

# VOCIARE

HUNGARY

## NATIONAL REPORT



**Victims of Crime  
Implementation Analysis  
of Rights in Europe**



VOCIARE  
Victims of Crime  
Implementation Analysis  
of Rights in Europe



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**DISCLAIMER**

All views expressed in the present report are those of the authors and not of the European Commission. Most findings of the report are based on the research conducted by national researchers, between June 2018 and March 2019, and any inaccuracies in the interpretation of national results lies with the authors of the present report only. Additional support research, in particular regarding international experiences, was conducted by the authors of the present report. The findings compiled in the present report represent, to the best of authors' abilities, the current situation of the practical implementation of the EU Victims' Rights Directive. Given its scope and ambition, authors are aware that some elements may be inaccurate or out of date. However, it was still important to offer the first overall picture, even if incomplete, of the practical implementation of the Directive, to inform future work of Victim Support Europe, its members and the policy initiatives at the EU and national level. Future efforts will be plan to improve the findings and provide a more detailed analysis of key rights defined in the Directive.

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## EXECUTIVE SUMMARY

This national report aims to give a detailed overview of how Directive 2012/29/EU (the Victims' Rights Directive) has been implemented in Hungary and how the legal regulations are enforced in practice.

The research (comprising of desk research, an online questionnaire completed by 74 professionals, and 4 interviews) scrutinised individual articles of the Directive, and its equivalents in Hungarian legislation, and identified various gaps, challenges and good practices.

### **Victim support**

Although legal regulation on victim support in Hungary is detailed and well-regulated, with services offering more than the minimum standards of the Victims' Rights Directive, this is not reflected in daily practice.

The **definition of victim** is twofold: one definition is used in criminal proceedings, the notion of the 'injured party', and is limited to direct victims: this defines their role in criminal proceedings and the protection they can be granted. According to official Hungarian victim support legislation from the Office of Justice<sup>1</sup>, 'directly affected' victims are injured parties as are those harmed because of close spatial, temporal relation or causal connection to the criminal act (this might cover close friends, neighbours etc).

The other understanding of 'victim' comes from 2005 Support of Crime Victims and State Compensation Act. This notion, however, does not fully correspond to the requirements of the Victims' Rights Directive. On the one hand, it pertains not only to the direct victim and his/her family members, but also to all those directly affected by the crime, and in that regard, this notion covers more than anticipated by the Victims' Rights Directive. On the other hand, however, legal recognition of a victim is only given to people legally residing in the European Union, importantly leaving out undocumented migrants or others with an 'irregular' residence status, which falls short of the requirement of the directive to provide the same guarantees to all victims of crimes in a Member State.

The main victim support provider in Hungary is operated by the state, by means of the district office<sup>2</sup> (*járási hivatal*)<sup>3</sup>. However, support by non-governmental organisations is also available,

<sup>1</sup> dr. Veisz G. ed. (2013). Áldozatsegítési kézikönyv az igazságügyi szolgálatok számára (Victim Support Handbook for Justice Services). Budapest, Hungary: Közigazgatási és Igazságügyi Hivatal; pp. 15-17.

<sup>2</sup> Although state victim support is functioning within a three-level institutional framework. See more at Article 8.

<sup>3</sup> Section 10 Subs (1) of Govt. Decree No. 362/2016. (XI. 29.)

through both the nationwide generic NGO service and smaller, specialised services. The present report indicates that the current structure and attitude of the **state victim support provider**, its facilities, as well as the qualifications and workload of the staff, are unsatisfactory.

Most (state) victim support workers act as office clerks, they are mere administrators, rather than active supporters. Their attitude and approach are administration-based instead of victim-focused, and many lack proper qualification<sup>4</sup>. The offices used are not adequate for receiving victims; they are equipped for office work instead of counselling. Since victim support is integrated with the Guardianship Office (*Járási Hivatal Gyámügyi és Igazságügyi Osztály*<sup>5</sup>), victims are kept from seeking help, because they are afraid of "going to the social services".

As well as victim support, the staff carry out other duties (most of them are required to, additionally or mainly, provide legal aid services), therefore they lack time and are not encouraged by their superiors to any initiative that would be necessary to increase their client numbers. One might not even be wrong to suggest their interests are even the reverse, because they could not handle a higher number of victims within the current staffing limitations.

The Ministry of Justice is aware of these problems, yet it has been unclear whether the solution they are working on (namely opening victim support centres) would actually resolve these issues. Meanwhile, experienced NGOs are highly dependent on state funding, which is all but transparent, thus making mid- to long-term planning and operations impossible, thus violating victims' rights as well as regulations of the Victims' Rights Directive.

### **Victim protection**

The Police force, the Prosecution Service and the Judiciary are the most important stakeholders in victim protection matters, but each has a different approach. The police force is notably a very active actor in the field, with some committed leaders who have a forward-looking vision for victims of crimes. However, in practice, its approach is not very effective.

The prosecution service does not appear to have any agenda on victims other than the required minimal legal standards. Yet, considering it is in a position to supervise some of the police activities in this field, it could do much more to improve the actual situation of victims by insisting on the implementation of victims' procedural rights.

<sup>4</sup> According to Govt. Decree no. 29/2012. (III. 7.), minimum requirement for victim support desk officers is either a degree in public services, law, social sciences, theology, pedagogy, andragogy, psychology, cultural management or any higher vocational education with professional qualification in social issues, addictionology, child and youth protection, mental health. They are obliged to pass an exam on victim support within two years, which seems an insufficient condition.

<sup>5</sup> Guardianship office duties include issues concerning child custody, right of access, fostering, appointment of a guardian etc., in brief, things people usually do not get good feelings about.

In recent years, the judiciary has prioritised some areas of victim support (e.g. child-friendly hearing rooms, witness care); however, it does not seem to co-operate much in these matters with others, but rather operates in isolation.

The **individual assessment** of victims, by the police, has been obligatory since the realisation of the Victims' Rights Directive. Even though they are spot-checked by internal audits, many police officers do not fulfil their relevant duties. In 2017, only 5% of all registered victims were considered as vulnerable<sup>6</sup>: this figure represented a substantial underestimation of vulnerable victims who actually needed to receive appropriate care.

The **Communication with victims** (including the provision of general information as well as specific information on their individual rights) is unsatisfactory. This is concerning especially because victims' knowledge about their rights has always been a bottleneck towards practicing those rights. According to the law, state victim support should provide printed leaflets to the police who then are obliged to pass them to victims. Yet, in reality, leaflets are not available, significantly limiting victims in their right to receive information. Even those victims who seek information on victim support from the internet are no better off: there is no dedicated victims' webpage and other online information is scarce and mostly outdated. Decisions in individual criminal cases are systematically communicated with victims, but the very technical legal language used in those documents – while guaranteeing accuracy – limits the understanding by the average reader.

The attitude of **police** leaders is positive towards victim protection and is something to build on. The national police are actively looking to provide as many special hearing rooms for vulnerable victims as possible in a response to victims' needs. Nonetheless, more effort is required from police officers who are in direct contact with victims as a systemic victim-oriented approach is currently missing (lack of information, underutilisation of special hearing rooms, failure to make individual assessments). Any future investment risks being nullified in the absence of training, sensitisation and a general change in culture.

In general, the **training** of police officers, prosecutors and judges on victims' rights should get more emphasis and should preferably be multidisciplinary. A multidisciplinary approach (e.g. regular stakeholders' meetings on the local level) could also increase knowledge between stakeholders about each other's activities – a notable result from the research.

### **General implementation of the Victims' Rights Directive**

All articles of the Directive have been written into Hungarian law, to a lesser or greater extent. Yet practice paints a different picture. Some provisions are not used regularly, or at all, causing deficiencies and practical gaps, as identified by this report.

<sup>6</sup> See the figures regarding Article 3. For the consequences of a victim being registered as vulnerable, see Article 23.

Evidence suggests that information given to victims and individual victim assessments are not being systematically applied even though they are a legal requirement. If provided, infrastructure, such as special hearing rooms, is not being regularly used as it should be. Public prosecutors insist on confronting victims with offenders to confirm evidence, even if the success rate of such interaction is very low, while at the same time causing great stress and secondary victimisation. Courts do not use measures (audio-visual live links etc.), which are already at their disposal, to ensure that the victim may be heard in the courtroom without being present and hence avoid secondary victimisation.

On the other hand, there are good practices in use in Hungary and victims generally enjoy broad rights within the Hungarian legal system; especially children and victims of domestic violence, who are provided with extra protection measures (notification system, restraining orders). Victim-offender mediation has become a widely, and successfully, used tool for the criminal authorities. With new criminal procedures legislation in force from 1 July 2018, there is hope that victims' rights will become ever more prominent in the near future, but what value this will have in practice still remains to be seen.

## INTRODUCTION

This national report aims at assessing the practical implementation of the Victims' Directive in Hungary in the context of project VOCIARE - Victims of Crime Implementation Analysis of Rights in Europe.

For this purpose, the project's research methodology was created and adopted. The first two steps taken in order to begin this report were a legislative analysis and a mapping of competent authorities and organisations. In order to assess how the Victims' Directive has been implemented, it is vital to know more about national legislation, to know how the Directive was written into national law to further analyse whether such legislation is being implemented, how and by whom. Mapping competent authorities and organisations is essential to guarantee that detailed answers will be provided by the authorities, services and organisations that work in direct contact with victims.

To support the work presented in this report, three research tools were developed to obtain the desired information: a desk research, an online survey, and interviews.

The desk research included research of legal and policy instruments, literature and existing studies, opinions, discussions and other sources that are related to victims' rights. It collected and systematized existing quantitative and qualitative information on the research topic, covering, for example, statistics on the victims, academic literature on the topic of victims' rights implementation, media reports on the topic, relevant NGO researches and government reports to Intergovernmental Organisations.

The national online survey was a particularly important tool as it enables a much broader evidence base and allows for statistical analysis. It consisted of closed-ended questions directed at organisations and practitioners having contact with victims (police, judges and court staff, policy makers and victim support organisations).

The third instrument, the interviews, served as an addition to desk research. Any questions to which the desk research could not respond, or where findings were inconclusive, the researchers identified a stakeholder/key informant with whom to discuss specific topics, in addition to the list of questions which were provided via the research tools.

Regarding structure, this report first provides a basic overview of the legal framework, an important element to help understand the transfer of the Directive into national law. Subsequently, an evaluation of the practical implementation of the Directive will be presented. This document will

explain if and how articles and rights provided by the Directive are converted into Hungarian law. Each right will be briefly described and explained along with its translation into law and practical implementation.

After such thorough analysis, a chapter on good practices will be presented, as well as a chapter identifying gaps, challenges and recommendations. These provide information on good practices, to be implemented by other Member States and be maintained in Hungary, and on what is lacking or failing in the practical implementation and that could be improved. This is important to Hungary itself and for other Member States, which might have similar challenges. The final chapter will provide a conclusion of this report.

## BASIC OVERVIEW OF THE LEGAL FRAMEWORK

At the apex of the legislative hierarchy in Hungary is the Constitution (officially called the Fundamental Law of Hungary), which contains basic principles of fundamental rights of individuals. Legislation regarding victims' rights can be found in acts, governmental decrees and ministerial decrees as well as in inner regulations, policy papers and other instruments. Wherever EU law is concerned, relevant Hungarian legislation contains a compliance clause that makes it relatively easy to find all transplanted legislation. Such is the case regarding the Victims' Rights Directive.

The common approach in Hungary regarding the inclusion of any EU legislation is to amend existing legislation, as with the Victims' Rights Directive, rather than create a new law. Most victims' rights outlined in the 2012/29/EU Directive are incorporated in two acts: procedural rights are regulated in Act XIX of 1998, Criminal Procedure (a büntetőeljárásról szóló 1998. évi XIX. törvény; hereinafter: 1998 Criminal Procedure Act), whereas victim support rights are in Act CXXXV of 2005, the Support of Crime Victims and State Compensation (a bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről szóló 2005. évi CXXXV. törvény; hereinafter: Victim Support Act 2005). Some rights however (e.g. those regarding free legal aid for victims) are regulated in sectoral legislation, rather than in general law.

It must be highlighted that at the time of the research for the present report, the Hungarian Parliament had passed a new act on criminal procedure (Act XC of 2017, Criminal Procedure) that entered law on 1 July 2018. The present report, unless noted otherwise, is primarily based on the analysis of the 1998 act<sup>7</sup>.

According to the notification report submitted by the Hungarian government to the Committee, all articles of the Directive have been declared as written into law. However, it would appear that not all guarantees actually work in practice. There are concerns about the accessibility of some procedural rights and the poor performance of Áldozatsegítő Szolgálat (hereinafter: state victim support).

The status and role of victims in criminal proceedings may be defined differently by the various state actors. The 1998 Criminal Procedure Act uses the term 'injured party' whereas the Victim Support Act 2005 operates with the term 'victim'. The latter is much broader than the former

<sup>7</sup> This has been the chosen approach for two reasons: firstly, the time-frame for the finalisation of the report did not allow for an analysis of the new legislation. Secondly, it is in the essence of the methodology of the present report to look into practical implementation. For such an approach to be applied to the new legislation, one should have a historic distance of at least two years, to be able to give an informed conclusion about how the legislation functions in practice.

(and includes most family members as well as close friends etc.), yet mostly (there are some exceptions) it is only the injured party term that has legal status within criminal proceedings. *This distinction is justified by the risk that allowing a broader definition of the injured party to hinder the procedure if all those falling under the broad definition provided by the Victim Support Act 2005 would wish to participate. Therefore, this differentiation may be deemed justified by a legitimate concern.*

The English term used in Directive 2012/29/EU is 'victim', and it is intended to cover victims' rights within the criminal system and victims' rights regarding support.

In Hungary, there is a different term in use for the two:

- the term victim ('áldozat') is used in victim support issues, and it is a relatively broad term, covering family members etc.
- the term injured party ('sérült') is used in criminal matters, and it covers only the person against whom the crime was committed

This distinction is justified by the risk that allowing a broader definition of the injured party would hinder the procedure if all those falling under the broad definition provided by the Victim Support Act 2005 would wish to participate. Therefore, this differentiation may be deemed justified by a legitimate concern.

In 2017, the Hungarian police registered 226.452 criminal cases and 141.821 natural persons as injured parties (not including misdemeanours). Most of the registered crimes were committed against property (78.311 thefts, 22.197 fraud cases) though 180 homicide cases were reported that year.<sup>8</sup> The total number of registered cases, however, may indicate a very low reporting rate of crime committed in Hungary. According to European Commission estimates, up to 15% of EU population falls victim to serious crime every year. Applied to the Hungarian population of almost 10 million, this would amount to some 1,5 million victims – 10 times more than the registered number of victims in 2017. Whilst alarming, this finding must be set aside for the purposes of this report.

