

**Legal protection of LGBT victims of crimes.**  
Implementation of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

**Country report:**  
**Hungary**

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## Introduction

The present study was prepared in the framework of the project Accommodating the needs of the victims of homophobic and transphobic hate crimes – raising the competences of law-enforcement institutions. The project aims at exploring the legal situation and needs of victims of homophobic and transphobic hate crimes, to prepare a toolkit for public authorities on how to deal with such victims and to carry out training activities to help the implementation of that toolkit. The two-year project is implemented by a consortium of six organizations: Campaign Against Homophobia (PL), Contra (CR), Háttér Society (HU), Lithuanian Gay League (LT), Mozaika (LV), Polish Society of Anti-Discrimination Law (PL) and is supported by the European Commission Fundamental Rights and Citizenship Programme.

The present study is the first step of this research project, it aims to assess how legislation and its implementation in the participating countries comply with the requirements of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime,<sup>1</sup> especially with regards to LGBT victims of crime. In order to standardize this assessment, a benchmarking questionnaire was prepared by the Polish Society of Anti-Discrimination Law containing detailed questions regarding various aspects of the directive and its implementation. In Hungary the benchmarking questionnaire was completed by a team of experts with the participation of dr. jur. Kárpáti József, Háttér Society's Legal Program Director, dr. jur. Borbála Ivány, lawyer at the Hungarian Helsinki Committee, legal expert dr. jur. Erik Uszkiewicz and program coordinator Tamás Dombos. The experts first reviewed the benchmarking questionnaire and discussed the responses to be provided to each of the questions and the related dilemmas emerging. Dr. jur. József Kárpáti prepared draft answers to each question following the advices of the expert working group, which served as the outline of the present study. The outline was reviewed by the working group, and the text was finalized taking into consideration their comments.

The study is based mainly on the text of laws in force, a few pieces of related literature published, officially published court decisions, and on the experiences of the Háttér Society's legal aid service offering support to LGBT victims of discrimination and violence for over 15 years. In addition to that, manuals, reports and statistics of state authorities were used, and public interest data were requested from authorities in order to answer the questions regarding which there was no reliable public information available. An interview was conducted with a criminal judge from a county-level court about issues emerging in the practice. As academic literature on these questions is rather scarce, in a few cases we made use of information we only learnt from the press. Due to the short timeframe for the research, only a part of our FOI requests were answered.

## Executive summary

The general provisions of the Directive were mostly transposed into the national law. Besides the fact that the Directive has not been fully transposed, several significant discrepancies detectable between the provisions of laws and other rules and the actual practice give rise to serious concerns. One of the reasons for the partly incorrect transposition and the practice that undermines the rights of victims is the old-fashioned criminal procedure law which entrenches the rights of defendants and does not emphasize sufficiently the rights of aggrieved parties, coupled with the continental criminal justice system which is strongly centred on the police and the prosecution. The law enforcement usually looks at the aggrieved party only as one of the witnesses in the case, and the significant part of the aggrieved parties' procedural rights stem from their position as witnesses. Even though there are certain victim support institutions available, they are rarely applied due to financial and technical reasons (e.g. videoconferencing).

Most of the deficiencies of the Directive's transposition (and the bad practice) are not LGBT-specific. Thus, general criticism may be formulated for example regarding the insufficient information provided about the rights of aggrieved parties and victims, the formal manner in which such information is provided, and the vanishing of the aggrieved party's right to use his/her native language. The physical separation of aggrieved parties and defendants cannot be solved at many places due to the characteristics of the buildings. The aspect of victim support does not receive sufficient emphasis in the training of lawyers and in the postgraduate training of judges, prosecutors and attorneys, and it is detectable only in traces in the basic and in-service training of police officers. The in-service training of the actors of the criminal justice system is completely incidental. Cooperation between the state Victim Support Service and the civil society is poor and desultory.

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<sup>1</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

Communication between the Victim Support Service and LGBT organisations is extremely rare, and there is no official cooperation between them.

The individual assessment of victims to identify specific protection needs (Article 22) is completely missing from the Hungarian law, and, accordingly, the right to protection of victims with specific protection needs (Article 23) cannot be considered transposed. Partly due to the latter, the particular needs of LGBT persons are not even mentioned in the system of victim support, which gives rise to grave human rights concerns not only with regard to the efficiency of victim support, but also with regard to the efficiency of law enforcement in general.

It has to be noted that the transposition of the Directive has not been officially completed in Hungary. While some amendments to existing legislation have been adopted specifically to comply with provisions of the Directive, according to the Victim Support Service further amendments are expected in the coming months.

## Chapter 1 – Definitions (Article 2)

**Victim** – In the Hungarian legal system, basically two laws apply the “victim” definition as understood in a broader sense: the Code of Criminal Procedure<sup>2</sup> (CCP) and the Victim Support Act.<sup>3</sup>

The two laws above provide a different approach and definition to determine the persons who suffered harm caused by a criminal offence. The CCP defines the person who suffered harm rather narrowly, as the passive subject of the criminal offence as included in the substantive law and as a participant of the procedure, by using the term “aggrieved party”. In contrast, the Victim Support Act, when using the term “victim”, describes a significantly wider scope of persons. In terms of the CCP, the aggrieved party is a person whose rights or lawful interests have been violated or endangered by a criminal offence.<sup>4</sup> According to the Victim Support Act, a victim is a natural person who is the aggrieved party of a criminal offence committed in Hungary and a petty offence against the property committed in Hungary, or a natural person who suffered harm as the direct consequence of a criminal offence committed in Hungary or a petty offence against the property committed in Hungary, such as physical or mental harm, emotional shock and pecuniary loss.<sup>5</sup> At the same time, the law contains a restriction based on citizenship (statelessness), and ensures services for the victims of human trafficking and based on agreements concluded by the Hungarian state, on reciprocity. As a result, not all victims are entitled to assistance.

The two definitions differ also in that regard that under the Victim Support Act victims may only be natural persons while under the CCP even a legal person can be an aggrieved party. The definition of victims as included in the Directive is considered to be partly transposed, having regard to the provisions of the CCP being more restrictive as compared to the Directive.

**Family members** – The CCP uses the definition of “relatives” included in the Criminal Code<sup>6</sup> to describe family relations, and, accordingly, the following qualify as relatives: the relatives in direct line and their spouses or cohabitants, adoptive and foster parents (including stepparents living with the victim), adopted and foster children (including stepchildren living with the victim), siblings and the spouses or cohabitants of siblings, spouses, cohabitants, and the relatives in direct line and siblings of spouses or cohabitants. If the aggrieved party dies either prior to or following the launching of the criminal procedure, he/she may be replaced by a relative in direct line, spouse, cohabitant or legal representative who may exercise the rights guaranteed for aggrieved parties.<sup>7</sup>

The Victim Support Act also defines the notion of “family members” indirectly, in the following way: a person who is a relative in direct line, adoptive or foster parent, adopted or foster child, spouse or cohabitant of the victim who suffered a

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<sup>2</sup> Act XIX of 1998 on the Code of Criminal Procedure (hereafter: CCP)

<sup>3</sup> Act CXXXV of 2005 on the Support of Victims of Criminal Offences and State Compensation (hereafter: Victim Support Act)

<sup>4</sup> CCP, Article 51 (1)

<sup>5</sup> Victim Support Act, Article 1 (1)

<sup>6</sup> Act C of 2012 on the Criminal Code (hereafter: Criminal Code), Article 459, Point 14.

