

## Child-Friendly Justice – Hungarian Perspective

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### ABSTRACT

Hungary was the first of the Central and Eastern European countries to sign the Convention on the Rights of the Child (CRC) on 14 March 1990. This was promulgated by Act LXIV of 1991 and entered into force on 6 November 1991. The adoption of the CRC marked the beginning of the necessary harmonisation of legislation and the preparation of a law on the protection of children in accordance with the Convention. To ensure the effective exercise of the child's right to participate guaranteed by Article 12 of the CRC, it was necessary to amend the rules of the Hungarian administrative, civil, and criminal procedure laws. The objective of this book chapter is to explore how children's right to participate is enforced in Hungarian administrative, civil, and criminal proceedings and the related national practice. It is necessary to analyse the relevant sections of the Hungarian Fundamental Law, the rules of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship, the Code of Civil Procedure and Civil Code, and finally, the rules of Code of Criminal Procedure. In addition to the legal provisions, the main case law of the Hungarian courts is also presented.

### KEYWORDS

procedural rights of children in Hungary, children's right to participate in Hungarian administrative, civil and criminal proceedings, children's right to express their views in Hungarian judicial proceedings, child who has sufficient understanding of Hungarian law

### 1. Introduction

After the regime change in 1989, Hungary was the first of the Central and Eastern European countries to sign the Convention on the Rights of the Child (CRC) on 14 March 1990, which was promulgated by Act LXIV of 1991 and entered into force on 6 November 1991. The adoption of the CRC marked the beginning of the necessary harmonisation of legislation and the preparation of a law on the protection of children in accordance with the Convention. As a result of this work, *Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship* (hereinafter: Gyvt.) came into effect.

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Before presenting the Hungarian national rules in detail, it is necessary to examine whether the protection of children's rights is implemented at the constitutional level in Hungary.

## 2. Constitutional Protection of Children's Rights in Hungary

The Hungarian Fundamental Law does not provide for children's rights 'in general', but rather *the right of the child to protection*, while at the same time setting out the general requirements and state duties relating to the protection and care of the child.<sup>1</sup>

According to Article XV (1) and (5) of Fundamental Law

'(1) Everyone shall be equal before the law. Every human being shall have legal capacity.

(5) By means of separate measures, Hungary shall protect families, children, women, the elderly, and those living with disabilities.'

The Fundamental Law highlights certain groups to be protected. This includes families, which are the smallest basic units of society, children, women, the elderly, and disabled persons.

The right of the child to the protection and care necessary for his or her proper physical, mental, and moral development is currently regulated by Article XVI para. 1 of the Fundamental Law

'(1) Every child shall have the right to the protection and care necessary for his or her proper physical, intellectual, and moral development. Hungary protects the right of children to be identified by their sex assigned to them at birth and provides for their education in accordance with the values based on Hungary's constitutional identity and Christian culture.'

In its decision 995/B/1990, the Constitutional Court stressed that "children are human beings who are entitled to all the fundamental constitutional rights as everyone else", but in order to be able to enjoy the full range of rights, they must be provided with all the conditions for adulthood appropriate to their age.

In its Decision 3068/2020 (9.III.AB), the Constitutional Court ruled that in cases where the return involves minor children, which would increase the risk of physical or psychological harm or otherwise create an intolerable situation for them, the court must, therefore, act with increased caution in such cases and the interests of the child(ren) must be explored and protected by the maximum available means of evidence. The interests of children are also particularly important because, in addition to international agreements, Article XVI para. 1 of the Fundamental Law specifically

1 Lux, 2018.

provides that every child has the right to the protection and care necessary for his or her adequate physical, mental, and moral development. In view of this, in proceedings directly affecting the best interests of the child, particular emphasis must be placed on the fairness of the proceedings (Recitals [44]-[45]).<sup>2</sup>

In 2011, Act CCXI of 2011 on the Protection of Families was adopted in Hungary, which lists the obligations of parents raising a minor child: respect for the child's human dignity and respect for the dignity of the child, cooperation with the child, and informing the child about matters concerning him or her. The provisions of the Act also provide for the rights of the child in general in connection with the Fundamental Law. According to the explanatory memorandum, the purpose of this Act is to lay down the most important rules, deriving from the Fundamental Law, related to the protection of families in a cardinal Act.

### 3. Children's Participation in Administrative Proceedings

Act XXXI of 1997 on the Protection of Children and Guardianship of the Child (hereinafter Gyvt.) and the related Government Decree 149/1997 (IX.10) (hereinafter Gyer.) provides that the fundamental interests of the child must be considered in its application and the safeguarding of these interests shall be pursued at all times.<sup>3</sup>

Article 8 of Gyvt. states that children have the right to express their views and be informed of their rights, be informed of the means of enforcing those rights, and be heard, directly or otherwise, on all matters affecting their person and property, and have their views considered in accordance with their age, state of health, and level of development. Together, this ensures the child's right to participate, both in the informal context of family life and in family substitute care, as well as in judicial and administrative proceedings concerning the child.

