatment and the recording of interrogations.

The criminal procedure act contains measures guaranteeing additional rights in the case of procedural actions requiring the participation of a person under the age of eighteen. In § 87, it is regulated that during the procedure, the court, the prosecutor's office and the investigating authority shall, if possible, make video and audio recordings, and may order that a forensic psychologist be present at the procedural act. Such an additional measure, which guarantees additional rights, is that the procedural act is carried out with the assistance of a forensic psychologist expert or consultant and is provided for in connection with criminal proceedings in Act LXIV of 1991 on the proclamation of the Convention on the Rights of the Child, signed in New York on 20 November 1989. The effective enforcement of children's rights as stated in the Convention on the Rights of the Child promulgated by law, the Child Protection Act and other laws. Another important special regulation is that the testimony of a witness who has not reached the age of 18 cannot be examined by means of an instrumented confession check, and his confrontation can only be ordered with his consent.

A person under the age of fourteen is given priority during the procedure, since in the case of a procedural act that requires his participation, the procedural act can only be performed if the evidence expected from it cannot be replaced by other evidence. The procedural act must be carried out in a room that serves or has been made suitable for it, except that the facilitation and protection of the exercise of the rights of the person concerned and the fulfilment of his obligations cannot be ensured in any other way or by other measures. Decree 34/2015 (XI. 10.) IM of the Minister of Justice on the establishment and control of hearing rooms for defendants or witnesses under fourteen years of age and victims requiring special treatment (IM Decree) sets out the rules relating to the establishment and occupation of special hearing rooms, formerly known as rooms for hearing children.

²⁹ Act LXIV of 1991, Article 3(1).



During the investigation, the investigative authority ensures that the procedural act is performed by the same person each time, the court, the prosecution and the investigative authority make a video and audio recording of the procedural act. However, the provisions of the Act could be further elaborated to explicitly include the European Recommendation on audiovisual recording of interrogations. If the questioning has already taken place during the investigation, and a video and audio recording has been made of it, the court can *ex officio* or upon request waive the questioning of the victim as a witness, avoiding, or at least substantially reducing secondary victimisation and its danger in order to protect the victim. Their testimony during the investigation can be used as evidence, regardless of this, ensuring the enforcement of their rights beyond the general procedural guarantees.

Interrogating a person under the age of fourteen is strengthened by the decision that if it can be established from the documents available during the procedure that a lot of indirect evidence was obtained during the procedure regarding the facts perceived by the child victims, which are suitable for supplementing their testimonies, therefore from this as a result, there is no longer a legal opportunity to question them in the second-degree proceedings.³⁰

Another peculiarity regarding the procedural acts of persons who have not reached the age of fourteen is that the accused and the defender cannot be present in person at the scene of the procedural act requiring the participation of such a victim. When using the telecommunications device, it must be ensured that the victim can only see the acting judge, prosecutor or member of the investigating authority. After the indictment, the court may carry out the procedural act requiring the participation of the victim by means of an appointed judge or a requested court, and the right of persons present at the procedural act requiring the victim's participation to ask questions is limited, they may only propose to ask questions and the public must be excluded from that part of the trial, where the victim's participation in the procedural act is mandatory.

It should be mentioned that during the questioning of persons under the age of 14 as witnesses, the investigating judge must observe the special procedural rules laid down in the procedural law. These include the fact that such witnesses do not need to be warned of the consequences of false testimony, they can only be confronted if this does not cause them fear, and their guardian or legal representative can nevertheless be present at the meeting – they cannot be sent out for later possibly being questioned as a witness.³¹ Relatives of incapacitated minors also have the right to refuse to testify, and a consent or refusal statement from a legal representative or guardian must also be obtained.³²

In the criminal procedure – starting from its specific nature in connection with the goal of justice – the goal of the acting authorities is to obtain the widest and most accurate information. In addition to obtaining the most well-founded evidence possible, the interesting paradox of the simultaneous enforcement of special treatment and leniency calls to life a framework for the scope and form of enforcement of rights and obligations,

³⁰ Szegedi Ítéletábla Bf. I. 365/2005 no. Decision I.

³¹ Fővárosi Ítéletábla 5. Bf. 1614/2004 no. Judgment I.

³² Fővárosi Ítéletábla 5. Bf. 1614/2004 no. Judgment II.



in which the best interests and leniency of those receiving special treatment are realised in such a way that the procedure does not lose its purpose, and the converging effective exploration resulting in the coincidence of the perceived and the real truth is also valid.