<sup>7</sup> CCP, Article 51 (3)

damage or died as a consequence of a criminal offence and was living at the time of the criminal offence in the same household as the victim; whom the victim who suffered a damage or died as a consequence of a criminal offence is or was obliged to maintain pursuant to a law, an enforceable court decision or a decision reached by any authority, or based on a valid contract; or who attended to burying an aggrieved party who died as a consequence of an intentional, violent criminal offence against the person.<sup>8</sup>

The definition of family members was found to be partly transposed, since they are mentioned in the Victim Support Act only in the context of the right to compensation as persons entitled to compensation on their own right. Accordingly, a family member cannot be considered a victim if a criminal offence was committed against the victim that does not establish a right for compensation. Siblings and dependants of the victim cannot replace the victim under the CCP, and siblings are also excluded from compensation. At the same time, the law does not make a distinction on the basis whether the relative/family member of the victim was living with the victim as his/her different-sex or same-sex cohabitant, same-sex registered partner or different-sex spouse, since Hungarian law recognizes same-sex and different-sex cohabitation equally,<sup>9</sup> the Criminal Code treats cohabitants and spouses equally, and the Criminal Code states that "cohabitant" shall also cover registered partners.<sup>10</sup>

**Child** – In terms of the position of victims the CCP guarantees a privileged status for children being less than 14 years old as opposed to children between 14 and 18 years old in many instances.

The custodian of a minor shall be notified about subpoenaing the minor together with a request to ensure the attendance of the minor; subpoenas and notices shall be served on minors less than 14 years old through their custodian.<sup>11</sup> Persons under 14 years of age may only be heard as a witness if the evidence expected to be provided by their testimony cannot be substituted by any other means. When hearing such persons, the warning about the consequences of giving false testimony shall be omitted.<sup>12</sup> If the witness is less than 18 years old, his/her legal representative, supporter and custodian may be present at his/her hearing.<sup>13</sup> Persons under 14 years of age may only be involved in a confrontation if it does not incite fear in the minor.<sup>14</sup> Upon the motion of the prosecutor, the investigation judge shall hear the witness being less than 14 years old prior to the filing of the indictment if there is reasonable ground to believe that questioning the witness at a court hearing would adversely affect his/her personal development.<sup>15</sup> The court may order that the witness being less than 14 years old is heard by using a closed-circuit communications system (videoconferencing).<sup>16</sup> In these cases the witness under 14 years of age, who resides in a separate room, shall – with the exception of confrontation – only hear and see the chair of the judicial panel via the transmission device.<sup>17</sup>

The exemplary list above clearly shows a differential treatment between the two age groups, which in certain cases may be explained by the special characteristics flowing from age, but in other cases – such as the provisions related to videoconferencing – definitely gives rise to concerns. The definition of the child has not been properly transposed into the Hungarian law.

**Restorative justice** – Using mediation as one of the methods of restorative justice is made possible by the act on mediation applicable in criminal cases<sup>18</sup> under certain circumstances.<sup>19</sup> A mediation procedure may be conducted only

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<sup>8</sup> Victim Support Act, Article 6 (1)

<sup>9</sup> Act V of 2013 on the Civil Code, Article 6:514

<sup>10</sup> Criminal Code, Article 459 (2)

<sup>11</sup> CCP, Article 68 (2)

<sup>12</sup> CCP, Article 86 (1)

<sup>13</sup> CCP, Article 86 (3)

<sup>14</sup> CCP, Article 124 (3)

<sup>15</sup> CCP, Article 207 (4)

<sup>16</sup> CCP, Article 244/A (2)

<sup>17</sup> CCP, Article 244/C (4)

<sup>18</sup> Act CXXIII of 2006 on Mediation Activity Applicable in Criminal Cases (hereafter: Penal Mediation Act)

<sup>19</sup> See: Chapter 4 – Right to safeguards in the context of restorative justice services (Article 12)

with the voluntary consent of the aggrieved party and the defendant. In the course of the procedure, the aggrieved party and the defendant are equal parties; they may withdraw their consent to participate in the mediation at any time throughout the proceedings; and shall reach any agreement voluntarily.<sup>20</sup> The notion of “restorative justice” is implemented properly by the Hungarian law. However, it shall be noted that applying the traditional criminal policy methods is extremely widespread in the domestic practice, and restorative justice methods are applied only in a fragment of the cases.

Neither the CCP and the Victim Support Act, nor the Legal Aid Act<sup>21</sup> limits the number of aggrieved parties or victims (and their family members) in terms of resorting to the allowances and rights ensured for them, and authorities do not have a discretionary power in that regard.

## Chapter 2 – LGBT victims’ access to information

### **Right to understand and to be understood (Article 3); Right to receive information from the first contact with a competent authority (Article 4)**

According to the Hungarian law, the victim of a criminal offence is entitled to the right to understand and to be understood in the criminal proceedings due to his/her status as an aggrieved party and a witness, while in the victim support procedure he/she is entitled to these rights due to his/her position as a victim. Under the law, the police shall inform the aggrieved party also about the possibility of resorting to victim support services.

Aggrieved parties are entitled at any time throughout the procedure to make motions and comments and receive information about their procedural rights and obligations from the court, the prosecutor and the investigating authority.<sup>22</sup> Prior to performing a procedural act, the court, the prosecutor and the investigating authority shall inform and advise the person affected by the procedural act of his/her rights and obligations.<sup>23</sup> Beyond that, the CCP expressly refers to the right to receive information.<sup>24</sup> According to the decree implementing the Victim Support Act,<sup>25</sup> the police shall provide every aggrieved party, at the time when aggrieved parties get in touch with the police for the first time in the given case, a unified information leaflet prepared by and provided to the police by the Victim Support Service, and at the same time it shall raise the aggrieved parties’ attention orally to the possibility of resorting to victim support and that the certification necessary for resorting to victim support services under the Victim Support Act is issued by the police upon their request.<sup>26</sup> According to the internal order on the victim support tasks of the police,<sup>27</sup> the heads of the affected police units shall ensure that aggrieved parties present at the scene of the criminal offence or the petty offence against the property receive the information leaflet of the competent Victim Support Service on the occasion of the police measure or investigative measure, and that aggrieved parties making a complaint with regard to a criminal offence or reporting a case personally or in any other way receive the information leaflet when they make the complaint or file the report, while in the case of victims not falling under the categories above, the heads of police units shall ensure that the leaflet is provided to the victims upon the first procedural act conducted which involves the victim. Furthermore, the heads of police units shall ensure that police officers raise the attention of the victims to the possibilities of resorting to victim support and that the certification necessary for resorting to victim support services is issued by the police unit proceeding in the case upon request – until the end of the official working hours on the working day following the receipt of the request –, and is handed over to the victim by the police or is sent to the competent Victim Support Service.

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<sup>20</sup> Penal Mediation Act, Article 7 (1)

<sup>21</sup> Act LXXX of 2003 on Legal Aid (hereafter: Legal Aid Act)

<sup>22</sup> CCP, Article 51 (1) b) and c)

<sup>23</sup> CCP, Article 62

<sup>24</sup> CCP, Article 51 (1)

<sup>25</sup> Decree 17/2007. (III. 13.) IRM of the Minister of Justice and Law Enforcement on the Tasks of the Police and the Border Guards Related to Victim Support (hereafter: Victim Support Decree)

<sup>26</sup> Victim Support Decree, Article 1

<sup>27</sup> Order of the Head of the National Police Headquarters 2/2013. (I. 31.) ORFK on the Victim Support Tasks of the Police, Section 11

However, in spite of the legal provisions, the right to information is not always ensured in practice. As stated by a report of the Commissioner for Fundamental Rights: "Many victims claim that they did not receive information about their possibilities from the police. According to the practical experiences the reason for that may be that the police actually did not provide information, but also that even though the victim signs in the minutes of him/her making the complaint that he/she received the information (together with several other warnings and notices), without providing it in a detailed manner, orally, and in a form fitting the given situation the transmission of information cannot be effective."<sup>28</sup>

According to the experiences of NGOs providing legal aid, the information provided about the procedural rights of aggrieved parties (by the police) is in many instances formal, it is not in an accessible language, and it is provided by making the aggrieved parties sign forms prepared in advance. The information leaflet of the Victim Support Service was in reality not handed over in any of the cases in which H  tt  r Society provided legal representation to aggrieved parties. Providing information which would reflect the needs of the LGBT community and victims of hate crimes is non-existent.

On the basis of the above it may be concluded that the right to understand and to be understood has been partly transposed, and is not ensured appropriately in practice. The same can be stated regarding the right to receive information from the first contact with a competent authority: victims usually do not receive information from the police officers acting at the scene, and information is sparsely provided when a complaint is made (only in the course of the related hearing).