It is also important that children are informed about their rights and how to exercise them. This obligation to provide information is primarily the responsibility of the family (the parents) and the organisations and persons involved in the child's education, care, or other affairs. The child's right to participate also includes the right to lodge a complaint in matters concerning himself or herself.<sup>4,5</sup>

The child has the *right to initiate proceedings* before a court and other bodies specified by law in the event of a violation of his or her fundamental rights<sup>6</sup> i.e. to have the capacity to take legal action. In several specific types of cases, the Gyer. allows a child with limited capacity aged 18-14 to initiate proceedings on his or her own initiative<sup>7</sup>, for example: a child over 16 may initiate proceedings for the abandonment of his or

2 Lux, 2022, p. 18.

3 Visontai-Szabó, 2021, p. 182.

4 Kriston, 2020, p. 18.

5 See: Article 36 of Gyvt.

6 Article 8 para. 3 of Gyvt.

7 Czibrik, 2022, p. 87.

her parents<sup>8</sup> or for the marriage of a minor<sup>9</sup>; a child with limited capacity to act may initiate proceedings for the choice of his or her school or career<sup>10</sup>; a child in care may also submit an application for a change of placement on his or her own initiative.<sup>11</sup>

All children have the right to be heard. The views of the child should be considered, taking into account his or her age, health, and level of development. If the age of the child prevents him or her from expressing an independent opinion, his or her legal representative shall act to enforce this right. In guardianship proceedings, a *child who has sufficient understanding* is a child who, in accordance with his or her age and intellectual and emotional development, can understand the essential content of the facts and decisions affecting him or her and the expected consequences of such decisions.<sup>12</sup>

In view of the personal nature of the living conditions regulated by the Gyvt., it is important for the guardianship authority, which essentially decides on the fate of children and families, to make its decisions based on the most accurate knowledge of the persons and the environment. The Gyvt., therefore, provides for a wide-ranging *hearing of the persons concerned in guardianship proceedings* so that the authority and its administrator can become as familiar as possible with these circumstances and the persons involved before taking a decision.

In view of this, Article 128 para. 1 of the Gyvt., in the light of Article 12 of the CRC, stipulates the persons who must be heard by the guardianship authority in guardianship proceedings. These persons include the legal representatives and persons responsible for the care of the child (parent, guardian, carer). Under Article 12 of the CRC, a child who has sufficient understanding but who lacks or has limited capacity to act must also be heard. The child who has sufficient understanding of the guardianship proceedings shall be informed of the possibility of making a statement, and the legal representative shall be informed at the same time. In this connection, Gyer. also stipulates that if such a child requests a hearing, it may not be waived. Likewise, in the personal and property matters of such a child, a hearing cannot, as a general rule, be waived. In addition, the guardianship authority is also obliged to hear the person against whom the authority seeks to establish an obligation. The Gyvt. also provides that, where necessary, the child's close relatives must be heard to learn about the child's upbringing and environment.

The Gyer. gives the guardianship authority considerable freedom in the *conduct of the hearing*. The hearing must be conducted primarily on the premises of the *child welfare agency* in the presence of the legal representative. However, in the interest of the protection of the child, the Gyer. provides for a derogation from this general rule<sup>13</sup>. Thus, it is possible for the guardianship authority to hear the child in the absence of

8 Art. 22 of Gyer.

9 Ibid., Art. 34.

10 Ibid., Art. 26.

11 Ibid., Art. 105/A; Katonáné Pehr, 2023.

12 Art. 2, point a) of Gyer.

13 Ibid., Art. 11 para. 6.

the legal representative, which may be the case where the interests of the child and the legal representative conflict, for example, because of a legal dispute between them or because of an act or omission of the legal representative. However, a hearing in the absence of a legal representative may be held only and exclusively in the best interests of the child and cannot be based on the effectiveness of the proceedings alone.

In many cases, the office is not the right environment to build trust, and the situation of the person concerned (e.g. age, health) can make it difficult to appear before the authority. Therefore, the Gyer. usually allows for the hearing to take place outside the premises of the office<sup>14</sup>. The Gyer. allows the authority to conduct the hearing *at the place of residence of the person concerned, at the educational institution, or health care institution* providing services to the person.

## 4. Children's Participation in Civil Proceedings

### 4.1. The Rules of the Code of Civil Procedure

It is important to emphasise that *Act LXII of 2012 on the amendment of certain laws related to the implementation of child-friendly justice* was of particular importance for Hungarian civil and criminal procedure law. This Act transposed the rules of international legal instruments, which provide guidance to state governments on how to make their judicial systems child-friendly, into the field of civil and criminal procedure by amending the rules of the old Code of Civil Procedure and the old Code of Criminal Procedure.

When analysing the participation of children in civil proceedings, we should primarily look at the rules of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter Code of Civil Procedure).

In the regulatory system of the Code of Civil Procedure, *the minor child is represented in three roles*: party, witness, and interested person in action related to parental custody.

#### 4.1.1. The Child as a Party in Civil Proceedings

According to Section 33 of the Code of Civil Procedure:

‘[Legal capacity to be a party to judicial proceedings]

Any person who is able to accrue rights and obligations under the rules of civil law is considered to have capacity to be a party in judicial proceedings.’

