



Procedural Rights of Juveniles Suspected or Accused in the European Union

NATIONAL RESEARCH REPORT | HUNGARY



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**PROCEDURAL RIGHTS OF JUVENILES SUSPECTED
OR ACCUSED IN THE EUROPEAN UNION**

RESEARCH REPORT | HUNGARY



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Contents

Introduction	5
Hypothesis and problem statement	6
Methodology.....	7
Limitations	8
II. Contextual overview: Hungary	10
II.1 Juvenile justice system	10
II.2 Characteristics of child and juvenile offenses	13
III.1 Directive 2010/64/EU on the right to translation and interpretation	19
III.1.1 A short summary of the directive	19
III.1.2 State of transposition in Hungary	20
III.1.3 Current laws, rules and regulations on the right to interpretation and translation	20
III.2 Directive 2012/13/EU on the right to information in criminal proceedings	29
III.2.1 A short summary of the directive.....	29
III.2.2 State of transposition in Hungary	30
III.2.3 Research results	31
III.2.4 Summary.....	34
III.3 Directive 2013/48/EU: the right of access to a lawyer, the right to have a third party informed and to communicate with consular authorities	35
III.3.1 A short summary of the directive.....	35
III.3.2 State of transposition in Hungary	36
III.3.3 Current laws, rules and regulations on the right of access to a lawyer, right to have a third party informed and to communicate with consular authorities	37
Summary	42
General recommendations	43
Appendix	44
Bibliography	46

Introduction

This report has been developed within the framework of the “Procedural Rights of Juveniles Suspected or Accused in the EU (PRO-JUS)” project. The PRO-JUS project is a regional project implemented in 5 EU Member States (Belgium, France, Hungary, Spain and The Netherlands) under the coordination of the Terre des hommes Regional Office for Central and South East Europe based in Hungary in partnership with Defence for Children International (Belgium), Hors La Rue (France), Rights International Spain and Defence for Children International (The Netherlands).

The PRO-JUS project aims to examine the situation of foreign children suspected or accused in criminal proceedings since their extra vulnerability may hamper their enjoyment of the rights enshrined in the three procedural directives of the European Parliament and of the Council (EU directives 2010/64¹, 2012/13², 2013/48³).

Through the implementation of its activities, the project aims to (1) Increase the knowledge-base and capacity of law enforcement and legal practitioners through multi-country research to ensure that the rights of foreign children suspected or accused in criminal proceedings are respected; and (2) Ensure that the three procedural directives are harmoniously implemented in 15 EU Member States for the benefit of all children, including foreign children, through wide dissemination of the results and national as well as international advocacy initiatives.

Children face various obstacles in seeking justice and demanding respect for their rights, some of these obstacles being their lack of legal capacity⁴ as well as their particular status as minors⁵. Their vulnerability is further exacerbated in the course of investigations or criminal proceedings by social and administrative conditions such as holding a foreign citizenship or belonging to a marginalised minority group. The procedural guarantees that need to be provided for children suspected or accused in criminal proceedings raise additional challenges for national justice systems when the children accused or suspected are of foreign origin.

Although it is difficult to provide an accurate picture of the prevalence of the phenomenon of foreign children suspected or accused in different EU Member States, the estimates⁶ suggest that the phenomenon of children in conflict with the law remains significant in the majority of EU Member States.

To be competent to stand trial, a criminal defendant must have sufficient present ability to consult with his/her lawyer with a reasonable degree of rational understanding, functional understanding of the proceedings against him/her, as well as the capacity to assist in preparing his/her defence.

Language is the first barrier that may hamper a suspected or accused child in accessing his/her rights and it may also hamper his/her right to a fair trial and his/her access to information on his/her rights in a language he/she can understand. Moreover, accessing a lawyer who is trained and competent to defend cases involving foreign children is not always an easy process, thereby potentially jeopardizing the exercise of their rights of defence, which must be “practical and effective”.

1 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

2 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

3 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

4 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016804b2c3> - accessed 03.06.2016

5 Golub, S. and Grandjean, A., Promoting equitable access to justice for all children. UNICEF Insights, Issue 1/2014 (2014)

6 In Belgium in 2012, out of 142,454 persons convicted in criminal proceedings, 26,423 were foreigners, out of which 234 were minors. In France in 2015, for the city of Paris only, the ‘Judicial Protection of Juveniles’ indicates that 2,297 cases of children were referred to the prosecutor for minors, among which 1,199 cases affected foreign children for an amount of about 400 different children (Source: Internal document of the Judicial Protection of Juveniles, Service Territorial de Milieu Ouvert Paris Center, 19 April 2016). In Spain, the data obtained in 2015 reveals that 18,134 children aged 14-17 years were arrested or investigated for the commission of a criminal offence, out of which 3,927 were foreigners (Ministry of the Interior, 2015 Statistical Annual Report, p. 297, available here: http://www.interior.gob.es/documents/642317/1204854/Anuario-Estadistico-2015_126150729_VF.pdf/808a7398-2d25-4259-b450-974dc505f2e3). In Hungary in 2015, the total number of juvenile offenders was 7,785 and out of this 195 were foreigners (Source: ENyUBS, 2016. Ministry of Home Affairs. <http://bsr.bm.hu>). In the Netherlands in 2015, the police interrogated 37,017 minors (Source: National Police Database). In 2014, 1,380 children were placed in judicial juvenile institutions, out of which 19.2% were of foreign descent (Source: Department for Judicial Youth Detention Centers (2015), JJI in getal 2010-2014’. The Hague: Ministry of Security and Justice).

This report covers Hungary and constitutes one of the 5 national reports developed as part of the PRO-JUS project. The report is the result of a research that has combined desk research, analysis and semi-structured interviews with adult stakeholders and children. Developed according to a common research methodology that was employed in all of the 5 project countries, the report presents the research findings and identifies noteworthy practices as well as recommendations. In line with the aims of the research, the report also discusses the factors that affect and hamper the effective enjoyment of the rights enshrined in the 3 EU directives.

Information and findings in this report and the other national reports will serve as a basis for the establishment of a regional comparative report that is also envisaged to be developed within the PRO-JUS project.

Hypothesis and problem statement

According to previous research⁷ on children in conflict with the law, children⁸ generally lack the knowledge, ability and independence to seek justice and demand respect for their rights. This primary vulnerability is further exacerbated in the course of investigations or criminal proceedings⁹ by social and administrative conditions such as holding a foreign citizenship or no citizenship at all.¹⁰

Children's vulnerability¹¹ can derive from, among others, their personal characteristics or through circumstances – being traumatized, being a foreigner, level of maturity etc.). The vulnerability of foreign children can be intensified and escalated by impairments, internal (individual, biological) and external (circumstances of the crime/childhood), respectively. The procedural guarantees that need to be provided for children suspected or accused in criminal proceedings raise additional challenges for national justice systems when the children are of foreign origin. It must also be taken into consideration that accused or suspected children might have been victims of other crimes previously.

In addition, children with multiple vulnerabilities, such as foreign children¹² accused or suspected of crimes, are facing additional protection challenges. National child protection systems fail to protect them effectively and ensure availability of and accessibility to quality services.¹³

'In Hungary, we are concentrating on the placement of the child. Abroad, the best interest of the child and the protection of his/her rights enjoy primary consideration. At first, in international forums, we did not understand this approach and, now, I hope that we start following this way of thinking.' (Guardianship Authority)

According to previous research (from 2016 January)¹⁴, there is a gap between legal norms and practices, the situation of native children and foreign children, and the practice in urban and rural areas.

7 Gyurkó, Sz. (ed.) - Nemeth, B.: Comparative situation analysis of juvenile justice systems in 20 CEE countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published yet)

8 For the purpose of the Project, a "child" shall be understood as any person below the age of 18 (at the moment he/she was arrested or is accused or suspected of committing a criminal offence by a competent authority).

9 "Criminal proceedings" are to be understood as the procedure under which a person is suspected or accused of having committed a crime (as defined under national or international law) until the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. As a consequence, the term when the person serves the sentence (i.e. post-conviction) does not fall under the definition of criminal proceedings. For the purpose of this research, criminal proceedings will only be taken into account from the moment the person is officially entitled to exercise the rights enshrined in the 3 directives, that is to say when the person is aware of the suspicion, the accusation or when the person is deprived of his/her liberty (arrest/pre-trial detention)..

10 For instance: unaccompanied minors

11 **Child vulnerability** is not based on age alone. Child vulnerability is the degree to which a child can avoid or modify the impact of safety threats. It describes how each child's age, physical, intellectual and social development, emotional / behavioural functioning, role in the family and ability to protect himself/herself contribute to or decrease the likelihood of serious harm. Child vulnerability should be considered from numerous perspectives, age being only one. The following should be assessed: the child's ability to protect himself/herself, the child's age, the child's ability to communicate, the likelihood of serious harm influencing the child's development, the provocativeness of the child's behaviour or temperament, the child's behavioural needs, the child's emotional needs, the child's physical special needs, the visibility of the child to others/child's access to individuals who can protect him/her, family composition, the child's role in the family, the child's physical appearance/size and robustness, the child's resilience and problem-solving skills, the child's prior victimization, the child's ability to recognize abuse/neglect.

12 A "foreign person" is to be understood as 'a person who does not hold the citizenship of the country where he/she is being accused or suspected, or where the criminal proceedings are taking place'. In other words, the foreign person must be a non-national, thereby excluding the holders of double-citizenship.

13 See: Mario project <http://marioproject.org>

14 Gyurkó, Sz. (ed.) - Nemeth, B.: Comparative situation analysis of juvenile justice system in 20 CEE countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published)

Previous situation analyses¹⁵ and the child-friendly justice guidelines of the Council of Europe revealed some factors that positively contribute to or have adverse consequences on the effective exercise of rights by children in the course of criminal procedures.

Therefore, the core question of the research reads as follows: Can foreign children, suspected or accused in criminal proceedings, effectively exercise the rights given to them by EU directives 2010/64, 2012/13, 2013/48 – both in theory and in practice?

In addition, two research sub-questions should contribute to answering the core question. They read as follows:

1. What factors contribute positively to or have adverse consequences on foreign children's effective exercise of rights in the 3 directives mentioned above?
2. How can positive factors be built upon and how can the obstacles be overcome?

Methodology

The national reports of the 5 EU Member States are based on data and information gathered during research that was implemented on the basis of a carefully developed research methodology that had been previously agreed upon. The purpose of the research methodology was to provide guidance to national researchers in each of the project countries and to ensure the collection of adequate information and data in the countries covered by the research so that these could be compared subsequently. The developed research methodology matrix included:

Desk Research

Each researcher was required to carry out extensive desk research of available documents and, in particular, to review national laws, official documents, national statistics and reports. The researchers were responsible for collecting all relevant sources of data from the various available sources (publications, doctoral theses, academic research, etc. in the exact and related areas).

Semi-structured Interviews with Adult Stakeholders and Children

In addition to desk research, researchers also carried out semi-structured interviews with adult stakeholders and foreign children in their respective countries. The aim of the semi-structured interviews was to obtain important first-hand information from the most important stakeholders (exclusively dealing with or playing an important role for foreign children in criminal proceedings) and foreign children suspected or accused in criminal proceedings. The interviews were conducted based on carefully drawn up questionnaires, with ones specially developed for interviews with adult stakeholders and one with foreign children.

Interview questions: At first, an English language questionnaire was developed and then it was translated into the other local languages. In order to ensure that the questions and results are comparable, the national adaptations to the questions were required to be kept to a minimum. It was important to ensure that the translated questions followed closely the meaning of the original English questions.

Ethical Issues

The research was guided by a number of ethical principles:

Informed Consent: interviewees had to be fully informed about the project and the way in which the information provided by them would be used in order for them to be able to give informed consent. With regard to children, this meant that the project should be explained in a manner that they could understand and that the interview questions had to be adapted accordingly;

Data protection: data obtained during the research have to be kept confidential and stored securely;

Purposeful use of data: data obtained from the interviews for this research are to be used for this research only. Permission must be obtained for use of interview data for alternative purposes.

¹⁵ Ibid.

Limitations

We faced several limitations during research preparation:

1. Sampling was restricted in three aspects:

- **Age-wise:** only those children who were less than 18 years old at the time of the suspicion / accusation were eligible.
- **Nationality-wise:** only non-Hungarian citizens or people with dual nationality were eligible.
- **Procedure-wise:** only those children who were suspected or accused in criminal proceedings in front of a **court** (not in mediation process, for instance) were eligible.

2. Time constraints

The 3 directives examined by the project apply to criminal proceedings that started after 1 January 2014, therefore we could examine the cases of foreign citizens under 18 that started following this date. This posed an objective obstacle regarding the eligible cases.

Moreover, the data collection and the interviewing took place over a six-month period which coincided with the tensest period of the **migrant crisis** (2015-2016). Therefore, we experienced a greater reluctance (often denial) than usual regarding the research (and its topic) from the affected authorities and institutions.