In Hungary, the main victim support provider is the state (*járás* *hivatal*). Following recent government reforms, the provision of state victim support has deteriorated for a number of reasons. However, this has been highlighted by the reformed structure of the service. The service is characterised by a lack of professionals available to provide support to victims; a tendency to burden staff allocated to victim support with the multiple unrelated tasks; a separation in the professional and economic management of the service, between two different ministries, has

resulted in a dramatic decrease in client numbers – almost three-fold in less than ten years<sup>9</sup>. While there are various NGOs able to fill in the gap, they are facing insurmountable obstacles, mostly due to a non-transparent system of grants and subsidies for the civil society sector. This becomes even more complicated due to shrinking public funding in addition to increased administrative and taxation burdens for organisations receiving foreign funding.

<sup>8</sup> Detailed figures are available on the following homepage: <https://bsr.bm.hu/SitePages/Nyitolap.aspx> (accessed 2/5/2018)

<sup>9</sup> State victim support was reached personally by 9,4% of all registered victims in 2009, 7,3% in 2012 and less than 3% in 2017. Source: annual reports of Victim Support Service and interview #3.

# EVALUATION OF PRACTICAL IMPLEMENTATION

## ARTICLE 2 - DEFINITIONS

*For the purposes of the Directive a 'victim' is a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence or a family members (the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim) of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.*

There are two legal definitions of a victim in Hungarian legislation- one used in criminal proceedings and another used for victim support purposes<sup>10</sup>.

An **injured party** is (as defined by Section 51 Subs (1) of the 1998 Criminal Procedure Code) "the party who's right or lawful interest has been violated or jeopardised by the criminal offence." The definition of the Criminal Procedure 2017 is almost identical, the only difference is that the new law highlights that not only natural, but also legal persons can be injured parties. Both the current and the new criminal code allow family members of a deceased victim to step up as **successor** and exercise the victim's rights in the criminal procedure, however, the 2017 Criminal Procedure Act sets a 1-month period to express the intention to do so. If the deceased victim was a church member bound to celibacy, the current criminal procedure allows the church principal to step up and exercise the victim's rights, but the 2017 Criminal Procedure Act does not contain such rights.

According to Section 1 Subs (1) of the Victim Support Act 2005, **victims** are those natural persons who have suffered injuries (in particular bodily or emotional harm, mental shock or economic

loss) as a direct consequence of criminal acts or misdemeanours committed on the territory of Hungary. To the status of victim, the following are entitled:

- Hungarian citizens,
- citizens of any EU Member State,
- citizens of any non-EU country lawfully residing in the territory of the European Union,
- stateless persons lawfully residing in the territory of Hungary,
- persons identified as victims of trafficking in human beings, and
- any other persons deemed eligible by virtue of international treaties concluded between their respective states of nationality and Hungary or on the basis of reciprocity<sup>11</sup>.

Those EU nationals residing in Hungary are also entitled to victim support if the crime they suffered was **committed outside of Hungary** while they were legally abroad.

The above legal definition means that two groups of persons are being left out from receiving support:

- victims of crimes committed in Hungary whose residence status is not regular
- non-EU nationals legally residing in Hungary, who were victims of crime abroad.

The vast majority of victims seeking assistance from support organisations have the legal status of injured party in the criminal procedure. But, according to legal provision, relatives, eyewitnesses, neighbours, friends, schoolmates or even police officers might be considered victims, as long as they are directly affected by a criminal offense. The definition is broad, only those illegally entering the EU, coming from a country with no agreement or reciprocity with Hungary regarding victim support do not fall into any category. Asylum seekers however are entitled to almost the same support as victims do, the only difference being that the Immigration and Asylum Office provides them with support, rather than victim support organisations.

Accused persons are never given access to victim support.

While there is an attempt to implement the Directive, the omission to extend support to all victims, regardless of their legal status represents an apparent failure, on the part of the Hungarian legislation, to comply with the Victims' Rights Directive. Section (10) of the Directive's preamble

<sup>10</sup> Unless otherwise noted, the term 'victim' is used for both meanings throughout the course of this study for easier understanding and to reduce confusion.

<sup>11</sup> Apart from some forms of specialist services – e.g. health care, there is no evidence suggesting any such bilateral treaty or reciprocity exists.

clearly requires Member States to ensure that the rights set out in are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality.

Moreover, the support that asylum seekers are provided with, through the Immigration and Asylum Office, is of an unknown standard of quality in comparison to the services provided to other victims. While research has not looked into the quality of these services, the question as to the differential treatment for victims, based on their legal status, remains a concern.

## ARTICLE 3 - RIGHT TO UNDERSTAND AND BE UNDERSTOOD

*Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings. Communications with victims should be provided in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including (but not limited to) any disability. Victims should, in principle, be allowed to be accompanied by a person of their choice in the first contact.*

As a generalisation, criminal proceedings in Hungary are conducted in the Hungarian language. According to Section 114 of the 1998 Criminal Procedure Act, deaf persons or persons with hearing impairment shall be questioned either by way of a sign language interpreter, or by way of written testimony. If the person to be questioned is deafblind, upon their request they shall be heard by a way of a sign language interpreter. If the person to be questioned has a speech impairment, upon their request they shall give a written testimony. In a recent decision, the Curia<sup>12</sup> expressed the view that an accused who is unable to communicate may legally be questioned within the criminal procedure only if an expert (interpreter) is present. This decision also applies to all witnesses, including victims.

The 1998 Criminal Procedure Act states that injured parties are entitled to **receive information** from the court, the prosecutor and the investigating authority concerning their rights and obligations during the criminal proceedings. Respecting human dignity, personal rights and the integrity of a deceased person are set as in the criminal code. The competent authorities shall ascertain whether the person before them (victims, accused as well as any others) understood what they were told, and they are obliged to **explain** if not. The Criminal Procedure 1998 was amended (Section 62/A) from 1 November 2015, as part of the implementation of the Victims' Rights Directive. The Criminal Procedure 2017 contains similar regulations.

<sup>12</sup> Kúria Bfv. II. 760/2015.; BH 2016.111. The Curia is highest judicial authority in Hungary.

There is little legally binding regulation regarding *how exactly* information should be provided. The rare instrument indicating this in any detail is the National Police Headquarters (*Országos Rendőr-főkapitányság*; ORFK) Reg. No. 13/2014. (V. 16.) on the Execution of Police Duties Regarding Prostitution-related Offences and Human Trafficking. Point 16 of this regulation requires police officers to consider the special situation of victims, their dependent status and their lack of information, therefore **partnership and empathy** shall dominate in their approach.

In practice, when someone makes **formal complaint** orally at the police, the police officer will note down all that was said. They use a template provided by software used by all police authorities across the country. This template contains a detailed description of the rights and duties of the injured party within the criminal procedure, but in a very **formal, legal language** that, for many, is not easy to understand. In addition to signing all pages of the complaint, some sections request the victim's separate signature to confirm information, in that section, was indeed provided or that the declaration was noted appropriately. However, some victim support organisations suggest<sup>13</sup> that victims are not provided with sufficient time to have carefully read everything before signing the documents. This can further be assumed from the fact that, while sections in the formal complaint copy given to the victim are signed, the answers to certain questions (e.g. whether or not they wish to receive further information etc.) are not marked.

Police officers are obliged to conduct an **individual needs assessment** if the injured party makes a complaint in person, in order to indicate whether a victim should be considered vulnerable. The document, where this relevant information should be indicated, contains data (among others) regarding age and disability, but nothing regarding communication issues. According to figures provided by ORFK<sup>14</sup>, 7.583 out of 153.352 registered victims were considered vulnerable, based on the individual needs assessments carried out. That is 5% of all registered victims.

According to Section 172 Subs (1a) of the 1998 Criminal Procedure Act, an adult may **accompany** the person who wishes to make a formal complaint. However, research indicates<sup>15</sup> that not all police officers are aware of this right and therefore it may be reasonable to assume that not all victims enjoy this legal guarantee.

The right to have a "**helper**" or "**aide**" (*segítő*) appears again in the Criminal Procedure 2017, with an interesting addition that is not present in the current legislation. According to Section 60, the helper will not only be able to accompany the injured party but will also be entitled to receive information in the victim's stead. Should this concept become daily practice, with apt helpers, victims might receive more information they can understand, while the pressure on police officers to explain victims' rights in a personalised way could be lifted thus erasing concerns about the victims' right to understand. However, an incompetent aide may have the opposite impact; while

not really helping the victim, s/he might also hinder the effective investigation and prosecution of the crime.

As a general conclusion – the right to understand and be understood, even though duly written into Hungarian legislation, does not appear to be fully practicable. There is little awareness by the police or other authorities to use simple clear language in their written and oral communications. The police, and the victims, are generally unaware of a victim's right to be accompanied by a person of his/her choice, and rarely use this basic right. Therefore, despite the formal transfer of the Directive, it is obvious that this right is not regularly practiced by victims in Hungary.

<sup>13</sup> Interview #1

<sup>14</sup> 2017 Victim Report of the Police

<sup>15</sup> Interview #1

## ARTICLE 4 - RIGHT TO RECEIVE INFORMATION FROM THE FIRST CONTACT WITH THE COMPETENT AUTHORITY

*Member States shall ensure that victims are offered, without unnecessary delay, from their first contact with a competent authority, information about the type of support the victims can obtain and from whom; the procedures for making a formal complaint; how and under what conditions they can obtain protection, access legal advice and legal aid; access to compensation; entitlement to interpretation and translation; special measures if they are resident in another Member State; contact details for communications about their case; available restorative justice services; how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.*

Police officers are obliged to hand over a leaflet of victim support and verbally **inform victims** about the availability of **victim support** organisations<sup>16</sup>. This information should be provided at the first contact, which is crucial, since Hungary adopted an opt-in approach to victim support services (as opposed to opt-out approach where support is automatically offered to them, in this system victims need to actively ask for assistance). Victims unaware of the existing available services will not reach the support organisations, if they do not receive information about them.

Police officers use the same computer system all around the country<sup>17</sup>, which also provides them with templates for each official activity. The template for taking formal complaints contains all the information relevant to victims (victims' procedural rights, information on victim support etc.), and the officer deletes unnecessary or irrelevant information for the individual victim during the hearing.<sup>18</sup> Thus, information is provided to victims in written form printed on the minutes of their formal complaint. Police officers are requested to explain this information to victims.

Victims choosing not to make the report personally will receive the information when they are heard as witness. Again, a template is used for such hearings, containing a detailed, albeit formal and technical description of the rights and duties of the injured party within the criminal procedure.<sup>19</sup>

In addition to information provided through formal complaints and witness summonses, police leaders have a formal duty to ensure the availability of a sufficient number of information leaflets for victims of crime<sup>20</sup>. This internal regulation makes **police leaders responsible** for the enforcement of victims' rights and for the provision of appropriate information to victims (point 8. of the regulation).

Information leaflets are prepared by the Ministry of Justice and the **language** used is easy to understand, it avoids legal or formal wording, as requested by Section 2 of the Decree of the Minister of Justice No. 32/2015. (XI. 2.) on the Detailed Substantive Requirements of the Victims' Rights Prospectus Prepared by the Victim Support Service. According to Section 3 of this Decree, the leaflets should, as a minimum, contain information regarding the following:

- the aims of available support,
- that some support is subject to certain conditions,
- the content of each type of support,
- the victim support services contact information (especially by phone and e-mail),
- the free of charge Victim Support Line (Áldozatsegítő Vonal),
- that tailored information is available.

The printed leaflet is available in Hungarian and in English. Further information for victims can be reached online<sup>21</sup> in Bulgarian, Finnish, Greek, Armenian, Romanian, Ukrainian, Serbian, Croatian, Slovakian, Polish, German and two Roma languages. However, the webpage containing this multi-language information is not on the updated homepage of the Office of Justice, which merged into the Ministry of Justice by the turn of 2016/17, thus providing victims with yet another challenge.

Experts suggest<sup>22</sup> that, despite the responsibility of the police leaders and their apparent commitment to the victims' causes, many police officers are either negligent in providing information to victims, or they simply do not have any leaflets to hand out. Reportedly, there

<sup>16</sup> According to Section 1 Subs (1) of the Decree of the Minister of Home Affairs No. 64/2015. (XII. 12.) on Victim Support Duties of the Police.

<sup>17</sup> ORFK Reg. No. 18/2011. (IX. 23.)

<sup>18</sup> Interview #2

<sup>19</sup> See also in the previous section on Article 3.

<sup>20</sup> According to point 14 of the ORFK Reg. No. 2/2013. (I. 31.) on Victim Support Duties of the Police.

<sup>21</sup> <http://igazsagugyihibatal.gov.hu/aldozatsegites> (bottom right column) (accessed 1/5/2018)

<sup>22</sup> Interview #1

was a dispute between the district offices and the Ministry of Justice as to who was responsible for the printing of the leaflets and thus who would bear the costs, so the printing was never carried out. The **National Crime Prevention Board** addressed the issue, stating that the existing regulations did not allow for information to be provided effectively<sup>23</sup>. Following that, the Office of Justice conducted a study which surveyed XX victims in 2016 and found that 56% of victims get their information on victim support from the police. Only 20% of the victims participating in the survey remembered seeing the leaflet that should have been given to them by the police. 34% of those who did receive a leaflet did not read it. Based on the study, the Office of Justice prepared a **communications protocol for police officers** on how to efficiently provide information to victims. The protocol provides simple example sentences and has been in use since then in police officer training sessions. After the protocol was issued in 2016, training was available to police officers around the country; it is unclear how the information is passed over to newcomers as the training has not been repeated.

Section 74 Subs (1) of the 2017 Criminal Procedure Act orders the court, the prosecutor and the police to inform all participants of the criminal procedure of their rights and duties prior to each procedural action.

It follows from the above that some victims receive general information from the police, but this is the exception, rather than the rule. While there is a general requirement for two types of information to be provided – through templates and information leaflets, neither are generally available to all victims. The former is only handed out to victims who file a formal complaint or those who take the witness-stand in criminal proceedings. The latter should, in theory, be available for everyone, but, in practice, hardly exists due to administrative issues. Consequently, many victims do not receive the information required by Article 4 of the Directive.

## ARTICLE 5 - RIGHTS OF VICTIM WHEN MAKING A COMPLAINT

*Member States shall ensure that victims receive written acknowledgement of their formal complaint. Where they do not understand or speak the language of the competent authority, they should be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance. The acknowledgement should be translated free of charge where the victim doesn't speak the language.*

When making a formal complaint personally, victims receive a copy of the minutes containing the complaint free of charge. If a complaint is made in writing, victims shall receive a copy of the documents proving the complaint was made: this is also **free of charge** since the implementation of the Directive. According to Section 70/B Subs (3) of the Criminal Procedure 1998, those not understanding Hungarian will receive **written acknowledgement** that has to be sent by mail (e.g. someone making a complaint in English will receive this acknowledgement also in English at their home address abroad).