According to this rule, a child can be a plaintiff or defendant in a civil action without any limitation from the date of his or her birth until the date of death.

14 Ibid., Art. 11 para. 7.

The age of the plaintiff or the defendant is relevant in terms of who can make valid declarations in a civil action. According to Article 34 para. 1 of the Code of Civil Procedure:

‘[Competency in judicial proceedings and legal representation]

(1) A person may be a party in judicial proceedings acting personally or by way of counsel:

- a) if having full legal capacity under civil law;
- b) if being of legal age with partially limited legal capacity, and if there exists no restriction in his legal capacity under civil law relating to the subject matter of the action or to procedural steps in court; or
- c) if having the right of disposition of the subject matter of the action under civil law.’

A person may participate as a party if he or she has full capacity to act under the rules of the Civil Code. Since civil procedural law does not recognise limited procedural capacity to act, *a person under the age of 18 does not have procedural capacity to act*, even if he or she has already reached the age of 14.

A party shall act through his or her *statutory representative* in the action if the party does not have any procedural capacity to act. Therefore, generally, *the parent acts as the statutory representative instead of the child*, who does not have the procedural capacity to act. If the child does not have a statutory representative, the court will appoint a *public representative* for the party if the party lacks capacity and does not have a statutory representative, for example, if the minor child has neither a parent nor a guardian.<sup>15</sup>

In family law procedures, such as in matrimonial proceedings, special rules apply to the representation of the child and the participation of the minor as an interested party. In actions related to personal status,<sup>16</sup> special rules apply to the legal actions of children who have reached the age of 14. According to Article 431 para. 2 of the Code of Civil Procedure, a person having limited capacity to act, whose personal status is affected by the action, shall have *full procedural capacity to act during the action*. This means that a child who has reached the age of 14 can make a valid procedural statement if he or she is a party in an action related to his or her personal status without the consent of his or her statutory representative. Although the child is rarely a party in actions related to personal status, it can happen; for example, in an action to terminate parental custody, where the child who has reached the age of 14 can also initiate the procedure.

<sup>15</sup> Wopera, 2023, p. 2.

<sup>16</sup> According to the Civil Procedure Code an action related to personal status means an action on custodianship, a matrimonial action, an action for the establishment of parentage, an action related to parental custody, actions related to contact with the child and actions related to the termination of adoption. (Article 429 of Civil Procedure Code).

#### 4.1.2. *The Child as a Witness in Civil Cases*

According to Section 298 of the Code of Civil Procedure, a minor under the age of 14 years may be asked to testify only if there is no other way to obtain the evidence the testimony is expected to provide. The hearing of a minor may be attended by his or her statutory representative. Any warning and information communicated during the hearing shall be phrased in a manner adapted to the minor's age and level of maturity, in a child-friendly manner. The hearing shall be conducted in an appropriate atmosphere, also in a child-friendly manner.

In the hearing of a minor under the age of 14 years, he or she shall not be advised of the legal consequences of perjury; instead, the minor shall be advised to say only the truth in a manner adapted to the minor's age and level of maturity, in a child-friendly manner. The statement on the confidentiality of personal data and on the refusal to testify shall be made by the minor's legal representative, and the right to appeal the court's decision ordering a witness to testify shall be exercised by the legal representative.

Where any conflict of interest exists between the witness of minor age and the minor's legal representative, the court shall request the *guardian authority to appoint a caretaker officer* to exercise the rights of the legal representative.

The law does not specify an age as a condition for testifying, from which it follows that minors under the age of 14 can also be heard as witnesses. This section of the Code of Civil Procedure regulates the hearing of minors under the age of 14 as witnesses *as an exception*, thus ensuring that the child only has to participate in the justice system ultimately if justified by an important procedural interest.<sup>17</sup> The suitability of a child to testify is a question that, with general life experience, the court can judge independently, without the use of an expert.<sup>18</sup>

#### 4.1.3. *The Child as an Interested Person in Civil Proceedings*

Section 473 of the Code of Civil Procedure contains precise procedural rules for the hearing of minor children as an interested person in actions related to personal status, which are considered to be a very forward-looking provision.<sup>19</sup>

If the court has decided to interview the child as an interested person, in justified cases, it shall simultaneously appoint *ex officio* a *public representative* for the minor. Moreover, the court may hear the minor child *without the parties and the parties' representative being present*.

The court shall summon a minor *under the age of 14 years* through his or her legal representative, where such representative is held responsible for ascertaining the minor's appearance. Where a minor *over the age of 14 years* is summoned to appear, the court shall notify the legal representative of the summons even if the legal representative is summoned to the hearing as well.

17 See more: Nagy, 2019, pp. 782–783.

18 Decision No. 2011/ 2318 of Curia (Supreme Court of Hungary).

19 See more: Boros, 2019, pp. 1141–1149.

A minor shall be interviewed *in an appropriate atmosphere*, in due consideration of the minor's age and level of maturity, *in a child-friendly manner*. At the beginning of the interview, the minor shall be asked to state his or her name, place and date of birth, mother's name, and home address and shall be advised to say only the truth, as well as of his or her right to refuse to make a statement or answer certain questions. The court, if having appointed a public representative for the minor, shall inform the minor about the role and the rights and obligations of the public representative in the proceedings.