### **Rights of victims when making a complaint (Article 5)**

Upon the request of the aggrieved party, a certified copy shall be issued of such documents issued in the course of the procedure to the copy of which the aggrieved parties are entitled to under the CCP: the aggrieved party may request a copy of documents prepared about the investigative acts on which the aggrieved party's presence is allowed by law.<sup>29</sup> Accordingly, the right of aggrieved parties of access to case materials is strongly restricted in the investigative phase of the procedure and is based on the discretion of the authorities.<sup>30</sup> The aggrieved party may receive a copy of his/her complaint with regard to the criminal offence.<sup>31</sup> In criminal cases, providing the copy of the minutes prepared about the complaint to the complainant is exempt from duties.<sup>32</sup>

In practice, the aggrieved party usually receives a copy of the complaint if he/she requests it and if his/her hearing takes place in the premises of the authorities. If the complaint is made and recorded at the scene of the offence, usually no copy is provided. The police acquire an interpreter for foreign persons making a complaint, but this is sometimes time-consuming. In practice, the translation of the complaint is not always ensured.

Article 5 has been partly transposed, and it is enforced in practice also only partly.

### **Right to receive information about the case (Article 6)**

The person who made the complaint shall be notified about the rejection of the complaint,<sup>33</sup> along with the person who submitted a private motion. After the interrogation of the suspect, the prosecutor may, in a decision, dispense with further investigation into a criminal offence having no significance in terms of establishing liability, taking into account another, graver criminal offence committed. The decision on partially dispensing with the investigation shall be communicated to the aggrieved party, to the person who made the complaint, and to the person who submitted a private motion.<sup>34</sup> The

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<sup>28</sup> Citation from the report of the Commissioner for Human Rights related to case no. AJB-7599/2012

<sup>29</sup> CCP, Article 70/B (2)

<sup>30</sup> See e.g. decision no. Bfk. 4907/2010/5. of the Budapest 1<sup>st</sup> and 12<sup>th</sup> District Prosecutor's Office, in which the prosecutor's office rejected the request aimed at providing copies of the reports about the juvenile suspects' background and living conditions (including information on his deeply rooted homophobia), claiming that an act is involved at which the aggrieved party could not be present. Source: archives of H  tt  r Society.

<sup>31</sup> Joint Decree 10/2003. (V. 6.) IM-BM-PM of the Minister of Justice, the Minister of Interior and the Minister of Finances on Providing Copies of Documents Issued in the Course of the Criminal Procedure, Articles 1-2, extract

<sup>32</sup> Act XCIII of 1990 on Duties, Article 57 (2) f)

<sup>33</sup> This means a decision by the police or the prosecutor's office that it does not want to pursue the given act.

<sup>34</sup> CCP, Article 187 (1)-(2), extract

decision on suspending the investigation shall be communicated to the aggrieved party.<sup>35</sup> The decision terminating the investigation shall be communicated simultaneously to the aggrieved party, to the person who made the complaint, and to the person who submitted a private motion.<sup>36</sup> Decisions shall be put into writing and shall be communicated to the persons whom they concern as well as to those whose procedural rights are affected by them. The defence counsel shall also be informed of decisions communicated to the suspect. Decisions shall be handed over to those present and shall also be communicated orally; in other cases they shall be served on the persons concerned.<sup>37</sup> In merit decisions and decisions concerning the transfer of the case, the appointment of the court to proceed and suspending the procedure shall be communicated also to the aggrieved party.

The court, the prosecutor and the investigating authority shall serve a subpoena on those persons whose presence at the procedural act is obligatory, and shall serve a notice on those whose presence is not obligatory but permitted by law,<sup>38</sup> so the aggrieved party learns about the dates of court hearings and of those investigative acts at which he/she may be present. The aggrieved party shall be notified about the pressing of the charges,<sup>39</sup> but the indictment is not served on the aggrieved party.

Both the law and the practice ensure the possibility for the aggrieved party to receive information about the termination of the investigation, the refusal of the complaint, the prosecutor's decision not to press charges or not to press charges with respect to certain elements of the suspicion, and in merit decisions, the first and second instance judgment.<sup>40</sup>

The aggrieved parties of certain grave criminal offences are entitled to be informed upon request about the release and escape of the defendant from pre-trial detention, the final or conditional release of the convict and the intermission of executing his/her imprisonment, and in the case of placement in a juvenile reformatory, the release of the juvenile or him/her leaving the juvenile reformatory without permission.<sup>41</sup> Simultaneously with communicating the in merit decision, the aggrieved party shall also be informed about the above right.<sup>42</sup>

An earlier decision of the National Justice Council (predecessor of the National Judicial Office) aims at introducing the institution of witness care.<sup>43</sup> The witness's caretaker is obliged to enlighten the witness about his/her rights and, if necessary, to ensure that the witness may wait for his/her turn in the witness room, in a room being physically separate from where the accused resides. Introducing this institution is in progress, and it has not been realized fully, but it may be considered a good practice.<sup>44</sup> (The decisions of the National Justice Council and the National Judicial Office do not qualify as laws, but they are obligatory for the organs falling under their scope, so they may be considered de facto legal norms.)

At the same time, receiving and providing information is not only a right, but also an obligation for the authorities, so such a request by the aggrieved party that he/she does not want to receive information cannot be fulfilled.

In practice, there are obstacles to the general possibilities of the aggrieved party to receive information (about the state of the case, the identity of the officer in charge, or the expected length of the investigation). If the qualification of the criminal offence is altered in a way that the original aggrieved party is not an aggrieved party to the criminal offence any more (because the new criminal offence is directed against the public order, such as disorderly conduct), the right to receive information might be violated due to the omission of informing the aggrieved party about the change in the qualification,

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<sup>35</sup> CCP, Article 188 (5), extract

<sup>36</sup> CCP, Article 190 (5), extract

<sup>37</sup> CCP, Article 169 (4), extract

<sup>38</sup> CCP, Article 67 (1)

<sup>39</sup> CCP, Article 219 (6)

<sup>40</sup> CCP, Article 367 (1)

<sup>41</sup> CCP, Article 51 (4)

<sup>42</sup> CCP, Article 262 (1)

<sup>43</sup> Decision 117/2008. (V. 6.) OIT of the National Justice Council on Introducing the Institution of Witness Care on a National Level

<sup>44</sup> Source: <http://birosag.hu/tudjon-meg-tobbet/a-birosagi-tanugondozasrol>.

since in that case the aggrieved party may act later on only as a person who reported the case or as a witness, and his/her procedural rights become insignificant.<sup>45</sup>

Laying the groundwork for court witness care and introducing the institution of the witness's caretaker may be considered good practices.

Article 6 has been mostly transposed, with the anomalies mentioned above. The transposition or its deficiencies are not LGBT-specific.

### **Right to interpretation and translation (Article 7)**

Criminal proceedings shall be conducted in Hungarian. Nobody shall suffer a disadvantage for not speaking Hungarian. In the course of the criminal procedure every person may use, both orally and in writing, their native language, or, pursuant to an international agreement promulgated by law and within the scope established therein, their regional or minority language, or – failing to command the Hungarian language – another language identified by the person concerned as a language spoken. Translation of the decisions and other official documents to be served pursuant to the CCP shall be the responsibility of the court, the prosecutor or the investigating authority which has adopted the decision or issued the official document. Unless provided otherwise by an Act of Parliament, documents to be served do not have to be translated if the person concerned expressly disclaims of this possibility.<sup>46</sup> If a person whose native language is not Hungarian intends to use his/her native language in the course of the proceedings, an interpreter shall be employed. If the person to be heard is hearing impaired, he/she shall be heard upon his/her request with the assistance of a sign language interpreter, or the person concerned may also make a written statement instead of being heard. If the person to be heard is deafblind, he/she shall be heard upon his/her request with the assistance of a sign language interpreter. If the person to be heard is speech impaired, he/she may make a written statement instead of being heard. The term "interpreter" shall include specialized translators as well.<sup>47</sup>

In theory, aggrieved parties may use their native language throughout the whole procedure free of charge. In practice, upon the request of aggrieved parties, interpreters are employed who interpret or summarize for the aggrieved parties what is happening in the course of the procedural acts or the content of decisions if the presence and witness testimony of the aggrieved party is necessary for the sake of the procedure. However, this does not necessarily prevail when the judgment is promulgated.<sup>48</sup> The number of interpreters is low and their fees are high, it is often hard to acquire an interpreter, and so in these cases the police rather dissuade the aggrieved party from making a complaint.<sup>49</sup> Even though the aggrieved party is entitled to the right to use his/her native language, in practice, the authorities and the courts rarely translate the official documents, minutes and decisions.<sup>50</sup>

The content of Article 7 is included in the CCP as a general principle, but it does not fully prevail in practice. The article does not contain substantive elements relevant for LGBT persons.