3. Aggravated access

A general characteristic of the criminal proceedings against foreign minors is that the suspect simply **disappears** after a while. In many cases, they leave the country and their later place of residence is unknown to the Hungarian authorities. It is a frequently cited reason that Hungary is a transit country, therefore the arrested people who cross the border irregularly, travel with false documents or with human traffickers and are eager to continue their journey to Western and Northern Europe as soon as possible. We had the same experience during the research. It was very difficult to get into contact with suspected minors also due to the fact that they usually left their appointed place of residence to an unknown place within a short time.¹⁶

As we read in one of the police files¹⁷ (where the suspect also left to an unknown place), children are **constantly on the move** until they reach their final destination, during which journey legal, irregular border crossing and voluntary and forced migration vary:

'I am a Syrian citizen and fled from my country through Athens with my cousin. In Athens, a human trafficker offered me a Czech ID for 300 euro, saying that it would be very good for me and I can travel within the European Union easily. This is why I bought the ID from that unknown human trafficker. He also put my photo on it. I was aware that this would be a false document, because the procedure was not legal, but I thought it would be still useful. Then we moved on with my relatives, I wanted to go to the Netherlands, but meanwhile I was caught and arrested at the Hungarian 'green-border'. When they examined my clothes, they found the Czech ID with my photo. I am sorry for what I have done, I was very irresponsible.' (Quote from a police report of a suspected Syrian child)¹⁸

4. Country-specific factors:

Even though the research request included that we collect data about all foreign children, the vast majority of the authorities were automatically thinking of asylum seekers, refugees and unaccompanied minors. A possible reason for this might be that the above-mentioned phenomenon, simplistically referred to as 'refugee crisis', when asylum seekers from Syria and other, mainly conflict-driven regions appeared at the Hungarian border en masse took place at the same time as the research.¹⁹

¹⁶ We try to elaborate this quite euphemistic statement later in this report.

¹⁷ Detailed explanation about the 'police files' – See: next paragraphs.

¹⁸ Since the police files were anonymized (all personal data were erased or hidden), we have no data about age, family, place of birth, etc.,

¹⁹ <http://www.nbcnews.com/storyline/europes-border-crisis/europe-s-refugee-crisis-hungary-declares-state-emergency-over-migrants-n534746> (Last download: 25 June, 2016.)

A serious dispute has developed about the phenomenon later called as the 'migrants issue'²⁰ between international (UN) organizations that monitors and calls states to account for the protection of fundamental and human rights and local (mainly non-governmental) organizations, as a consequence of which a sort of **conflict** has perpetuated. The authorities were made to constantly explain their procedures and many times their compliance with Hungary's obligations under international conventions, with humanitarian principles and finally with the rule of law and legality. This could cause frustration at organizational and institutional level. Therefore the affected authorities considered this issue as so **politicised and sensitive** that even sharing data and information for research purposes (or helping us to get into contact with affected children) were assessed as risky.

During the period of research preparation and data collection, we contacted 67 adult stakeholders in Budapest and in the countryside. We made contact for two reasons – to obtain an interview with key stakeholders and in order to get into contact with affected children. By the closing of the data collection period (June 2016), we met 22 adult stakeholders in person and conducted a semi-structured interview with each of them which lasted between 1 to 1.5 hours.²¹ Among the stakeholders, there were lawyers, prosecutors, police officers, interpreters, legal guardians, guardians ad-litem, social workers and staff of a children's home, an NGO and the ombudsperson's office. As the National Office for the Judiciary officially declined to participate in the research, **we could not undertake interviews with judges**. Therefore, the findings about the judiciary presented in this paper derive from other stakeholders' points of view.

We could talk to an **affected child** who met the research sample criteria **altogether in only one case**. In three other cases, children ran away or left to an unknown place, making the pre-arranged interviews impossible.

In order to include children's stories in the research, we turned to the National Police Headquarters once again with a permission request for case **file research**. Thanks to their contribution and to the police records, we could get to know 12 more cases, involving foreign children in conflict with the law under 18 in 2014. Since the method of sampling cannot be considered representative in any way (we received access to randomly selected files from the Police Headquarters of Szeged), we solely carried out content analysis with the files (without statistical analysis).

In this report, we indicated the source of information in each case.

²⁰ <http://www.gatestoneinstitute.org/6861/hungary-migrant-crisis-europe> (Last download: 25 June, 2016.)

²¹ The questionnaire is available in the Annex.

II. Contextual overview: Hungary

Hungary / fundamental data

Capital	Budapest	Population	9,864,749 (Central Statistical Office, 2014)
Regime	Parliamentary democracy	Population under 18	1,997,904 (under 19, Hungarian Central Statistical Office, 2013) 1,797,955 (aged 0-18. Central Statistical Office, 2010)
Religions	Roman Catholic 37.1%, Calvinist 11.6%, Lutheran 2.2%, Greek Catholic 1.8%, other 1.9%, none 18.2%, unspecified 27.2% (Central Statistical Office, 2011 est.)	Children in detention	Total no. of offenders: 10,056, convicted: 5,279, Pre-trial detention: 304, administrative detention: 525, imprisonment: 1595, reformatory: 454 (2013)
IDH ranking	37 (UNDP, 2012)	Age of criminal responsibility	Since July 2013, 12 for premeditated homicide, voluntary manslaughter, bodily harm leading to death or resulting in life-threatening injuries, robbery and rolling (robbing a helpless person); 14 for other crimes.
Legal system	civil legal system influenced by the German model	Literacy	99% (aged 15+, 2011, CIA World Factbook)

II.1 Juvenile justice system

The Fundamental Law sets out the right to freedom, personal safety and the principles of *nullum crimen sine lege* and *nulla poena sine culpa*²²(Article 4). Besides, the right to equal access, presumption of innocence, remedy and protection are also included in the Fundamental Law (Article 26). Regarding children, Article 16 ensures the right to protection and healthy development.

There is no independent code regarding children in conflict with the law, the applying provisions take place in general substantial and procedural rules.

Act C of 2012 on Criminal Code, applicable from 1 July 2013, shall be applied to minors as a general rule. (This was the same in the prior legislation.) The Code only names the provisions different for young people (Chapter XI), where it also defines the notion of a juvenile offender: ‘Juvenile offender’ shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense.’ Section 16 of the Criminal Code sets the **age of criminal responsibility at 14 years; however, decreases it to 12 years for certain more severe crimes**, if the child offender has the capacity to understand the nature and consequences of his/her acts.

²² Ancient legal principle in Latin, meaning: “no penalty without a law” and “no crime without doing something that is prohibited by law”

The minimum age of criminal responsibility is 12 years in case of homicide, voluntary manslaughter, battery, robbery and plundering. In these cases, criminal responsibility is linked to the examination and definability of the capacity to understand the nature and consequences of one's acts, and only measures can be imposed as sanction (primarily placement in a reformatory institution).²³Based on statistical data, there were no homicide, voluntary manslaughter and plundering among foreign children between 2013 and 2015.

Since children are often the 'tools' of adults in committing a crime, the above cited Section 16 of the Criminal Code declares the impunity of offenders under the age of 12 and, in most crimes, under the age of 14. Therefore, the person responsible for the crime will be the so-called covert offender, who used the minor as an offender. The notion of **covert offender** is defined in Section 13 (2) of Act C of 2012: 'Covert offender is a person who instigates the commission of an intentional offense by using a person who cannot be prosecuted for reason of minority or insanity, or for reason of acting under undue influence by coercion or duress, or under misconception.'

In this case, the subjective and objective side of the crime is divided, the statutory definition does not apply to the perpetrator.

We have found signs pointing to covert offenders in many files – although in these cases the child could already be persecuted (i.e. they were aged 14 or over) and proceedings were instituted against him, but influence, usage and 'exploitation' were clear, as well as the fact that the actual perpetrator has been hiding and remained in the background. For instance:

'To answer your question, I can tell you that about 2 weeks ago I met a friend in Horgos (a Hungarian village) at the bus stop, who offered me a job. I do not want to name him. He told me that illegal migrants need to be smuggled to Hungary. We agreed to receive 200 Euros per person, and I said yes because of the money. I went to the centre of Horgos around 5 pm, as we discussed. There was a red car waiting for me, I do not know its type, it had a Serbian registration plate. The driver took me to Martonos (a Hungarian village), next to the mound. The driver was the same person who had given me the offer. Meanwhile, he told me that there would be 18 persons who need to cross the state border. He said that I had to go with them along the mound and attend (with) them until a factory building in Gyálarét (a Hungarian village). Around 6 pm, the group arrived to us to the mound and I left with them. The foreigners were brought there with two cars, but I did not pay attention to them. As we crossed the border, we stopped walking and began to hide immediately, because I noticed the police. I had been hiding from the police (for) about an hour, but I was eventually captured and brought here.' (Quote from the police questioning of a foreign child suspect)

The phenomenon that foreign minor citizens are used for crimes also appeared in the interviews.

'According to the detectives, the system works the same way every time. They spend 1-2 days in Budapest, in a pre-arranged way. They come here because they know that they can get off pickpocketing, since the procedural rules are softer. Many times their role is to cover something, and children are exploited.' (Legal guardian)

In these cases, children become victims of, exploitation, and are responsible for offences against property at the same time. Unfortunately, Hungarian authorities only react to the latter. Criminal proceedings are instituted, but child protection measures, the report of the abuse and a suitable intervention are all lacking. This is clearly contrary to Hungarian child protection provisions, according to which every child residing in Hungary is eligible for the same protection (Section 4 (1) – (3) of Act XXXI of 1997).

Misdemeanours are stipulated in Act II of 2012 on Misdemeanours. In this range of offenses, the minimum age of criminal responsibility is always 14 years.

23 Measures applicable in case the crime was committed by a child between the age of 12 and 14: probation, community work, placement in a reformatory institution.

The following criticisms are expressed the most frequently about juvenile justice in the UNCRC, UNDP and other international reports:

- lack of separate legislation, **code and institutional system**;²⁴
- the lowering of the **age of criminal responsibility**;²⁵
- lack of professionals, protocols and evaluation guidelines to examine the **ability of understanding**
- the low number of cases where **alternative sanctions and diversion** are applied;²⁶
- the condition of **detention facilities**;²⁷
- Some penalties (unpaid or unsettled fines, on-the-spot penalties and imposed but unfulfilled public work) are replaced by **detention for misdemeanours, which** is contrary to the international principle that detention shall be imposed only as a measure of last resort.²⁸

Children who cannot be prosecuted (under the age of 12 and 14) are subject to the **Child Protection Act**. The criminal proceedings shall be terminated but this fact shall be reported to child welfare services or to other members of the reporting system (e.g. guardianship authority). Subsequently, the child protection system determines the legal consequences (out-of-home placement, family care, defining behavioural rules, etc.) at its own discretion. From 1 January 2015, this scope has been extended to the new legal institution of preventive probation, which can be applied to children or juveniles involved in offending.²⁹

Furthermore, child protection also has a role in **prevention** and **aftercare**. This task is prescribed by the law but its practical realization is impaired in many ways (due to the lack of financial, personal and physical resources and capacity problems). The Mario Research³⁰ collected information about the situation of foreign children in the child protection system, which showed that **the accessibility and efficiency of the Hungarian child protection system is highly questionable**.

The system is generally not open and inclusive towards foreign children, their presence is considered marginal (thus the necessary funds are not allocated); and the system disregards children's rights in many cases. The most prominent example of the latter is that the system handles with absolute indifference that teenagers run away and try to cross the border on their own. **Saying that Hungary is a 'transit country' has become a common reference framework, which makes it seem acceptable that children move on and nothing is done to ensure their safety, protection and rights.**³¹

24 UNCRC Concluding Observations, 2014. <http://hrlibrary.umn.edu/crc/crchungary2014.html> (Last download: 26, June, 2016)

25 Ibid.

26 Vaskuti, A. et al: Age and the capacity to understand the nature and consequences of one's acts – Summary of the professional session of the Hungarian Society for Criminology. 26, January, 2007

27 http://helsinki.hu/wp-content/uploads/Jelentés-Tököl-+-BVOP-nak_végleges-anonim.pdf (Last download: 26, June, 2016)

28 <http://public.mkab.hu/dev/dontesek.nsf/0/F34A40E998DDD4A4C1257ADA00524CD9?OpenDocument> (Last download: 26, June, 2016)

29 Preventive probation is applicable to children below the age of criminal responsibility if the child committed a serious crime (in which deprivation of liberty or detention would be applied as a consequence).

