

UDC 34

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THE CHILD PROTECTION ACTIVITIES OF THE POLICE

Historical formation of child protection:

The formation of children's rights and child protection is as old as human rights. In this respect, we need to underline three very important conventions, which provisioned human rights, which are to be guaranteed for every person, regardless of age, gender or any other factors.¹

The first is the Universal Declaration of Human Rights, approved by the UN on December 10, 1948. In Article 25, the ban on the discrimination against children born in or out of wedlock was stipulated, connected to the right to social protection.

This was followed by the International Covenant on Civil and Political Rights (ICCPR) (1966), which was ratified by the Decree law nr. 8/1976 in Hungary. This document also specifies special rights with regard to children. Article 23 contains the priority of the protection of the family, while article 24 contains the prohibition of discrimination: "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin,

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¹ Kriston Edit: Child Novotni Foundation Miskolc 2019. 9. oldal

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property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”

A third, very important convention is the International Covenant on Economic, Social and Cultural Rights (1966), which was ratified by the Decree law nr. 9/1976 in Hungary.² Article 10 of this document specifies in detail that states constituting part of this covenant shall accord the widest possible protection and assistance to the family while it is responsible for the care and education of dependent children. States taking part shall protect children and youth against economic and social exploitation, and are obliged to set an age limit below which paid child labour is forbidden and considered a criminal offense.

The 1989 New York Convention on the Rights of the Child deals exclusively with the protection and rights of children. Hungary signed the convention in 1990, and Act nr. LXIV./1991 ratified it. The Convention seeks to establish special protection and safety in terms of the implementation of children’s rights.

In Hungary, we can find child protection measures on almost each level of the legal hierarchy.

Paragraph (5) of Article XV of the Fundamental Law of Hungary: “By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities.” Paragraph (1) of Article XVI details this principle further: “Every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a selfidentity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.”

² Kriston Edit: Child Novotni Foundation Miskolc 2019. 10. oldal

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Paragraph (1) of Article XVIII stipulates the prohibition of child labour, except in those cases specified in an Act where there is no risk to their physical, mental or moral development.

Act V./2013, the Fourth Book of the Civil Code, the Family Act (hereinafter referred to as: FA) provides for the implementation of children's rights in several ways. The principle ensuring the priority of children's rights is of special importance.

Besides stipulating the principle, the FA also guarantees and implements children's rights in the scope of the provisions regulating certain family rights relations. Such a provision is that in many legal relations the minor over 14 years of age must be heard, and the opinion of a minor with good judgement must be taken into consideration with appropriate weight.

Act CCXI./2011 on the protection of families (hereinafter referred to as: FPA), besides stipulating duties of parents, also stipulates regarding the minor child that they have right to grow up in a family environment providing for their bodily, intellectual, spiritual and moral development and healthy upbringing, and to receive assistance in their upbringing in a family, evolve in their personality, avoid situations threatening their development, and fit into society.

Minor children can only be separated from their parents or other relatives only for the sake of their own bodily, intellectual and spiritual development, in cases and in manners stipulated by law, and they cannot be separated from their families for endangering solely for financial reasons.³

The most relevant legal norm with respect to children's rights is Act XXXI./1997 on the protection of children and guardianship administration (hereinafter referred to as: CPA), which stipulates the basic regulations through

³ FPA. 13.§.

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which the government, local governments and other involved organizations and natural persons can assist the implementation of children's rights and interests with specific services and measures. Children's rights are dedicated a separate chapter by the Act.⁴

The CPA also stipulates the duties of children. The child is obliged, for the sake of their care and upbringing cooperate with their parents or legal representative or guardian, study in accordance with their capabilities, and refrain from practicing lifestyles harming their health or using substances damaging their health.

The protection of children is an activity aiming to promote the upbringing of the child in a family, to prevent and terminate endangerment, and to provide substitute protection for children removed from parental or other relative's care. The protection of children are provided for by financial, in-kind, child welfare basic care services, child protection special care services, and authority measures. The operation of the child protection system is the duty of the government and the local government.