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<sup>45</sup> See e.g. Decision FK. 18404/2011/3. of the Metropolitan Prosecutor's Office. The underlying offence, "violence against a member of a community" (hate crime) was later on qualified as disorderly conduct, and the pressing of the charges was delayed. The aggrieved party was not informed about the change in the act's qualification and the delay in pressing charges, and found out about those decisions accidentally via a FOI request by Háttér Society. The higher instance prosecutor's office reviewing the case found that the lack of serving the decision on delaying the pressing of the charges violated the law.

<sup>46</sup> CCP, Article 9

<sup>47</sup> CCP, Article 114, simplified text

<sup>48</sup> Source: interview with a criminal judge from a county-level court on 31 March 2015.

<sup>49</sup> Source: documented experiences of the Háttér Society's legal aid service.

<sup>50</sup> Source: interview with a criminal judge from a county-level court on 31 March 2015.

## Chapter 3 – Support for and protection of LGBT victims

### Right to access victim support services (Article 8)

According to the Victim Support Act, when rendering victim support services, the state shall facilitate the enforcement of the victims' interests, grant instant financial aid, provide legal aid, ensure placement in a safe house if necessary, and provide compensation for indigent persons.<sup>51</sup> Authorities shall facilitate that the authorities receiving the complaints refer victims to the Victim Support Service. In order to facilitate the enforcement of victims' interests, the Victim Support Service shall help victims, in a manner and to the extent they need, in the enforcement of their fundamental rights and in resorting to healthcare services, health insurance benefits and social welfare services.<sup>52</sup>

The Victim Support Service shall inform clients approaching the Victim Support Service about their rights and obligations they have in the criminal procedure and in the petty offence procedure; the forms of support available to them and the conditions for applying for them; any available benefits, allowances and opportunities to enforce their rights other than those provided for by the Victim Support Act; the contact details of state, local government and certain civil organisations and religious communities participating in supporting victims; and the opportunities to avoid secondary victimization with a view to the type of the criminal offence or petty offence against the property in question.<sup>53</sup>

The Victim Support Service shall, after considering all circumstances of the case, provide the victim who suffered harm in terms of his/her rights as a consequence of a criminal offence or a petty offence against the property with legal advice and assistance in order to provide remedy for the harm suffered.<sup>54</sup> If, based on the circumstances of the case, it is proven that legal aid as defined in the Legal Aid Act is necessary to remedy the harm suffered by the indigent victim, the Victim Support Service shall forward the victim's application for victim support to the competent Legal Aid Service, which shall immediately notify the Victim Support Service of its decision and its measures taken.<sup>55</sup> In the framework of providing legal aid, the state – after examining whether the victim is indigent or not – provides the victims the forms of assistance defined in the Legal Aid Act.<sup>56</sup> The Victim Support Service shall – in the form of an instant financial aid – cover the victim's expenses regarding his/her accommodation, clothing, food and travel, along with medical and funeral expenses, if as a consequence of a criminal offence or a petty offence against the property the victim is not able to cover these expenses.

Victims are entitled to the service of facilitating the enforcement of their interests and instant financial aid irrespective of whether they qualify as indigent or not.<sup>57</sup> However, experiences show that out-of-pocket expenses shall be verified or at least rendered probable in order to receive payment. For the persons identified as victims of human trafficking the state shall ensure placement in a safe house irrespective of the fact whether a criminal procedure has been launched in the case or not.<sup>58</sup>

Indigent victims who have been the victims of an intentional, violent criminal offence against the person, and as a consequence thereof, their physical integrity or health has been severely damaged, and family members of the aggrieved parties who suffered damage or died as a consequence of a criminal offence are entitled to compensation. (For the definition of family members, see Chapter 1.) The compensation may be granted as lump sum compensation or may be granted as an allowance.

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<sup>51</sup> Victim Support Act, Article 4 (1)

<sup>52</sup> Victim Support Act, Article 4, extract

<sup>53</sup> Victim Support Act, Article 9

<sup>54</sup> Victim Support Act, Article 24 (1)

<sup>55</sup> Victim Support Act, Article 24 (2)

<sup>56</sup> Based on: Legal Aid Act, Article 1.

<sup>57</sup> Victim Support Act, Article 27 (1)

<sup>58</sup> Victim Support Act, Article 4, extract

A victim may be considered indigent if his/her net monthly income – in case of persons living in a joint household, the per capita income – does not exceed a certain threshold sum<sup>59</sup> which currently equals to approximately 680 Euros. Further persons may be also considered indigent irrespective of their financial standing.<sup>60</sup>

Certain services (providing information, facilitating the enforcement of interests, instant financial aid) are provided free of charge, while other services, such as compensation and special legal aid, are ensured on the basis of the victim's indigent status. The condition for providing victim support beyond providing information is ascertaining the affected person's status as a victim, the precondition for that being that a criminal procedure has been launched ex officio or upon the complaint of the aggrieved party.

Hungary has transposed Article 8 only partly, since not all victim support services are free of charge, and because the requirement that access to victim support services shall not be dependent on the victim making a formal complaint at the police is not fully complied with.

### **Support by victim support services (Article 9)**

Victim support tasks are performed by the Justice Services of the competent Government Offices. The Victim Support Service and the Legal Aid Service operate within the framework of the Justice Service.<sup>61</sup> The major tasks of the Victim Support Service are the following: providing information and advice, facilitating the enforcement of interests, providing instant financial aid, and providing state compensation.<sup>62</sup> The Victim Support Service informs the victims about their rights and ensures that they receive financial and practical advice and emotional support. Psychological support is incidental: the law does not make it obligatory, but the Victim Support Service strives to provide also this kind of support by resorting to various non-normative financial sources.<sup>63</sup> The Victim Support Service grants instant financial aid, and provides state compensation for indigent victims in the case of certain criminal offences. The Victim Support Service provides information on the specialized professional services operating locally. The information provided by the Victim Support Service covers the risks of secondary victimisation and of retaliation. Placement in a safe house is provided by the Victim Support Service depending on the places available, on an occasional basis ("mothers' homes"), but it is obliged to provide such placement in a narrow scope of victims established by law (persons identified as victims of human trafficking).<sup>64</sup> In cases involving more complex legal questions the Victim Support Service refers the victim to the Legal Aid Service, where the victim receives further information, and, in case he/she is indigent, other support as well (e.g. representation by an attorney acting as a legal aid provider).

The major tasks of the Legal Aid Service are the following: providing legal advice, providing instructions in questions related to powers and competences, permitting legal aid in extra-judicial matters and legal representation by an attorney acting as a legal aid provider.<sup>65</sup> The Legal Aid Service provides legal advice in simple cases, and, based on the client's indigent status, decides as an authority on the issue whether legal aid may be permitted: it permits the assistance of a legal aid provider (an attorney) in extra-judicial matters in order to provide advice and/or to prepare official documents, and the legal representation by an attorney acting as a legal aid provider in judicial procedures who represents the victim before the court. In practice, the procedure goes as follows: a registry is compiled of the attorneys willing to operate as a legal aid provider, that list is handed over by the Legal Aid Service to the victim, and the victim chooses the attorney he/she prefers. The attorney cannot refuse to provide the services.<sup>66</sup> The procedure of including someone in the registry is formal;<sup>67</sup> there is no special quality assurance in place with regard to the attorneys included in the registry; the quality of the service provided by them is incidental.