The minor child shall be heard by the presiding judge. Prior to the hearing, the parties may submit questions to be asked if the minor is interviewed in the absence of the parties. During the hearing of the minor, the public representative may submit questions to be asked. The presiding judge may allow the public administrative to interview the minor directly. The presiding judge shall decide whether the proposed and the directly asked questions are admissible.

At the end of the interview, the statement recorded in a written report shall be read in the minor's presence, or if the statement is made by way of sound recording summarising the content of the records, it shall be carried out in the minor's presence. Such recording, or the omission thereof, shall be indicated in the records. At the time of reading or when the recording is made, the minor may modify his or her statement or give additional information. The records may be supplemented and amended if so authorised by the presiding judge, relying on the comments of the public representative or the parties if the hearing takes place in their presence. The request made by the public representative or the parties, therefore, if rejected, shall be indicated in the records. If the minor is interviewed in the absence of the parties, the presiding judge shall inform the parties of the contents of the records made of the interview.

Hungarian courts have *child-friendly children's hearing rooms*, where minor children can be heard by the court in a child-friendly environment. Children under the age of 8-10 are typically heard in these children's hearing rooms; older children prefer to be heard in the courtroom.

#### ***4.2. The Rules of the Hungarian Civil Code***

The basic private law rules for minors can be found in two parts of Act V of 2013 on the Civil Code (hereinafter Civil Code), in Book Two, entitled "The Individual as subject of Law", and Book IV, entitled "Family Law Book".

Article 4:2 of the Civil Code states that "in family relationships, the interests and rights of the child shall be afforded increased protection". This declaration is closely linked to the general principles of family law since the child, who, due to his or her age and situation in life, is inherently in the position of the weaker party in family relations, needs special protection and support. It is clear that the legislator's intention is that the child should not be the subject of official proceedings, should not be a passive sufferer of his or her parents' decisions, but should be the main stakeholder in the proceedings, who should be informed of all important matters, should have the



right to express his or her views on them, and should have the right to have his or her views taken into account, in accordance with his or her age and maturity.<sup>20</sup>

#### 4.2.1. Children in Civil Substantive Law

In Hungarian law, *a minor is a person under the age of 18*, except if she or he has attained majority by marrying over the age of 16. Minors *under the age of 14* shall have no capacity to act. Minors shall have limited capacity to act if they have *reached the age of 14*.

A minor child under the age of 18 is *under parental custody*. According to Section 4:146 of the Civil Code, a minor child shall be subject either to *parental custody* or *guardianship*. Parental custody includes the right and obligation to determine the minor child's name, to care for and bring the child up, to determine the place of residence and manage the minor child's assets, as well as the right to appoint a guardian and to exclude someone from being a guardian. The content of parental custody includes the *obligation to legally represent the child*. The parents exercising parental custody shall have the right and obligation to represent their child in his or her personal and property matters. This means that the parent or guardian has the right to initiate an action on behalf of the minor. The parent or guardian provides legal representation of the child in the lawsuit as well.

Actions where there may be a conflict of interest between the parent and the child are, of course, an exception to this provision. This can happen, for example, in proceedings to establish parentage or in proceedings to terminate parental custody.

Of course, the abovementioned rule does not apply to the hearing of the child by the court, which is the child's personal declaration of rights, which the child himself makes in court.

According to Article 4:163 of the Civil Code, it is also important to emphasise that *the parent shall not represent his child in cases* in which the parent, their spouse, cohabitant, lineal relative, or any other person whose statutory representation is performed by the parent is a party of opposing interest regarding the child. If the parent who is the statutory representative of the child cannot act in the child's affair by virtue of an Act or upon the order of the guardianship authority due to a conflict of interests or any other obstacle, the guardianship authority shall appoint an *ad hoc guardian* for the child. The appointment of an *ad hoc guardian* may be applied for by any interested party or authority, or it can also take place *ex officio*. For the purposes of the appointment of an *ad hoc guardian*, the parent shall be required to notify, without delay, the guardianship authority of the parent not being allowed to act due to the grounds specified earlier. The *ad hoc guardian* shall have the same competence as the guardian in the case.<sup>21</sup>

20 Boros et al., 2013, p. 28.

21 Wopera, 2023, pp. 2–3.

#### 4.2.2. Children's Right to Participate in Civil Proceedings Affecting Them

The Family Law Book of the Civil Code provides several ways for the rights of the child. Section 4:148 of the Civil Code “*Involving the child in the decision-making*” provision has fundamental importance<sup>22</sup>:

‘The parents shall inform their child concerning the decisions that pertain to the child as well, and they shall permit the child of sound mind to express his/her views before the decision is made, and to partake in making the decision itself together with his/her parents in cases defined by law. The parents shall take the child’s opinion into account, giving due weight consistent with the child’s age and degree of maturity.’