30 Analysis of the situation of children on the move. Tdh. 2014. Source: <http://marioproject.org/documents/analysis-of-the-situation-of-children-on-the-move-assessing-the-capacity-and-the-adequacy-of-the-child-protection-system-in-hungary-to-ensure-the-protection-of-children-on-the-move/6630>

31 Mario Research, *ibid*.

II.2 Characteristics of child and juvenile offenses

The number of child and juvenile offenders has shown a dynamically **descending tendency** even compared to the decreasing child population. Their proportion barely exceeds 1% (children), and does not reach 8% (juveniles) within the total number of offenders.

Table 1a: Data about crimes committed in Hungary –in distribution of offenders³²

Total number of crimes (2015)	Total number of aggrieved persons (victims) (2015)	Total number of offenders (2015)	Number of child offenders (-12y) (2015)	Number of juvenile offenders (14y-18y) (2015)
267,628	183,431	98,899	1,374	7,785

Table 1b: Change in the number of child and juvenile offenders between 2011 and 2016

	2011	2012	2013	2014	2015	2016 (1-5 months)
Number of child offenders	2691	2580	2009	1157	1364	654
Number of juvenile offenders	11275	10165	10361	8724	7684	2932

The statistics of crimes committed by foreigners significantly differ from those committed by Hungarians. Basically, it can be seen that **international events and legislative amendments** clearly affect the number of foreigners in conflict with the law. The statistics are influenced firstly by the constantly growing wave of refugees from 2012, secondly by the Syrian, Turkish and North-African refugee crises at the end of 2014 and thirdly by the legal amendments of 2015 (also defined as physical and legal border fence).³³

Table 2: Change in the number of crimes committed by foreigners in Hungary between 2011 and 2016, by the age of the offender³⁴

	2011	2012	2013	2014	2015	2016 (1-5. months)
Number of foreign child offenders	13	15	182	325	10	15
Number of foreign juvenile offenders (aged 14-17)	104	251	103	61	185	141
Number of foreign adolescent offenders (aged 18-24)	989	1058	828	867	1194	1322
Number of foreign adult offenders (aged 25-59)	4,176	3,737	2,957	3,320	3,586	2,258

³² Source: <https://bsr.bm.hu> (Download: 26 June, 2016)

³³ The physical border fence is a separation barrier that runs along the international borders of Serbia and Hungary, and Croatia and Hungary. The Hungarian Parliament amended the Criminal Act (with the new crime of 'illegal border crossing') and adopted regulations about the 'extraordinary situations caused by illegal migrants'. After the legal changes, Hungary completed the construction of a 175 km wall in September-October 2015. The length of the border fence was doubled in 2016.

³⁴ Source: <https://bsr.bm.hu> (Last download: 26, June, 2016)

The figures of the first two rows reflect the number of children recognized as offenders by court decision. The numbers seen in Table 2 show that foreign children do not impact greatly on the overall crime statistics contradicting the narratives saying that criminals populate the refugee flows.³⁵

Regarding the crimes committed by foreigners, we can mainly find the following types of crimes and misdemeanours:

- violation of admission and residence restrictions
- forgery of administrative documents
- counterfeit of individual identifiers
- illegal entry through the border fence after 2015
- theft
- public nuisance
- battery

Foreign adults usually break the law by and in order to enter the country (crossing the border and using false documents, etc.). In contrast, the **pattern of offending among child and juvenile foreigners shows a significantly different picture** and parallels with that of Hungarian young people of a similar age. Petty crimes against property, public nuisance are dominant, while acts of violence against a person is present in about 10% of the cases.

In 2015, this dynamic has significantly changed due to **the border fence**.

Table 3: Number of foreign child and juvenile offenders registered in police procedures³⁶

Crime type	2014	2015 I-XI. months
Theft	169	21
Public nuisance	92	6
Illegal entry through the border fence	-	107
Battery	42	4
Forgery of administrative documents	13	11
Vandalism	16	1
Offenses against transport security	9	-

³⁵ <https://www.alaraby.co.uk/english/blog/2016/7/21/hungarian-government-links-immigrants-to-terrorism-in-anti-refugee-campaign>

³⁶ Data set of the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution, 2014 and 2015 I-XI months.

The introduction of the border fence and the related legal provisions evoked the objection of various NGOs, highlighting the criminalization of foreign children as a problem.³⁷

In 2014, **stateless** persons were in decisive majority, followed by Romanian, Afghan, Serbian and Slovakian offenders. In 2015, the proportion of **Afghans** and **Syrians** were multiplied by eight³⁸, while the number of stateless persons decreased from 325 to 6. The number of offenders from the neighbouring countries (Romanians, Serbians, Slovaks, Ukrainians) remained unchanged.

Regarding the implied legal consequences, we accessed data from 2013-2014 at the time of the research. Based on this data, investigations ending with reprimand are dominant, followed by **prosecution/** bringing to court. Diversion took place in less than 2% of the cases.³⁹

'It is unlikely that the cases of foreign children reach the court procedure phase. Foreigners usually commit petty crimes and the public prosecution office typically reprimands the offender.' (Prosecutor)

'None of the cases reached the prosecution phase, because children disappear or they realize that their names are different, and it also happens that their names are changed.'
(Head of a children's residential home)

Examining the duration of the proceedings, the average number of days counted from the order to investigate to prosecution was 312 in 2013 and 285 in 2014. The average number of days counted from the order to investigate to a legally binding court decision was 930 in 2013 and 899 in 2014.

On average, it takes **nearly 3 years** until a criminal proceeding comes to its end for a child under 18. These data raise the question of how the priority and the principle of juvenile justice about 'the earliest possible imposition of legal consequences' can be realised in these cases.

It should be underlined here that **the realization of children's rights** is hampered in Hungary **not because of the lack of legislative provisions**, since Hungarian legal regulations mostly comply with international and European provisions (see Table 4).

37 According to the amendments to the Act XIX of 1998 on Criminal Procedure that came into effect on 15 September 2015, the special protections and rules pertaining to juveniles do not apply in criminal procedures that were conducted due to the crimes stipulated in the Criminal Code (illegal crossing of the border fence: Section 352/A, damaging of the border fence (Section 352/B.), hampering the construction work of the border barrier (Section 352/C.), so in proceedings of children aged 14 to 18 (whether they are refugees, asylum-seekers, migrants or Hungarian citizens), the regulation relevant to adults apply. Although the amendments require that all coercive measures must be used with regard to the interests of minors in mind, according to the amendment, there is no requirement to appoint a guardian and parents or legal guardians cannot exercise their rights related to the case of the minor even if they reside in Hungary. Neither the favourable and more comprehensive rules relating to deferred prosecution, nor the specialized rules of evidence pertaining to juveniles (i.e.: prohibition of the use of lie detectors) apply in these cases. Furthermore, it is also concerning that the rule requiring to prove the age of the juvenile with administrative documents was set aside by Section 453 (1) of the Act on Criminal Procedure. Consequently, it is possible that the criminal responsibility of non-punishable children is established. Source: <http://unicef.hu/aggodik-a-gyermekjogi-civil-koalicio/> (Last download: 26 June, 2016.)

38 The number of Afghans increased from 5 to 47, while the number of Syrians increased from 1 to 36.

39 Data set of the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution, based on Act C of 2012 and Act IV of 1978, 2013-2014.

Table 4: Children's rights by legal subjects (based on mandatory legal provisions)⁴⁰

Children's rights in civil law	Children's rights in criminal law	Children's rights in international issues (child abduction, immigration, etc.)	Children's rights in implementation
Procedure without undue delay (treated as a priority)			
Presence of the caregiver/ legal representative in the procedure			
Legal representation of children's rights			The colleague of the guardian authority can be present at the implementation of the court ruling.
Special provisions / Partly separated institutional system	Absolutely separated rules on substantive law/ Separated institutional system		Separated institutional system/ Special provisions
Special provisions on child hearing	Partial restriction of children's hearing (under the age of 14) and special provisions		
Obligation to employ professionals with special knowledge (e.g. child psychologist)			
Presence of the child protection system in the procedure (child environment report, hearing as a witness, etc.)			
Special provisions on publicity and information to the public			

The problem lays in the practical realization of the legislation, which was manifested in this research in two aspects:

- a) **The actual practice and its legality is unknown(able).** This statement is grounded on the results of the file research. During the study of the hearing minutes of foreign suspects aged under 18, formality and standardization seemed obvious. Many times, data about nationality were filled incorrectly - supposedly, they remained unchanged from the minutes of a previous case. Even though the minutes made clear that the suspect was a foreigner and did not speak the language, it stated that the nationality was Hungarian. Once these are left unnoticed, the question arises: 'are all data registered (and are they correct)?'

On the basis of the minutes, it also raises questions that the appointed lawyer does not show up for regular summons (according to the minutes) in a great part of the cases we looked into, but his or her signature still appears at the bottom of the minutes.

40 Gyurkó Sz.: Child Friendly Juvenile Justice in Hungary (Phd thesis) 2013.

*'You cannot necessarily monitor what actually is happening, because the decisions and minutes are standardized, which does not mean that some pieces of information were not given, but you cannot monitor what was told. Just as you cannot monitor to what extent the police officer assessed the personal characteristics and the state of mind of the person being questioned, and what he or she said and what kind of answer he or she got. The minutes generally cite the points of the legislation so complicatedly that the presenter did not supposedly say it or say it that way.'*⁴¹ (Prosecutor)

'We have even less information about written disclosure as, being an irrelevant file, it does not get into the criminal records. The prosecutor cannot even say whether it was done and if so, how.' (Prosecutor)

We have practically no data about the quality of interpretation and legal protection.

Technically, 100% of the potential problems remain hidden, since every interviewee confirmed: there has never been a formal procedure as a consequence of the fact that an interpreter worked poorly or the lawyer appointed to a foreign child did not do his or her job well.

- b) The practice we learned is alarming.** We elaborate further on this in the upcoming chapters of the report, but it should be highlighted here as well: the procedures are long and traumatizing, children's rights are violated, procedural infringements are rarely investigated and real law enforcement (applied in good faith) is undermined by cost-efficiency.

'The procedure is traumatizing. The Hungarian jurisdiction is not even compatible with Hungarian children - not to mention foreigners. Personal opportunities influence what happens/ will happen to the children, it is all a matter of luck.' (Ombudsperson's office)

'It makes adults out of children. They look at them and say that they are adults, and from then on, they treat them as adults when they provide information to them and throughout the whole procedure.' (Social worker)

'The authorities seek cost-effectiveness. They need the least expensive interpreter, who is quickly and easily accessible at the same time.' (Interpreter)

'The procedures take 6 to 8 months at best, despite priority. Delay is guaranteed due to the process of translation, even though the aim is to prioritize the cases.' (Defence lawyer)

*'The prosecutor shall be notified about the order of the investigation, but if the police officer posts it and we get it just two weeks after, we can just fret about what happened, and it is very difficult to do anything about it...'*⁴² (Prosecutor)

In addition, we also learned about a case during the research where a foreign child was stopped for an identity check at dawn, at times of one of the peak waves of refugees. All his papers were fine, but the body search revealed that he had committed an act which involved the institution of a procedure against him:

⁴¹ The representative of the Public Prosecutor's Office commented on this quote after the interview: The minutes of procedural acts contain properly the information and warning given to the suspected non-Hungarian citizen about his/her rights and obligations according to the procedure law. The interpreter shall translate these pieces of information so I judge this quote unfounded.

⁴² The representative of the Public Prosecutor's Office commented on this quote after the interview: The statement that police sends the investigation order by post and the prosecutor gets it after two weeks, is too general and simplifying. Regarding Section 170 (3) of the Criminal Procedure Code, the police have to inform the prosecutor about the commencement of investigation within 24 hours. This regulation is compulsory also in case of foreign suspects and it also happens without undue delay in the majority of the cases.

'Today, on 16 August, 2014, at 5.35 am, at the control at the central train station of Mórahalom (a Hungarian city), there was 1 live Greek turtle in the pocket of his backpack, declared to be his own based on the available data. Pursuant to a regulation about the protected and strictly protected plant and animal species, the Greek turtle is a protected species in Hungary. He did not obtain the permission of the Nature Conservation Authority and he could not show the warrant necessary to transport the reptile through Hungary. Based on the above, he can be suspected with committing the crimes of unlawful possession of any species of protected living organisms or species of flora and fauna which are deemed important for conservation objectives in the European Union and with damaging the natural environment by import.'
(Quote from a police report)

It turns out from other parts of the minutes that the child left Iran to go to England one and a half years ago, after he had lost his father at the age of 3. He received the turtle in one of the refugee camps in Greece, and as he said: 'I did not know that I commit a crime by doing this and I just thought I would save this animal.' **The hazards of the act to the society, its weight, the circumstances in which the offence was committed, not to mention the need for using state funds and resources efficiently, and child rights considerations, all raise the question whether the institution of a criminal proceeding was the most appropriate answer.**

Directive 2013/0408 EU declares in Article 13 that "in proceedings involving children, the urgency principle should be applied to provide a rapid response and protect the best interests of the child. Courts should exercise particular diligence to avoid any risk of adverse consequences on the family and social relations of the child." Hopefully, the adoption of this directive will effect the Hungarian practice.