However, this is only applicable to crimes which are prosecuted *ex officio*. Namely, if the police patrol detects a minor crime that is **subject to private prosecution** (for example simple assault), they will not start an *ex officio* investigation. As no criminal procedure starts automatically in such a situation, information by police officers is provided orally (then they can make a report if they wish). According to the research, however<sup>24</sup>, it is assumed that a criminal procedure will automatically start once the police have been called and a patrol sent out: the informal information victims receive from the police at this time rarely registers with them.

Criminal proceedings in Hungary are conducted in Hungarian, yet according to Section 9 Subs (2) of the Criminal Procedure 1998 all those involved in the proceedings (including the victim) may use, both verbally and in writing, their native language, or their regional or minority language or another language spoken (a third common language)<sup>25</sup>. As mentioned above, victims with communication disabilities have the right to be questioned with the assistance of an sign language

<sup>24</sup> Interview #1

<sup>25</sup> The Criminal Procedure 2017 places this right in Section 8, among the general regulations.

23 Point 8.3.3.A of the Action Plan annexed to the National Crime Prevention Strategy 2013-2023

interpreter. Other forms of accessibility for persons with disabilities are, however, questionable, given that Hungarian authorities are not equipped to provide documents in Braille and research failed to indicate other efforts to make information accessible (e.g. easy-to-read, child friendly etc).

According to information provided by ORFK<sup>26</sup>, 5.252 victims made foreign language reports in 2016 and 4.291 in 2017, all were assisted by an interpreter. There was no information available regarding the quality of the interpretation provided to victims.

Based on the above findings, it may be concluded that Article 5 is not fully implemented in Hungary. Specifically, victims will only receive official information regarding their complaint when the crime is prosecuted *ex officio*. This is particularly problematic, given that in such cases not only will the victims be unaware of any support that might have been available, but also prosecution of the crimes will most likely fall under a statute of limitations.

## ARTICLE 6 - RIGHT TO RECEIVE INFORMATION ABOUT THEIR CASE

*Member States shall ensure that victims are notified without unnecessary delay of their right to receive information related to criminal proceedings: any decision not to proceed with or to end an investigation or not to prosecute the offender; the time and place of the trial, and the nature of the charges against the offender; of any final judgement in a trial and of information about the state of the criminal proceedings, in accordance with their role in the criminal justice system; about the reason which led to the above mentioned decisions; notification in case the person remanded in custody, prosecuted or sentenced concerning the victim is released from or has escaped detention.*

In criminal proceedings, victims rarely appear only in their capacity as an injured party, often they are also called as witnesses and, within the same set of proceedings, they may appear in the capacity of a private party with a civil claim. In addition, they can appear in the role of the prosecutor, in cases where prosecution is not undertaken *ex officio* (private prosecutor) and in situations when the public prosecutor renounces the prosecution (substitute prosecutor). The information provided to the victim will depend on these different roles in the proceedings.

The Criminal Procedure 1998 contains a number of regulations stating when a victim, as the injured party, is to be notified of decisions made by the competent authorities conducting the criminal procedure. These include:

- the **rejection** of the denunciation<sup>27</sup>,
- the decision on the **partial dismissal** of the investigation<sup>28</sup>,
- the decision on the **suspension** of the investigation<sup>29</sup>,

<sup>27</sup> Section 174 Subs (4) of the 1998 Criminal Procedure Act

<sup>28</sup> Section 187 Subs (2)

<sup>29</sup> Section 188 Subs (5)

26 Letter from the deputy head of the national police (27/06/2018)

- the decision on **terminating** the investigation<sup>30</sup>,
- the **indictment**<sup>31</sup>,
- the partial dismissal of the indictment<sup>32</sup>,
- the decision on the **postponement** of the indictment<sup>33</sup> - the victim may **appeal** against the decision postponing the indictment,
- the **place and date of trial**<sup>34</sup>,
- the conditions as a subsidiary accuser, and the possibility of obtaining legal aid in order to be represented by a legal aid counsel and exemption from expenses incurred due to his/her financial and employment status (in case **substitute private prosecution** is applicable)<sup>35</sup>,
- the conclusive **decision** (final judgement)<sup>36</sup>.

Such notifications are always sent to the victim in writing. If victims have questions about the notification received, as well as seeking assistance from victim support organisations, they can raise their questions with a counsellor at the **Witness Care Service** of the courts. Victim counsellors give information about the form of testimony and issues related to appearance at court. The involvement of the courts started off as a project, but since the application of the Victims' Rights Directive, it has become part of the court duties, regulated by Section 4 Subs (5) of the Victim Support Act 2005. According to the National Office for the Judiciary<sup>37</sup>, the number of victims serviced through the counsellors is constantly rising, with the registered number of inquiries being 6.000 in 2014, 12.000 in 2015 and 15.000 in 2016<sup>38</sup>.

The current Hungarian criminal procedure does not comply with Article 6 Subs (4) of the Victims' Rights Directive ("wish of victims as to whether or not to receive information shall bind the competent authority"), but Section 51 Subs (3) of the Criminal Procedure 2017 will introduce this right: victims will not only be able to decide not to exercise their rights but will also be able to alter their decision at any time. Hence, in the period from 2012 to July 2017, Hungary was in violation of this provision of the Directive.

<sup>30</sup> Section 190 Subs (5)

<sup>31</sup> Section 219 Subs (6)

<sup>32</sup> Section 220 Subs (2)

<sup>33</sup> Section 225 Subs (5)

<sup>34</sup> Section 279 Subs (1)

<sup>35</sup> Section 229 Subs (3) and Section 312 Sub (1)

<sup>36</sup> Section 262 Subs (1)

<sup>37</sup> <http://birosag.hu/en/media/aktualis/witness-care-and-victim-protection-interview-dr-erika-porkolab> (engaged on 1/5/2018)

<sup>38</sup> In the time of finalisation of the present report, the research team was unable to get an explanation to the increase of victims from the relevant authorities. Hence, the explanation can only remain in the realm of speculation.

The Criminal Procedure 2017 puts into place another legal tool: the **victim impact statement**. According to the new legislative solution, victims will be allowed to make a declaration at any time during the criminal proceedings regarding physical, emotional and financial damages suffered by them because of the crime, and regarding their wish whether or not to have the accused convicted and punished.

Both the current and the new criminal procedures make it possible for the victim (the injured party or the family member exercising his/her rights) to request, in advance, information regarding the **release** or **escape** of the accused from detention, imprisonment, psychiatric institution or juvenile correction centre. According to experts' interviews, victims receive this information on request. However, very few victims actually make the request, as they are made aware of their right to actually do so. Victim support organisations (both state and NGO services) can contact the perpetrator's probation officer and receive information regarding the perpetrator's status after his/her release.

Victims receive information on their rights through the written notifications mentioned above. In addition, victims and the general public can view information on the court webpage<sup>39</sup>, but this is not easy to access and there are no general information leaflets available in other languages.

It follows, from the above analysis, that until July 2017, there were many gaps in the implementation of the victims' right to information. However, with the newly adopted legislation, at least in theory, the situation should improve. Nonetheless, even with these improvements, victims' rights to information does not provide full access to all relevant information to all victims. Namely, in criminal proceedings, only victims who are identified as an injured party and/or witnesses, will receive information about procedural steps, while victims in the broader sense will not. While in the majority of situations this difference will have no practical consequences, there may still be situations where this could be relevant: e.g. in cases of multiple victims, when not all of them press charges and testify in the court (victims of trafficking or some forms of mass victimisation, for example).

It is worrying that making victims aware of their right to request information about the perpetrator is an exception, rather than a rule, as this prevents many victims from being informed in advance about the perpetrator's release or escape.

<sup>39</sup> Information for victims on the judiciary webpage: <https://birosag.hu/uj-eljarasi-kodexekrol-tudni-kell/uj-be/legfontosabb-valtozasokrol-kozerthetoen> (reached 20/6/2018)

## ARTICLE 7 - RIGHT TO INTERPRETATION AND TRANSLATION

*Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings are provided, upon request, with interpretation at least during any interviews or questioning and with translation of information essential to the exercise of their rights in criminal proceedings in accordance with their role. Victims may challenge a decision not to provide interpretation or translation.*

All participants of criminal proceedings (including victims and defendants) are entitled to the right to use their **native language**, both Criminal Procedures 1998 and 2017 confirm as **principle** that no disadvantage may be suffered by anyone who lacks the command of the Hungarian language. If there is any hint of a person not understanding the language properly, the authorities ask them whether they understand Hungarian and whether they wish to continue. Even if they say they are comfortable with the language, but the police officer has concerns, they are obliged to involve an interpreter.<sup>40</sup>

Translation of decisions and other official documents that need to be served is the responsibility of the court, prosecutor or investigating authority that has adopted the decision or issued the official document. This means there is **no differentiation** in this regard between those victims who do understand Hungarian and those who do not: any documents the authorities are required to serve (see the list at Article 6) must also be translated.

Section 78 Subs (1) of the Criminal Procedure 2017 requests the authorities use a translator "*preferably (...) that has sufficient knowledge of legal terminology*". The larger the city and the more common the required language is (i.e. English, German, French, Spanish, Slovak, Rumanian, Serbian etc.) the easier it is to find such interpreters.

Currently, the police have a list of professional translators and they prefer to select someone from this list. Translation is compulsory even when the officer speaks a common language with

the victim, given that proceedings need to be conducted in Hungarian.<sup>41</sup>

There is no special law enforcement training for situations involving interpreters, but in practice, police officers check with the interpreter first whether *s/he* understands the question, before allowing the translation.<sup>42</sup>

During a trial, the victim is usually in the courtroom only for his/her testimony and (unless the judge wishes to ask further questions) is allowed to leave afterwards. The interpreter translating aloud whatever the judge, the victim or any other party is saying whilst the victim presents his/her testimony. After *s/he* has finished, the victim usually leaves as does the interpreter; however, the victim has the right to stay if desired, and in this case the interpreter will stay with the victim and translate quietly, being careful not to disturb the trial.<sup>43</sup>

Whenever a translation is needed, the whole document will be translated, despite Article 7 of the Directive allowing Member States to provide only an oral translation or oral summary of essential documents instead of a written translation. Hungarian law does not use the excuse provided by Article 7 Subs (8) of the Directive either, the authorities are given **no right for discretion**. If the use of the victim's native tongue should cause an unreasonable delay, another language as determined by the victim (or any other person participating in the proceeding) can be used.

Interpretation and translation is free of charge, the costs are pre-paid by the state and shall be borne by the convicted person at the end of the procedure as part of the court costs. If no one is convicted, the costs are paid by the state.

Consequently, the right to interpretation and translation appears to be duly implemented in Hungary. Given that translators come from a pre-approved list, it may be assumed that the quality is appropriate. It is particularly important to emphasise that all documents are translated and that it is possible for victims to follow the entire course of the proceedings in their own language.

40 Interview #2

41 Interview #2

42 Interview #2

43 Interview #4

## ARTICLE 8 - RIGHT TO ACCESS VICTIM SUPPORT SERVICES

*Member States shall ensure that victims have access to confidential victim support services, free of charge, before, during and for an appropriate time after criminal proceedings. Member States shall facilitate the referral of victims, by the competent authority that received the complaint to victim support services. Member States shall take measures to establish specialist support services in addition to, or as an integrated part of, general victim support services. Member States shall ensure that access to any victim support service is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.*



**Figure 1:** Organigram of the State system of victim support in Hungary

Both district and regional offices are run by the Prime Minister's Office (i.e. the ministry of public administration). Policy making, training and supervision is, however, the responsibility of the Ministry of Justice. The Ministry of Justice runs a 24/7 free-of-charge victim support telephone service and has plans to create further victim support centres around the country (so far three have been opened in Budapest, Szombathely and Miskolc).

While most services are available to victims regardless of whether a criminal complaint has been filed, for most of them, filing the complaint when they receive information on the existence of state victim support from the police. There is very little information about support for victims who do not report the crime.

Depending on the population density, districts cover 1 to 6 towns (2 on average) and the surrounding villages, therefore victim support in district offices ought to physically be easy-to-reach by victims. Opening hours are determined by the business hours of the district office (usually 8:00 to 16:00), but a 24/7 free-of-charge Victim Support Line (Áldozatsegítő Vonal 06 80 225 225) is also available and state victim support accepts all forms of communication, including e-mails.

Public knowledge of the availability of victim support services is quite low. According to official figures published by the Ministry of Interior<sup>45</sup> the total number of natural person victims known by the authorities in 2017 was 140.352, whereas state victim support registered only 16.421 client contacts in the same period (3.984 personal assistance and 12.437 telephone contacts of the Victim Support Line). That means less than 3 % of registered victims actually received in person support from the state victim support service.<sup>46</sup> In practice, 197 local offices served 3.984 victims in total, or an average of 20 clients per office per year.

In Hungary, one can find the state victim support service, state specialised services and several NGOs: one generic victim support NGO (*Fehér Gyűrű Közhasznú Egyesület*, founding member of Victim Support Europe) as well as numerous local or specialised victim support NGOs. Co-operation and cross-referrals exist on an individual basis between the above, excluding the state services, which are bound by law to follow certain referral and notification procedures.

**State victim support** currently functions within a three-level institutional framework. At the basic level, there are 197 local (district<sup>44</sup>) offices within the 20 regional government offices. Victim support officers are usually assigned to the guardianship units within these district offices.

<sup>44</sup> The Hungarian járás (district) is the equivalent of Local Administrative Unit 1 (LAU1) of the EU.

<sup>45</sup> <https://bsr.bm.hu/SitePages/DokumentumtarLista.aspx?libraryName=SertettiAdatok> (accessed 2/5/2018)

<sup>46</sup> Interview #3

However, the reasons behind the low number of supported victims cannot be the lack of availability of services. Many other factors should be taken into account, two of which appear to be crucial: the failings of the state victim support to provide satisfactory services and the failure of the police to refer victims to victim support.

The experience of practitioners indicates that most victim support workers assume themselves to be regular office clerks. In their daily work, they see themselves as administrators instead of being employed to actively support victims. Their attitude and approach are administration-based rather than victim-focused, and many of them lack appropriate qualifications<sup>47</sup>. The victim support staff are expected to multi-task (most of them are required to additionally or mainly provide legal aid services to all users of social services) and are not motivated by their superiors to provide support to an increasing number of victims. Indeed there appears to be little incentive for victim support staff to aim to service a higher number of victims in the given circumstances.<sup>48</sup>

Aware of the problems, and as a part of larger administrative government reforms<sup>49</sup>, the Ministry of Justice recently undertook changes, with the aim to build the capacities of district victim support offices.<sup>50</sup> Victim support - among many other state services - was formerly available only in the county seats so part of the reform was aimed at bringing state services closer to citizens.