According to Article 4:171 para. 4 of the Civil Code in the procedures for settling the exercise of parental custody and for the child’s placement with a third party, the court shall hear both parents, except if any insurmountable obstacles exist, and *notify the child who has sufficient understanding of the opportunity to express his or her views*. If the child requests to be heard, or if the court is of the opinion that a hearing is in order whether requested or not, the court shall hear the child personally or through an expert.

*If the child is over the age of 14 years*, the decision relating to custody and his or her placement can be made *upon the child’s agreement*, except when the child’s choice is considered to jeopardise his or her development.

It is important to emphasise that Act LXII of 2021 on international judicial cooperation related to parental responsibility supplemented the cited provision of the Civil Code by stating that the *court must notify the child* of the possibility of expressing his or her views. With this provision, the Hungarian legislation took a great step in the direction of child-friendly justice. The amendment entered into force on 1 August 2022, and it must also be applied in ongoing procedures.<sup>23</sup>

Thus, in order to ensure that the child’s opinion is taken into account, the Civil Code requires the court to inform the child of the fact that he or she can express his or her opinion or otherwise express it during the proceedings if his or her parents do not inform him or her of this possibility.

This regulation is otherwise flexible as it is up to the court at which stage of the first-instance procedure to inform the child of the possibility to express his or her views. It is reasonable to send the notice to the child *at the beginning of the preparatory stage* of the civil procedure. Furthermore, if the child requests to be heard, it must be done as soon as possible within the framework of preliminary taking of evidence. It is important to use notices with different content and language in court proceedings based on age groups. It may be necessary to standardise the wording of

22 See more: Barzó, 2017, pp. 46–47; Tóth, 2021, pp. 620–633.

23 Wopera, 2023, p. 1.

court notices with the involvement of psychological experts so that it is sufficiently “child-friendly”.<sup>24</sup>

In the notice sent to the child, the court shall inform the child that he or she can express his or her views in different ways. They can do this in writing, by any electronic message, video message, or drawing, which they can send to the court electronically, with the help of their parents, or even on their own, i.e. they do not have to appear in court. The use of electronic means of communication is already natural for Generation Z children. The experience we have so far shows that children are very active, and many of them take the opportunity to express their views electronically.<sup>25</sup>

The Civil Code guarantees the participation of the affected child not only in actions related to parental custody but also in *actions settling contact*. According to Article 4:181 paras. 1–2 of the Civil Code, the child must be heard in actions settling contact. This means that the court or the guardianship authority<sup>26</sup> must not only notify the child of the possibility of expressing his or her views but also ensure that the child shall be heard. The court or the guardianship authority shall decide on the contact with the child, taking into account the age, health, and living conditions of the child, parents’ personal conditions, and the opinion of the child who has sufficient understanding.

#### 4.2.3. Definition of ‘Child Who Has Sufficient Understanding’

Hungarian civil law does not define the concept of ‘child who has sufficient understanding’. According to the court practice, “the court have to examine the child who has sufficient understanding in each case, in which the age of the child is not a determining factor”.<sup>27</sup>

Hungarian family law regulations *do not specify the age* at which a child has sufficient understanding. Among the relevant laws, only Article 2 point a) of 49/1997. (IX. 10.) government decree on guardianship authorities and the child protection and guardianship procedure defines that “a child who has sufficient understanding: a minor who, in accordance with his age and intellectual and emotional development, is able – during his hearing – to understand the essential content of the facts and decisions affecting him, to foresee the expected consequences.”

Based on legislation and judicial practice, this is clearly a *subjective category*. The court must decide whether the child has sufficient understanding and whether an uninfluenced opinion can be expected from him. The legal practitioner can find out about this based on the child’s age and the parents’ statement, and if necessary, a

24 Wopera, 2022.

25 Ibid.

26 The guardianship authority shall decide on the contact with the child if no matrimonial action or action for settling parental custody is pending.

27 Hungarian legislation attaches great importance to the expressed will of the child, and if it can be established that it reflects the child’s well-considered, considered and sufficiently justified views, it must be evaluated. The only limitation in this is if it can be determined from the child’s age, maturity, and expressions that he has not sufficient understanding: he is not able to express a view on the given issue independently and without influence. Decision of Curia (Supreme Court of Hungary, published in No. 298 of 2019).

psychologist can decide on this issue. At the same time, the Supreme Court of Hungary, in its civil decision, took the position that the determination of a child who has sufficient understanding is not a professional matter. In this case, the court can take a position without appointing an expert. It is, therefore, clear that there is no uniform standard for the judicial determination of the existence of sufficient understanding, the assessment of which is based on a thorough consideration of the circumstances in each case, of which the child's age is an important, but not the only, decisive factor.<sup>28</sup>

#### 4.2.4. *Ways of Hearing the Child*

According to Article 4:171 para. 4 of the Hungarian Civil Code, the court hears the child *directly* or by *involving an expert*.