The specific chapter of the current Code of Criminal Procedure on special treatment based on age sets out the rules and their implementation in law enforcement and can be seen as a kind of outline of child-friendly justice, which is evidence of the evolution of the hungarian legal system towards a more child rights-friendly justice system.

The reformed Criminal Procedure Act is more in line with European legal standards for the protection of victims and witnesses in criminal proceedings,³³ by refining the criteria for special treatment and creating more transparent and uniform procedures, including: adequate protection of the rights of persons entitled to special treatment throughout the entire duration of criminal proceedings, from initiation to completion;³⁴ enhancing the credibility and integrity of the criminal justice system in the eyes of the European Union, thereby strengthening international cooperation in criminal matters;³⁵ promoting more human and fairer treatment of victims and witnesses, which is a fundamental aspect of European legal principles. Overall, the current Code of Criminal Procedure holds the promise of significantly improving compliance with European requirements and thereby contributing to a fairer and more efficient criminal justice system.

European legal standards for children

Children face various obstacles during the criminal proceedings and want to assert their interests and try to achieve respect for their rights. An obstacle is, for example, the limitation of their capacity to act, as well as if they want to assert the right to special protection arising from childhood.³⁶ In the following, I present the European legal standards for children based on the 2015 Manual of the EU Fundamental Rights Agency (FRA) of the Council of Europe.³⁷

For children, criminal justice objectives such as social integration and reintegration, education and recidivism prevention are the principles that are assessed. In terms of their protection, according to the principle contained in Article 24, their best interests must be taken as a basis during the proceedings, although the definition of this is not completely clear and it is necessary to examine each case on an individual basis, contributing to the outcome of the proceedings with a significant subjective element.

The right to a fair trial is one of the basic requirements of the rule of law. A juvenile involved in a crime, whether victim or perpetrator, has the right to a fair trial, which applies from the first questioning of the child and continues throughout the entire process.

³³ NAGY 2023: 624.

³⁴ T/13972 with explanatory statement – on criminal procedure, see: <https://jogkodex.hu/doc/2460571>

³⁵ Act XLIII of 2020, explanatory memorandum amending the Criminal Procedure Act and other related acts.

³⁶ NÉMETH et al. 2017: 1.

³⁷ European Union Agency for Fundamental Rights and Council of Europe 2015.



Article 47 of the EU Charter of Fundamental Rights deals with the right to an effective remedy and a fair trial and includes the right to a fair and public hearing within a reasonable time, to advice, defence and representation, and to freedom of costs. The principles laid down in Article 49 are also of paramount importance in terms of legality and proportionality, but almost as important are the Directive on the right to information, the Directive on the right to interpretation and translation, and the Directive on legal aid.

The Council of Europe states the requirements for a fair procedure in Article 6 of the ECtHR, which is enriched by the extensive jurisprudence and jurisprudence of the ECtHR. The 2010 ET Guidelines on Child-friendly Justice are of particular importance to child suspects and accused persons. The Parliamentary Assembly of the Council of Europe, Resolution 2010 (2014) “Child-friendly juvenile justice: from rhetoric to reality” states the need for specific treatment. In order to ensure effective participation, procedures should, as a general rule, ensure that the child’s age, maturity level and emotional state are taken into account.³⁸

In the case of *T. v. United Kingdom*,³⁹ the ECtHR found that the applicant’s right under Article 6 of the ECtHR had been violated; it was not able to effectively participate in the proceedings due to the publicity of the meetings, the intensive press presence, the limited lawyer consultation, and the lack of appropriate testimony.

One of the assertions of the right to a fair trial is the possibility of using a lawyer’s assistance, which is included in the EU law in Directive 2013/48/EU, and in the human rights legislation of the Council of Europe, the use of a lawyer is ensured from the initial stage of the investigation.

In *Panovits v. Cyprus*,⁴⁰ the authorities seemed willing to allow the applicant to seek legal assistance at any time, without drawing his attention to his right to request the appointment of a lawyer free of charge. There was no evidence that the applicants expressly and unanimously waived their right to legal representation, so the ECtHR declared a violation of their rights in its decision.