It should be underlined regarding the alarming practices that we have not met any professionals with intended discriminative, openly **racist** or xenophobic principles. Prejudicial attitudes are very difficult to research, as people tend not to be open about such. However, unfortunately it is not rare in Hungary that professionals openly formulate their racist opinion or indirectly refer to their xenophobic attitude.⁴³ Discriminatory practices, for instance against Roma minority, are well documented and supported through other research..⁴⁴ Only one interviewee mentioned that these reasons might also be behind the nature of the treatment she experienced with a foreign child she represented:

'Let's admit, there is some racism in people, and sometimes I've had the feeling that it also has a role in this.' (Guardian ad litem)

The criminal justice system, the child protection system and the immigration system work more or less independently from each other, meaning that in the research we did not find data about the operation of the mandatory reporting system (towards child protection agencies) and the administrative procedures in relation to migration remain hidden in the criminal procedures as well.

Directive 2013/0408 EU on procedural safeguards for children suspected or accused in criminal proceedings had not yet come into force in Hungary but it will, so the context of the proposal is very important and may influence the practice of the Hungarian authorities: "Suspects or accused who are children are recognised and treated with respect, dignity, professionalism, in a personal and non-discriminatory manner, whenever they are in contact with the competent authority acting in the framework of criminal proceedings. This should also facilitate the reintegration of children into society after they were confronted with the criminal justice system. The rights set out in this Directive apply to children suspected or accused in a non-discriminatory manner, including with regard to their residential status."

⁴³ <http://tasz.hu/romaprogram> (Last opened: 27 August, 2016)

⁴⁴ Source: <http://www.errc.org/en-search-results.php?mtheme=16>. ERRC, 2016 (last opened: 27 August, 2016)

III.1 Directive 2010/64/EU on the right to translation and interpretation

III.1.1 A short summary of the directive

Directive 2010/64/EU establishes minimum EU-wide rules on the right to interpretation and translation in criminal proceedings and in proceedings for the execution of the European Arrest Warrant. **These rights should be guaranteed and the exercise of these rights should be made possible within a reasonable period of time, free of charge and with minimum quality requirements.** The fundamental right stipulated in the directive affects three key axes:

Right to quality interpretation

Suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned should be provided, without delay, with interpretation during criminal proceedings before:

- Investigative and judicial authorities including during police questioning;
- All court hearings and any necessary interim hearing.

This right also extends to persons with **hearing or speech impediments** who should be provided with appropriate assistance. It may be provided via ICT if it does not affect the fairness of proceedings.

A procedure to ascertain whether a person understands the language of the criminal proceedings must be in place. Moreover, in the event the interpretation is deemed to be of poor quality, the right to challenge a decision to not provide interpretation or to challenge the quality of the interpretation is also protected by the directive.

Right to quality translation

Right to have a written (or oral if it does not affect the fairness of proceedings) translation of all documents which are essential to ensure that accused or suspected children who do not understand the language are able to exercise the **right of defence and to safeguard the fairness of the proceedings**. Essential documents include at a minimum:

- any decision **depriving a person of his liberty**;
- any **charge** or indictment;
- any judgment.

A reasoned request can be submitted by legal counsel to have more documents translated. In the event the translation is deemed to be of poor quality, the right to challenge a decision to not translate or to challenge the quality of translation is also protected by the directive.

Structural obligations

Concrete measures to ensure quality must be adopted, for example:

- establish and make accessible to legal counsels a **register** of independent translators and interpreters;
- require translators and interpreters to respect **confidentiality**;
- obligation to **keep a record** in line with domestic legislation of the exercise of the presented rights or the decision of a person to waive those rights.

III.1.2 State of transposition in Hungary

Directive 2010/64/EU of the European Parliament and of the Council entered into force on 15 November 2010, and Member States had to transpose it by 27 October 2013. In Hungary, the Directive was transposed by Act CLXXXVI of 2013 on the Amendment of Certain Criminal Law Acts and Other Related Acts on 18 November 2013. With this short **delay**, Hungary was one of the 16 Member States that failed to transpose its implementing rules under this Directive and Directive 2011/61/EU and/or to send a notification about it.⁴⁵ As part of the transposition, the following rules, provisions and regulations were amended:

- Act XIX of 1998 on Criminal Procedure;
- Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System;
- Decree 24/1986. (VI. 26. MT) on translation and interpretation;
- Act C of 2012 on the Criminal Code;
- Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union.

III.1.3 Current laws, rules and regulations on the right to interpretation and translation

The right to translation and interpretation in criminal proceedings is guaranteed in various national criminal laws.

Act XIX of 1998 on Criminal Procedure states that not knowing the Hungarian language shall **not be a ground for discrimination**. It determines a greater protection than the minimum standards of the Directive in a regard that it ensures the right to use one's native language in criminal proceedings (Section 9). If the use of the native language involved unreasonable difficulties, the use of another language (including sign language) defined by the person not speaking the Hungarian language shall be provided for by way of an interpreter (Section 114). The Act leaves the possibility to employ a temporary/in-case interpreter⁴⁶ with proper language skills, if the employment of interpreters having the qualification stipulated in a separate legal regulation is not possible (Section 114 (3)). It requires the inclusion of the employment of interpreters in the minutes; however, it **does not stipulate comprehensively the translation of essential documents** – it refers to the translation of official documents without defining its scope, but also defines the right to translation of charges and judgements.

Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System ensures the right to use one's native language (or the use of other spoken language defined, including sign language) in the misdemeanour procedure both verbally or in writing. It sets out the **funding** of the translation and interpretation by the state, the possibility to employ a **new interpreter or translator** if the quality of the translation and interpretation is deemed to be of poor quality, the scope of **essential** documents, the right to request a **waiver** and the use of communication technology (in accordance with the Directive). However, the Act **does not ensure the right to appeal** the rejection of a request to employ a different translator or interpreter.⁴⁷

⁴⁵ European Commission (2014) Report from the Commission 31st Annual Report on monitoring the application of EU law (2013). COM (2014) 612 final. Brussels, 1.10.2014.

⁴⁶ Temporary/in-case interpreters offer an easy-to-access alternative for qualified interpreters. Compared to qualified interpreters, they do not obtain any professional qualifications for translation or interpretation, they just simply have some language skills. They are usually colleagues or other acquaintances of the authorities.

⁴⁷ Directive 2010/64 Art.1 (3) says where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such a court, this Directive shall apply only to the proceedings before that court following such an appeal. In accordance with the following sentence Act CLXXXVI. 2013 declares that the directive is applicable only in court procedures.

Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences ensures the right to use the native language of convicted and detained persons, the right to translation of the decisions, and **also enables employment of members of law enforcement with proper language proficiency as temporary interpreters.**

The right to interpretation and translation is ensured in private guidelines and protocols of the authorities involved in criminal proceedings, in various other rules and regulations not related to criminality (such as those on asylum procedures, legal aid), as well as directly or indirectly in international conventions (e.g. UN Convention on the Rights of the Child, European Convention on Human Rights).

Decree 7/1986. (VI. 26. MM) on the conditions required to obtain a qualification for translation and interpretation sets out the scope of persons who can be employed as interpreter. Neither this Decree nor Decree 7/1986 (VI. 26. IM) about its implementation require **quality control or an official register** (in contrast to the Decree on the register of sign language interpreters).

Regarding the rights of foreign minors, it should be highlighted that Act XXXI of 1997 on Child Protection and Guardianship Administration also applies to non-Hungarian children residing in Hungary. Consequently, foreigner children are entitled to the right of defence and to the fairness of the proceedings (and its assurances) just like Hungarian children.

Information derived from interviews on the right to interpretation and translation

Right to interpretation Use of interpretation

The professionals interviewed agreed that the authorities **always ensure interpreters** for suspected or accused foreigners.

'In Hungary, the use of interpreters is taken absolutely seriously in criminal proceedings. So much so that a retrial has been asked once because of the lack of interpreters, even though there was no need for them because the accused person spoke the language well. (...) So I find it impossible that a criminal proceeding would be conducted without employing an interpreter.' (Interpreter)

'The interpretation was ensured each time, and if there was not any proper interpreter, the hearing was cancelled. It could not have any financial or other barriers, for instance the Somali interpreter used to come to Budapest from far away at dawn to arrive to the hearings on time.' (Legal guardian)

Based on the 12 police minutes, all the questioning was conducted in the presence of an interpreter and **the right to an interpreter was formally ensured.**

As mentioned above, the national laws enable the employment of temporary interpreters in criminal proceedings. This possibility serves as a loophole for the authorities and often results in choosing the easier way. The employment of anyone with language skills comes first. This also means that **the right to use the native language is undermined and an intermediary language is used instead.**

'The interpreter shall be appointed case by case. However, all of these are procedural tasks that you would prefer avoiding. If you can find a colleague who speaks the language, he or she can also help, but if this is not an option, an interpreter is employed, as last time a Nigerian one through BÁH [Office of Immigration and Nationality], which has a register. The colleagues do not receive any special training, but they have language exams, mostly in English, German or Russian.' (Guardianship authority2)

The interviews suggest that the assistance of an interpreter is not used if the suspected or accused person speaks even just a little Hungarian. However, those who just get along with a basic vocabulary and those who are confident users of a foreign language have a different level of understanding of the criminal proceedings' **legal language.**

'It was two years ago. Back then, I did not speak Hungarian well. I did not have an interpreter, just an appointed lawyer.' (Suspected child)

'She did not need an interpreter. I don't believe she has ever been asked in her native language.' (Child welfare guardian)

The interpreters usually arrive quickly without delay, but the proceedings can be **prolonged if the suspected or accused persons speak a unique, less common language**, since it takes longer to find a suitable interpreter.

'It is in everyone's interests to be there as quickly as possible; a patrol car is usually sent for the interpreter, so he or she can be there soon, within a few hours at the latest. The person is questioned just after the interpreter arrives.' (Interpreter)

Ascertain the necessity of interpretation

The professionals **did not give an exact picture of the procedures and mechanisms to ascertain whether the assistance of an interpreter is needed.** Police officers address the suspect in Hungarian and determine the language they speak based on the country of origin. Sometimes this takes place only after taking the defendant into custody.

'The interpreter is not always present at times of taking into custody, its necessity is ascertained later.' (Legal guardian)

'The process looks like this: the suspect is summoned and if he or she is a foreigner, an interpreter is employed.' (Interpreter)

'First, they address him/her in Hungarian, and obviously, if he/she does not speak Hungarian, they try to ask him/her what language he/she speaks. Then he/she receives a form in the native language defined, and declares in writing about his/her personal data and the language he/she speaks.' (Police officer)

Possibility to complain and communication technology

If the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings, the defendants have the possibility to complain. The authority employs a new interpreter if the suspect or accused person reports this or they come to this conclusion by themselves.

'The quality of the interpretation is taken seriously. I also happened to be the third interpreter in a certain phase of a sole case because the interpreter was unprepared and the parties could not communicate properly'. (Interpreter)

In Hungarian practice, the use of communication technology is not common in the criminal proceedings.

The right to translation of essential documents

Written translation of essential documents within a reasonable period of time

The authorities provide a copy of all essential documents to the foreign suspected and accused minors in the language of the procedure. An oral translation or oral summary of essential documents is provided in certain cases.

'Based on the position of the Office of the Prosecutor General of Hungary, every document relevant to the pre-trial detention shall be included in the file, handed over, and translated at times of pre-trial detention. All files are presented at the end of the case. Of course, if he/she requires, it is translated, but it is possible that an interpreter sits next to him/her and translates it orally.' (Police officer)

However, it also happens that the suspect or accused person receives the translation of the documents after a reasonable period of time has passed, which delay can impede the right of defence and the fairness of the proceedings. For instance, if the suspect is informed about the decision prolonging the pre-trial detention just after the translation gets ready, he/she cannot challenge this decision until then.

'This poses problems because you do not understand the real reason of the coercive measure's prolongation at once. Until he/she does not receive the translation, the defendant cannot declare whether he/she accepts the decision or challenges it. Let's say a pre-trial detention is prolonged by 2 months, then the translation is very rarely provided within that 2 months.' (Defence lawyer)

By essential documents most of the interviewees meant the documents listed as **minimum standards** in the Directive, but they did not express a firm opinion about it. They did not make any further comment on this, neither on the possibility to complain nor on the quality of translation.