If the court considers that it wants to obtain the child's opinion in the case by hearing, it must also decide whether to do so through a direct hearing or an expert. As a rule, *the method of hearing is, therefore, always chosen by the judge*. Judges have very different opinions as to whether it is appropriate to hear the child directly or by involving an expert.<sup>29</sup>

The *child's direct hearing* must be conducted in a way that considers the child's age and level of maturity. To get to know the position of younger children, different communication from the judge is necessary than in the case of a teenager. If the hearing is done correctly by the judge - and with appropriate discretion - it can allow the child to express his or her own wishes and relieve the child of any sense of responsibility or guilt he or she may have felt towards his or her parents. At the same time, it is advisable to inform the child during the hearing that the court will take his or her views into account but will not decide exclusively based on it or in accordance with it.

If the court decides to *hear the child by involving an expert*, it appoints a forensic psychologist expert. In the order regarding the appointment of the expert, the court must indicate the questions to which the expert must answer. When asking questions, the experts themselves determine what examination methods they use with the help of methodological letter No. 20 on the scope and activities of forensic psychologist experts of the National Institute of Forensic Medicine.

#### 4.3. *Representation of Children*

An important issue in the application of Article 12 of the CRC is how to ensure that the child has the right to express his or her views. This questions whether the child should be given the opportunity to participate directly or should he or she be accompanied by an adult whose role is to act as a "mouthpiece" for the child and convey what he or she says to the court.

In international practice, there are currently *five basic forms of child participation* in family law proceedings: the presentation of an expert opinion in court based on the hearing of the child; direct hearing by a judge; participation of a person representing

28 Boros, 2019, p. 1144; BH1996. 480.; BH2020. 11.; BH2022. 14.

29 See more: Kozák, 2011, pp. 23–30; Visontai-Szabó, 2015, pp. 24–35; Ádamkó, 2015, pp. 10–16.

the best interests of the child in the proceedings; legal representation of the child; direct participation of the child as a party.<sup>30</sup>

There is generally no question that *a child who is a party* to official or judicial proceedings concerning a family law matter has the right to be represented independently. However, there are many ways in which a child can be self-represented *if he or she is not a party to the proceedings but has a right or legitimate interest in the proceedings*.

In Hungary, there is a clear desire to develop the quality of children's participation. The development of *child-friendly hearing rooms* (and their use in family law cases) and the *training of judges* organised by the Hungarian Academy of Justice should be positively evaluated. However, it is questionable whether the legal institution of *ad hoc guardianship orders*, the *appointment of child psychologists as experts* in family law cases, and the system and practice of *preparing environmental studies* are working well. By 'good', we mean whether these instruments enable the child to be effectively involved in the proceedings and whether the determining authority or court can obtain a true picture of the child's views and all the necessary facts and positions that contribute to a decision being made in the best interests of the child in accordance with Article 3 of the CRC.<sup>31</sup>

#### **4.4. Children's Participation in Enforcement Proceedings**

In certain cases, Hungarian law also allows the child to express his or her opinion during the enforcement proceedings, and the court must take this into account when making its decision.

According to Article 4:178 of the Civil Code, the child shall have the right to maintain, on a regular basis, a personal relationship and direct contact with his or her parent living separate and apart. The parent or other person raising the child shall ensure that the right to maintain personal relationships can be exercised undisturbed. On the other hand, unless otherwise provided for by the court or the guardian authority, the parent living separate and apart from his or her child has the right and obligation to maintain contact with the child.

According to Article 4:181 of the Civil Code, in a matrimonial suit or an action brought in connection with the exercise of certain rights of custody, the parents may reach *an agreement* relating to visitation rights; in the absence of an agreement, *the court shall decide* - upon request or ex officio if deemed necessary for the protection of the child's interest - about visitation rights. If there is no matrimonial suit or action in connection with the exercise of certain rights of custody in progress, in the absence of the parents' agreement on visitation rights, the decision lies with the guardian authority. The parties concerned and the child who has sufficient understanding shall be heard before such a decision is made. The court or the guardian authority shall adopt a decision relating to visitation rights considering the child's age, health, and

30 Fernando, 2013, pp. 387–407.

31 Gyurkó, 2022, p. 2.

living conditions, parents' personal circumstances, as well as the opinion of the child who has sufficient understanding.

Enforcement of decisions relating to visitation rights shall be ordered by the court in non-litigious proceedings according to Act CXVIII of 2017 on the rules applicable to civil non-litigious proceedings.<sup>32</sup>

According to Article 22/E, if contact fails because *the child over 14 years of age* has expressed his or her will, the court shall stay the enforcement proceedings, provided that parents ordered to have access to a mediation procedure, either on application or on the basis of an order of the court; or one of the parents requests the court or the guardianship authority to modify, restrict, or withdraw the decision relating to visitation rights.

In most cases, the courts will hold a hearing on the application for an enforcement order. The hearing can explore the relationship between the parents, and, in many cases, the child is also heard by the court.<sup>33</sup>

The Act, therefore, *distinguishes between the declaration of a child over the age of 14 and the declaration of a child under the age of 14* regarding the establishment of contact. Article 22/E gives the court the possibility of suspending enforcement if the establishment of contact fails due to the child's independent and uninfluenced expression of his or her will. This does not mean that a child under the age of 14 is not free to express his or her views on contact. However, this opinion can only be assessed in the light of the child's age, state of health, and level of development.