Despite the best intentions, without an independent victim support organisation and without sufficient victim support specialists, as the numbers above indicate, the whole system suffered an enormous drop in client numbers compared to previous years<sup>51</sup> (prior to 2017, victim support still enjoyed some minor professional independence within the regional government offices). Assigning victim support duties to a staff with almost exclusively legal educational background resulted in a drop of service quality as well, since the number of social workers and psychologists (previously available on the county level) became insufficient to cover all 197 districts. As an offset to these shortcomings, the Legal Academy of Justice Services<sup>52</sup> (within the Ministry of Justice) is increasingly providing training to the staff of district offices<sup>53</sup>.

As a result of the above, the common opinion among police officers is that victim support is currently dysfunctional, caused by constant changes and a lack of professionals at the state victim support, while NGO victim support is not available everywhere due to limited funding. This

<sup>47</sup> According to Govt. Decree no. 29/2012. (III. 7.), minimum requirement for victim support desk officers is either a degree in public services, law, social sciences, theology, pedagogy, andragogy, psychology, cultural management or any higher vocational education with professional qualification in social issues, addictology, child and youth protection, mental health. They are obliged to pass an exam on victim support within two years, which seems an insufficient condition.

<sup>48</sup> Interview #3

<sup>49</sup> Which resulted in the organigram presented above.

<sup>50</sup> Interview #3

<sup>51</sup> State victim support was reached personally by 9,4% of all registered victims in 2009, 7,3% in 2012 and less than 3% in 2017.

Source: annual reports of Victim Support Service and interview #3

<sup>52</sup> <http://jogakademia.gov.hu/>

<sup>53</sup> Public servants are obliged to attend trainings and thus collect credit points. However, it is up to each civil servant which kind of trainings they attend, which is not necessarily a victim support training, even for a victim support desk officer.

is not helped by the fact that the police often do not get any information leaflets from state victim support, therefore, they prepare their own to have at least something to hand over to victims.

Hungary is unique in that, in addition to the state-wide governmental victim support services, it also has a nation-wide generalist NGO – the Hungarian White Circle (Fehér Gyűrű). Before the government undertook the provision of victim support services in response to the Victims' Rights Directive, Fehér Gyűrű was the only generalist victim service provider in the country.

Fehér Gyűrű, was founded in 1989, with financial and professional support from the German victim support organisation, Weisser Ring. Fehér Gyűrű was not only the first victim support organisation in the country, but it still is the only generic victim support NGO in Hungary. The association provides material, psychical, legal and other means of support and assistance to individual victims of crime and also represents victims' interests in general (through events, advocacy, lobbying and projects). The association has 19 offices nationwide (with special focus on tourist locations e.g. Lake Balaton). The head office building is owned by the association, all others are located in community premises, police stations and with other partners (e.g. the Red Cross, law offices). The services of Fehér Gyűrű are free of charge, neither membership nor other criteria are necessary other than being victim of a crime. The staff operates in more than a dozen offices across Hungary and while the organisation employs professional staff, volunteers are heavily involved in the provision of services to victims of crimes. In the past, Fehér Gyűrű has received funds for their operations through government grants. However, more recently, with the push towards governmental services, funding has become more difficult to obtain. Despite these difficulties and scarce resources, Fehér Gyűrű supported, through face-to-face contact in 15 offices, 4.564 clients in 2017 – 20% more than the state victim support in their 197 offices<sup>54</sup>.

**Specialised state victim support services** are part of the overall social services system. The national helpline for domestic violence and trafficking victims is run by the Ministry of Human Capacities, which also finances mothers' homes, foster care, shelters and half-way houses. State- or municipally-employed health advisors (*védőnő*)<sup>55</sup> and family services are in contact with all families with difficulties – mostly this population is more at risk of victimisation.

Since 2013, it has become a priority of the National Office for the Judiciary (*Országos Bírósági Hivatal*) to engage in victims' rights issues. Witnesses (including victims) receiving summons from the court, have the option to speak to a qualified court staff member, the witness-counsellor. Victims are offered support on an opt-in basis – hence, they are expected to actively reach out for support, after having been informed of its availability.

<sup>54</sup> As mentioned above, in 2017, state services supported in direct contact a total of 3.984 victims.

<sup>55</sup> These advisors provide support and advice to young mothers in the first week following the delivery of a new baby.

In addition to Fehér Gyűrű, as the only non-governmental provider of generalist victim support, numerous **religious and citizens' institutions, charities, foundations and associations** offer targeted and integrated assistance to victims of crime on local or regional levels: mothers' homes, therapy groups and victim helplines. All are specialised in issues such as sex crimes, trafficking victims, crimes against women, children, etc.

**Co-operation** between the various generalist and specialised services is encouraged and, whenever child victims are involved, is obligatory. To solve data protection issues, Section 135 Subs (7) of the Child Protection Act 1997 authorises the guardianship offices and child welfare services to forward personal and sensitive data of child victims (related to the crime suffered) to the state victim support service.

In order to prevent, or end the endangerment of children, Section 17 of the Child Protection Act 1997 created a **notification system**, of which all victim support organisations are members. Whenever any participant in the notification system (health providers, public schools, police, prosecutors, courts, probation services, state victim support services, asylum services, NGOs, churches, foundations, labour services, correctional facilities, children's rights services, child protection and guardianship offices) detects the endangerment of any child, it is obliged (depending on the likely seriousness of the case) either to notify child welfare services or to initiate official administrative procedures. Failure to do so is subject to disciplinary action.

## ARTICLE 9 – SUPPORT FROM VICTIM SUPPORT SERVICES

*Victim support services shall, as a minimum, provide: a) information, advice and support relevant to the rights of victims; b) information about or direct referral to any relevant specialist support services in place; c) emotional and psychological support; d) advice relating to financial and practical issues arising from the crimes; e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall develop and provide: a) shelters or any other appropriate interim accommodation for victims; b) targeted and integrated support for victims with specific needs such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships.*

The referential service provider on the field of victim support in Hungary is the state. State victim support services are shown on the chart below.



**Figure 2:** Victim Support Services in Hungary, according to Act CXXXV. of 2005

All aid is provided as a community service by the state victim support services, free of charge.

The services indicated by the dotted line are provided by specialist services (shelter<sup>56</sup> for trafficking victims by a state-funded NGO, witness care by the court system respectively), and compensation is provided solely by the state (through the county government offices). The rest of the services indicated in the above figure is that which the state victim support services provide. The state-run victim support services are herewith described in more detail. It should be noted that the description is also valid for what the non-state run generic service, Fehér Gyűrű, offers with just a couple of important differences: only the state-run services can issue certificates confirming the official status of the victim, but non-governmental services come without the administrative formalities that apply to the state services. Needless to say, the non-governmental services employ fewer staff and have smaller budgets, but have comparatively better results, given those confines and limitations.<sup>57</sup>

The state compensation system was introduced in response to Council Directive 2004/80/EC. Immediate financial aid and the victim status certificate are additional services, which are not required by the 2012 EU Directive. Initiating a formal criminal procedure is required for victims in order to be given access to these elements of victim services, while all other support is provided regardless of the criminal complaint.

### **Facilitating victims' interests (practical support)**

This category includes all non-administrative services by which victim support services aim to facilitate the enforcement of the victim's fundamental rights.

Information provided by victim support services reflects the victim's need for information and it covers the rights and obligations of the victim in criminal proceedings, the forms of support, benefits, allowances and opportunities available, the contact details of state, local government, NGO and church organizations involved in helping victims of crime and pointers on how to avoid secondary victimisation. Providing information is the only form of assistance that is available around the clock, due to the free-of-charge Victim Support Line (06 80 225 225)<sup>58</sup>. It is important to note, however, that the Victim Support Line is not meant to be an emergency or hot-line number through which victims can receive practical or emotional support, when needed. Rather, its main purpose is to provide victims with information on where to get further support, if needed.

Providing practical support ensures the victim has access to health care, social security and social benefits, and includes assisting the victim replace stolen (official) documents, contacting any

state or non-governmental service providers, insurance companies and offering psychological assistance, where an expert will be available. There is much flexibility within this model and it covers (at least theoretically) Article 9 of the EU Directive.

### **Instant financial support**

Unlike the previous category, this is a form of support with less flexibility due to its financial implications. State victim support can pay an amount up to around 360€ (113.164 Ft) for victims if they have, as a direct consequence of the crime suffered, extraordinary expenses they are unable to cover. This type of support is available to all victims, who demonstrate the need for it, without any further eligibility criteria such as income level etc. This is not compensation, however, and can only be used to cover the cost of the victim's basic needs in housing, clothing, nutrition, travel, medical and funeral expenses. All victims may apply for this emergency aid within 5 days of the crime being committed. The reason for such a short application deadline is because of the (challengeable) legal presumption that after 5 days the emergency ends.

### **Victim status certificate**

This certificate is an official document proving someone is a victim of crime. This certificate is necessary for victims to be able to take advantage of any service or benefit requiring victim status. It can only be issued by the state victim support services and only to victims who report a crime. The certificate is valid only during the criminal proceedings.

Consequently, even while Hungary appears to have quite elaborate victim support services, with a total of 197 nation-wide state- and 19 NGO-run victim support offices providing generic victim support, as well as a number of specialist support providers, the situation is far from encouraging.

Support provided through the state system does not ensure appropriate care is available because of the deficiency in well qualified staff, dedicated to victim support and because the Hungarian national victim support line appears to provide only a limited service to victims of crime. As noted above, only 141.821 natural persons were registered as injured parties in 2017, indicating a reporting rate of 10% and with only 3% of such victims reaching out for support. At the same time, the number of victims receiving support has been dropping rapidly since the recent reforms. While the NGO system is financed in a non-transparent manner, the pressure – administrative, financial and, importantly, political – on the civil society sector is, in general, increasing.

<sup>56</sup> Once identified as trafficked victim, a person is entitled to go to a shelter for 90 days (extendable with additional 90) for recovering, regardless any ongoing criminal procedure.

<sup>57</sup> See the figures in footnote No 48.

<sup>58</sup> Available for calls from within Hungary only.

## ARTICLE 10 - RIGHT TO BE HEARD

*Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.*

According to Section 51 Subs (2) a) and b) of the Criminal Procedure 1998, the injured party shall be entitled **to be present** at the legal proceedings as well as to **make motions and objections** at any stage of the procedure. The Criminal Procedure 2017 keeps the same rights and extends victim the right to **ask questions** whenever s/he is present, to make **oral arguments** before the court and to complete a **victim impact statement**.

In the Hungarian legal system, victims are obliged to **give testimony**. There are some exceptions (grounds for refusal) to this general rule, especially if someone is the relative of the defendant, but when the victim's testimony is necessary, the Criminal Procedure 1998 expects authorities to give priority to it.

Testifying is not the only obligation, victims are expected to submit themselves to **professional examination or treatment** (if ordered), unless it involves an operation, or an examination procedure qualifying as such. The victim shall facilitate the performance of the professional examination in other ways (e.g. by supplying information) as well. Victims cannot refuse the examination. However, should it prove to have been unnecessary, victims retain the right to sue for the violation of their personality rights.

Victims are obliged to submit to the **inspection**, reconstruction and presentation for identification, and make the object in their possession available for the purpose of inspection, reconstruction and presentation for identification. Failing to do so, the victim might receive disciplinary penalty.

There are special regulations in place for **child victims**. Children under the age of 14 shall only be heard as witness if the evidence expected to be provided by their testimony cannot be substituted by any other means. Children from 14 to 18 years of age can usually be heard. Whenever a child's testimony is needed, s/he is summoned via their parents (or other guardian), and this person is entitled to be present during the hearing. Polygraph tests are not to be used for children, not even with their parents' consent.

Section 207 Subs (4) of the Criminal Procedure 1998 contains an important rule (in order to avoid secondary victimisation of children) regarding children under the age of 14: the public prosecutor, the child's parent or legal representative, may request that such children be **heard by an investigating judge** prior to the trial (even during the investigating phase). Children who testify this way will not be summoned to the trial. Section 89 Subs (5) of the Criminal Procedure 2017 still provides children under 14 with this right, not only if the hearing is in front of an investigating judge, but also if the police or the prosecutor carry out the hearing while making an audio-visual recording. Investigating judges are encouraged (but not obliged) to conduct such hearings in child-friendly chambers, when available. Despite such opportunities, in practice, investigating judges are reluctant to leave the court buildings to use the police premises.<sup>59</sup> However, many court buildings are equipped with child-friendly hearing rooms and investigating judges do use these.<sup>60</sup> According to interview #4 investigating judges make voice recordings in .mp3 format and attach the recording to the case file and use those during trial.

If children need to participate in the trial, it is possible to have them heard **via the live link** of a closed-circuit broadcasting network. In such cases, direct links between the trial venue and the child's location will be provided by a device simultaneously transmitting oral and visual communication.

It would therefore appear that the implementation of this provision of the Directive, in Hungary, is problematic. Instead of the right to be heard, victims in practice, have an obligation to testify unless there is a danger of self-incrimination. This may be a potential factor as to why victims are reluctant to report crime, as they know that they will have to attend court as a witness.

As far as children are concerned, using the child's age alone as a basis for different approaches to testifying does not correspond to the spirit of the directive, which states approaches should be based on the 'child's age and maturity'. Any reluctance by investigating judges to adjust their procedures to meet the needs of the child is alarming, given that the best interest of the child must be a core value in criminal proceedings involving child victims.

<sup>59</sup> Interview #2

<sup>60</sup> Interview #4

## ARTICLE 11 – RIGHTS IN THE EVENT OF A DECISION NOT TO PROSECUTE

*Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to review of a decision not to prosecute. Where the role of the victim will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. Member States also need to ensure that victims are notified of their right to receive, and that they receive sufficient information to decide whether to request a review.*

In Hungary, depending on its seriousness, crime is prosecuted by either public or private prosecutors. For those crimes that are prosecuted ex officio - there is **no differentiation** between victims based on the seriousness of a crime. Therefore, the rights in the event of a decision not to prosecute are the same for all victims of crime.

Generally, **judicial remedy** is available against the decisions of the court, the prosecutor and the investigating authority, as well as against the measures taken by the prosecutor and the investigating authority. Complaints can also be introduced when the **measure taken or omitted** by the prosecutor or the investigating authority directly violates the rights or interest of an individual.

Victims in their capacity of injured parties are entitled to legal remedy, in cases specified in the Criminal Procedure. Whenever the authorities come to a decision, they need to specify whether it is subject to legal remedy, as well as the deadline and the investigating authority, prosecutor's office or court at which it must be filed.

The remedy is a **complaint** which can be submitted **against any decision** of the prosecutor or the investigating authority. The complaint needs to be introduced within 8 days, by those affected directly by the dispositions in the decision. Complaints have no suspensive effect, but the issuing authority needs to either grant it within 3 days, or forward it for decision to the appellate court. The complaint needs to be decided upon within 15 days or 30 days – depending on the type of the underlying decision.

A victim may file a complaint **against the decision rejecting the criminal complaint** and request an order for the investigation. If the prosecutor terminated the investigation, the victim may file a complaint in order to resume the proceeding. Based on the complaint, the initial decision to drop the criminal complaint can **either** be **repealed**, subject to which the prosecution will resume the investigation or to press charges, **or reject** the complaint as unfounded. When the complaint is rejected as unfounded, the victim may act as a **substitute private prosecutor**.