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<sup>59</sup> Victim Support Act, Articles 6 (2) and 4 (3)

<sup>60</sup> Victim Support Act, Article 6, extract

<sup>61</sup> Government Decree 233/2014. (IX. 18.) on the Justice Office, Articles 5 and 6

<sup>62</sup> Victim Support Act, Article 4, extract

<sup>63</sup> See also: comments provided with regard to Article 26.

<sup>64</sup> Victim Support Act, Articles 4 (1) and (6)

<sup>65</sup> Legal Aid Act, Article 1

<sup>66</sup> Legal Aid Act, Article 70

<sup>67</sup> Legal Aid Act, Article 71/A

There is no state-coordinated and -financed, targeted and integrated support available which would target the victims with specific protection needs, such as the target group of LGBT persons. The transposition of Article 9 has been realized for the most part, but placement in a safe house is restricted, and the specific protection needs of victims are not assessed. In practice, victims are not referred to LGBT organisations; the involvement of civil society organisations is incidental.

## Chapter 4 – Participation of LGBT victims in criminal proceedings

### Right to be heard (Article 10)

In the criminal proceedings, the victim shall be entitled to, unless provided otherwise by the CCP, be present at the procedural acts; to access those documents of the proceedings that concern him/her; to make motions and comments at any stage of the procedure; and to receive information from the court, the prosecutor and the investigating authority concerning his/her rights and obligations during the criminal proceedings.<sup>68</sup>

If the aggrieved party is a minor, he/she is represented in the procedure by his/her legal representative. In the subpoena and the notification concerning the minor, information shall be given about the content of the subpoena or the notification in a manner understandable for the minor, taking into account the minor's age and maturity.<sup>69</sup> The custodian of a minor shall be notified about subpoenaing the minor together with a request to ensure the attendance of the minor. Subpoenas and notices shall be served on minors less than 14 years old through their custodian. The legal representative of the minor shall also be notified of the fact that a subpoena or notice has been served on the minor.<sup>70</sup> If a person is under 18 years of age at the time of being heard, the court, the prosecutor and the investigating authority phrases the information on rights and the warning of obligations in a way which is understandable for the affected person, taking into account the person's age and maturity.<sup>71</sup>

Persons under 14 years of age may only be heard as a witness if the evidence expected to be provided by their testimony cannot be substituted by any other means. When hearing such persons, the warning about the consequences of giving false testimony shall be omitted. If the witness is less than 18 years old, his/her legal representative, supporter and custodian may be present at his/her hearing. If there is a conflict of interest between the witness and the legal representative or the custodian, or between the supporter and the relative named by the witness, or it is necessary for the sake of the investigation, rights shall be exercised by the guardianship authority.<sup>72</sup> The police shall conduct the hearing of persons less than 14 years old in such a hearing room designed for children where it may be ensured that the hearing is conducted, if possible, in a way showing consideration for the child, and taking into account the child's best interests.<sup>73</sup> The National Judicial Office aimed to achieve that until 31 December 2014 hearing rooms designed for children are established in every court building accommodating more than seven persons, which would facilitate that children are heard in a gentle manner. The "Child-sensitive justice system" program ensures the respect for children's rights and their effective enforcement. Implementing the program is in progress.

As far as the provisions of Article 10 are concerned, the right of the aggrieved party to be heard and to provide evidence has been fully transposed by the Hungarian state, while the related obligations affecting children have been mostly transposed. The court system also took initiatives beyond the normative legal obligations, but the practice needs to be enhanced.

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<sup>68</sup> CCP, Article 51 (1)

<sup>69</sup> CCP, Article 67 (7)

<sup>70</sup> CCP, Article 68 (2)

<sup>71</sup> CCP, Article 62/A (1)

<sup>72</sup> CCP, Article 86 (1)

<sup>73</sup> Decree 32/2011. (XI. 18.) KIM of the Minister of Administration and Justice on the Design of Hearing Rooms Designed for Children to Be Established at the Investigative Authorities of the Police, Article 1

## **Rights in the event of a decision not to prosecute (Article 11)**

In the criminal proceedings, the general right to submit complaints is ensured for the participants of the procedure, which covers every in merit decision and other measures, as well as omissions. Decisions shall be communicated to the person concerned. Any person affected by the provisions of the prosecutor's or the investigating authority's decision may file a complaint against it within eight days following its communication.<sup>74</sup> Anyone whose rights or interests are being violated directly by the measure or omission of the prosecutor or the investigating authority may file a complaint within eight days from learning about it.<sup>75</sup> If the complaint made about the criminal offence is rejected by the prosecution or the police,<sup>76</sup> if they terminate the investigation,<sup>77</sup> or if the prosecutor decides to press charges only with respect to a part of the accusation, to refer the case to mediation or to refuse to do so, or to delay the pressing of the charges, the aggrieved party may file a complaint against these decisions.<sup>78</sup> The aggrieved party may act as a substitute private prosecutor if the prosecutor or the investigating authority rejected the complaint made about the criminal offence or terminated the investigation; if the prosecutor decided not to press charges with respect to certain elements of the suspicion; if the prosecutor dropped the charges; if as a result of the investigation the prosecutor did not establish a criminal offence which should be prosecuted upon a public motion and therefore did not press charges or did not take over the representation of the prosecution (in an investigation ordered in a procedure based on private motion); or if the prosecutor dropped the charges because in his/her view the criminal offence in question shall not be pursued by a public motion.<sup>79</sup>

The rights enshrined in Article 11 have been appropriately transposed by Hungary. However, if due to altering the qualification of the criminal offence or due to qualifying the act as a less serious criminal offence (e.g. the qualification of "violence against the member of a community", i.e. hate crime is changed to disorderly conduct) the victim loses its standing as an aggrieved party, and his/her rights above cease, or the victim cannot necessarily resort to them.<sup>80</sup>

## **Right to safeguards in the context of restorative justice services (Article 12)**

Cases may be referred to a mediation procedure in the case of certain criminal offences and certain sentences a criminal offence is punishable with, provided that the offender confesses to committing the criminal offence until the pressing of the charges at the latest. Up until the pressing of the charges the prosecutor has the right to initiate a mediation procedure while suspending the criminal procedure for six months, while in the trial phase it is the court which is entitled to do so. A mediation procedure may be conducted only with the voluntary consent of the aggrieved party and the defendant. In the course of the procedure, the aggrieved party and the defendant are equal parties; they may withdraw their consent to participate in the mediation at any time throughout the proceedings, and shall reach any agreement voluntarily.<sup>81</sup>

A person who confessed to committing certain criminal offences punishable by imprisonment not exceeding three years shall not be prosecuted if he/she has admitted to commit the criminal offence before being indicted, and has provided restitution for the harm caused by the criminal offence in a way and to the extent accepted by the aggrieved party within the framework of a mediation process. The punishment may be reduced without limitation by the judge (meaning that some punishment or measure must be applied, but it can be the lightest one) if the perpetrator has confessed to having committed certain specified crimes punishable by imprisonment not exceeding five years before being indicted, and has provided restitution for the harm caused by the criminal offence in a way and to the extent accepted by the aggrieved party within the framework of a mediation process.<sup>82</sup>

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<sup>74</sup> CCP, Article 195 (1), extract

<sup>75</sup> CCP, Article 196 (1), extract

<sup>76</sup> CCP, Article 174 (1)

<sup>77</sup> CCP, Article 190 (1)

<sup>78</sup> CCP, Article 216 (5)

<sup>79</sup> CCP, Article 53 (1)

<sup>80</sup> See e.g.: decision no. FK. 18404/2011/3. of the Metropolitan Prosecutor's Office described in fn. 45.