According to Curia, the fact that a minor child does not want to spend more days with his father does not, in itself, relieve the plaintiff from ensuring that contact is properly maintained. The minor child did not want to spend a weekend with his father because he was spending time with the child from the father's new marriage. The Curia considers that this reason is not sufficient, given the age and level of development of the minor child, to disregard the provision of the contact ordered by the court. The applicant has no basis for relying on it, and the child's opinion does not render the failure to provide contact irresponsible.<sup>34</sup>

## 5. Children's Participation in Criminal Proceedings

In Hungary, about 30 children die every year as a result of abuse or neglect. According to child welfare services, nearly 200,000 children are at risk. For every detected case of child abuse, there are 25 hidden cases. According to Szilvia Gyurkó, child abuse statistics have been steadily increasing since 2016, with more than 6300 cases detected in 2020, which is 500 more than in the previous year. However, according to

32 See more: Nagy and Wopera, 2021.

33 Harmat and Völcsy, 2020, p. 27.

34 Curia Kfv.37.636/2021/6.

the expert, this is also due to the decrease in the number of hidden cases.<sup>35</sup> This result can also be derived from the fact that the special rules of child-centred justice are also an important part of Hungary's legislation through the extensive regulatory system of Act XC of 2017 on Criminal Procedure (hereinafter Code of Criminal Procedure).

In criminal proceedings, children can be in three positions: defendant (i.e. perpetrator of the crime); victim; witness.

The fact that we can talk about child-friendly justice in Hungary greatly contributes to the improving trend in detecting crimes involving children. It is the fundamental interest of society that such crimes should not remain hidden, and it is also in the fundamental interest of the individual, since the traumatised child receives help and possibly opens the chance to become a healthy, cured adult.<sup>36</sup>

### 5.1. Vulnerable Groups in Criminal Proceedings

Code of Criminal Procedure uses a different regulatory technique to ensure children's right to participate in criminal proceedings compared to the national rules for administrative or civil proceedings.

The Code of Criminal Procedure regulates uniformly, in *Chapter XIV*, the provisions relating to so-called *vulnerable groups requiring special protection*. As a rule, special treatment is provided by law for natural persons and victims who: in understanding, in exercising the rights and fulfilling obligations specified in this Act, is prevented from participating effectively in criminal proceedings.<sup>37</sup>

It follows from all this that *only natural persons* can belong to the category of persons entitled to special treatment, which is excluded in the case of legal persons. Special treatment is, as a general rule, only for *victims and witnesses*. An exception to this is provided for in Article 96, which allows, for example, the application of certain protection measures to defendants under the age of 18 and 14, representatives of witnesses or victims, experts, consultants, defence counsels, or property interests.<sup>38</sup>

The Code of Criminal Procedure provides guidance to law enforcement authorities on the *criteria that can be considered in determining special treatment*. On the one hand, the circumstances of the person concerned, such as age, mental, physical, or health condition, and on the other hand, the blatantly violent nature of the act and the relationship of the person concerned to other persons involved in the criminal proceedings may also be examined.<sup>39</sup>

These provisions of the Code of Criminal Procedure require, with certain exceptions, the cooperation of the victim/witness. Thus, *the person concerned may refuse certain measures falling within the scope of special treatment*.<sup>40</sup> In other words,

35 Révész, 2022.

36 Zumbok, 2022, p. 102.

37 Art. 81 para. 1 of Code of Criminal Procedure.

38 Ibid., Arts. 90–96.

39 Ibid., Art. 81 para. 2. The detailed rules are laid down in Regulation 12/2018 of 12 December 2018 IM Regulation.

40 Art. 83 of Code of Criminal Procedure.

the legislator grants him the right of self-determination, which reflects that his aim was basically to ensure that the procedure should be conducted in the interests of the person in need of special protection. The law distinguishes between victim and witness in such a way that in the case of a witness, he or she can reject a motion to that effect without making a decision, whereas in the case of the victim, this requires the form of a decision. This refers to the privileged position of the victim of the crime since he or she is the one who is most vulnerable in the proceedings, given that he or she is the most directly involved in the crime.<sup>41</sup>

At the same time, it lays down mandatory rules and *deprives the enforcer of the right to decide if*:

- ‘(a) a person is under eighteen years of age,
- (b) is a disabled person defined by law, or
- (c) the victim is a victim of a crime against sexual freedom and sexual morality.’<sup>42</sup>

*This imposes an obligation on the authorities to classify as vulnerable persons those who meet any of the above. Furthermore, it similarly imposes an obligation on the person concerned since he or she cannot refuse measures which are linked to that institution.*