A victim may stand as a substitute private prosecutor within 60 days of the communication of the decision concerning the rejection of the complaint.

Victims shall be informed<sup>61</sup> of their rights and obligations in the role of subsidiary prosecutor, and about access to legal aid as well as the conditions of exemption from payment of the court fees.<sup>62</sup>

The prosecutor may decide not to prosecute a criminal offence if the same perpetrator is being indicted for the commission of another criminal offence of greater gravity.<sup>63</sup> In the decision, the prosecutor informs the victims of their right to seek compensation through civil proceedings, and that a substitute private prosecution may be lodged in respect of the act, which has been **partially dropped from the indictment**.

In the cases of crimes punishable by up to 3 years' imprisonment<sup>64</sup>, the prosecutor may decide to **postpone the indictment** for up to two years, if this is likely to have a positive impact on the future conduct of the suspect. The victim may appeal to the prosecutor.

The prosecutor has the discretion to drop the charges or withdraw themselves(?) from the prosecution<sup>65</sup>. When the victim takes over the prosecution, s/he is given the full file from the public prosecutor. Confidential documents handled separately from the prosecutor's file may not be disclosed to the substitute private accuser.

<sup>61</sup> The information is provided in writing in the decision concerning the rejection of the complaint.

<sup>62</sup> See Article 13 – Right to legal aid.

<sup>63</sup> The less 'gravity' of a crime is relative, it means it is less serious compared to another crime also examined within the same procedure and would not make any difference by the end, even if convicted. As a result, the court may concentrate on the more serious issues. On the other hand, however, victims might feel their case is neglected (this is the reason they are offered the option to step up as substitute private prosecutor. See also in: Kiss, A. – Mészáros, Á.: A nyomozások időszertűsége, a nyomozás gyorsítása (Timeliness and acceleration of investigations) p. 56 (available at: [http://www.bm-tt.hu/assets/letolt/rendtudtar/be\\_gyorsitas\\_kutjel\\_meszaros\\_kiss\\_2011%20doc.pdf](http://www.bm-tt.hu/assets/letolt/rendtudtar/be_gyorsitas_kutjel_meszaros_kiss_2011%20doc.pdf))

<sup>64</sup> For example base case of dangerous driving, theft etc. Although base cases of domestic violence may also fall within this category, the condition 'if this is likely to have a positive impact on the future conduct of the suspect' suggests there is but theoretical chance for perpetrators of the named crime to have their indictment postponed. In practice postponement is mostly used in minor drug abuse cases (FÍT Bf.158/2007/11., FB B.628/2005/105., FB Bf.8418/2007/7.).

<sup>65</sup> The different decisions depend on the origin of prosecution. If at any point, the prosecutor decided to take over the prosecution from the subsidiary private prosecutor, they cannot drop the charges, but just withdraw from the prosecution.

Victims can file lodge an **appeal against the verdict** of the court of first instance only if they acted either as substitute private accuser or as private party (in case of the latter, only against a disposition adjudicating a civil claim in its merit).

It would appear that, in Hungary, victims can fully access their right to question the decision not to prosecute and to, moreover, take over the prosecution in all cases where the public prosecutor has decided not to do so. Victims can also request to legal aid and to be relieved of the court tax duty, when it is so justified. Unfortunately, authorities do not collect data on the frequency and success rate of victims' complaints, so the victims' success rate in acting as substitute prosecutors remains unknown.

## ARTICLE 12 - RIGHT TO SAFEGUARDS IN THE CONTEXT OF RESTORATIVE JUSTICE SERVICES

*Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Member States shall facilitate the referral of cases, as appropriate to restorative justice services.*

Victim-offender mediation was introduced to the Hungarian legal system in 2007 and has been successfully used ever since, with a growing number of successful outcomes.<sup>66</sup>

The mediation process is conducted during the criminal proceedings for crimes against person, traffic crimes and crimes against property, if punishable by not more than 5 years of imprisonment. Mediation may be initiated, on the motion of either the accused or the victim and can proceed with the informed consent from both. The aim of the mediation process, within the Hungarian legislation, is to facilitate the **reparation** of the consequences of the crime and to encourage the future law-abiding behaviour of the accused. During the mediation process an agreement – establishing the **active regret** of the defendant – is hoped to be reached between the perpetrator and the victim.

Before referring the procedure to mediation, the court and the prosecutor may request an **opinion from the probation officer**, which focuses mostly on the perpetrator's situation and the circumstances of the crime. In order to examine the conditions of the mediatory process the prosecutor will hear the accused and the victim, and also the probation officer if necessary.

According to Section 7 Subs (1) of the Mediation Act 2006, the victim and the defendant are **equal parties** within the mediation process, they can withdraw their consent at any time and they must reach an agreement voluntarily.

To prepare the parties for mediation and what might happen, the mediator will provide **information** on the purpose, the legal consequences, the rights and duties of the parties. This information is

<sup>66</sup> 1529 cases indicated during investigative phase in 2007, reaching 5953 by 2012. Source: Serfőző, M. Büntetőjogi mediáció: évente mintegy 6000 esetben választjuk available at: <https://jogaszvilag.hu/napi/buntetojogi-mediacio-evente-mintegy-6000-esetben-valasztjuk/>

given in writing, in the letter inviting them to the first meeting. By the start of the first meeting, the mediator will ascertain whether the parties have understood the written information, and will provide a more detailed explanation if necessary.

The eligibility criteria (mediation is available only in less severe cases) serve as a **general protective measure**. To further protect victims, personal data (including names and addresses) is **concealed** from the defendant if the court, the prosecutor or the investigating authority has ordered the data to be treated as confidential and kept separate from the files. Another protective measure is the option for the mediator to hear the victim and the defendant separately. Yet – if an agreement is reached – they both must be present when signing the agreement.

An agreement is reached when both parties reach a common point of view on how the harm caused by the offence can be recovered or otherwise restored. The **agreement will** obey the law, be reasonable and cannot be contrary to good manners.

## ARTICLE 13 - RIGHT TO LEGAL AID

*Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings.*

Legal representation during any criminal procedure is a right all victims are entitled to. If the victim acts as substitute private prosecutor, having legal representation is obligatory, unless the victim is a member of the bar.

The **Legal Aid Service** authorizes a legal aid counsel to represent victims, private prosecutors, private parties and other interested parties if the conditions set forth by the Act LXXX of 2003 on Legal Aid (Legal Aid Act 2003) have been met. If the court, the prosecutor or the investigating authority learns that the conditions are met for authorising a legal aid counsel for any of the parties mentioned above, they must inform the party in question that a legal aid application can be made.

The Legal Aid Service is a public service with **shared staff and structure** as the state victim support: the same staff act as victim support and legal aid clerks. Although this might sound practical (victims can access both service at the same time), the different approaches needed by the different tasks cause professional conflicts (and can be exhausting, increasing the danger of burn-out) and time management problems (the more clients someone has the less time there is to care).

Providing legal aid is subject to **a means test**<sup>67</sup>. The deadline within litigation or court session to apply for legal aid is the last day of court trial.

In addition to legal aid, which is limited in its scope to providing advice and information only, eligible victims can also request to be granted legal support in the proceedings by an attorney. This service can be provided free of charge or at a reduced rate, with postponed payment. Once the request is granted, victims are advised to refer to the **list of attorneys** contracted by the Ministry of Justice<sup>68</sup>; victims also get a printed copy when receiving the formal decision of their eligibility.

<sup>67</sup> The income level set for eligibility of victims is relatively high (226.292 Ft per member of the household, whereas minimum wage is 138.000 Ft per month in Hungary). According to the Central Bureau for Statistics, the net average wage in Hungary was 210.318 Ft (approx. €650) in the first quarter of 2018. This means most of the population is eligible for this service, since the eligibility level is higher than the average wage and it is calculated per member of the household.[https://www.nav.gov.hu/nav/ado/jarulek/Minimalber\\_garantalt\\_berminimum.html](https://www.nav.gov.hu/nav/ado/jarulek/Minimalber_garantalt_berminimum.html) (accessed 13/6/2018)

<sup>68</sup> <https://szakrendszer.im.gov.hu/nevjegyzek/> (accessed 8/6/2018)

The State provides legal services free of charge for victims of terrorism and for any victim using the state victim support service who meets the means test.

Once a positive decision has been received, the victim might choose an attorney from the list and make an appointment with him/her. If none of the available attorneys take the case, the victim can ask the legal aid service to assign one.

In practice, the system appears to work quite well, as victims are free to choose their own attorney, who is paid directly by the state. There is a concern, however, that access to the service is given only to victims who are officially registered by the state victim support, hence legal aid has been given to a shrinking number of victims in recent years.

## ARTICLE 14 - RIGHT TO REIMBURSEMENT OF EXPENSES

*Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system.*

Expenses incurred by victims and their legal representatives are considered as **costs of the criminal proceedings**. If the investigation or the trial has been terminated, the cost of criminal proceedings will be borne by the state. If the accused is found responsible, the court will order him/her to pay the cost of the trial.

Until the proceedings are terminated, costs must be prepaid by the victims, except for the costs incurred in connection with the **appearance as a witness**. Such costs are reimbursed either immediately or later via post transfer. Victims are asked at the end of their hearing what expenses they had in connection with appearing and they immediately declare these costs (e.g. if they went by car to the police station, the police will calculate the cost based on the car type and the distance travelled from home).

The court will order the accused to pay the out-of-pocket expenses of the **private party**<sup>69</sup> and its representative, as well as the representative's fee, if the civil claim pursued by the private party is successful. In the case of a partial success in a civil claim, the accused will be ordered to pay the proportionate part of cost. In other cases, the costs will be borne by the private party.

If victims wish to actively participate in the criminal proceedings and execute their rights, they must have access to all related documents. Although this right is provided to victims, until 1 July 2018 they had to pay a fee for any copies<sup>70</sup>, which limited their rights and could have been seen to be in violation of Article 14.

<sup>69</sup> The private party is the victim enforcing a civil claim in criminal proceedings.

<sup>70</sup> 100 Ft/page which is about 30 eurocent.

## ARTICLE 15 - RIGHT TO THE RETURN OF PROPERTY

*Member States shall ensure that recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings.*

The court, the prosecutor, and the investigating authority will order the seizure of any item that can serve as evidence, even if it belongs to the victim. Any property seized will be held at the court; if there are justifiable reasons for the property not to be held at the court, an alternative safe-place will be arranged. Deposited items are kept safe and secure in the evidence room.

Seizure shall be terminated by the court, the prosecutor or the investigating authority, if the items are no longer relevant to the procedure. It will also be terminated if the investigation itself has been terminated, or if the maximum holding period has expired without extension. Upon terminating seizure, the property shall be **returned** to the person who can authentically verify having been the owner of the property seized at the time of the perpetration of the criminal offence. Private property items are returned in the same condition as they were in when seized.

Depending on the court decision, the property seized from the defendant may become state property, if the identity of the owner cannot be established beyond doubt. Late claimants may demand the property or the amount realised on the sale thereof. Such claims will be decided by a competent legal court under the Code of Civil Procedure.

Upon the termination of seizure, if the property cannot be returned in kind, the amount realised on its preliminary sale, less handling and storage expenses but including the prevailing statutory interest rate up to the day of the refund payment.

In case of blackmail, fraud or usury, if the offense was committed related to a real estate the accused is living in, but prior to the offence the victim did, the victim can ask for emptying and occupying the property as an **interim measure**. This means that the court may order the accused to leave his/her home and give it back to the victim, if the real estate belonged to the victim and was taken away by blackmail, fraud or usury. This can be done before convicting the perpetrator, as an interim measure, without violating presumption of innocence.

## ARTICLE 16 - RIGHT TO DECISION ON COMPENSATION FROM THE OFFENDER IN THE COURSE OF CRIMINAL PROCEEDINGS

*Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.*

Victims might introduce a compensation claim in the capacity of a private party in criminal proceedings. The failure to do so, however, shall not preclude the possibility of pursuing a civil claim by other legal means.

Inasmuch as possible, the criminal court will settle the civil claim by merit; either accepting or rejecting it. However, the court might refer the decision on such claims to other legal means (i.e. ordinary civil procedure): if the hearing would considerably delay the trial, if the accused is acquitted, or if the adjudication of the motion on its merits in criminal proceedings is precluded due to other conditions. Such decisions cannot be challenged.<sup>71</sup>

Representation by an attorney in the compensation proceedings is not obligatory, yet strongly advised, for the procedure might be complicated for non-lawyers.

In cases where the criminal liability of the accused is obvious, it is in the interest of the perpetrator to cooperate with the victim and pay compensation, because it is a strong mitigating circumstance.

There is a relationship between state compensation and compensation from the perpetrator or from another source (e.g. insurance): according to Section 15 Subs (1) c) of the Victim Support Act 2005, victims shall refund the amount of state compensation within 3 years following the date of the decision on the merits of their application for support was finalised if the loss or damage was fully or partly compensated from other sources, however, the victim's refund obligation shall not exceed the amount of such compensation.

<sup>71</sup> [https://e-justice.europa.eu/content\\_claiming\\_damages\\_from\\_the\\_offender-494-hu-hu.do?member=1](https://e-justice.europa.eu/content_claiming_damages_from_the_offender-494-hu-hu.do?member=1) (accessed 20/6/2018 – English translation has not yet been available at this point)

## ARTICLE 17 – RIGHTS OF VICTIMS RESIDENT IN ANOTHER MEMBER STATE

*Member States shall ensure that authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed. The authorities of the Member State where the criminal offence was committed shall be in a position:  
a) to take a statement immediately after the complaint is made to the competent authority; b) to have recourse to video conferencing and telephone conference calls for the purpose of hearing victims who are resident abroad.*

*Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.*

*Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.*

Interviews are usually conducted in person, orally; the court, the prosecutor or the investigating authority may permit the witness (upon request) to submit a **written testimony** following, or instead of, oral questioning.

Witnesses (including victims) must appear in court when summoned. However, victims residing abroad can request that **previously provided testimony** is read out at court.

The presiding judge may require cross-examination of witnesses (including the victim) via a live link **closed-circuit broadcasting network**. Such mobile technology is available for all courts; however, it is not used.<sup>73</sup> Currently, necessary equipment is being installed in all police stations, which should make such broadcasting easier.<sup>74</sup>

A separate act regulates criminal co-operation at EU-level, namely Act CLXXX of 2012 on Cooperation in Criminal Matters with the Member States of the European Union (Criminal Cooperation Act 2012). According to Section 107/A of the Criminal Cooperation Act 2012, if a criminal complaint is made in Hungary regarding a crime committed in another Member State and the Hungarian authorities have no jurisdiction over the crime, the prosecutor shall immediately and directly forward the report to the competent authority of the Member State having jurisdiction and inform the victim thereof.