<sup>81</sup> Penal Mediation Act, Article 7 (1)

<sup>82</sup> Criminal Code, Article 29 (1)-(2), text simplified due to the provisions' length

The aggrieved party may receive information from the authorities about the mediation within the framework of the general right to receive information. Later on, in the subpoena concerning the first mediation session the aggrieved party and the defendant shall be shortly informed about the essence of the mediation procedure, its legal consequences, and about their rights and obligations.<sup>83</sup> The documents developed in the mediation procedure – except the document containing the agreement reached as a result of the mediation and the report of the mediator – shall not be used as evidence in the criminal proceedings in which the mediation procedure was conducted.<sup>84</sup> In the mediation procedure an agreement is reached if the aggrieved party and the defendant reach an identical position in terms of paying for the damage caused by the criminal offence or to provide restitution for the detrimental consequences of the criminal offence in any other way.<sup>85</sup>

The agreement reached in the mediation procedure, which is put down in writing, is not suitable to produce any legal effect beyond the purpose of the mediation procedure. The agreement reached in the course of the mediation procedure does not affect the aggrieved party's right to enforce his/her claim resulting from the criminal offence in a court procedure outside the criminal procedure.<sup>86</sup>

Article 12 has been almost fully transposed. At the same time the prosecutor's office is on the standpoint that in the case of hate crimes procedures should not be referred to mediation, since it is the punishing of the accused which serves the fulfilment of the purposes of the punishment.<sup>87</sup> This categorical statement made by a prosecutor gives rise to concerns, since in the case of acts motivated by bias it precludes the aspects of establishing liability beyond the punishment, and so it does not necessarily serve the interests of the LGBT community.

### **Right to legal aid (Article 13)**

Only a subgroup of the persons falling under the scope of the notion of victims as applied by the Directive, namely aggrieved parties,<sup>88</sup> have the legal status of parties to criminal proceedings under the Hungarian law.

Victim support tasks are performed by the Victim Support Service and the Legal Aid Service.<sup>89</sup> For the detailed presentation of the general operation of these services, see comments provided with regard to Article 8. In the framework of providing legal aid in criminal proceedings for financially indigent persons, the state provides personal cost exemption for substitute private prosecutors and legal representation by an attorney acting as a legal aid provider for aggrieved parties.<sup>90</sup> Indigent aggrieved parties are entitled to being represented by an attorney acting as a legal aid provider if they are not capable of enforcing their rights in an efficient way personally due to the complexity of the case, their lack of experience in law or other personal circumstances.<sup>91</sup> Minor aggrieved parties are entitled to legal representation by an attorney acting as legal aid provider irrespective of the circumstances above. In the case of those persons whose status as a victim was established by the Victim Support Service, the law defines the (financial) conditions for qualifying as indigent more favourably than in those "ordinary" cases when a person is entitled to free legal aid in order to attend to one of his/her legal issues.<sup>92</sup>

Article 13 has been partly transposed: victims are entitled to receive certain types of legal aid depending on their financial status. Based on the practical interpretation of the law, aggrieved parties are entitled to the right to an attorney acting as a legal aid provider (i.e. to being represented as an aggrieved party) within the system of legal aid only in the trial phase

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<sup>83</sup> Penal Mediation Act, Article 9 (3)

<sup>84</sup> Penal Mediation Act, Article 13 (5)

<sup>85</sup> Penal Mediation Act, Article 13 (1)

<sup>86</sup> Penal Mediation Act, Article 14 (1)

<sup>87</sup> Decision no. B. XIV.8856/2013-9-I. of the Budapest 14<sup>th</sup> and 16<sup>th</sup> District Prosecutor's Office; source: archives of Háttér Society.

<sup>88</sup> Penal Mediation Act, Article 51 (1)

<sup>89</sup> Government Decree 233/2014. (IX. 18.) on the Justice Office, Articles 5 and 6

<sup>90</sup> Legal Aid Act, Article 17 (1), extract

<sup>91</sup> Legal Aid Act, Article 20 (1)

<sup>92</sup> Legal Aid Act, Article 9/A

of the criminal proceedings, leaving them without such support in the investigative phase, which is often more decisive for the outcome of the case.

### **Right to reimbursement of expenses (Article 14)**

The costs of the criminal proceedings are usually advanced by the state in the course of the procedure, and then it is covered by the convict or, in the case of acquittal, by the state. The costs of the criminal proceedings include the costs emerging in relation to the attendance of the aggrieved party, along with his/her out-of-pocket expenses.<sup>93</sup>

If the presence of the aggrieved party is obligatory at a given procedural act, he/she is served a subpoena. In this case, the costs related to his/her attendance shall be reimbursed.<sup>94</sup> If the presence of the aggrieved party is not obligatory at a given procedural act, a notification is served. In this case, the costs related to the aggrieved party's attendance are advanced by him/her and are covered by the defendant if being convicted in the criminal proceedings.<sup>95</sup> The costs of the interpreter are advanced by the state and are not covered by the aggrieved party under any circumstances.<sup>96</sup> Aggrieved parties may receive a copy of the case files in return for paying a duty, but have a right to make photographs about the case files free of charge.<sup>97</sup> Every cost of the criminal proceedings which is not advanced by the state shall be advanced by the aggrieved party: e.g. if the aggrieved party puts forward a motion to record the procedural acts by stenography, by an image or sound recording device, or with any other device, he/she is obliged to advance the costs of these.<sup>98</sup> The costs of the aggrieved party's legal representation is advanced and covered by the state according to the rules pertaining to providing legal aid, under the conditions presented above.

Article 14 has been partly transposed, since the costs of victims are not fully reimbursed by the state, but only if the presence of the aggrieved party (as a witness) is ordered by the authorities. Problems related to the transposition are not LGBT-specific.

### **Right to the return of property (Article 15)**

Seizure of property shall be terminated by the court, the prosecutor or the investigating authority if it is not necessary for the sake of the procedure any longer; the seizure shall be terminated if the investigation has been terminated or if its maximum period has expired. Prior to filing the indictment, the seizure ordered by the court may also be terminated by the prosecutor.<sup>99</sup> There is no express legal provision prescribing that the seizure should be terminated without delay, and in practice it is not terminated for years in many cases. The article has no specific LGBT-relevance.

### **Right to decision on compensation from the offender in the course of criminal proceedings (Article 16)**

The CCP makes it possible to enforce a civil law claim (damages) in the framework of the criminal proceedings. An aggrieved party enforcing a civil law claim in the criminal proceedings has the status of a so called "private party". The private party may enforce a civil law claim against the defendant which arose as a consequence of the act being the subject of the accusation. The fact that the aggrieved party did not take action as a private party shall not preclude the possibility of enforcing the civil law claim by other legal means.<sup>100</sup> In practice, the civil law claim put forward in the framework of the criminal proceedings is often referred to other legal avenues, which means that the aggrieved party may enforce his/her claim before a civil court with ordinary powers. One of the reasons behind that is that the features of the

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<sup>93</sup> CCP, Article 74 (1)

<sup>94</sup> CCP, Article 74 (1)

<sup>95</sup> CCP, Article 338 (1)

<sup>96</sup> CCP, Articles 338-339, extract

<sup>97</sup> The right to make photographs is not provided for by law, but authorities usually permit the making of photographs.

<sup>98</sup> Joint Decree 21/2003. (VI. 24.) IM-PM-BM of the Minister of Justice, the Minister of Interior and the Minister of Finance on Advancing the Costs of Criminal Proceedings, Article 4

<sup>99</sup> CCP, Article 155 (1)

<sup>100</sup> CCP, Article 54 (1)

criminal proceedings do not allow for conducting an evidentiary procedure characteristic for civil law procedures, and, accordingly, deciding on the claim is rare and happens only in clear and simple cases.

There are no rules which would encourage offenders to provide compensation. At the same time it is taken into account as a mitigating circumstance by the court if the damage is recovered (especially if it is recovered by the defendant). The mediation procedure offers a possibility for the offender to provide the victim pecuniary and non-pecuniary compensation voluntarily, and that may have an effect on the outcome of the procedure regarding the defendant. Due to the latter reasons Article 16 has been only partly transposed; it has no specific LGBT-relevance.

### **Rights of victims resident in another Member State (Article 17)**

In practice, authorities strive to acquire the complaint made with regard to a criminal offence or the aggrieved party's witness testimony as soon as possible for the sake of being able to conduct the investigation,<sup>101</sup> even though there is no specific rule pertaining to that. In certain cases, the CCP makes it possible to apply videoconferencing in the trial phase, but due to the limited resources available and the technically difficult preparatory work it is applied only rarely, in cases of larger volume.<sup>102</sup>

Based on the scope of the Criminal Code and the principle of officiality, and due to the state's law enforcement obligation with regard to criminal offences, it is possible to make a complaint domestically with regard to acts committed abroad,<sup>103</sup> but in these cases inquiries made under international mutual legal assistance are slow and the investigations are mostly not effective.