The impact of the amendments to the regulations on asylum procedures that entered into force on 15 September 2015⁴⁸ on the right to translation of essential documents did not come up as a problem in the interviews. The aim of the amendments to the criminal proceedings was to **complete the criminal proceedings instituted because of crimes related to the border fence within the shortest possible time**. The European Commission opened an infringement procedure against Hungary because of these amendments in December 2015, and expressed its concerns that the law on **fast-tracked** criminal proceedings for irregular border crossings contradicts the right to translation of essential documents set out in Directive 2010/64/EU.⁴⁹

⁴⁸ Act CXL of 2015 on the amendment of certain Acts related to the management of mass migration. <http://mkogy.jogtar.hu/?page=show&docid=a1500140.TV> (last download: 26, June, 2016)

⁴⁹ European Commission (2015) Commission opens infringement procedure against Hungary concerning its asylum law. Press release. Brussels, 10 December 2015. http://europa.eu/rapid/press-release_IP-15-6228_en.htm (last download: 26, June, 2016)

The research contained rather little experience and information about the right to translation of essential documents. It supposedly indicates the clearer expectations resulting from the written text; however, it also shows that during **translation even more potential problems remain unknown**.

Structural obligations

Costs

The adult stakeholders for the most part agreed that authorities usually **meet the costs** of interpretation and translation, despite some delay. Some of them also thought these expenditures were sometimes **wasteful**.

'The use of interpreter does not depend on financial issues, rather they often waste money on it, for example when they employ an interpreter even if it has not been ascertained whether the suspect needs one and this turns out just at the court. Even when they could have known that the suspect will not show up, they fail to find it out and inform the interpreter hence they have to pay his/her fee. I think this is negligence.' (Interpreter)

However, the costs can also influence the quality of the interpretation. In accordance with the principle of **cost-efficiency**, the interpreter with lower fees is employed.

'The authorities basically employ interpreters based on economic considerations. You can apply to be listed in a register by making a bid and it is up to that whether you can get on the list or not.' (Defence lawyer)

Register

There are no official national registers of interpreters with a qualification in specialized terminology. The authorities use their own, **private, internal database** whose features and maintenance are discrepant and accidental. These are usually informal registers of tried and tested interpreters, including qualified and temporary interpreters with good language skills that they know.

'There are not many good interpreters, and they are listed in an informal database. There is a formal database as well, but basically the tried and tested professionals are used and these two overlap.' (Prosecutor)

There is a county where the register is made based on a **tender**, but elsewhere even the interpreters are unaware of which register they are part of.

'I think there is a register, a database at the police or the Ministry of Justice, where they can look for an interpreter, if needed. Once I've been called from the police headquarters of my residence place, even though I was not in connection with them.' (Interpreter)

Quality

The authorities have only taken a few concrete measures to monitor and ensure the quality of interpretation and translation. Most of the professionals reported the lack of a quality assurance system for interpretation. For this reason and as a result, the quality of interpretation in criminal proceedings remains relatively hidden and invisible. They usually draw conclusions **from the lack of feedback**: if the suspected or accused minor does not make a complaint about the quality of interpretation, supposedly there is no problem with it.

'The quality of interpretation is hard to assess, because we do not understand what the interpreter says and how, but the children usually do not object (to) the person of the interpreter. Children always ask if they do not understand something anyway.' (Legal guardian)

'There weren't any cases where the use and quality of interpretation would have been concerning.'
(Prosecutor)

However, there is a significant discrepancy in the quality of interpretation, which can often violate the right to fair proceedings and the right of defence.

'Some interpreters refuse to interpret what is said due to antipathy.' (Social worker)

'Many times the interpreter does not speak the legal terminology. I think the translation and interpretation is often very concerning. Many people who were made to wait for a long time reported that they did not understand the interpretation... It happens easily that the interpreter can hardly speak Kurdish and the authority finds this normal.... The adequate linguistic assistance is absolutely not ensured.' (Defence lawyer)

The lack of unified and comprehensive set of criteria for interpretation in criminal proceedings contributes to the varying quality. This supports the above-mentioned loophole to choose temporary interpreters and the less expensive and quicker solutions – which is likely to reduce the quality of service.

'The majority of lawyers do not even speak the world languages with working proficiency. Much depends on children's country of origin, and speaking a rare language enhances their vulnerability. Essential information is lost during interpretation. You would need a great motivation to make it work well!'
(Ombudsperson's office)

Interpreters with different qualifications are employed: Temporary interpreters are not subject to the conditions stipulated in the regulation on interpreters, therefore their training and experience in interpretation are of an absolutely different depth and quality. The practice of providing a proof of language proficiency does not count as real assurance. The interpretation in criminal proceedings requires strong language proficiency and a wide vocabulary. These are not ensured in case of temporary interpreters, because they do not always use the appropriate terminology even if they speak the language to a certain level.

Lack of interpreters speaking rare languages: Children speaking a rarer language are less likely to find a native interpreter and sometimes the necessary efforts are also missing (including financial ones, too). For this reason, intermediary languages (mainly English) dominate.

Intermediary languages can distort the information: Intermediary languages are often used in criminal proceedings due to the lack of interpreters and the preference of temporary interpreters, therefore the information (also filtered by the language and mental capacities of the accused and suspected child) can be easily distorted.

Speed compromises quality: The use of a temporary interpreter sourced from colleagues and other informal circles seems like an easier and quicker solution for the authorities, but it impairs the quality of interpretation and violates the right to use native language. Still, for some this risk is not taken to consideration.

'It is possible that interpreters without qualification are employed during the police investigation phase, or someone else, e.g. the lawyer speaks the native language of the suspect. Not everyone has an interpretation permit. However, it does not even have any detrimental consequences in these cases, it does not violate the rights of the suspected or accused person, on the contrary, it might even accelerate the proceedings that there is no need to employ an interpreter in the official way.' (Interpreter)

The authorities focus on cost-efficiency: In the selection of the interpreter and in the development of the register the fee of the interpreter is decisive which can undermine quality aspects.

'The authorities try getting off as cheap as possible, therefore they employ the cheaper and the more accessible temporary interpreters.' (Defence lawyer)

The interpreter's tasks and their limits of competence and authority are unclear and not standardized: Similar to international experiences, there is no consensus on interpreters' limits of competence and authority. Some believe that they need to make the content understandable, adjusting it to the addressed person's abilities and state, while some are convinced that the task of the interpreter is to transpose the text promptly, word by word. There is not any widely accepted position on the nature of high quality translation and interpretation, nor on the necessary qualifications and trainings.

'The interpreter plays an important role in making children understand the information. In my opinion, an interpreter should make sure that everything is understandable for children, and they actually understand it.'
(Police officer)

If the interpreter exceeds mirroring the language and plays a role in making the content understandable, his/her **soft skills and social skills** become more important than language proficiency.

'A good interpreter primarily needs empathy and tolerance. The language proficiency comes just far after those. Let's imagine a child or an under-educated adult. He/she simply cannot understand a complete and accurate translation. To this regard, we can say that the task of interpreter is dual: not just to transpose the text to another language, but also to adjust it to the mental capacities of the person. I don't believe this can be taught. You either know it or not. Of course language skills are important as well, but that is the starting point where you can begin working from.' (Interpreter)

'You need a higher education degree for the translator exam, the 'authentic' translation is much more important there, for example the authentic translation of official documents like a notarial deed. But you don't need a higher education degree for the interpreter exam. Interpretation in a criminal proceeding is a stressful job, for example, not everyone feels comfortable in the same room with an offender who has committed an abusive act. Threatening or aggression happens, therefore not everyone dares to come next time. This is why I tell you that human characteristics are more important than language skills. But if it seemed that I devalue the language proficiency and the importance of expressing yourselves promptly, it is wrong. It only applies to those kinds of criminal proceedings we talked about.' (Interpreter)

Social and legal experts mostly disagree with the expansion of interpreters' competence and authority. They highlighted that **if the interpreter exceeds mirroring the language of the text promptly and explains the information to the suspected and accused minors, they alter their meaning and the focus subjectively, arbitrarily.** We were told about a case when the employment of a new interpreter was seen necessary for this reason.

'It should be known that interpreters often confuse their role and think they know the procedure and the interests of the defendants the best. The problem is that we cannot control what they say. They are present but often do not interpret everything.' (Defence lawyer)

'It happens many times that the interpreter starts explaining the things to the children. An ideal interpreter would work like a robot, interprets what is said in both direction, but he/she does not start communicating or reasoning. Creating child-friendly texts from legal documents would not be the task of the interpreters, but that of the defender.' (Legal guardian)

'Sometimes other interpreters had to be employed, because the first did not only interpret but he/she added some information or explanation that they should not have. You should take care of this with children.' (Guardianship authority)

'The interpreters often complete the information with their own experience, which does not always end up well.' (Colleague of a children's home)

These uncertainties and quality risks also indicate the **lack of control**, which most interviewees considered necessary. In the absence of a quality assurance system, the invisibility allows interpreters to do their job as they prefer and hides the discrepancies and problems.

'How would insufficient interpretation be revealed if no one else understands what is said?' (Social worker)

'The language proficiency is most difficult when the lawyer or the defendant understands the other language a little or when the latter is a lawyer.' (Interpreter)

Factors that hamper the effective enjoyment of the right to interpretation and translation

The aim of translation and interpretation is that suspected or accused children who do not speak Hungarian should not be discriminated against because they do not speak the language of the criminal proceedings. The right to translation and interpretation is ensured if it safeguards the fairness of the proceedings and the right of defence, and takes into consideration the best interests of the child.

In Hungary, the enjoyment of these rights is advanced by the following:

- The **legislation** prescribes the employment of an interpreter or translator in criminal proceedings for those who do not speak Hungarian, and sets out the funding and the possibility to employ a new interpreter or translator.
- The interpreters and translators are **always appointed** if the suspected or accused persons do not speak Hungarian.

However, the results of the research showed that the realization of the rights enshrined in the Directive 2010/64/EU is impeded by the following factors:

- The employment of interpreters and the translation of essential documents is often **just formally ensured**, even though the authorities pay attention to them. The principles of simplicity and cost-efficiency undermine quality assistance, resulting in such compromises with the choice of interpreters that reduce children's chances to participate with equal conditions in criminal proceedings.
- The efficient **access** to interpretation of adequate quality is not ensured, especially in less common languages.
- Adequate **operational and professional standards** are lacking, which would set the criteria and conditions of the interpretation and translation in criminal proceedings.
- **Equal conditions** are not provided for suspected or accused foreign children, and the realization of the right to interpretation and translation remains accidental (temporary or qualified interpreters, native or intermediary languages are equally used), which especially discriminates against children speaking less common languages.
- There is no **institutional framework**, which would define the role of interpreter compared with the defender, guardian and other officials as well as the parameters of quality interpretation.

- **There is no quality assurance system** in place that could reduce the invisibility and the discrepancy, ensuring that the information is not distorted by translation and interpretation, and the information is truly understood by the defendants in criminal proceedings.
- The practice of the **system ascertaining the need for the assistance of the interpreter and the use of intermediary languages** do not take into account the level of language proficiency of the defendant in the chosen language.
- There is no **national and official register** in place of qualified interpreters and translators, which could also play an important role in preventing the delay due to interpretation and translation, especially with less common languages.
- The **conditions of participating as an interpreter** in criminal proceedings are different (requires significantly less conditions for temporary interpreters) and is not comprehensive enough (does not address either the nature of the criminal procedures or that of the cases involving children).
- There is no **training**, which would help with interpretation and translation in criminal proceedings as well as the work with minors.
- There is no **multidisciplinary cooperation** among authorities involved in criminal proceedings.

Moreover, the research revealed that topics and needs such as multicultural mediation or briefing of the interpreter before the hearing, the physical place of the interpreter during the procedure (where shall he/she sit), and the type of interpretation (e.g. simultaneous) have not even been raised in Hungary.⁵⁰

⁵⁰ See more at Co-Minor IN/Quest project statements. <http://eulita.eu/co-minor-inquest-final-report> (last download: 26 June, 2016)

III.2 Directive 2012/13/EU on the right to information in criminal proceedings

III.2.1 A short summary of the directive

The resolution of the Council on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings was adopted in the European Union on 30th November 2009. The resolution determines the direction of future legislative measures in relation to ensuring the rights of the accused person. The second act drawn up and adopted on the basis of the resolution was the Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.⁵¹

The right to information translates into an **obligation to inform suspects or accused persons** that, according to the Directive, should be exercised from the beginning of the procedure **without undue delay**. Information shall be provided **orally or in writing, in simple and accessible language**, taking into account any particular needs of vulnerable persons including children.

Minimum information includes:

- the right of access to a **lawyer**;
- any entitlement to free legal **advice**;
- information on the **accusation**;
- the right to **interpretation** and translation;
- the right to **remain silent**.

The opportunity to read and keep the Letter of Rights shall be granted to the suspects or accused persons who are arrested or detained throughout the time that they are **deprived of liberty**.

According to the Directive, the authorities shall ensure that the accused or suspected children are provided **promptly** with a written Letter of Rights. If the Letter of Rights is not available in a language understood by the accused or suspected child, he/she shall be informed orally, until a translation is made without undue delay.