If the available information is insufficient to determine which authority is competent in the country where the crime was committed, shall be acquired through the European Judicial Network contact points.

The European Judicial Network functions in both directions, thus Hungarian authorities must start an investigation if they receive information on a crime that happened within their jurisdiction, regardless that the information came via the Network, from another agency or from a victim from abroad directly.

It is a general rule to give **priority** to interviewing the victim in a manner that will ensure that further questioning is unnecessary. This rule applies regardless of the victim's residence or nationality: in Hungary according to research, this is indeed current practice.<sup>72</sup>

<sup>72</sup> Interview #2

<sup>73</sup> Interview #4  
<sup>74</sup> Interview #2

## ARTICLE 18 - RIGHT TO PROTECTION

*Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.*

Section 60 of the Criminal Procedure 1998 requires authorities to respect the dignity of the human being, the personal right of the concerned parties, the integrity of deceased persons and to guarantee that private data will not needlessly become public.

- As the law considers most victims to also be witnesses, there are no specific victim protection regulations in Criminal Procedure 1998, only witness protection measures: listed from the softest instruments to the most serious as follows:
- **confidential treatment** of personal data (personal data belonging to a witness may only be seen by the court officials, the prosecutor and the investigating authority, upon request);
- declaring the witness **specially protected** (only possible if the identity, location, and intention to be heard by the prosecutor or the investigating authority is not known by the accused and the defence counsel);
- **personal protection** (available if someone is threatened, might include family members of the victim too);
- participation in the **witness protection program**<sup>75</sup> (this might include physical protection for the victim by, e.g. having police officers present at the victim's residence).

In specific situations, victims are protected by rights and physical means:

- If a confrontation<sup>76</sup> is ordered, victims have the right to refuse to participate, if they are afraid of the other person.
- In severe cases, when the accused is in custody, the authorities use handcuffs, fetters and lunges to prevent any aggression.

Various forms of protection measures and tools, available to law enforcement officials and the judiciary, can safeguard the victims' physical and psychological integrity. Hungarian law contains regulations on restraining orders for use in cases of domestic violence; there are three levels, depending on which authority gives the order:

- **provisional precautionary restraining order**: issued by the police in **domestic violence** cases. It can be issued immediately, and orders the perpetrator to leave the victim's home and stay away from the victim for **72 hours**. The perpetrator is prohibited from directly or indirectly approaching or communicating with the victim until the order becomes void.
- **precautionary restraining order**: issued in domestic violence cases by the court, upon the order of the police (which is obligatory if they issued a provisional order) or upon the victim's request. If ordered, it will prohibit the perpetrator from approaching the victim for up to **60 days**.
- **restraining order**: the "ordinary" restraining order is considered a coercive measure (together with custody, preliminary arrest, prohibition of leaving residence, house arrest, temporary involuntary treatment in a mental institution, bail et al.). The defendant with the restraining order will follow the rules set by the court. These orders can include: a requirement to leave the victim's residence and stay away for a time set by the court, to refrain from approaching the victim and to stay away from his/her workplace, home, educational institution, health institution or the place of worship that the victim regularly frequents, for the period of time set by the court. In addition, the perpetrator will be required to avoid direct or indirect contact with the victim. The order might be binding from **10 to 60 days** and can be repeated. If the restraining order is not observed, the perpetrator may be detained.

<sup>75</sup> A detailed description is available at <http://www.select.org/doc/Hungary.pdf>

<sup>76</sup> It means the court or the investigating authority tries to resolve the dispute on the facts or circumstances of the case by way of confrontation, where those confronted shall present their statement orally and may be permitted to ask questions from one another.

Victim support organisations (both state and NGO services) can contact the probation officer of the released perpetrator and receive information from him/her. Before releasing a perpetrator, the probation services are obliged to review future living conditions, but the victim is only involved in this process if the perpetrator is planning to move in to the victim's home. Based on feedback from some victims, there is a need for a preliminary restraining order, yet that is not possible under current legislation (and would arguably violate the rights of the released person).

## ARTICLE 19 - RIGHT TO AVOID CONTACT BETWEEN VICTIM AND OFFENDER

- (1) *Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.*
- (2) *Member States shall ensure that new court premises have separate waiting areas for victims.*

The Criminal Procedure 1998 contains a **general rule** (in Section 62/B), that requires the court, the prosecutor and the investigating authority to ensure the victim and the accused do not meet during the preparation or execution of any official activities, unless specifically necessary.

**Confrontation** is a form of evidentiary procedure under Hungarian law. This may be used if the testimonies given by the defendant(s) and witness(es) are contradictory. The court or the investigating authority will try to resolve the dispute about the facts or circumstances by way of a confrontation: those involved will give an oral statement and may ask questions to each other. As per Section 124 Subs (2) of the Criminal Procedure 1998, a confrontation will not be ordered, if there is a requirement to protect the witness or the defendant. In practice, law enforcement officials ask the victim whether s/he would agree to participate or not<sup>77</sup>.

With a few exceptions, police stations and court buildings in Hungary do not have separate waiting areas, separate entrances or other facilities for victims and offenders. To avoid unnecessary contact, the police summon victims and perpetrators on different dates<sup>78</sup>. This does not prevent the chance of victims meeting other offenders within the buildings. However, victims should be safe within police premises, since unaccompanied movement around the police premises unauthorised.

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<sup>77</sup> Interview #2  
<sup>78</sup> Interview #2

The only time contact is almost inevitable is at the court trial; the accused has the right to be present during the whole trial. However, the judge can exclude the offender from the courtroom during the hearing of a witness, if the presence of the offender would disturb the witness.<sup>79</sup>

Theoretically live links are made possible by the legislation, and mobile equipment is available for the courts to use as needed. However, in practice it is not used by the courts<sup>80</sup>, which may represent an unnecessary risk for victims in some situations.

## ARTICLE 20 - RIGHT TO PROTECTION OF VICTIMS DURING CRIMINAL INVESTIGATIONS

*Member States shall ensure that during criminal investigations: a) interviews of victims are conducted without unjustified delay; b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation; c) victims may be accompanied by their legal representative and a person of their choice; d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.*

The Criminal Procedure 1998 contains a number of regulations related to Article 20 of the Directive:

- According to Section 181 Subs (3a), whenever a victim's testimony is necessary, the victim's hearing shall be given priority. In practice, victims making a formal complaint in person will be heard immediately, whereas victims submitting a written complaint will be heard short time after the investigation starts.<sup>81</sup>
- As per Section 62/B Subs (2), if a victim is physically required to participate during the criminal proceedings, this should be carried out in such a way as to avoid any unnecessary repetition. It is up to the experience of the police officer conducting the hearing whether the expectations of the law are met. Optimally, victims are interviewed twice in one procedure: once by the police and once at the court trial.<sup>82</sup>
- Unless a personal appearance is necessary, victims may exercise their respective rights by way of a **representative**. Such a representative may be an attorney-at-law or a relative of full age. Basically, the rights of representatives are to get a copy of those documents the victim is entitled to get (and just like victims, they also have to pay for the copies), be present wherever the victim is allowed to be present and to inform the victim of his/her rights and obligations in the proceedings.

79 Section 292 Subs (2) of the Criminal Procedure 1998

80 Interview #4

81 Interview #2

82 Interview #2

- Section 59 acknowledges **aides**, who may take action on behalf of the victims and witnesses. Unless it would jeopardise the interests of the procedure, a person of age, appointed by the victim shall be present when making the complaint or at any other time during the proceedings, even when the public is excluded. However, regardless of the legal guarantee, according to experts, aides are uncommon, as victims rarely know that they have this right at their disposal. If aides are present, the police will quickly verify their status and allow their presence if there is no objection.<sup>83</sup> Victim support staff may act as aides.
- If the victim is a foreign national, the **diplomatic representation** of the respective state shall be informed of the victim's hearing (unless it would cause unnecessary delay) and a representative can be present.
- Victims shall submit themselves to **professional examination** or treatment, unless it involves surgery (*műtét*) or an examination procedure qualifying as such (*műtétnék minősülő vizsgálati eljárás*). The victim shall facilitate the performance of the professional examination in other ways (e.g. by supplying information) as well. If the victim fails to fulfil the obligation of assistance, a disciplinary penalty may be imposed. Such examinations are one-time occasions, as the medical documents will serve as primary evidence. In practice, multiple examinations are never required<sup>84</sup>.

There are special regulations for child victims (partly introduced at Article 10), yet instead of giving the same rights to all children (i.e. those under 18), the Criminal Procedure 1998 draws a line at the age of 14, and those between 14 and 18 are less protected *ex officio*. Hungarian criminal law considers those under 14 as children or infants (e.g. that is generally the minimum age for someone to be prosecuted). Nonetheless, all children under the age of 18 are now considered vulnerable victims, which makes some protective measures available and applicable for them. Such measures include the following:

- Children under the age of 14 may only be heard as witnesses if the evidence expected to be provided by their testimony cannot be substituted by any other means<sup>85</sup>. For children between 14 and 18, the same rules apply as to vulnerable adults.
- Children under the age of 18 may be accompanied at their hearing by their parents or a person of their choice, unless there is a conflict of interest, in which case the guardianship office shall appoint someone<sup>86</sup>. If the hearing is conducted by an investigating judge, according to Section 213 Subs (3) parents or other guardians of child victims under 14 are

allowed to be present.

- Audio-visual recording of the hearing of victims is obligatory only if they are under 14. For other vulnerable victims, the investigating judge may order the recording or upon a request from the parties<sup>87</sup>.
- Vulnerable victims shall be heard in a room, where (in accordance with the goals of the criminal proceedings) the authorities are able to provide a friendly environment, taking into account the best interests of the child, unless there are inevitable circumstances making it impossible<sup>88</sup>. In practice, since such circumstances do not have to be justified by the proceeding authority, some of these special rooms are underutilised, as these special circumstances are being routinely invoked.<sup>89</sup> However, the situation with child-friendly hearing rooms of courts is different, since investigating judges do use them regularly, wherever they are available.<sup>90</sup>

Currently, new legislation is under development that would require police stations to provide monthly (as opposed to the current annual) statistics on the use of special hearing rooms to the National Police Headquarters. This might result in an increased use once the law enters into force.<sup>91</sup>

While the legislation appears to set safeguards for victims, two observations need to be made. Firstly, it would appear that the requirement for victims to provide evidence is unqualified – meaning that whenever they might provide evidence, they can be penalised for refusing to do so, even if providing evidence is not absolutely necessary to the proceedings (e.g. victim of rape can be required to undergo medical examination, even if there are eye witnesses or even a video recording to corroborate the statements). However, imposing a penalty on a non-cooperative victim in such circumstances would evidently constitute secondary victimisation.

The second observation is related to child victims: participation in the proceedings based on their age, and not their maturity and their best interests is a circumstance that needs to be factored in, whenever children are participating in the proceedings.

<sup>83</sup> Interview #2

<sup>84</sup> Interview #2

<sup>85</sup> Section 86 Subs (1) of the Criminal Procedure 1998

<sup>86</sup> Section 86 Subs (3) of the Criminal Procedure 1998

<sup>87</sup> Section 213 Subs (4)

<sup>88</sup> Section 10/A Subs (1) and (2) of the Joint Decree of the Ministers of Home Affairs and of Justice No. 23/2003. (VI. 24.).

<sup>89</sup> According to figures provided by ORFK on 27/06/2018

<sup>90</sup> Interview #4

<sup>91</sup> Interview #2

## ARTICLE 21 - RIGHT TO PROTECTION OF PRIVACY

*Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy of the victim. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.*

As per Section 60 of the Criminal Procedure 1998, dignity of the human being, personal rights of the concerned parties and the integrity of a deceased person shall be respected throughout the proceedings. There is a guarantee that personal data will not needlessly be made public.

The court, the prosecutor and the investigating authority may order on their own or upon a motion of the witness (which the victim usually is) or the legal counsel acting upon the behalf of the witness that the personal data of the witness shall be treated confidentially and separately among the files. In such cases the **protected data** of the witness may be accessed only by the court, prosecutor and investigating authority proceeding in the case.

According to Section 237 Subs (3) of the Criminal Procedure 1998, the court may, on their own cognisance or upon a motion by the prosecutor, the accused, the defence counsel, the victim or the witness, exclude the public from trial in part or its entirety (**in-camera trial**):

- a) for ethical reasons,
- b) to protect the minor participating in the procedure,
- c) to protect the persons participating in the procedure (especially a vulnerable victim) or the witness,
- d) to protect classified data.

Information may be disclosed to **any party having legal interest** in conducting the procedure or in the result thereof, permission to inspect the documents or the provision of the necessary information – after the justification of the legal interest therein – shall be granted by the prosecutor prior to filing the bill of indictment, and by the presiding judge during the court procedure.

**Information to the press** may be provided by the authorised police spokespersons, the prosecutors' office or the court. The press are also entitled to give information on public court hearings. Disclosure of information to the press shall be refused, if this would violate classified data, or would jeopardise the successful conclusion of the proceedings in any way.

Any sound or video **recordings of the court hearings** are subject to the permission of the presiding judge, while sound or video recordings of people at the hearing – with the exception of the members of the court, the keeper of the minutes, the prosecutor and the defence counsel – are subject to the consent of those concerned. The presiding judge may refuse to grant permission or may withdraw permission at any stage of the court procedure in order to ensure an uninterrupted and undisturbed trial.

There is no available evidence of media-based self-regulatory measures for reporting on crimes, specifically victims. Recommendations could for such could be made, since the Commissioner for Media and Communications<sup>92</sup> already has a recommendation on reports on suicide.<sup>93</sup>

<sup>92</sup> <http://english.nmhh.hu/media-and-infocommunications-commissioner> (accessed 13/6/2018)

<sup>93</sup> [http://nmhh.hu/dokumentum/1364/vegleges\\_ajanlas.pdf](http://nmhh.hu/dokumentum/1364/vegleges_ajanlas.pdf) (accessed 13/6/2018)

## ARTICLE 22 – INDIVIDUAL ASSESSMENT OF VICTIMS TO IDENTIFY SPECIFIC PROTECTION NEEDS

*Member States shall ensure that victims receive a timely and individual assessment to identify specific protection needs due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

The individual assessment of victims is new to the Hungarian criminal system, and was introduced in 2015 as part of the transfer of the Victims Rights Directive to Hungarian Law.

According to Section 62/C of the Criminal Procedure 1998, the court, the prosecutor and the investigating authority will be alert to whether the victims' personal characteristics, the nature of the crime or the conditions of the perpetration might result in special requirements for the victims. Victims under the age of 18 at the start of the criminal proceedings will be considered vulnerable victims. Once vulnerable victim status has been declared, the investigating authority, the prosecutor and the court must act with caution and endeavour to provide the rights available in law.