The special situation of child victims and witnesses is recognised by both the EU Charter of Fundamental Rights and the ECtHR, they are entitled to protection against re-victimisation, the right to rehabilitation and reintegration, and the right to effective participation in criminal and alternative procedures. The rights of child victims are dealt with in the Directive 2012/29/EU of the European Parliament and the Council on the establishment of minimum rules for the rights, support and protection of victims of crimes, and primarily emphasises the child-centred approach, taking into account the best interests of the child (above all) on an individual basis in the procedures during. It is important to emphasise that the CJEU also stated that the protection of victims must be implemented in such a way that it does not violate the right of the accused person to a fair trial.

³⁸ European Commission 2013.

³⁹ *T. v United Kingdom* 24724/94 (1999) ECtHR.

⁴⁰ *Panovits v. Cyprus* 4268/04 (2008) ECtHR.



In the *Pupino case*⁴¹ the CJEU interpreted for the first time a provision relevant to the legal status of children as victims and witnesses participating in criminal proceedings. The CJEU emphasised that the national court should be able to testify in a way that ensures their protection, for example outside and before the public hearing. And stated that if the children claim that the teacher abused them, they are eligible to testify and all measures must be designed so that the accused continues to receive a fair trial.

In the practice of the ECtHR, in connection with the protection of child victims, it enables the proper and effective exercise of the rights of the defence, and for this reason the judicial authorities can be required to counterbalance the rights of the defence and ensure the protection of the interests of the accused.⁴²

As part of this, the ECtHR deals with the rights of victims and their families.

In the case of *RR et al. v. Hungary*,⁴³ the exclusion of the family from the witness protection program endangered their lives, because the authorities did not prove that the danger that caused it had ceased. It is noteworthy from the point of view of the topic that the Economic and Social Council of the United Nations (ECOSOC), in its Decision 2005/20 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted the guidelines for child victims and witnesses according to which children's individual needs and protection of their rights are taken into account.

Concluding remarks

In terms of tasks and tools, child protection is related to many areas of law.⁴⁴ It is imperative to recognise that child protection standards across legal and institutional systems interact with different areas of law and aim to promote the upbringing of children within the family and reduce risks to their well-being. The issue of age is of paramount importance from the point of view of criminal prosecution and applicable legal consequences. When determining the responsibility assigned to the age, consideration must be given to the factors shaping the child's personality and socialisation background.

The general rules and system for the protection of children can be found in the Act XXXI of 1997 on the protection of children and the administration of guardianship, commonly known as the Child Protection Act. In accordance with the UN Convention on the Rights of the Child, the Child Protection Act prioritises the interests and rights of the child, giving priority to upbringing in the family. To this end, it provides a large spectrum of different aid for the family and the child and only allows removal from the family as a last solution, however, in this case as well, it defines reintegration into the family as a priority task.

The child protection system provides different services operated mainly by the government including official measures and different benefits, basic and specialised services providing personal care with the aim also to avoid growing criminalisation of children.

⁴¹ *Pupino case* C-105/03. s. case, criminal proceedings against Maria Pupino (2005) CJEU.

⁴² *Kovač v. Croatia* 49910/06 (2006) ECtHR.

⁴³ *RR and others v. Hungary* 9400 /11 (2012) ECtHR.

⁴⁴ FÁBOS-HERKE 2018.



The integration of our child protection standards into national laws is complex in itself, but it aims to improve national law.

The question of age is of paramount importance for the criminal procedure and the applicable legal consequences, and three main issues arise in relation to age: 1. When does a child or juvenile come into contact with the criminal justice system? 2. Is it the responsibility of child protection or the criminal justice system to determine the responsibility? 3. What kind of administrative official measure or punitive material or procedural legal measure will be ordered, and will it achieve its goal?⁴⁵

Whether the determination of responsibility and the determination of the legal consequence falls within the competence of child protection or the criminal justice system depends on the capacity to commit a crime. The prevention network of the child protection system focuses primarily on the child at risk. In the criminal justice system, there is less opportunity to take into account individual aspects.⁴⁶

EU law can also be of fundamental importance in the application of criminal law. In my view, in today's context, practitioners, under the mistaken assumption that they are not concerned, do not attach sufficient importance to this subject either as such or as a study of it, even though EU law can modify the assessment of the acts of the person being prosecuted, the legal consequences applied and the framework of criminal proceedings, independently of the legislation and the legal situation at the time.⁴⁷

The integration of European standards and norms into national legislation is therefore essential not only to protect children, but also to provide alternative care when children are removed from their biological families due to interventions by public authorities.