It is important to define which persons belong to the category of child/children as a generic name. The Fundamental Law and Act V./2013 on the Civil Code (hereinafter referred to as: Civil Code) does not only regard minors younger than eighteen years of age as a child, but majors as well who are indicated in family relations as relatives in the descending line.

The CPA uses a peculiar categorization and unique terminology. It makes a distinction according to age between a child⁵, a juvenile⁶, and a young adult⁷.

⁴ CPA 6.§.-10.§.

⁵ CPA 5.§. a)

⁶ CPA 5.§. b)

⁷ CPA 5.§. c)

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Act C./2012 on the Penal Code (hereinafter referred to as: Penal Code) defines the reasons excluding or limiting the punishability of offenders, of which one of the most important conditions is when the offender is a child.⁸ As a principle, it is declared that no child can be punished who has not passed fourteen years of age when the offence was committed, however, exceptions are also defined for the interpretation of childhood, in case of specific crimes.⁹ A juvenile¹⁰ is who has passed fourteen years of age when the offence was committed, but has not passed eighteen years of age.

Act XXXIV./1994 on the Police (hereinafter referred to as: Police Act) defines the duties and the organizational structure of the police.¹¹

In my paper I will present the main child protection tasks and activities of the organization established to carry out general policing duties.

With regard to natural and legal persons active in the field of law enforcement and the justice system the role of people working within the organization of the police is the most relevant. The CPA¹² obliges every authority, organization and person proceeding in the matter of the child when proceeding and taking decision, to take the interests of the child into consideration above all, guaranteeing the rights of the child acknowledged by law.

In Act XC./2017 on criminal proceedings (hereinafter referred to as: ACP) youth under 18 years of age are considered persons requiring special treatment.¹³

Measures in the scope of special treatment¹⁴ and their special regulations¹⁵ with regard to the criminal proceedings guarantee the efficient implementation

⁸ Penal Code 15.§. a)

⁹ Penal Code 16.§.

¹⁰ Penal Code 105-106.§.

¹¹ Police Act 1.§., 2.§., 2/A §., 4.§.

¹² CPA 2.§.

¹³ ACP 82.§.

¹⁴ ACP 85.§.

¹⁵ ACP 87.§, 88.§, 89.§.

of children's rights stipulated in the Fundamental Law, the Convention on the Rights of the Child ratified with Act LXIV./1991, in the Act on Child Protection and Custody Administration and other legal regulations.¹⁶

Act II./2012 on offences, offence procedures and the offence registration system (hereinafter referred to as: Offence Act) implements specific provisions with regard to both child witnesses,¹⁷ and juveniles under proceedings¹⁸.

Main areas of the child protection activities of the police:

Member of the alarm system:

The CPA defines the organizations bound to cooperate aiming to promote the upbringing of the child in a family, to prevent and terminate endangerment, members of the child protection alarm system and their duties.¹⁹

The alarm system is a cooperation between sectors, institutions, experts and private persons, which aims to perceive and recognize problems, threatening factors, crisis situations, ensuring efficient cooperation and information flow, and distributing tasks in the framework of case discussions.

Members of the alarm system stipulated in the CPA²⁰ have a reporting duty in case a minor is endangered. The police, in a public administration procedure as stipulated in the Police Act, shall, in case a minor is endangered, report at all times to the allocated authority or service, i.e. district authority guardianship agency, child welfare service provider, notary of the local government.

The reporting is done in writing, on an appropriately registered form, in accordance with document handling regulations.

¹⁶ ACP 87.§ c)

¹⁷ Offence Act 62.§. (4), (5), (6)

¹⁸ Offence Act 134.§.

¹⁹ CPA 17.§.

²⁰ CPA. 17. §. (1).

Operating a school guard from the school year 2020/2021:

The police may provide for the sustenance of the order of schools, in the area of schools during educational time, through school guards.