The Letter of Rights contains information on:

- the right of **access** to the materials of the case;
- the right to have **consular** authorities informed;
- the right of access to urgent **medical** assistance;
- the maximum number of days suspects or accused persons may be **deprived of liberty** before being brought before a judicial authority.

The defendant also has the right to be informed of the reasons for arrest or detention; and the right to receive prompt information of any changes.

Article 5 of the Directive 2013/0408 on procedural safeguards for children suspected or accused in criminal proceedings provides further complementary safeguards with regard to the information of the holder of parental responsibility or an appropriate adult in order they take into account the specific needs of children provided that this does not prejudice the due course of the criminal proceedings against the person concerned and any other criminal proceedings.⁵²

⁵¹ Source: argument of the Act CLXXXVI of 2013 on the amendment of certain criminal law acts and other related acts

⁵² In addition, the provisions of Directive 2013/0408, Art. 5, (21) reflect international rules such as the Guidelines of child-friendly justice.

Right of information about the accusation

The information shall be provided promptly (at the latest on submission of the merits of the accusation to a court) and it shall include the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

Right of access to the materials of the case

Access shall be granted to **all** documents related to the specific case in the possession of the authorities (to the accused or suspected persons or their lawyers, at the latest on submission of the merits of the accusation to a court) or they shall receive these documents in the course of the proceedings (without undue delay). Access shall be provided free of charge.

The right of access to all essential documents during the arrest or detention could challenge the lawfulness of the arrest or detention. Access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person, or if such refusal is strictly necessary to safeguard an important public interest, but it can only be taken by a judicial authority.

If the authorities fail to provide information about a decision under the Directive, the defendant shall have the right to challenge.

III.2.2 State of transposition in Hungary

The deadline for the transposition of the Directive was 2nd June 2014 and the Hungarian government partially complied with. Act CLXXXVI of 2013 amends the rules of pre-trial detention in such a way that it stipulates that the motion of pre-trial detention sent to the suspect and the defender shall be accompanied by a copy of the **investigation files** justifying pre-trial detention.

According to Article 7 (1) of the Directive, if a person is detained at any stage of the criminal proceedings, the documents in the possession of the competent authorities which are essential to challenging the lawfulness of the detention, shall be made available to the arrested person or their lawyer.

In favor of the adaptation of Article 7 (4), Section 169 (1) of the Hungarian Criminal Procedure Code was modified which makes it clear that **a decision should be made on the refusal of the issuance of a copy**. According to the general **right to complaint** enacted in Section 195 (1) of the Hungarian Criminal Procedure Code, a complaint may be filed against such a decision. The possibility of a motion for review against the decision dismissing a complaint and through this the possibility of a judicial review was created by the amendment of Section 195 (6) of the Hungarian Criminal Procedure Code in connection with the **refusal of the issuance of a copy**, and regarding this, Section 207 (2) e) detailing the investigating judge's task was amended as well.

In connection with the harmonization, several non-governmental reports highlight that there are still gaps. According to the Helsinki Committee, for example, "the content of the information provided to the defendant does not even comply with the minimum standards set forth in the Directive. The suspects or accused persons do not receive written information even about the rights they have during the detention, what is more, the content of the Letter of Rights of the detainee is not in compliance with the content of Article 4 of the Directive."⁵³ Beyond that, the above amendment of the Hungarian Criminal Procedure Code is also criticized because it "...did not eliminate the possibility that the public prosecutor selects among the investigation files, and attaches only those documents to the submitted motion of pre-trial detention that establish the general and special conditions of pre-trial detention and ignore those that raise doubts of the reasonable suspicion or the existence of a specific condition."⁵⁴

⁵³ Practitioner Training on Roadmap Directives project – training of the Hungarian Helsinki Committee, June 2015.

⁵⁴ *ibid* – Training for lawyers about EU directives

Act LXII of 2012 on the amendment of certain laws related to the implementation of **child-friendly justice** has amended the Hungarian Criminal Procedure Code to ensure better enforcement of the children's right to information; and Section 67 of the Hungarian Criminal Procedure Code has been complemented with Subsection 7: „In the minor's subpoenas and notices, information on the content of the subpoenas and notices shall be provided taking the minor's age and maturity into consideration and in a way that **can be understood** by the minor.” The rules concerning child witnesses and accused were also complemented with similar new provisions.

“The questioning of children is a potentially risky situation where their procedural rights and dignity may not always be respected and their vulnerability may not be duly taken into account.” – declares Article 9 of Directive 2013/0408.

As highlighted in the previous chapters, the real problems are not the legal regulations but the way they are implemented into practice.

“When it comes to the right to information, we are in fact talking about forms that exhaustively cover everything. There are also adult and child versions (investigative authority document), but there are only slight differences between the two. The minutes is a warranty of the procedural protocol – we cannot verify the information provided orally.” (Prosecutor)

During the study of files, it turned out (which is also confirmed by the previously cited prosecutor's opinion) that the minutes are basically **standardized**, in many cases **they do not reveal how the authorities actually provided information to the defendant**.

“The prosecutor's office criticizes that the minutes are formal. In some cases endeavour can be seen but the minutes do not contain specific information. It highly depends on the police officer how the information is provided. It is an advantage if there isn't much turnover among police officers because over time they can gain experience. If there is a high turnover, consistent procedures cannot be ensured.” (Prosecutor)

III.2.3 Research results

Enforcement of the right to information was one of the most difficult parts of the PRO-JUS project to research. On the one hand, it can be determined objectively and listed what information shall be provided to the accused, on the other hand the information can be considered effective only if the person who was provided with it, actually understands his/her rights and is aware of them.

“Comprehension” is a complex process whose part is that the accused becomes capable of making grounded and responsible decision regarding his/her case and the procedural acts waiting for him/her using the obtained information. So the right to information is not considered enforced until:

- it **covers** all the provisions stipulated by law;
- the information corresponds to the **age** and **discretionary ability** of the defendant;
- the information adapts to the **current** situation of the defendant (for example, a trauma in many cases reduces or alters the capacity of comprehension);
- the defendant has the right to ask **clarifying**, confirmative questions while receiving information;
- the acting authority is **sure** that the defendant has understood his/ her rights, the procedure and the provisions of the substantive law;
- the procedural act (e.g. questioning of defendant) **is not continued** until the representatives of the acting authority are sure that the defendant has actually understood his/her rights.

Regarding the latter, during the research we did not find evidence in any case for interrupting or suspending a hearing of a witness, an incrimination or any procedural act because the children indicated that they did not understand their rights. This either means that every child was able to **understand** the course of criminal procedure, the certain acts, their possible consequences and his/her rights at once. We highlighted these four elements because according to the data, the majority of the accused, suspected children arrived from a country where non-continental legal system prevails, so

there are essential differences in the procedures. If it is assumed that the teenage defendants are aware of basic legal concepts and legal institutions, the Hungarian legal system and the way it works must be novelty for them. If it is assumed that the child has no information, then it is the **first time** that he/she gets legal information. Often it is not provided in his/her mother tongue but in an intermediary language; in many cases not with the help of a legal interpreter, but of an ad hoc interpreter. These conditions assume that the colleagues of the acting authorities should act with more care than usual when providing information. However, no evidence for this was found either in the files or in the interviews.

"It seems that while children are making statements and confessions, "words are put into their mouth". I do not think that in most cases children are aware of the contents of the words." (Guardianship authority)

"This is our main problem because the refugees get very little information." (Social worker)

"Information provided to children is not comprehensive enough." (Defence lawyer)

Although there are serious concerns about the quality of the information provided to children, it has to be recorded that all the files formally contained the items of compulsory information. This meant **the extraction and pasting of** relevant statutory **provisions**.

"Taking into custody of children is not typical, but information is of course provided to them in writing, in Hungarian. It is translated orally and then signed by them. They can keep the Hungarian Letter of Rights ." (Defence lawyer)

This procedural protocol corresponds to the provisions of the Directive. And as many kinds of information shall be provided to the defendant, they are usually provided at the same time / one after another.

"A lot of the statements that they have to make, e.g. whether they intend to file a complaint against the arrest, who they want to inform, whether they need medical examination etc., are usually made at the same time." (Police officer)

Child-friendly questioning

In the interviews there are significant differences between the opinion of experts helping the children (temporary guardian, lawyer), and the police officers. While according to adults with the task of helping children or those involved in the defence, "The documents and information are not written in a way children can understand.", police officers have stated that "... children get every document and information. If they do not understand something, we explain it to them." The difference between the two opinions can probably be put down to the fact that was also confirmed by the police officers "the information is the same for everybody". So it is universal, **it does not fit the suspects' individual needs** (discretionary ability, age, current accountability, etc.).

This is perfectly understandable if we take into consideration that the workers of the authorities do not get any general, system-wide **training** on how to communicate with children effectively (in a child-friendly, child-centred way). Until it is provided to them, they cannot be expected to be effective.⁵⁵

In 2012, child-friendly questioning rooms were established, but on the one hand, they cannot be used in the case of the minor accused (only in the case of victims), on the other hand, the training on conducting questionings in those rooms is not comprehensive enough to provide generally applicable knowledge to the professionals. This results in professionals not being aware of **the children's cognitive, emotional and psychological maturity and other characteristics**.

This undermines the possibility of adequate information, and can easily lead to **secondary victimization**. The latter may happen if the suspected or accused child has been previously traumatized (due to human trafficking, exploitation, sexual, physical or emotional abuse, war trauma, loss of family members, etc.).

*"The children that I got to know as a guardian have all experienced serious, challenging traumas."
(Guardian ad Litem)*

The information is the most effective (so the child understands it most easily) if it takes the **potential trauma** that might have affected the child into consideration. This is important because the trauma might have a negative effect on the child's comprehension and discretionary ability. As a result, for example, a 15-16-year-old child might need to be communicated with as if he/she was only 9-10 years old.

The joint enforcement of the right to interpretation and the right to information

The enforcement of the right to interpretation and its quality, and the right to information are highly **related**. In the case of foreign suspected/accused children, it is beyond doubt that the most comprehensive information provided by a trained official person could be jeopardized by an unprepared, inaccurate horrible dictu bad interpretation.

„The interpreter plays an important role in getting the children to understand the information. In my opinion, the interpreter must make sure that the information is understandable for the child and the child understands what he/she was told.“ (Guardianship authority)

Although the colleague of the guardianship authority had this opinion, it is not clear if this should be the task of the interpreter. In many cases, it is not clear even for the translators and interpreters what their task exactly is, and where the line is between interpretation and explanation, or **a multi-cultural mediation**.

A "good enough" translation, however, cannot be literal, but it must convey the content.

In accordance with the principle of equality of arms and fair trial, **the interpreter shall never expand his/her role**. He/she cannot add explanation to what the accused/ suspect said, and cannot evaluate or supplement it. For example, as stipulated by law, the interpreter cannot ask the child whether he/she understood the information - even if the interpreter has the feeling that the child in fact is not aware of the real content, meaning of the provisions they were informed about. This type of clarification (asking for confirmation) can be made only by the professional who conducts the questioning. Therefore, the professionals have a particularly big responsibility, and this is exactly the reason why it would be important to provide proper and sufficient training in this field. The practice is also important of course, but no matter how long someone is working with criminal affairs of foreign children, the long or often repeated bad (or insufficient) practice will never change by itself.

We experience that in the current system it depends on the acting experts' individual preparedness, responsiveness and openness, if they can provide information to the children that is indeed understandable for them.

⁵⁵ Directive 2013/0408 declares in its Article 19 that "Judicial authorities, law enforcement authorities and prison staff dealing with cases involving children should be aware of the particular needs of children of different age groups and should take care that the proceedings are adapted to them. For that purpose they need appropriate training with regard to children's legal rights and the need of children of different age groups, child development and child psychology, pedagogical skills, communicating with children at all ages and stages of development and on children in situations of particular vulnerability. Also defense lawyers specialising in children's cases should benefit from such training."

*„A nice judge at the court told me these at first. Police officers are really difficult to understand. The police officer told me that he/she did not have time. I had to sign the documents they put in front of me.“
(Suspected foreign child)*

This is also problematic because it is very difficult for a child to say no to an adult, or to ask and enforce their interests. We often experience in administrative procedures and court proceedings that it is not easy even for adults to articulate their needs and interests, or draw the professionals' attention if they find that their rights or interests are violated. Therefore, the Directive (in fact, all three examined Directives) stipulates special protection of the rights / enforcement of the right of the vulnerable suspected and accused persons.

The children belong to this circle *ab ovo*. They are especially vulnerable because of their age – according to the Directive's provisions, foreign children are considered **twice** in this regard (given the 'non-citizens' status and the fact that they do not know the language of the proceedings).