Article 17 has been partly transposed; it has no specific LGBT-relevance.

## **Chapter 5 – Protection of victims and recognition of victims with specific protection needs**

### **Right to protection (Article 18)**

The Hungarian law deals with the protection of aggrieved parties and witnesses rather extensively. It may be requested in the course of the procedure that the personal data of the witness are treated confidentially and to declare someone a particularly protected witness. In the case of a more serious threat, there is also a possibility for personal protection.

It may be ordered ex officio by the court, the prosecutor or the investigating authority and shall be ordered upon the request of the witness (aggrieved party) or the attorney acting on behalf of the witness that the personal data of the witness (aggrieved party) are handled separately and confidentially among the documents. In such cases the data of the witness treated confidentially may only be accessed by the court proceeding in the case, the prosecutor and the investigating authority.<sup>104</sup> A witness may be declared particularly protected if his/her testimony concerns substantial circumstances of an outstandingly serious case, if the evidence expected to be provided by his/her testimony cannot be substituted by any other means, if his/her identity, place of residence and the fact that he/she is intended to be heard by the prosecutor or the investigating authority is not known by the defendant and the defence counsel, and if exposing his/her identity would entail that the life, the physical integrity or the personal freedom of the witness or the witness's relative would be seriously threatened.<sup>105</sup>

In exceptionally justified cases it may be ordered that the aggrieved party, the witness, or any other person with respect to them receives personal protection established in a separate law.<sup>106</sup> The following may receive personal protection:

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<sup>101</sup> Established on the basis of the cases of the H  tt  r Society's legal aid service.

<sup>102</sup> Source: interview with a criminal judge from a county-level court on 31 March 2015.

<sup>103</sup> Criminal Code, Article 3 (1)

<sup>104</sup> CCP, Article 96 (1)

<sup>105</sup> CCP, Article 97

<sup>106</sup> CCP, Article 98 (1), extract

participants of the criminal proceedings and, with respect to the latter, any other person in an endangered situation. Personal protection may be applied in the course of the criminal proceedings and also after the procedure is closed.<sup>107</sup> Personal protection may be provided in particular by regular patrolling service, technical device, ensuring the continuous flow of information, providing protective gear, through guards, or at a place being protected by guards and being under the control of a law enforcement agency entitled to order or provide personal protection.<sup>108</sup>

As part of the victim support services, in the framework of its general obligation to provide information, the Victim Support Service provides information of a general nature which also covers the prevention of secondary victimisation, while when more complex legal aid is required the aggrieved party is referred to the Legal Aid Service.

Article 18 has been transposed into the Hungarian law. The rights pertaining to treating personal data confidentially are often violated in practice.<sup>109</sup>

### **Right to avoid contact between victim and offender (Article 19)**

The court, the prosecutor or the investigating authority may permit the witness to submit a testimony in writing following or instead his/her oral hearing.<sup>110</sup> If it is required for the protection of the witness, the line-up procedure shall be conducted in a way preventing the person in the line-up from identifying or noticing the witness. If the confidential treatment of the witness's personal data has been ordered, this shall be ensured in the course of the line-up procedure as well.<sup>111</sup> If it is required for the protection of the witness or the defendant, the confrontation of the witness or the defendant shall be omitted.<sup>112</sup> Persons less than 14 years old may participate in a confrontation if the confrontation does not incite fear in the minor. Particularly protected witnesses and witnesses who are in a state directly endangering their lives shall be heard by the investigation judge prior the filing of the indictment upon the motion of the prosecutor.<sup>113</sup> (Prior to the filing of the indictment, the tasks of the court are fulfilled by the investigation judge.<sup>114</sup>) In addition to the investigation judge, the keeper of the minutes, and, if necessary, the interpreter, the hearing of a particularly protected witness may be attended only by the prosecutor and the attorney acting on the witness's behalf.<sup>115</sup> Upon the motion of the prosecutor, the investigation judge shall hear the witness being less than 14 years old prior to the filing of the indictment if there is reasonable ground to believe that questioning the witness at a court hearing would adversely affect his/her personal development.<sup>116</sup> If the witness is less than 14 years old and was questioned by the court in the course of the investigation, no subpoena may be served on him/her to attend the court hearing.<sup>117</sup>

In the trial phase, the court may order that the witness, or, in exceptional cases, the defendant is heard by using a closed-circuit communications system (videoconferencing). When conducting the hearing via a closed-circuit communications

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<sup>107</sup> Government Decree 34/1999. (II. 26.) on the Conditions of Ordering and the Rules of Implementing the Personal Protection of the Participants of Criminal Proceedings and Members of the Authority Conducting the Procedure, Article 2, extract

<sup>108</sup> Government Decree 34/1999. (II. 26.) on the Conditions of Ordering and the Rules of Implementing the Personal Protection of the Participants of Criminal Proceedings and Members of the Authority Conducting the Procedure, Article 12 (2), extract

<sup>109</sup> See e.g.: the Budapest Police Headquarters' Reconnaissance Department – Division for Miscellaneous Criminal Offences expressly acknowledged in the criminal case no. 01000-970/2014. concerning a homophobic hate crime that they violated the rules of treating personal data confidentially by accidentally sending a copy of a decision to the suspect with the name and full address of the victim even though the confidential treatment of data had been ordered before. (Source: archives of H  tt  r Society.) Another example is minute no. 12.B.V.33.334/2013/14. in a case concerning a homophobic hate crime before the Pest Central District Court, where the judge read out loud the name of the aggrieved party in a court procedure when reciting a police report in spite of the fact that the confidential treatment of personal data had been ordered. The judge acknowledged that the police made a mistake when including the name of the victim in the report, but claimed that since it was included in the police report he had to read it out.

<sup>110</sup> CCP, Article 85 (5)

<sup>111</sup> CCP, Article 122 (5)

<sup>112</sup> CCP, Article 124 (2)

<sup>113</sup> CCP, Article 207 (3), excerpt

<sup>114</sup> CCP, Article 12 (4)

<sup>115</sup> CCP, Article 213

<sup>116</sup> CCP, Article 207 (4) b)

<sup>117</sup> CCP, Article 280 (1)

system, the direct link between the site of the court hearing and the place of residence of the person heard is ensured by a device transmitting image and sound simultaneously.<sup>118</sup> The court may order that hearing is conducted via a closed-circuit communications system if the witness is less than 14 years old, if the criminal offence committed against the witness was a grave and violent criminal offence against the person, and if the witness or defendant concerned participates in a witness protection program established by a separate law or if his/her safety otherwise requires so.

On the basis of the above, the means of separating victims and offenders are the following: granting the status of a particularly protected witness, omitting confrontation on the basis of individual deliberation, the possibility of testifying in writing, resorting to the closed-circuit communications system in the trial phase, and the exclusion of the defence lawyer.

At the police stations, victims usually have to wait in the corridor, and there are usually no separate waiting rooms for victims. There are usually no separate waiting areas for victims in the court buildings either, but certain courtrooms have two entrances, and so, based on individual deliberation, it may be avoided that the defendant and the victim meet.<sup>119</sup>

The National Judicial Office's goal is to ensure that the infrastructure for the safe stay of witnesses and minors can be guaranteed in court buildings. At the end of 2013, they started to establish such hearing rooms at most courts in which minor witnesses may be heard in an environment appropriate to their age. In the framework of witness care, courts, if required so, strive to separate the aggrieved parties and the defendants by using separate waiting rooms, but witness care is underdeveloped.<sup>120</sup>

Provisions of Article 19 have been partly transposed; the physical separation of aggrieved parties and offenders is not fully ensured either by law or in reality<sup>121</sup> – especially if the aggrieved party is not represented in the procedure. At the same time, introducing the institution of witness care and establishing hearing rooms designed for children at courts may be considered as good practices.