The utopian vision of juvenile justice implies a steady and gradual progress towards criminal tolerance, where the 'best interests' of children prevail and where correctional intervention – especially imprisonment – is used only as a 'last resort', i.e. the approach to the consideration of juvenile offenders within the Hungarian criminal justice system reflects a balance between corrective measures and the provision of legal responsibility. It does not rule out imposing consequences, but does so in the light of their age and their potential for rehabilitation. This vision is supported by global and European human rights⁴⁸ and EU policies.

However, in line with the examples of legal malpractice in the cases presented, the use of legal representation in Hungarian criminal proceedings is limited and does not sufficiently protect the rights of suspects with limited access to legal representation, is not transparent and accountable, and is adapted to a specific – national – legal and cultural context, which the EU should respect with regard to the sovereignty of Member States in the area of criminal justice.

Hungary should be given the opportunity to develop its own criminal procedures while cooperating with the EU to improve its criminal justice system. The current legislative framework, in particular the Child Protection and Guardianship Act, provides

⁴⁵ NÉMETH et al. 2017: 2.

⁴⁶ NÉMETH et al. 2017: 3.

⁴⁷ KARSAI 2005: 53.

⁴⁸ NAGY-OROSS 2016: 12.



a solid framework for the protection and enforcement of children's rights in judicial proceedings. This is exemplified by the clauses that prevent the examination of minors by means of an instrumental confessional test, in order to ensure that the integrity and psychological well-being of the child are paramount. In addition, the involvement of forensic psychologists in trials underlines the obligation to be sensitive to children's rights and to enforce them. This advocacy approach is operationally supported by Article 87 of the Criminal Procedure Law, which serves as an important tool for transparency and accountability in the legal process. In my opinion, the Hungarian criminal procedure makes sufficient efforts to strike a balance between law enforcement and the need for special treatment of children under the age of 18, which is certainly evidence of progress towards a more rights-respecting justice system.

References

- European Commission (2013): *Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for child suspects or accused persons in criminal proceedings*. COM(2013) 822 final. Online: https://eur-lex.europa.eu/resource.html?uri=cellar:ab265467-7866-11e3-b889-01aa75ed71a1.0003.05/DOC_1&format=PDF
- European Commission (2021a): *Commission Proposes Action to Uphold Child Rights and Support Children in Need*. Press release. Online: <https://ec.europa.eu/social/main.jsp?langId=en&catId=1428&furtherNews=yes&newsId=9968>
- European Commission (2021b): *Communication from the Commission to the European Parliament, the Council, the European To the Economic and Social Committee and the Committee of the Regions – EU Strategy on the Rights of the Child*. COM(2021) 142 final. Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0142>
- European Union Fundamental Agency for Fundamental Rights and Council of Europe (2015): *Handbook on European Law Relating to the Rights of the Child*. Luxembourg: Publications Office of the European Union. Online: https://fra.europa.eu/sites/default/files/fra_uploads/fra-ecthr-2015-handbook-european-law-rights-of-the-child_en.pdf
- FÁBOS-HERKE, Barbara Katalin (2018): A gyermekvédelmi rendszer prevenciós szerepe a bűnmegelőzésben a Csemegi-kódextől napjainkig [The preventive role of the child protection system in crime prevention from the Csemegi Codex to the present day]. *Diké – A Márkus Dezső Összehasonlító Jogtörténeti Kutatócsoport folyóirata*, 2(2), 33–50. Online: <https://doi.org/10.15170/DIKE.2018.02.02.03>
- GYURKÓ, Szilvia (2013): *The Requirement of Child-Centered Justice in Hungary and Europe*. AJB Projektfüzetek, Child-centered justice, Children's rights project. 1-262. Online: https://www.ajbh.hu/documents/10180/124834/gyermekjogi_2013.pdf
- KARSAI, Krisztina (2005): Büntetőeljárás és uniós jog, avagy a büntetőjogásznak is le kell nyelnie az integráció békáját. *Kontroll Jogtudományi Folyóirat*, (3)1, 32–53.
- KARSAI, Krisztina (2023): European Criminal Law. In JAKAB, András – KÖNCZÖL, Miklós – MENYHÁRD, Attila – SULYOK, Gábor (eds.): *Internet Encyclopaedia of Legal Studies*. Online: <https://ijoten.hu/szocikk/europai-buntetojog>