III.2.4 Summary

For the assessment of the enforcement of the right to information, we carried out four methodological experiments in the framework of the PRO-JUS research that led to the following results:

1. Data collected during desk research confirmed that the implementation of the Directive into the Hungarian law and its **harmonization with the legal system were mostly attained** (although regarding some parts of law there are still some hiatuses);
2. We got to know from professionals during the interviews that the practice of the right to information in many respects depends on the preparedness, individual sensitivity and knowledge of the person providing the information. The generally used **forms are universal**, and they are not suitable for consideration of the accused persons' special characteristics (age, discretionary ability/criminal capacity and unique life situation);
3. The interview with a child revealed that information in this particular case was occasional, and **there was no consequence** of not providing information to the child (until the beginning of a court procedure);
4. During the file analysis, it was confirmed that the realization of right to information provided by the authorities is **formal and standardized** (all minutes contained the same information), and as a consequence, those professionals (especially public prosecutors), for whom the examination of the realization of the right to information is important regarding the lawfulness of the procedures, in fact receive no information about what happened by way of "informing".

III.3 Directive 2013/48/EU: the right of access to a lawyer, the right to have a third party informed and to communicate with consular authorities

III.3.1 A short summary of the directive

This Directive⁵⁶ lays down minimum rules concerning the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings⁵⁷, the right to have a third party informed upon deprivation of liberty and the right to communicate with third persons and with consular authorities while deprived of liberty. The exertion of these rights shall be ensured without undue delay and in any case, especially upon taking into custody.

The fundamental right drawn up in the Directive includes three main areas: the right of access to a lawyer, the right to have a third person informed of the deprivation of liberty and the right to communicate with consular authorities while deprived of liberty.

The Directive 2013/0408 on the procedural safeguards of suspected or accused children repeatedly underlines the importance of assistance by a lawyer for children from the outset of the proceedings and during police questioning thereby suggesting that a waiver can represent significant risks for them. The importance of access to a lawyer for children is also recognised by all relevant international rules, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice⁵⁸, the Beijing Rules⁵⁹ and the 2007 UN CRC 2007 General Comment N°10 on Children's rights in juvenile justice.⁶⁰

1. The right of access to a lawyer

The right of access to a lawyer⁶¹ can be exercised from the questioning until the announcement of the final judgment. Suspects or accused persons shall always be granted access to a lawyer in criminal proceedings, unless they have waived that right.

The right of access to a lawyer entails:

- Right to **meet in private and communicate** with the lawyer, including the right to confidentiality;
- Right of suspects or accused persons for their lawyer to be **present** and participate effectively when questioned;
- Right of suspects or accused persons for their lawyer to **attend** investigative or evidence-gathering acts (if the suspect or accused person is required or permitted to attend the act concerned).

⁵⁶ Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

⁵⁷ Proceedings according to Framework 2002/584/JHA

⁵⁸ Points 37 (to 43).

⁵⁹ Point 15.1.

⁶⁰ Directive 2013/0408 Source: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013PC0822> (last opened: 27 August, 2016)

⁶¹ The term 'lawyer' in this Directive refers to any person who, in accordance with national law, is qualified and entitled, including by means of accreditation by an authorised body, to provide legal advice and assistance to suspects or accused persons.

2. The right to have a third person informed of the deprivation of liberty

The Directive ensures that suspects or accused persons who are deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish.

If the suspect or accused person is a child, Member States shall ensure that the holder of parental responsibility of the child is informed **as soon as possible** of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. The Directive prescribes to inform an authority responsible for the protection or welfare of children.

3. The right to communicate with consular authorities while deprived of liberty

Member States shall ensure that suspects or accused persons who are non-nationals and who are deprived of liberty have the right to have the consular authorities of their State of nationality informed upon the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish.

The provisions of this Directive may, however, be subject to a number of derogations and their exercise is restricted if a number of conditions are met. Among others, authorities may legitimately invoke geographical considerations (remoteness) or they may derogate from the rights of the suspect or accused person if a person's life is in jeopardy or if the course of the criminal proceedings may be affected.

III.3.2 State of transposition in Hungary

Regarding the transposition, the Directive sets forth that Member States shall bring the laws, regulations and administrative provisions necessary to comply with this Directive into force by 27 November 2016.

The necessary legislative process for the Directive's transposition is ongoing in compliance with the expectations in Hungary. However, it has to be pointed out that in Hungary the rights determined in the Directive **have already been ensured by several national laws**. The Directive was transposed through a number of national acts in accordance with the principles of regulation of Act C of 2012 on the Criminal Code.⁶²

With respect to the Directive, the right of access to a lawyer was extended to the misdemeanour procedure that similarly to the Act on Criminal Proceedings makes it possible for the person subject to investigation to withdraw the power of attorney of the representative, and to communicate with a lawyer without supervision. Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System was supplemented with a regulation guaranteeing the enforcement of the right to defence of the person subject to investigation during the evaluation of evidence. Furthermore, it is ensured under the stipulations of the Directive that the minor's parent or another suitable adult shall be notified of the deprivation of liberty as soon as possible.⁶³

Since the transposition of the Directive 2013/48/EU is required in 2016, the legislative plans⁶⁴ of the Ministry of Justice include adopting Act CLXXX of 2012 on cooperation in criminal matters with the Member States of the European Union.⁶⁵

⁶² Act CII of 2015 on the amendment of the Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System and certain other laws in this context which was adopted by the Parliament on 1st December 2015.

⁶³ Act CII of 2015 on the amendment of Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System and certain other laws in this context

⁶⁴ <http://www.kormany.hu/download/c/07/90000/20160115%20IM%20Jogalkot%C3%A1si%20terv.pdf>

⁶⁵ <http://www.kormany.hu/download/d/12/40000/20150224%20IM%20el%C5%91terjeszt%C3%A9s%20az%20C3%BAi%20b%C3%BCntet%C5%91elj%C3%A1r%C3%A1si%20t%C3%B6rv%C3%A9ny%20szab%C3%A1lyoz%C3%A1si%20elveir%C5%91l.pdf>

III.3.3 Current laws, rules and regulations on the right of access to a lawyer, right to have a third party informed and to communicate with consular authorities

Act XIX of 1998 on Criminal Proceedings currently in force stipulates the right of the detainee to contact a lawyer, and if he/she is a foreign national, the consular authorities of their state of nationality; communicate with them in writing or orally without supervision; communicate with his/her relatives or another person orally, personally under supervision, via inmate telephone system, and in writing under supervision. The communication with a relative shall be restricted or prohibited only to ensure the effectiveness of the criminal procedure.

The act declares that the participation of a lawyer in the criminal procedure is compulsory if the suspect or accused does not speak Hungarian or the language of the proceedings. Furthermore, the act stipulates that the suspect or accused shall authorize the attorney, and if the suspect or accused does not have a duly authorized attorney, a public defender shall be appointed.

Act II of 2012 on Misdemeanours, the Misdemeanour Procedure and the Misdemeanour Registry System sets forth that in the interest of the suspect or accused, his/her legal representative or any other adult authorized by him/her or by the legal representative in writing can proceed in any part of the misdemeanour procedure. The act stipulates that a fact obtained by the authorities with restriction of the suspected or accused person's procedural rights cannot be admitted as evidence.

Under the act, the detainee is informed of his/her right to defence, the right to inform the consular authorities and a relative or other person nominated by him/her.

Joint Decree 23/2003 (VI. 24.) of the Minister of Interior and the Minister of Justice on the Detailed Rules of Investigation Conducted by Investigative Authorities under the Minister of Interior and the Rules of Recording Investigative Acts by Means Other than Minutes, the scope of which applies to the criminal procedures conducted by the Police, sets forth the right of the suspect to authorize an attorney. If the minor suspect does not have a duly authorized attorney, the investigative authority shall assign an attorney, and inform the authority responsible for the protection or welfare of children about the criminal procedure against a minor.

Under Decree 27/2007 (V.31.) of the Minister of Justice and Law Enforcement on the Rules of Executing Detention Ordered in Immigration Proceedings, the detainee can communicate with his/her authorized attorney and the appointed guardian, the diplomatic representative of his/her State or consular officer accredited in Hungary with supervision, without control; and the communication between the detainee and his/her relative or any other person is possible under certain conditions.

Information on the right of access to a lawyer, the right to have a third party informed and to communicate with consular authorities derived from interviews

1. The right of access to a lawyer

Under the Directive, Member States shall ensure that persons suspected or accused could exercise the right of access to a lawyer without undue delay. In the case of children, the presence of a lawyer is obligatory. If the child has no lawyer, a defender is assigned for him/her. According to the police files studied, the appointment of a defender always takes place, but there are some cases when the lawyer fails to appear in spite of being duly summoned at the questioning. In this case, the authority informs the child that the defender's absence does not hinder the conduct of procedural actions. However, in the absence of lawyers children can interpret that they do not have a lawyer, a defender has not been assigned for them, they do not receive legal assistance, which could mean another trauma for them.

"I have no lawyer in the case. There was an interview with a guardian, he said that he would send the papers to the public prosecutor."(Suspected child)

The right of access to a lawyer shall entail the right of the suspects or accused persons to meet and communicate with the lawyer in private, and it shall be ensured that their lawyer can attend and participate actively (put questions, ask for explanations, make statements) in the questioning, the investigative or evidence-gathering acts.

The confidential communication with the lawyer is provided in the proceedings, but usually an interpreter is also present, so in most cases, the communication takes place between three persons instead of two. In many cases, due to surfeit of the lawyers' cases, the relationship between the lawyer and the suspected or accused child is limited to having a word before the procedural act, but it can happen that there is no real relation between the parties at all. According to the police files studied, it is not typical that the lawyers add any remarks or comments in connection with the procedural acts.

"Confidential communication is ensured in theory, but it actually takes place between three persons, not two." (Defence lawyer)

"The interpretation also makes the communication with a lawyer more difficult. It is hard to ensure communication based on a relationship of trust." (State advocate)

2. The right to have a third person informed upon deprivation of liberty, the right to communicate with third persons while deprived of liberty

Member States shall ensure that suspects or accused persons who are deprived of liberty have the right to have at least one person nominated by them informed without undue delay, and to communicate with at least one person nominated by them without undue delay. If the suspect or accused person is a child, the holder of the custody rights of the child shall be informed after deprivation of liberty as soon as possible. Member States shall refrain from limiting or deferring the exercise of the right to communicate with a third party in respect of suspects or accused persons who are children and who are deprived of liberty, save in the most exceptional circumstances. Where a deferral is applied, the child shall, however, not be held incommunicado and shall be permitted to communicate, for example with an institution or an individual responsible for the protection or welfare of children.

The interviews show that the holder of custody rights is always informed by the authorities, or at least attempts are made to inform them. However, there are cases when this is impossible, e.g. if the child's parent or guardian is in a war zone and they are not available even via Internet or telephone. If the holder of custody rights cannot be present, a temporary guardian is assigned whose main role is supporting the child.

"Even if a foreign national does not have a guardian with them, it does not necessarily mean that they do not have one." (Police officer)

"A temporary guardian has the important role of strengthening the children's mental status because appearing in front of an official body definitely means a lot of stress for a child." (Guardian ad Litem)

Based on the interviews and police minutes, it is clear that **the role of the temporary guardian is nominal**. The authorities make sure to observe the rules, therefore the appointment of the ad hoc guardian always takes place, but it is only a formality. Police files show that the temporary guardian, who is not a trained professional, is not present during the questioning of the child in many cases.

"Even if nothing else is done, a temporary guardian is always requested for the children to observe formalities." (Guardianship authority)

"The temporary guardian has practically no role, they cannot have any effect on the proceedings or influence anything." (Guardian ad Litem)

"There is no communication or cooperation between us. But there is no demand for it, the temporary guardian has very little role." (Guardian ad Litem)

"Although it would be very important, the guardians in Hungary do not care where the children are or what they eat. Child welfare guardians should have more important roles and more influence on the child's fate and life. Sometimes the guardian only meets the child when they go into the police room, but this way the essence of child protection is lost." (Guardianship authority)

3. Right to communicate with consular authorities

The Hungarian authorities ensure suspects and accused persons the right to contact and communicate with the consular authorities of their State of nationality, but suspects or accused persons usually do not exercise this right. Police files studied show that suspects and accused persons did not ask to get in contact with the consular authorities.

Conditions that contribute to or impede the effective enjoyment of the right of access to a lawyer, the right to have a third party informed and to communicate with consular authorities

Professionals acting in these cases have the adequate qualification; however, there is no **special training or continuing vocational training** that could help their work.

"We did not get any help to work with foreign minors. There is no training, not even language training. There is no training or special preparation for the work with children either." (Guardian ad Litem)

"Rather, there are professional conferences, but in the subject of victim protection and crime prevention." (Guardianship authority)

"Less visible developments are well behind. The training and motivation of appointed defenders (...)" (Ombudsperson's Office)

Professional cooperation between the judiciary and the protection of children in some cases works well; however, there are some factors that hinder it (e.g. lack of information). In some cases, the cooperation is not realized at all. It depends naturally on the acting authorities, on the motivation of the assigned defender and the temporary guardian. The lawyers and the temporary guardians generally do not know each other, they do not know who acts in these cases, what their workload is, and what kind of qualification the professionals have.