The Code of Criminal Procedure lists by way of example *the measures that may provide special protection to the person concerned*. Accordingly, authorities should pay close attention when keeping contact, protecting privacy, and handling personal and health data. The role of the authority is important in connection with the preparation of a procedural act requiring the participation of the person concerned since the aim is that it can be carried out without delay, that it should not be repeated if possible, and that it does not have to meet unnecessarily a person who participates in the criminal proceedings, especially if the protected position is based on his or her relationship with that person. The authorities should play a role in making it as easy as possible for the person concerned to have access to an assisting person. It may also exclude the public from the procedural event. In order to facilitate the exercise of the rights and the fulfilment of the obligations of the person in need of special treatment, the court, the prosecution, and the investigating authority shall carry out the procedural act in the premises designated or adapted for that purpose.<sup>43</sup>

*During proceedings involving a person under the age of eighteen (not only the victim!), video and audio recordings must be made whenever possible, a forensic psychologist expert may be required to be present at the proceedings, or the procedural event shall be carried out with the assistance of such an expert or a specialist adviser. The*

41 Zumbok, 2022, p. 104.

42 Art. 82 of Code of Criminal Procedure.

43 Ibid., Art. 85 para. 1 point i). The detailed rules are laid down in Regulation 13/2018 of 13 July 2018 IM Regulation.



consultant shall carry out its activities under the guidance of the person in charge of the procedural act (the court, the prosecution service, or the investigating authority); in doing so, he or she shall convey the questions put to the person who has not attained the age of eighteen years and any other communications by the authority. The testimony of the above person cannot be verified with a polygraph; his or her confrontation can only be ordered with his or her consent.<sup>44</sup>

*In proceedings involving persons under 14 years of age*, the above measures are complemented by further restrictions. According to this, the child may be heard only and only if the evidence expected from him or her cannot be replaced by anything else. It must be carried out in a room that serves this purpose or has been made suitable for this. If possible, the same person must conduct questioning each time, and video and audio recordings must be made. It prohibits confrontation and excludes counsel and the accused from procedural acts (unless requested by these persons).<sup>45</sup>

The law is even stricter *if a crime against sexual freedom or sexual morality is committed against a person under the age of eighteen*. It applies more binding rules regarding the place of proceedings, prohibits the presence of the defence counsel and the defendant at the procedural event in all cases, and, if the procedural act is conducted by telecommunication, unless exceptions are made by law, the person concerned can only see the judge, prosecutor, or member of the investigating authority. The right of the persons present to ask questions is limited; they can only make a motion in this regard. Any procedural event where the presence of the victim is mandatory is to be excluded from the public without consideration.<sup>46</sup>

## 5.2. Some Practical Solutions in Hungary

The Hungarian Code of Criminal Procedure strives to ensure that procedural acts are carried out with the highest possible care for children as actors in proceedings in a special protection situation. At present, the main goal is to interview them once, preferably in an environment that does not embarrass them, and to do so in the presence of professionals who work with children.

From 1 January 2021, the Code of Criminal Procedure provides the opportunity for children to be questioned by a forensic psychologist or consultant<sup>47</sup> during criminal proceedings. This provides an opportunity for the child victim of crime to avoid the risk of becoming a secondary victim by having to relive the trauma they have suffered again and again. According to experts, this is very important because the greatest strain for the child is caused by the repeated repetition of events.

The place where children are heard is the *Barnahus House (Children's Houses)*. This Icelandic method provides an opportunity to interview children complexly, in

44 Art. 87 of Code of Criminal Procedure.

45 Ibid., Art. 88.

46 Ibid., Art. 88 para. 5.

47 Decree No 12/2018 (VI. 12.) of the Ministry of Justice on the rules applicable to certain acts and persons involved in criminal proceedings Sections 14/A-14/D contain detailed rules for procedural acts carried out with the assistance of a specially trained adviser.

a single place, integrating experts into the procedure. The event itself does not take place in an official room but in a place adapted to the needs of children, where a psychologist or consultant talks to the child concerned. Video and audio recordings of the conversation are made; with the help of these recordings, members of the authority, such as the person conducting the investigation, the prosecutor, and even the defence counsel, can follow the questioning in a so-called monitoring room and also propose to ask questions.

The first Barnahus House opened its doors in 2016 in Szombathely. After that, from 1 February 2021, such an institution has also been operating in Budapest, in the building of the Budapest Child Protection Centre and Regional Child Protection Service. Other houses operate in Debrecen and Gyula.<sup>48</sup> This has provided an opportunity to reach an important milestone in legislation, as mentioned above, so that the court could dispense with questioning victims under the age of 18 if a crime of a sexual nature has been committed against them. Such a hearing can only take place in the case of the victim and only in the case of crimes against sexual freedom or sexual morality.<sup>49</sup>

What can it mean in practice to plan and carry out procedural acts in accordance with the personal needs of the person concerned when a child is heard in court proceedings? One important aspect is the presence of a person whom the child knows or trusts. This may be either the *ad hoc guardian*, the *victim's legal representative*, or the *person acting as an assistant to the witness*. This circumstance alone can inspire confidence and calm in the procedure.<sup>50</sup>

48 For more see: <https://barnahus.hu/> (Accessed: 16 January 2025).

49 See more: Hirtling, 2022, pp. 235–242; Gál, 2021, pp. 30–36.

50 Zumbok, 2022, p. 107.

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