The school guard shall be organized in accordance with the needs of the school, based on a cooperation agreement in a manner that it guarantees the undisturbed performance of duties of the teachers, employees assisting directly school work, and the tasks of teachers stipulated in the Act on National Public Education and the VET Act of the given institution, the prevention of unlawful acts against them.²¹

At present, in Hungary there are school guards in 483 educational institutions, involving 529 school guards.

Police checks for the protection of children and juveniles

Local departments and crime prevention units of the Police, in accordance with the provisions of the action plan National Crime Prevention Strategy have been carried out checks since August 2014 in places of entertainment, events involving music and dance in order to restrain the alcohol consumption of persons under 18 years of age. (Due to the COVID19 epidemic, the closing of these places of entertainment became necessary, therefore this activity has been suspended since 2020, until the restrictions were lifted.)

The policeman is proceeding against pupils not older than 14 years of age, who are absent from, or leave classes or any program organized by the school without permission, not providing a satisfying explanation for their absence, in which they may accompany the child to the head of the school after prior discussion.²²

²¹ Act XXXIV./1994. 10/A. §. (1) and (2)

²² Police Act 34/A §.

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During activity involving wanted persons younger than 18 years of age, tasks serving the protection of children are the following:

The Police informs the guardianship agency about the data of minors who disappeared or ran away from their homes or children's homes without permission without delay.²³In case the minor staying at an unknown place is determined to be disappeared after 90 days, the decision regarding this shall be forwarded to the guardianship agency in charge according to the last known place of residence.²⁴

The minor, during hearing must be inquired whether they became victims of trafficking, were forced to prostitution, begging or illegal work, or they became victims of any crime.

In case the disappearance of the child can be attributed to the unlawful behaviour of the child's parent, guardian or any other legal representative, the presence of a psychologist at the hearing is necessary.

In Hungary, in 2020 compared to the previous year, the number of wanted proceedings due to the disappearance of minors decreased by 1.9%. The officers of the police started wanted proceedings due to the disappearance of minors in numerous cases. The great majority of children sought for disappearance left a child protection institution without permission, and turned up within 1 month.

In accordance with the tasks imposed by the National Police Department, in 2020 all police departments concluded cooperation agreements with the county agencies of the social and child protection directorates, child protection centres and the leaders of child protection special services. In accordance with the agreement, the officers of the crime prevention field of the Police assist in the prevention of children in child protection special care becoming victims or perpetrators of crime by organizing joint programs, giving presentations. The

²³ Act LXXXVIII./2013, 2.§. (1).

²⁴ Act LXXXVIII./2013, 23.§. (2) c).

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parties pursue continuous professional conciliation, try to cooperate efficiently in their work to find or locate children leaving their place of care without permission.

Police actions:

Based on the CPA,²⁵ when the child, for instance due to police actions against the parent remains without supervision, or their bodily, intellectual, emotional and moral development is severely endangered by their family surroundings or themselves, and due to this their immediate placement is necessary, the police, as a referring organ, places the child with an immediately executable order, temporarily, at a parent living separately, relative, or other person, suitable for and willing to taking care of the child.

The placement of the child over twelve years of age, if possible, shall be made at a foster parent nearby also providing care for children with temporary order, or if it is not possible, or the health or personality condition of the child, or the child is dangerous to self or others, or other reasons make the placement of the child in an institution necessary, placement must be guaranteed in a children's home, special group of a children's home or a special home apartment, appointed to provide temporary placement. The referring organ immediately informs the guardianship agency of the action, in case of a child with foreign citizenship the guardianship agency appointed by the Government.

Decree nr. 30/2011. (IX.22.) of the Ministry of the Interior about the service regulations of the police stipulates that in case a suspected person²⁶ is transported from their residence, besides securing the safety of property in the residence, the police also has to provide for the child remaining alone as a result of the proceedings to receive care.²⁷

²⁵ CPA. 72. §. (1).