"The cooperation between the judiciary and the protection of children is very good. The problem is the lack of information: what to do and when." (Guardian ad Litem)

"The police and the public prosecutor's office handle these materials very confidentially. When we wanted to consult a guardian about an incident, we couldn't get the minutes and the report on the on-site inspection." (Guardianship authority)

"Maybe there are 3 or 4 lawyers who are contacted in these cases, but I don't know who they are. There is no communication or cooperation between us." (Guardian ad Litem)

"The communication between the lawyer and the guardian is necessary but we do not have an overall picture of this, the police and the rapporteur pay attention to it." (Guardianship authority)

Regarding the **workload**, it can be ascertained that professionals are overloaded and scarce. It depends on the lawyer's personality and vocation, what amount of energy they put into the proceedings, who accepts these cases and how important it is that the suspects or accused persons' rights get enforced. Besides vocation, it is also important that the professional can and wants to understand the child.

"They usually call us the same day and we have to be there in an hour. They phone round from the guardianship authority to find someone who is free, and can be there quickly, and we meet the minor there and then for the first time." (Guardian ad Litem)

"I am the guardian of 35 children. Last summer the most was 53. New guardians didn't come or they dropped out during the term of probation." (Guardianship Authority)

"It cannot be separated at all, that someone has specialized in this area. Some get many appointments because of various reasons. I think that everybody accepts as many as they can. (Defence lawyer2)

"There was a general inspection about the system of assigned defenders. The assigned defender's work can be carried out effectively only by those who are committed, because even the costs of the lawyer are hardly covered." (Ombudsperson's office)

"If it is possible, we pay attention to assigning a lawyer who has pedagogical qualification, and thus special knowledge in this field." (Police officer2)

"In the case of children, I try my best to describe and explain the proceedings in a way they can understand, considering their age, the culture they have come from and the extent of their education." (Defence lawyer2)

What impedes these proceedings the most is **formality**. Everybody pays attention to following the rules: appointing a defender, informing the personal representative of the child, appointing an ad hoc guardian. The proceedings, however, are often conducted only for the sake of appearances and the questionings frequently follow a similar pattern. Based on police minutes, the questionings seem to be carried out without paying particular attention to details, which is confirmed by the fact that some data in some transcriptions might derive from the minutes of previous cases; for example, among the other particulars of a foreign accused, Hungarian is given as mother tongue.

"There are very few, who actually do fine work. The indifference of the child protection system is quite big. There are almost only formalities, the only thing done is producing documents." (Defence lawyer2)

“The fact that the child can talk to the lawyer for ten minutes changes nothing. These are obvious facts. Absolute standardization is going on, in every case (...). The same patterns are used. The proceedings are conducted only for the sake of appearances, everybody plays their role.” (Guardian ad Litem)

“There is no problem with operation and compliance with rules, everyone does their job, bearing the minor’s interest in mind.” (Guardian ad Litem)

“One thing is how law regulates a system, and another one is how it is implemented into practice. Demands appeared in the Directive, and there are some similar sections in the Act on Criminal Proceedings as part of the legislative package of victims’ protection. These sonorous mottos have been around for long.” (Ombudsperson’s office)

In proceedings against children, public **prosecutors have an important role in legal protection**, in recognizing and rectifying deficiencies.

“The absence of ensuring legal representation was more of a problem as well as that they didn’t recognize that the accused was a minor and the public prosecutor didn’t know the child was not an adult.⁶⁶ In these cases, especially if it is a criminal procedure, the enforcement of procedural rules is examined with much more depth. It is expected that the public prosecutor enters as soon as possible and reviews the case. Also because of the need to make a decision in their case very quickly because they often leave.” (Prosecutor)

“The role of the prosecutor becomes more important. He is also responsible for safeguarding the fundamental rights of the accused. Especially, when he/she is a member of a vulnerable group. If there is an indictment, the public prosecutor should pay attention that his/her task is not prosecution exclusively, but to be sure that he/she understands what this is about (although this issue is discussed in conferences and articles). But the mentality of the prosecutor is: this is not my task.” (Ombudsperson’s office)

In connection with the requirement of **child friendly justice**, that is put down in the Directive⁶⁷ as well, the practice shows that at the questioning of children, child-friendly interview rooms are not used by the acting authorities.

“According to the prosecutor, the child-friendly interview rooms should be available to the accused persons of 12-14 years old, too.” (Prosecutor)⁶⁸

“Use of child-friendly interview rooms: occasional, not systematic and does not include use in the case of suspects.” (Ombudsperson’s office)

“If a child is to be questioned, the child can be questioned in the child-friendly questioning room of the 5th district police station. The fundamentals are provided to have an efficient system, but I don’t know how it works in reality, that they conduct the questioning only once.” (Guardianship authority)

⁶⁶ The representative of the Public Prosecutor’s Office commented this quote after the interview: “this quotation by a prosecutor is disapprovable”.

⁶⁷ Directive (55) “This Directive promotes the rights of children and takes into account the Guidelines of the Council of Europe on child friendly justice, in particular its provisions on information and advice to be given to children...”

⁶⁸ The representative of the Public Prosecutor’s Office commented this quote after the interview: „Decree 34/2015. (XI.10.) of the Minister of Justice declares that the special hearing rooms are available for accused minors under the age of 14, too (see article 10/A paragraph 1 of Joint Decree 23/2003 (VI.24) of the Minister of Justice and the Minister of Home Affairs). The implementation of this order should be supported.”

Summary

The implementation of the research proved to be a really challenging task. The primary reason for this was the situation emerging from the consequences of the so-called “migrant crisis”, a politicized situation causing considerable frustration for the authorities. As a secondary reason, we identified the characteristic of the procedures of suspected / accused children, namely that children concerned leave the country after the initiation of the investigation in many cases, and they leave to an unknown place.

The transposition of the Directive was realized essentially and primarily at the level of legislation. In some cases, the Hungarian legislation specifies more stringent requirements; in other cases partial deficiencies can be observed.

The implementation of the Directives into practice faces serious challenges if the suspected or accused person is a foreign citizen under 18. The most serious factors impeding the enforcement of the rights granted in the Directives were identified in the research as follows:

- The suspected or accused child is not considered **vulnerable**;
- The foreign child not speaking the language of the procedure is not **considered highly vulnerable**;
- The provisions are applied only formally and not in the **spirit** of the law, or according to the content of law;
- The quality / **ensuring quality** of the enforcement of law (interpretation / translation, information, representation by a lawyer) does not appear as a requirement;
- **The access** to interpreter / translation, information, legal representation of **a proper quality** is not ensured;
- Lack of **adequate operational and professional standards**;
- The authorities do not provide **equal conditions** for foreign defendant minors;
- Lack of registers (list of legal interpreters, list of lawyers speaking foreign languages, register of other professionals trained and prepared for communication with children);
- Lack of **training for legal professionals about interpreter mediated questioning of minors, and lack of training on multicultural issues**;
- Lack of **multidisciplinary cooperation** between authorities involved in criminal procedures.

General recommendations

1. The „best interest“ of the suspected, accused foreign child shall be a primary consideration (UNCRC Art. 3) – Implementing a child rights approach both in the criminal procedure and in the multi-sectoral cooperation of all competent actors (immigration, juvenile justice, child protection, etc.)
2. Providing multicultural and sensitizational training for judicial (and other) professionals working with accused, suspected foreign children to understand more their special, vulnerable situation and the cultural issues.
3. Conducting core empirical research / valid statistical database about the operation of the juvenile justice system in case of foreign children.
4. Close and continuous monitoring of the implementation of the 3 Directives.

Specific recommendations:

1. Improving the practice.
The implementation of the 3 investigated directives into the Hungarian law and its harmonization with the legal system was mostly attained but the practice did not keep up with the legislation. Usually, the provisions are applied only formally and not in the spirit of the law.
2. More available, non-temporary interpreters are needed.
According to the research findings, the right to use the native language is undermined and an intermediary language is often used instead because of the lack of interpreters. In addition, the proceedings can be prolonged if the suspected or accused children speak a unique, less common language – since it takes longer to find a suitable interpreter. The use of unqualified temporary interpreters sourced from colleagues and other informal circles seems like an easier and quicker solution for the authorities, but it impairs the quality of interpretation and violates the right to use native language.
3. Protocols, manuals and list of principles needed for the interpreters because now the lack of unified and comprehensive set of criteria to interpret in criminal proceedings contributes to the varying quality.
4. Quality-centered operation instead of cost-efficacy.
These days, interpreters with lower fees are employed regardless of the quality of their work.
5. Official national register of interpreters is needed because there are no official registers of interpreters.
6. Specific services available for foreign children should be disconnected from the criminal procedure because otherwise children who are in conflict with the law or who are asylum seekers are excluded from benefiting the Hungarian child protection system. Hungary should ensure that child protection and victim support services available reach out to all children.
7. Age appropriate “letter of information” in a child-friendly language.
Information provided by the police and other competent authorities are not easily understandable for children and it does not fit the individual needs of the suspected, accused child.
8. Mitigate the risk of multiple victimization.
The risk of secondary victimization during the criminal proceedings is high now. – Partly because of the lack of child rights approach.

Appendix

Interview questions

Semi-structured, anonymous interview in approx. 40 minutes / questions for adult stakeholders (juvenile justice system)

- Personal data: What is your job title? How many years of professional experience do you have? In which competence do you carry out the juvenile's criminal affairs? What qualification do you have that helps you in the juvenile's criminal affairs? What kind of qualification background do you have in this field (In what kind of courses, further trainings, trainings have you participated)?
- Do you know the following 3 EU directives? 2010/64/EU, 2012/13/EU, 2013/48/EU. (Do you know the content of the above mentioned 3 directives: right to information, right to interpretation and translation, right of access to lawyer.)
- What kind of relevant legal norms do you know at national level that ensure the success of the above 3 rights in the Hungarian juvenile justice system if the accused or suspected person is a non-Hungarian citizen under the age of 18?
- According to your information, how many colleagues deal with criminal procedures of foreign children? According to your information, what is the qualification and the workload of the colleagues, to what extent are the facilities of the work and the financial background ensured? What kind of cooperation with the child protection system do you know (for instance, participation in case conferences if invited)?
- Please describe in brief the general characteristics of the criminal procedures, if the accused, suspected person is a foreign child (the length of the procedure, use of coercive measures, obstacles of prosecution).
- Please describe the process to ascertain the need of the child for interpretation, translation (testing the language knowledge, etc.).
- What kind of limitations do you know in interpretation, translation? According to your interpretation, what do 'essential documents' and 'relevant passages' mean in the EU directive?
- Please describe how the quality of interpretation is generally in these cases. In your opinion can the 'adequate linguistic assistance' formulated by the EU directive prevail in the procedures? Please tell us about the consequences of insufficient interpretation. Please tell us your opinion about the quality of the database of professionals, and the way of choosing the interpreter.
- According to you, do the financial issues influence the way of choosing the interpreter? (cost of interpretation / quality of interpretation)
- Does any delay happen (in the procedure, because of the interpretation/ translation)? According to you can a 'reasonable period of time' formulated by the EU directive prevail?
- Please describe how the right of access to the material evidence prevails at the level of practice.
- According to you, how does the right to information about rights prevail in the foreign children's criminal procedures? Does the information cover the questions raised in the directive: access to a lawyer, free legal advice, accusation, right to interpretation, right to remain silent?
- According to you, is the confidentiality of communication between suspects, accused persons and their lawyers ensured in these proceedings?
- According to your knowledge, how does the right to communicate with consular authorities prevail in the criminal procedures?
- According to your knowledge, how does the Letter of Rights on arrest prevail? In accordance with the directive, the information has to cover: access of materials, one person informed, access to urgent medical assistance, maximum length of deprivation of liberty. According to your experience, how are the suspected or accused minors aware of these rights?
- Please describe the way of giving information, if the suspects / accused children are under the age of 18. How are the following provisions of the EU directives ensured: 'easily comprehensible manner', 'assist to understand the rights', 'particular attention to persons who cannot understand the content or meaning of the information'?
- According to you, what kind of experiences, events, happenings, family or personal characteristics make a child vulnerable? According to you, can the trauma or victimization experienced influence the behaviour, personality of a person under the age of 18?

- Technical issues: Do you have any experience in video conferencing? Do you have the opportunity to use video-conference or other audio-video recording during the testimony? (In which cases, how often)?
- What kind of suggestions do you have to improve the present situation? (How can positive factors be built upon and how can possible obstacles be overcome?)

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Procedural Rights of Juveniles Suspected or Accused in the European Union