- KIRÁLY, Tibor (2000): *Büntetőeljárési jog*. Budapest: Osiris.
- KISS, Anna (2021): A különleges bánásmód (leg)új(abb) szabályai a büntetőeljárásban. *Miskolci Jogi Szemle*, 16(5), 286–297. Online: <https://doi.org/10.32980/MJSz.2021.5.1473>
- KUHL, Andrea (2021): Gyermek tanúk kihallgatása és a gyermekbarát igazságszolgáltatás. *Büntetőjogi Szemle*, (2), 52–57.
- LENCSE, Balázs (2018): Specifikus védelmi szükséglet, avagy különleges bánásmód az uniós normáktól az új büntetőeljárési kódexig. *Büntetőjogi Szemle*, (2), 65–74.
- NAGY, Ádám – OROSS, Dániel eds. (2016): *Ifjúságügy – Szöveggyűjtemény I–II* [Youth Affairs – Text Collection I–II]. Budapest: UISZ Alapítvány.
- NAGY, Ivett (2023): A hatályos büntetőeljárési törvény egyes változásainak vizsgálata a szervezett bűnözés elleni fellépés tükrében. *Belügyi Szemle*, 71(4), 603–624. Online: <https://doi.org/10.38146/BSZ.2023.4.3>
- NÉMETH, Barbara – BALÁZS, Réka – GYURKÓ, Szilvia (2017): Az eljárási jogok és a gyermekbarát igazságszolgáltatás érvényesülése Magyarországon, büntetőeljárás alá vont külföldi fiatalok esetén. *Belügyi Szemle*, 65(5), 42–53. Online: <https://doi.org/10.38146/BSZ.2017.5.3>
- SOLT, Ágnes (2018): A „gyermekbarát igazságszolgáltatás” repedéseiről. In VÓKÓ, György (ed.): *Kriminológiai Tanulmányok 55*. Budapest: OKRI, 47–62.
- The Council of Europe (2010): *Guidelines of the Ministerial Committee of the Council of Europe. Building Europe for Children, with Children!* Council of Europe Publishing. Online: <https://rm.coe.int/16804b2cf3>
- Thomas Hammarberg a gyermekközpontú igazságszolgáltatásról (2013). In LUX, Ágnes ed. *Gyermekközpontú igazságszolgáltatás*. Gyermekjogi projekt. Budapest: AJB Project Books, 13–17. Online: https://www.ajbh.hu/documents/10180/124834/gyermekjogi_2013.pdf

EU and legal sources

- 12/2018 (VI. 12.) IM rendelet az egyes büntetőeljárási cselekményekre és a büntetőeljárásban részt vevő személyekre vonatkozó szabályokról [12/2018 (VI. 12.) IM Decree on rules applicable to certain acts and persons involved in criminal proceedings]. Online: <https://njt.hu/jogszabaly/2018-12-20-06>
2020. évi XLIII. törvény indokolás a büntetőeljárásról szóló törvény és más kapcsolódó törvények módosításáról szóló 2020. évi XLIII. törvényhez [Act XLIII of 2020, explanatory memorandum amending the Criminal Procedure Act and other related acts Act XLIII of 2020 on Criminal Procedure and other related matters]. Online: <https://njt.hu/jogszabaly/2020-43-K0-00>
- Charter of Fundamental Rights of the European Union, 2012/C 326/02. Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3AC2012%2F326%2F02>
- Fővárosi Ítéltábla BH 2005.10.343 I. Bf. 1614/2004 no. judgment I–II
- Kovač v. Croatia [2016] ECtHR, Online: <https://hudoc.echr.coe.int/eng#%7B%22site%22%3A%7B%22001-81645%22%7D%7D>
- Kúria Bfv. II/760/2015 (BH 5/2016 111)



Opinion of the European Economic and Social Committee on Proposal for a Council Recommendation Establishing a European Child Guarantee. COM(2021) 137 final. Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021AE1883>

Panovits v. Cyprus [2008] ECtHR. Online: <http://hudoc.echr.coe.int/eng?i=001-90244> (Accessed on October 23, 2021)

Pupino case, C-105/03.[2005] CJEU, Online: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62003CJ0105&from=HU>

RR and others v. Hungary [2012] (ECtHR, 19400 /11). Online: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-115019%22%5D%7D>

Szegedi Ítéletábla Bf. I. 365/2005 no. Decision I. (BH 2006. 8. 242)

T. v. United Kingdom [2000] ECtHR. Online: <http://hudoc.echr.coe.int/eng?i=001-58593>

T/13972. számú törvényjavaslat indokolással – a büntetőeljárásról [T/13972 with explanatory statement – on criminal procedure]. Online: <https://jogkodex.hu/doc/2460571>