²⁶ Police Act 33-34.§., 37.§. b) c)

²⁷ Decree nr. 30/2011. (IX.22.) of the Ministry of the Interior 15.§. (1), (2)

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In case the care of the child on the site cannot be provided for, the police organ shall refer the child to hospital or child protection institution, or contact a non-profit organization to provide care and placement for the child.

In accordance with Act V/2020, for the interests of the child below 18 years of age, violates the ban on offering themselves for sexual services the police brings a general protective ²⁸action.

In the framework of this action, the child below eighteen years of age, living in a family violating the ban on offering themselves for sexual services, in accordance with the regulations of temporary placement, is placed in a special children's home, based on which the guardianship authority proceeds of its own motion. During that, the agency investigates the necessity of taking the child into foster care, or if any other child protection authority action is necessary. The police takes the child placed temporarily or taken into foster care previously into a special children's home.

The general protection action for the protection of children affected by prostitution is a decision which can be executed immediately, of which the organ performing the measure informs the guardianship agency, and also provides for the placement or transport of the child. With this regulation it can be guaranteed that a person below eighteen years of age shall not be exposed to sexual exploitation hindering their further, bodily, intellectual and moral development.

The guardianship agency in its official proceedings investigates whether the child's family is suitable for upbringing the child, and whether it is not contrary to the child's interest to be raised in their family environment. Children, who supposedly became victim of trafficking, which also includes children affected by prostitution, are considered to be children with special care needs. This need is verified by the decision of the police organ entitled to place the child,

²⁸ CPA. 76/B. §.

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to maximum 60 days from the placement, in the lack of a child protection expert board opinion and a guardianship agency decision based on it.

Police duties related to violence between relatives are stipulated by the OFP Act, the CPA, and Government Decree nr. 471/2017.(XII.2.) on the detailed regulations governing the orders for protection with injunction to stay away, and the relevant NPD Instruction.

The aim of the norm is to prevent family violence, protect the children, and the efficient performance of the tasks explicitly stipulated by the CPA. It regulates police duties in detail, training requirements for officers, the scope of duties deriving from the CPA, as well as cooperation and information obligation towards child welfare services, the guardianship agency.

The two earlier NPD Instructions in effect was compiled into a uniformed structure, supplemented, updated professionally by the NPD Instruction, rendering the two previous instructions ineffective. (NPD Instruction 32/2007.(OT.26.) about the management of family violence and the execution of tasks related to the protection of minors, and the NPD Instruction 37/2009.(OT.22.) about police duties related to temporary preventive injunction to stay away applicable in case of violence between relatives).

In case of a police action, when there is a child endangered by violence between relatives, or abused, the police is obliged to act based on the OFP Act, and shall report an alarm to the family protection coordination body.²⁹ In case there was a child present at the site of the violence between relatives, the endangering of the child took place even if they “only” witnessed the events, therefore the obligation to alarm reporting still persists.

Any abuse or neglect of the child posing their life to immediate danger, or causes significant and irreparable damage to their bodily, intellectual, emotional

²⁹ OFP Act 2.§) (1), (2)

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or moral development is considered severe endangerment constituting a basis for temporary placement.³⁰

The police can order temporary preventive injunction to stay away, in case of violence between relatives perceived during action on the site on one hand of its own motion, on the other hand based on a report.³¹ Report can be made by the abused in person, or by a (close) relative of the abused, or any expert performing duties in the scope regulated by the CPA or the Social Act, active in the field of child protection and welfare, and health care providers, services providing personal care, or public education institutions performing tasks connected to the child protection system.

The police orders a 72 hour temporary preventive injunction to stay away in case when from all the circumstances of the case, with special regard to the facts told by the abuser and the abused, the site of the violence between the relatives, signs indicating violence between the relatives, the behaviour of the abuser and the abused and their relationship they presume their is grounded suspicion of violence committed between the relatives.