The Criminal Procedure 2017 contains more detailed regulations on the topic; there is an entire chapter on the provision of special treatment for vulnerable victims. According to Section 81 Subs (1) of the new law, the victim and the witness qualify as persons requiring special treatment if, owing to their personal characteristics or the nature and circumstances of the crime subject to the proceedings, they are impaired either in understanding or making themselves understood, in exercising their rights or performing their obligations, or in their efficient participation in criminal proceedings. Circumstances giving rise to special treatment include age, physical, mental or health conditions of the person concerned, the extremely violent nature of the act, which constitutes the subject-matter of the proceeding, or the relationship of the person concerned with other persons involved in the criminal proceedings.

To decide whether someone might need special treatment, an individual assessment is prescribed. In the current legislation, there is a formal assessment by the police, in the annex to the Decree of the Minister of Home Affairs No 64/2015. (XII. 12.) on Victim Support Duties of the Police. This is a simple (with tick-boxes), one-page form the police officer completes, with a counter-signature

by the victim. The form was suggested by the Office of Justice (since merged with the Ministry of Justice) and is broadly based on the tool developed in the European project EVVI (EVAluation of ViCtims).<sup>94</sup>

The form should be completed by the investigator either immediately after the victim's report or at the first hearing attended by the victim. The investigating officers were taught how to complete the form, as a one-off training session, when the legislation entered into force.<sup>95</sup>

The form contains the following groups of questions:

- Firstly, whether the victims wish to have protection measures applied to them or not.
- Secondly, the victims' personal details: name, sex, age, address, contact information, aide, disabilities, any previous victimisation, nationality, any other relevant information.
- Thirdly, tick-boxes regarding the type and nature of the crime, which may indicate: human trafficking, forced labour, hate crime, organised crime, domestic violence, sexual crime, child abuse, terror attack.
- Fourthly, the circumstances of the perpetrator:
  - whether the victim has a personal relationship with the offender,
  - whether the victim fears the offender might hurt them again and
  - whether the offender previously harmed the victim already.
- Fifth, and finally, the actual classification as to whether or not the victim should be considered as vulnerable or not.

Even if the police suggest someone could be a vulnerable victim entitled to special treatment, victims can refuse such attention, if they wish to do so.

According to the police expert interviewed, police officers were initially resistant to the individual evaluation of victims (as it meant an additional administrative burden), but they now automatically use this tool and under the supervision of their direct commanders as well as the *compliance* department.<sup>96</sup> Despite this assertion, criminal attorneys indicate the situation is otherwise.

The fact that no legislation entered into force on 1 July 2018 as to how prosecutors and judges should actually evaluate victims raises concerns about how they will be able to prepare for the practical enforcement of this requirement.

<sup>94</sup> <https://victimsupport.eu/news/a-guide-for-individual-evaluation-of-victims-evvi-now-available/> (accessed 5/6/2018)

<sup>95</sup> Interview #2

<sup>96</sup> Interview #2

## ARTICLE 23 - RIGHT TO PROTECTION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS DURING CRIMINAL PROCEEDINGS

(1) Member States shall ensure that victims with specific protection needs may benefit from the measures. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

(2) During criminal investigations, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment, may benefit from the following measures: a) interviews with the victim being carried out in premises designed or adapted for that purpose; b) interviews with the victim being carried out by or through professionals trained for that purpose; c) all interviews with the victim being conducted by the same persons; d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships being conducted by a person of the same sex as the victim, if the victim so wishes.

(3) During court proceedings, victims with special protection needs shall also have the following measures available: a) measures to avoid visual contact between victims and offenders; b) measures to ensure that the victim may be heard in the courtroom without being present; c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; d) measures allowing a hearing to take place without the presence of the public.

Under current law, the Criminal Procedure 1998, the rights of vulnerable victims are found in many of its provisions. Most of these rights have been part of Hungarian criminal law as optional measures before the inclusion of the Victims' Rights Directive, however, law enforcement officials are expected **to make more effort** to actually implementing these rights, if vulnerable victims are involved.

According to experts, if a police officer fails to provide vulnerable victims with their rights, this will come to light when their cases are reviewed. If a tendency to fail to respect certain rights is detected on a greater scale, the local police will organise training on the issue. The prosecutors also have the right to oversee individual cases and instruct the police.<sup>97</sup>

Section 62/C Subs (3) contains a list of the most important pre-existing rights:

- The prosecutor and the investigating authority may order the **recording** of the investigatory action by shorthand, a video or audio recorder or other equipment, at the motion of the victim. Hearing of victims under the age of 14 ex officio will be recorded [Section 167 Subs (1)].
- At the motion of the prosecutor, prior to the filing of the indictment, the **investigating judge** will hear the witness under the age of fourteen, if there is reasonable ground to believe that questioning at the hearing would adversely affect his personal development. The legal representative, the legal guardian and the lawyer acting on behalf of the witness may file a motion for the hearing of the witness with the prosecutor. The prosecutor, the lawyer acting on behalf of the witness, and the ward and the legal representative of the minor witness may also make a motion for **hearing** the witness **via live link**. [Section 207 Subs (4)-(5)].
- If there is a **room specifically designed** for the hearing of infants within the investigating judge's jurisdiction, the judge may also use (but according to interview #4 they do not) this room instead of the courtroom to hear the witness under the age of 14 [Section 211 Subs (4a)].
- Upon a motion (or in case of a vulnerable victim<sup>98</sup> ex officio), the investigating judge may order the **recording of the examination** of the witness by an audio or video recorder or other equipment. Such recording shall not substitute the minutes. On the copy of the recording, the individual features of the witness suitable for identification (e.g.: face, voice) may be distorted by technical means [Section 213 Subs (4)].
- The presiding judge may order the use of live link for the questioning – among others – of

<sup>97</sup> Interview #2

<sup>98</sup> See Article 22

the vulnerable victim [Section 244/A Subs (2) c)]. Courts are not equipped with relevant equipment, but the National Office for Judiciary has mobile equipment that can be moved to whichever court needs it within the country. According to experts, this equipment has only been used once ever.<sup>99</sup>

- The presiding judge shall ensure that the method of questioning does not injure the human dignity of the victim. If the question may influence the victim, if its suggestive, irrelevant, has been asked by an unauthorised person, injures the dignity of the trial, or is repeatedly directed to the same fact, the presiding judge shall prohibit the reply<sup>100</sup>.
- At motion, or ex officio, the presiding judge may order the accused whose presence may disturb the witness in the course of the questioning to leave the court room<sup>101</sup>, for the duration of questioning.

There are also other rights in the act, not listed in the section above:

- In criminal proceedings regarding sexual crimes or crimes committed against relatives, the victim shall be heard in the investigating phase only by a **same-sex person**, if the victim wishes so and it does not jeopardise the proceedings<sup>102</sup>.
- The court may on its own motion or the motion of the parties **exclude the public** from the entirety or a part of the trial in a decision explaining the reasons therefore – among others – to protect the persons participating in the procedure, especially the vulnerable victim<sup>103</sup>.

Decree of the Minister of Justice No. 34/2015. (XI. 10.) on the Establishment and Supervision of Police Rooms Serving the Hearing of the Accused and Witnesses Under 14 and of Victims Requesting Special Treatment is the source of law that contains regulations on how hearing rooms for vulnerable victims should be configured, furnished and used. The territory of Hungary is divided into 20 police headquarters (one in each county and in the capital), and there is at least one special hearing room per headquarters (not necessarily, but mostly in the county seat police station). The total number of such hearing rooms in police premises is 26 (as of May 2018).<sup>104</sup> Some court buildings also have special hearing rooms designed especially for children<sup>105</sup>, yet these were not set up according to Decree No 34/2015, but based on a program launched voluntarily by the courts themselves.

<sup>99</sup> Interview #4

<sup>100</sup> Section 290 Subs (2)-(3), Section 293 Subs (2) of the Criminal Procedure 1998

<sup>101</sup> Section 292 Subs (2) of the Criminal Procedure 1998

<sup>102</sup> Section 86/A of the Criminal Procedure 1998

<sup>103</sup> Section 237 Subs (3) c) of the Criminal Procedure 1998

<sup>104</sup> Data provided by ORFK.

<sup>105</sup> Photo examples of court hearing rooms for children can be found at <http://birosag.hu/tudjon-meg-tobbet/gyermekkzpontu-igazsagszolgaltatas/gyermekmeghallgato-szobakrol> (accessed on 21/5/2018)

As opposed to current law, Section 85 of the Criminal Procedure 2017 provides law enforcement with a list of measures falling within the scope of special treatment. According to the new law, in view of the interests of the procedure, the court, the public prosecution service and the investigating authority shall assist persons in need of special treatment<sup>106</sup> to exercise their rights and fulfil their obligations and shall provide sufficient care to such persons through applying the following measures as much as such is reasonably possible:

- ensure that the person concerned can exercise the rights and perform the obligations properly, despite the impediments resulting from the circumstances giving rise to special treatment,
- take the utmost care in the course of maintaining contact with the person requiring special treatment,
- take the utmost care during the criminal proceedings in order to have regard for the privacy of the person concerned,
- provide enhanced protection for the personal data of the person concerned, which relate to the circumstances giving rise to special treatment including and especially medical data,
- enable the persons concerned to avail themselves of the assistance of an aide,
- when planning and performing procedural acts, they shall take account of the personal needs of the person concerned, and carry out any procedural act requiring the participation of the person concerned without delay,
- prepare any procedural act requiring the participation of the person concerned in a manner that obviates the need for the repetition of the procedural act;
- ensure that the person concerned will not encounter any other person involved in the criminal proceedings in the course of, and at the location of, the procedural act unless such is absolutely necessary, especially if the reason for special treatment is his relationship with that person,
- carry out the procedural act in a facility designed or adapted for that purpose, provided that the persons concerned could not exercise their rights or fulfil their obligations and insufficient care would be provided for them otherwise or through other measures,
- may make sound and video recordings of any procedural act requiring the participation of the person concerned,
- may ensure the presence of the person concerned at the procedural act through telecommunications devices.

<sup>106</sup> See also Article 22

## ARTICLE 24 – RIGHT TO PROTECTION OF CHILD VICTIMS DURING CRIMINAL PROCEEDINGS

*Member States shall ensure that where the victim is a child: a) in criminal investigations, all interviews with the child victim may be audio visually recorded; b) in criminal investigations, and proceedings, competent authorities appoint a special representative for child victims where the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family; c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.*

Most rights envisaged by this article have already been mentioned above in the differentiation between children under and over 14 along with their different rights. Therefore, this section briefly summarises only the most important current legislation as well as the new law entering into force on 1 July 2018.

**Audio-visual recordings** of hearings are obligatory only for those under the age of 14<sup>107</sup>, otherwise upon motion<sup>108</sup>. The new legislation keeps this rule but also brings some positive changes: if the crime suffered by the victim was of a sexual nature, an audio-visual recording will be obligatory for all children. But even if it was not a sexual crime, sound and video recordings will be made “if possible”<sup>109</sup>.

Child victims shall be represented by their **legal representatives**, which usually their parents or legal guardians. In the event of a **conflict of interest** the provisions of the Civil Code shall apply<sup>110</sup>: according to Section 4:163 Subs (2) of the Civil Code, in case of a conflicting interest or a physical obstacle preventing the parents to be present, the **guardian authority** shall appoint a caretaker

<sup>107</sup> Section 167 Subs (1) of the Criminal Procedure 1998

<sup>108</sup> Section 213 Subs (4) of the Criminal Procedure 1998

<sup>109</sup> Section 87 Subs (1) a) and Section 89 Subs (4) b) of the Criminal Procedure 2017

<sup>110</sup> Section 56 Subs (2) and Section 86 Subs (3)-(4) of the Criminal Procedure 1998

officer to represent the child, acting as the legal representative instead. The appointment of a caretaker officer may be requested by either of the parties affected or by any authority (including the police). Section 73 Subs (1) b) of the Criminal Procedure 2017 amends the current rules, giving the right of appointment of a representative for the victim to the court, the prosecutor and the investigating authority instead of the guardian authority. Additionally, this appointed representative will no longer be a caretaker officer, but an attorney-at-law or a law firm. This change will hopefully ensure more professional representation of the victims. According to professionals, the conflict of interest is usually obvious from the case files; if law enforcement officials detect conflict of interest, the hearing will be interrupted and arrangements made for further representation.<sup>111</sup>

Child victims also have the right to be represented and have their rights exercised by an **attorney-at-law**<sup>112</sup>. For substitute private accusers it is obligatory to be represented by an attorney-at-law<sup>113</sup>. The power of attorney may be issued by the victims or their legal representatives (parents or guardians) in writing<sup>114</sup>. Regulations of the Criminal Procedure 2017 bring no significant change to the current legislation in this matter.

There are no juvenile courts in Hungary, but **juvenile panels** within the ordinary courts and the rules for criminal procedures are different if the **accused** is underage. At the court of first instance, one of the two associate (lay) judges on the panel must be a teacher<sup>115</sup>. Following the application of the Criminal Procedure 2017, the lay judges will be either teachers, or psychologists or child protection professionals<sup>116</sup>. There are no special regulations on the composition of court panels if the victim is a child, but the accused is an adult.

In practice, the investigating judge interviews child victims, not the police. Since investigating judges are not available in smaller local courts, children are usually transferred to the location of the investigating judge to make their statement. This might be inconvenient, but it makes all further questioning unnecessary. The change of legislation presented by Article 10 will simplify this procedure: allowing the recordings of child victims also made by police and prosecutors to be used as evidence, in addition to the present solution where only those made by investigating judges can be used in trial.

<sup>111</sup> Interview #4

<sup>112</sup> Section 56 Subs (1) of the Criminal Procedure 1998

<sup>113</sup> Section 56 Subs (4) of the Criminal Procedure 1998

<sup>114</sup> Section 57 Subs (1)-(2) of the Criminal Procedure 1998

<sup>115</sup> Section 448 of the Criminal Procedure 1998

<sup>116</sup> Section 680 Subs (5) of the Criminal Procedure 2017

More and more court buildings are equipped with child-friendly hearing rooms. It is also allowed for judges to 'relocate' themselves, i.e. to do official hearings outside the court. In practice, however, little is yet known about the quite novel concept of child-friendly justice. Anecdotal evidence indicates instances of enthusiastic judges at some locations who go out of their way to make sure that proceedings are adjusted to children, as vulnerable participants. However, it will take a while to fully evaluate the impact of new measures.

## ARTICLE 25 - TRAINING OF PRACTITIONERS

*Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to enable them to deal with victims in an impartial, respectful and professional manner.*

*Member States shall request that those responsible for the training of lawyers, judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase awareness of the needs of victims.*

*Member States shall encourage initiatives enabling those providing victim support and restorative justice to receive adequate training and observe quality standards to ensure such services are provided in an impartial, respectful, and non-discriminatory manner.*

*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*  
*Training shall aim to enable the practitioners to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.*

Training of professionals is mostly the responsibility of each profession's training institution or department. The most important, from victims' perspective, are the police, the courts and victim support organisations.

### 1. Police

Police education in Hungary is organised through vocational schools and the police academy. At the lower end of police education (where non-commissioned officers – *tiszthelyettes* – are trained), students receive information on victim support and victim protection; at the police academy, future also study victimology.<sup>117</sup>

According to Section 4 Subs (1) of Decree No. 64/2015. (XII. 12.) of the Minister of Home Affairs,

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<sup>117</sup> Interview #2

the National Police Headquarters (ORFK) provide methodological assistance to local police in their victim-related duties. Point 26 of ORFK Reg. No. 2/2013. (I. 31.) orders adequate victim support and victim protection knowledge to be built in to police personnel training. Although this regulation also prescribes the involvement of state victim support officials in the provision of this training, this only takes place when personal relations between those in charge are good. Otherwise, either Fehér Gyűrű Association or police crime prevention professionals train the police officers. Fehér Gyűrű has been providing police training since 2008, through a cooperation agreement. This agreement was renewed in 2016, reaffirming the cooperation and trust between these institutions.

Training is usually organised whenever a new legislation enters into force, but those assigned with duties related to victim protection (i.e. crime prevention officers) undergo additional training as required.

## 2. Courts

As per Section 171/A of Act CLXI of 2011 on the Organisation and Administration of Courts, the Hungarian Academy of Justice<sup>118</sup> provides training for judges and other members of the judiciary, including prosecutors. The academy is part of the National Office for the Judiciary (*Országos Bírósági Hivatal*).

Training is not obligatory for judges, but usually those interested in a particular topic participate if they have time. Those involved in the Witness Care program have non-obligatory training twice a year.

## 3. Victim support organisations

State victim support officials are required to pass an **exam within 2 years** from the start of their employment, according to Section 124 of Act CXCIX on Public Servants. The details of the exam are regulated in the Decree of the Minister of Public Administration and Justice No. 22/2010. (XII. 28.) on the Administrative Exam of Probation Officers, Government Officials and Government Assistants Working at Organisations Appointed as Probation Services, Legal Aid and Victim Support Services and Compensation Authorities. Section 7 of the said decree lists the topics to be covered by the exam, including the legal framework of victim support, trauma management, crime prevention, victimology, social law, criminal law, mediation, child protection, document management and data protection.

Preparatory training has been organised by and provided via the Legal Academy of Justice Services (*Igazságügyi Szolgálatok Jogakadémiája*<sup>119</sup>) since 2015. Training is provided not only for

victim support officials, but also for legal aid officials, probation officers, bailiffs and others.

NGO victim support services have internal training for their employees and volunteers.

## 4. Law faculties of universities

Victim support law is hardly part of the curriculum of any law faculty, but criminology is. Thus, most law students study victimology, even if only to a limited extent. There are some universities offering voluntary seminars on the topic, where those interested can receive information on victimisation, secondary victimisation and victim support.

## ARTICLE 26 - COOPERATION AND COORDINATION OF SERVICES

*Member States shall take appropriate action to facilitate cooperation between Member States to improve victims' access to the rights set in the Directive and such cooperation shall at least aim at: a) exchange of best practices; b) consultation in individual cases; c) assistance to European networks working on matters directly relevant to victims' rights.*

*Member States shall take appropriate action aimed at raising awareness of the rights set out in the directive, reducing the risk of victimisation, and minimizing the negative impact of crime and the risk of secondary and repeat victimisation, of intimidation and retaliation, in particular targeting groups at risk such as children, victims of gender-based violence and violence in close relationships.*

local victim support offices. However, services offered are actually exactly the same as those that regular local victim support offices should provide, but mostly fail to do so.<sup>122</sup> The opening of these centres in 2017 (Budapest) and 2018 (Miskolc and Szombathely) received national media coverage. The Budapest centre received 340 victims in 2017, whereas Miskolc (which lays in the part of the country with the highest crime rate) received 141 between their opening in early 2018 and end of May 2018. In Szombathely (where criminal figures are expressly low) they assisted 14 victims by the end of May 2018. These centres (especially Miskolc and Szombathely) are also building extensive local cooperation networks as well as organising training and roundtables.<sup>123</sup>

Domestic inter-professional co-operation also exists in Hungary, even though on a sporadic and incidental basis. The sole exception is a project initiated by the National Crime Prevention Council in some counties that facilitates local roundtables to be organised on the issue of trafficking victims.<sup>124</sup> Since the organisations dealing with this particular topic are mostly the same as those involved in general victim support, this initiative could (if it became nationwide and obligatory) lead to good practice in cooperation between stakeholders of victim support.

Both major Hungarian victim support organisations (Fehér Gyűrű Association and state victim support) are members of Victim Support Europe, the former is a founding member, the latter (represented by the Ministry of Justice) joined as an associate member. In this capacity, both are active and participating at VSE events.

The Ministry of Justice is also an initiator of the European Network on Victims' Rights (ENVR), a recently established network of policy makers working to ensure that victims are able to exercise their basic rights; the Ministry of Justice hosts the ENVR's head office in Budapest.

Over the past few years, Hungarian victim support organisations have been involved in multiple European projects.

The Ministry of Justice is committed to victims' rights, even though the current state victim support system does not reflect this commitment. The ministry has recently opened three (somewhat independent) victim support centres<sup>120</sup> in three parts of the country as an addition to the less satisfactory existing offices. This experimental initiative officially aims<sup>121</sup> to complement

120 <http://aldozatsegitokozpont.im.gov.hu> (accessed on 5/6/2018)

121 <https://magyaridok.hu/belfold/aldozatsegito-kopontot-adtak-at-szombathelyen-2935402/> (accessed on 5/6/2018)

122 According to Fehér Gyűrű, many victims complain about state victim services and the low figures also support these critics.

123 Interview #3

124 Interview #2

# GOOD PRACTICES

Throughout the development of this report, researchers have identified good practices regarding the practical implementation of the Victims' Directive in Hungary, which may be easily transferable and could potentially be implemented in other Member States.

## Financial assistance for victims

Despite the current performance of state victim support in Hungary being quite poor, the (theoretical) system of assistance available is well-structured and transparent. With fully functioning staff, it could not only reflect victims' needs and cover the expectations of Article 9 (support from victim support services) of the Directive, but with the ability to provide instant monetary aid it could go further. Instant financial assistance is, on many occasions, irreplaceable and brings great relief to victims.

## Child protection notification system

The notification system created by the Child Protection Act 1997 binds stakeholders (health providers, public schools, the police, prosecutors, courts, probation services, victim support services, asylum services, associations, churches, foundations, labour services, correctional facilities, children's rights services, child protection and guardianship offices) to take action whenever they detect endangerment of a child. This is taken seriously and helps to prevent victimisation of many children.

## Restraining orders

Article 18 (right to protection), the three-level system of restraining orders, is a measure that protects victims from perpetrators in domestic violence cases. Provisional precautionary restraining orders issued immediately on the spot by the police prevent the perpetrator from contacting the victim for 72 hours. A precautionary restraining order from the prosecutor could prolong this interdict for up to 60 days. Finally, an ordinary restraining order lays out the rules of the court.

## Mediation

Victim-offender mediation was introduced to the Hungarian legal system in 2007 and has been successfully used since with a growing number of successful cases.

## Special hearing rooms in police and court premises

The police and the judiciary have made progress, recently, by setting up special hearing rooms in numerous premises to encourage a child-friendly and victim-centred approach.

## New criminal procedure – a new hope

Although the Criminal Procedure 2018 just entered law by the time this study was finished, making an examination of any practical implementation impossible, the new legislation is encouraging: victims' procedural rights have been extended and listed in a single chapter to make law enforcement easier.

# GAPS, CHALLENGES, AND RECOMMENDATIONS

Throughout the development of this report, gaps and challenges regarding the practical implementation of the Victims' Directive in Hungary have been identified. The most important are the following.

## Individual assessment

Individual assessment of victims by the police has been obligatory since the conversion into law of the Victims' Rights Directive. Even though it is spot-checked by internal audits, many police officers do not fulfil their duties. This statement is supported by the results of the survey, which was largely completed by police officers, yet the responses on the provision of individual assessment are far from unanimous<sup>125</sup>. In 2017, only 5% of all registered victims were considered as vulnerable, which is arguably less than those actually requiring adequate care.

The police officers' approach may become more victim-oriented if training is not just organised when new legislation is written; regular training should be obligatory.

The attitude of police leaders is positive and could be built on (they were very positive and supportive of this report), but more effort is required by police officers actually working with victims, as the statistics do not always reflect the necessary victim-oriented approach.

## State victim support

It has been noted that victims are reluctant to approach state support services from the outset so as not be seen using social services. Also, it appears that, in the state support system, there is pressure on victims to report a crime in order to receive associated services. Combined with an expectation from victims to be subject to, often unwanted, a medical examination, under threat of a fine if they refuse, as well as an obligation - rather than a right - to make a statement in court, victims are unsurprisingly reluctant to report crime or to seek support from the state victim support services.

The structure and the work practices of the state victim support, their facilities as well as the qualification and workload of the staff is below satisfactory. Most (state) victim support workers act as office clerks, as administrators and not active supporters. Their attitude and approach

are administration-based instead of being victim-focused, and many lack proper qualifications. The offices used are inappropriate for receiving victims; equipped for office tasks rather than counselling. Since victim support is integrated into the Guardianship Office, victims are kept from seeking help, because they are afraid of "going to the social services". As well as victim support, the staff have other duties (most are required to additionally or mainly provide legal aid services), therefore they lack time and are not encouraged by their superiors to improve client numbers. One might even say that, professionally, they could not handle a higher number of victims.

New centres being opened by the Ministry of Justice might provide an alternative, but without any quality assurance in place the outcome is questionable and it is unclear how conflicts of interest with statutory state victim support services can be resolved.

**NGO engagement in providing victim support services** Non-governmental victim support organisations depend on state funding, which is all but transparent, thus making mid- and long-term planning and organisation impossible, violating victims' rights as well as regulations of the Victims' Rights Directive. NGOs applying for funding do not receive clear feedback from the Ministry of Justice on what exactly is required to obtain the funding. The decision-making process within the ministry appears to be based on sympathy rather than on professional performance.

Keeping in mind that the victim support centres of the Ministry of Justice provide similar services to those of the victim support NGOs, it might be worth giving a thought to subcontract experienced NGOs to run such centres, thus avoiding unnecessary overlaps as well as providing NGOs with sufficient funding, and still allowing the government to maintain quality control. This might be recommended to not only avoid overlaps and to rationalise funding (which of itself could be a reason enough), but also to complement the existing state support services in providing support to more victims.

In the short run, strengthening NGO support might overcome at least some gaps and ensure support to all victims, especially those who are reluctant to report a crime. As practice shows, the non-governmental sector relies on volunteers and is able to provide more support with less resources. However, to make the support through the civil society sector sustainable, funding needs to be made in a more transparent manner, enabling planning and sustainability of services in, at least, the mid-term (e.g. ensuring guarantee of funding for at least three to five years at a time).

<sup>125</sup> Only 44% answered victims are always provided with an individual assessment, 18% did not even know how to answer the question.

## Communication, availability of easy-access information

Victims' knowledge of their rights has always been a bottleneck towards practicing those rights. According to the law, state victim support should provide printed leaflets to the police who are then obliged to hand them to victims. In reality, leaflets are not available, significantly limiting victims in their right to receive information.

Even those victims who seek information on victim support from the internet are not in a better position: information on victim support is not easily available and it is next to impossible to find relevant and updated information through a simple web search.

According to the findings of the questionnaire, most practitioners agree that communication with victims in general is unsatisfactory. Apart from the shortcomings in the provision of general information, a further difficulty is found in legal proceedings, where decisions are communicated with victims, yet the very technical legal language they are written in – while guaranteeing accuracy – limits victims' understanding of the outcome of the proceedings and its consequence for the victim.

# CONCLUSION

The Victims' Rights Directive has been almost entirely converted into Hungarian law, but as this report points it out, some aspects remain on paper so far and have not yet become part of daily routine. The attitude of police leaders towards victim protection is positive, but more effort is required from police officers actually working with victims to ensure a victim-oriented approach (lack of information, underutilization of special hearing rooms, failing to make individual assessments). With the new criminal procedure legislation, there is hope that victims' rights will become stronger in the near future.

Prosecutors are in the position to supervise investigations (including acceptance of victims' rights) and judges are the most notable stakeholders within the criminal procedure. While neither the Judiciary nor the Prosecution Service wished to contribute to the VOCIARE project, this does not mean they do not take victims' issues seriously, but this reluctance to participate remains a concern.

If information on victim support at least reached the victims, they could get all the necessary, detailed and personalised information on victim support organisations, as required by the Directive. To enable more victims to receive information on victim support, close cooperation between the local victim support and the local police forces is essential. This cooperation should also cover regular training sessions (by victim support workers) for police officers on victim support duties etc. In general, training on victims' rights for police officers, prosecutors and judges should get more emphasis and should preferably be multidisciplinary. A multidisciplinary approach (e.g. regular stakeholders' meetings on the local level) could also increase knowledge between stakeholders about each other's activities as can be seen from the results of the questionnaire.

The current status of Hungarian state victim support is dysfunctional and below standard. The service portfolio is well-structured and covers more than the minimum required by the Directive, but there is no appropriate infrastructure, staff and institutional background to provide the services.

The existing non-governmental victim support organisations would be able to provide the necessary services, but in the absence of appropriate transparent funding schemes they are struggling for survival.

Research has highlighted that communication with victims is problematic in many respects: the language used is not easy to understand and the internet is rarely used as source of information. A specific webpage would be welcomed by information-seeking victims, as would the deletion of

outdated information (including homepages of non-existing offices) which would minimize the spread of misinformation. Current information is not victim-oriented but is institution-focused and hard to understand.

Research has identified multiple good practices as well as omissions. Both criminal procedure codes create a legal environment that treats all victims equally, allows for the use of native language, respects and reflects differences based on age or other aspects, and all that for free. The sole deficiency identified in this regard is the lack of availability of proper interpreters.

Victims enjoy broad rights within the Hungarian legal system, especially children and victims of domestic violence, who are provided with extra protection measures (notification system, restraining orders).

The national police are actively pursuing to furnish as many special hearing rooms for vulnerable victims as possible, which will then hopefully be used according to victims' needs.

The new criminal procedure that entered into force on 1 July 2018 allows all members of law enforcement to reshape their approach to victims and bring the law in books part of their daily practice.

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# APPENDIX 1 – CONTACT LIST OF INTERVIEWED PROFESSIONALS<sup>126</sup>

#	Name	Institution	E-mail	Phone #
1		state victim support officer		
2		police officer		
3		policy maker in the Ministry of Justice		
4		former criminal judge		



**VOCIARE**

Victims of Crime  
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<sup>126</sup> For the protection of the integrity of the professionals who took part in the research, their identity and contact details are known to the research team, but not revealed to the public.