Due to the restrictions attributed to the COVID-19 epidemic, the crime prevention officers of the Police focused on keeping contact by telephone and email, therefore child protection case discussions, meetings and training sessions took place online. With institutions, homes sustained by foundations offering temporary placement for persons or families escaping from the abuser the relationship has been informal and excellent for years.

During the COVID19 pandemic, for police actions in case of acts of violence and crimes between relatives in authority home quarantine and the location of children staying away from child protection special care without premission, a special protocol was prepared.

³⁰ CPA. 72.§. (2)

³¹ OFP Act 6.§. (2).

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Family, child and youth protection activities of the crime prevention units of the Police

It is better to prevent crimes than to punish them, therefore besides prosecution of crime a basic duty of the police stipulated by law is also crime prevention. Of the manifold and complex activities of crime prevention units, crime prevention programs with uniformed topics are outstanding, ranging from kindergarten age (OVI-ZSARU) through elementary school (DADA) to secondary school (ELLEN-SZER).

In Hungary, so far 596 kindergartens have joined the OVI-ZSARU programs, 297 elementary schools take part in the DADA program, while in 46 secondary schools students have access to the ELLEN-SZER program. School crime prevention counsellors are present in 250 secondary schools, who are policemen or policewomen spending 60% of their working hours in the school.

The main task of the crime prevention counsellor is to provide increased protection to young people in their school against crime both as perpetrators and victims, with special regard to crimes related to substance abuse.

Besides, the counsellor also cooperates successfully with government, local government, social and non-governmental bodies and organizations.

Their duty is to provide as much information as possible to children, teachers and parents about crime prevention.

Summary

It can be said that an especially important part of child protection is comprised by the activities of the Police, which has a system approach, adjusting their activities to other elements of the system, and regard the best possible cooperation with all stakeholders in the system as its main value.

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Although in the field of child protection and the criminal justice system the functions of the various actions differ, the objectives to be achieved by the tools applied can be brought to a common denominator: namely the promotion of the socialisation of children and juveniles, their successful integration into society, prevention of repeat offence as early as possible and make them refrain from committing any further criminal offence.³²

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Act LXXII./2009 on orders for protection with injunction to stay away due to violence between relatives

Act CLV./1997 on consumer protection, Act CL./2016 on general public administration proceedings,

Act LXXXVIII./2013 on the registration system of wanted criminals and searching for and identifying persons and things

Act CXXXV./2005 on helping victims of crime and state compensation

Act V/2020 on amending certain Acts necessary to combat the exploitation of victims of trafficking in human being

³²Government decree nr. 1744/2013.(X.17.) on the National Crime Prevention Strategy (2013-2023.) point 8.2.

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Decree nr. 30/2011. (IX.22.) of the Ministry of the Interior about the service regulations of the police stipulates

Decree nr. 63/2013. (XI.28) of the Interior Ministry about data provision for certain records of the wanted persons registry system and detailed regulations governing wanted procedures, and the amendment of certain ministerial decrees,

Decree nr. 8/2013. (VI.29) of the Ministry of Public Administration and Justice about the activities of the Parole Officer Service

Government Decree nr. 471/2017.(XII.2.) on the detailed regulations governing the orders for protection with injunction to stay away

Instruction of the National Police Department nr. 22/2012 (XII.21.) about the detailed regulations of police proceedings against children playing truant.

Instruction of the National Police Department nr. 23/2012 (XII.21.) about the police execution of the cooperation in the sustainance of order in elementary and secondary schools

Instruction of the National Police Department nr. 54/2013 (XII.21.) about police duties relevant to the registry system of wanted persons and wanted procedures

Instruction of the National Police Department nr. 16/2016 (VII.21.) about uniformed execution of child and youth protection duties

Instruction of the National Police Department nr. 2/2018 (I.25.) about the execution of police tasks related to violence between relatives

Instruction of the National Police Department nr. 19/2020 (IX.10.) on the activities of school guards

Government Decision nr. 1744/2013.(X.17.) on the National Crime Prevention Strategy (2013-2023)