### **Right to protection of victims during criminal investigations (Article 20)**

There is no legal rule aimed at ensuring that interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority, or to ensure that 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.

The aggrieved party, the private prosecutor and other interested parties may exercise their rights through a representative unless the CCP sets out the obligation of personal contribution. Based upon an authorisation, attorneys, relatives of full age and other persons entitled to do so by a separate Act of Parliament may proceed as representatives.<sup>122</sup> The CCP allows for the legal representation of the aggrieved party, but not anybody may act as a representative, only attorneys, relatives of full age or civil society organisations may.<sup>123</sup> Being present at the hearing of the aggrieved party (as a witness) during the investigation is further restricted: only representative who are attorneys (so-called "attorneys acting on behalf of the witness") may be present, relatives or victim support personnel who are not attorneys cannot. The category of a relative of full age also covers the same-sex cohabitant or registered partner of the aggrieved party.

Although there is no express legal provision to that end, the good practice that victims do not need to appear at repeated medical examinations has been introduced.

The transposition of Article 20 is very poor, and the restriction concerning the right to representation and the right to be accompanied to a hearing may be strongly criticized.

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<sup>118</sup> CCP, Article 244/A (1)

<sup>119</sup> Source: interviews with criminal judges on 31 March 2015 and in 2012.

<sup>120</sup> For the details of witness care, see comments provided with regard to Article 6.

<sup>121</sup> In one of the cases it was not ensured that the security guard who allegedly ill-treated the victim and who worked at the scene is not present at the site inspection (case no. BRFK VI. 0160/1701/2013., currently still pending). Source: archives of H  tt  r Society.

<sup>122</sup> CCP, Article 56 (1)

<sup>123</sup> CCP, Article 58 (3)

## **Right to protection of privacy (Article 21)**

Information to the press may be provided by the member of the investigating authority authorised to do so in a separate law, the prosecutor, and the judge or another employee appointed by the court. The press shall be entitled to provide information on public court hearings. Disclosing information to the press shall be refused if that would violate the protection of qualified data, or would otherwise endanger that the proceedings is concluded effectively.<sup>124</sup>

Sound or image recordings to be made about any court hearing in order to inform the public shall be subject to the permission of the presiding judge, and making sound or image recordings of persons present at the hearing – with the exception of the members of the court, the keeper of the minutes, the prosecutor and the defence counsel – shall be subject to the consent of the person concerned. The presiding judge may refuse to grant the above permission or may withdraw the permission at any stage of the court procedure in order to ensure that the trial is uninterrupted and undisturbed. The press shall not provide information and no information may be disclosed to the press about hearings or parts of hearings from which the public was excluded. Unless an exception is set out by an Act of Parliament, only the persons stipulated in the CCP shall have access to the case files of pending or concluded criminal cases.<sup>125</sup>

The court may, ex officio or upon the motion of the prosecutor, the defendant, the defence counsel, the aggrieved party or the witness, exclude the public from the whole or a part of the trial in a reasoned decision, among others in order to protect the minors or other persons participating in the procedure and to protect qualified data. In a case concerning a lesbian couple, the court found that the protection of their privacy as a sole reason is not sufficient for excluding the public from the trial.<sup>126</sup>

Media law ensures self-regulation,<sup>127</sup> which also includes the possibility of regulating ethical journalism voluntarily, but no specific, victim-centred guidelines have been issued, either by the state or by self-regulatory bodies.

The general provisions of civil law on the protection of privacy and images of persons ensure the extensive protection of personality rights also applicable in criminal proceedings. The content of Article 21 has been mostly transposed, but the protection of privacy in itself does not serve as a reason for holding a closed hearing. In practice, personality rights are violated because of the carelessness of the authorities.<sup>128</sup>

## **Individual assessment of victims to identify specific protection needs (Article 22)**

A procedure of individual assessment of victims to identify their specific protection needs is completely absent from the Hungarian law.

## **Right to protection of victims with specific protection needs during criminal proceedings (Article 23)**

Since Article 22 has not been transposed, the question pertaining to the transposition of Article 23 is not applicable. The general measures to protect the victims have been presented above. Regarding victim support the law prescribes that victim support services shall be provided “after considering all circumstances of the case”,<sup>129</sup> but no more detailed rules are available.

## **Right to protection of child victims during criminal proceedings (Article 24)**

For the rules aimed at protecting children, see the detailed comments provided with regard to Articles 10 and 19. The protection of children is served by establishing hearing rooms designed for children at police stations, the willingness to

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<sup>124</sup> CCP, Article 74/A

<sup>125</sup> CCP, Article 74/B

<sup>126</sup> Authoritative Criminal Court Ruling no. 190/2000.

<sup>127</sup> Act CLXXXV of 2010 on Media Services and Mass Media, Article 8

<sup>128</sup> See e.g. case no. BRFK V. 5150/2012/bü.: in case of a homophobic hate crime the police served an official document on the parents of the aggrieved party in spite of his explicit earlier request not to do so. The parents found out about their child's sexual orientation from the letter of the police. Source: archives of Háttér Society.

<sup>129</sup> Victim Support Act, Article 24 (1)

establish such rooms at courts and the developing practice in that regard, the possibility to omit confrontation, the right of the investigation judge to question the child prior to the pressing of the charges, and the possibility of conducting the hearing in the trial phase via a closed-circuit communications system (videoconferencing). At the same time, videoconferencing is actually scarcely applied.

The parent may not represent his/her child in matters in which the parent himself/herself, his/her spouse, cohabitant, relative in direct line or any other person under the parent's legal representation is the opposing party. If due to an Act of Parliament or the order of the guardianship authority, a conflict of interest, or any other actual obstacle the parent acting as the child's legal representative is not able to proceed, the guardianship authority shall appoint an ad hoc guardian to represent the child. The ad hoc guardian shall have to act with the same authority in the case as a guardian.<sup>130</sup>

The investigating authority shall notify the guardianship authority about the conflict of interest, and the latter appoints an ad hoc guardian for the child, who is usually an attorney. The ad hoc guardian may resort to all the means which the Legal Aid Act offers to the victims as legal aid.

Article 24 has been partly transposed; provisions on making audiovisual recordings are completely missing from the law. The independent representation of children in the case of a conflict of interest is guaranteed. Provisions pertaining to presuming that someone is a child are missing.

## Miscellaneous

### Training of practitioners (Article 25)

Victim support is not mentioned among the output requirements of university level legal education,<sup>131</sup> nor in the curricula for the advanced legal exam ("bar exam") published by the Ministry of Justice.<sup>132</sup> Concerning the education of police officers, the professional requirement module called "criminal tasks of the police" contains, among others, the following requirement: performing the tasks of the police related to victim support and domestic violence.<sup>133</sup>

The obligation to provide in-service training to police, lawyers, judges, prosecutors and attorneys likely to come into contact with victims has not been transposed. The in-service training for such professionals is carried out on an ad hoc basis as part of projects financed through submitting grant applications. Topics related to victim support appeared in the training program of the Hungarian Justice Academy in the last five years only occasionally and tangentially, and the concerns of LGBT victims were not addressed. In 2015, the National Judicial Office initiated a sensitization training program for all judges which specifically includes LGBT topics, but its implementation so far has been limited and experimental.<sup>134</sup>

### Cooperation and coordination of services (Article 26)

The cooperation of the Victim Support Service's county-level units with civil society organisations is incidental; the central coordination of county-level victim support units is weak due to the indirectness of the institutional setup, and the intensity of the coordination is further decreasing.

Ad hoc steps were taken in the direction of international cooperation, but there is no express regulation adopted in that regard. The Victim Support Service is represented in the international organisation World Society of Victimology, and it also joined a European victim support organisation called Victim Support Europe. No information is available about the details of the cooperation.

The Hungarian state tried to provide information on the rights of victims, to facilitate the prevention of secondary and repeat victimisation, to provide information about the negative impact of criminal offences and to target groups at risk in the

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<sup>130</sup> Civil Code, Article 4:163, extract

<sup>131</sup> Decree 15/2006. (IV. 3.) OM of the Minister of Education on the Training and Output Requirements of Bachelor and Master Trainings

<sup>132</sup> Decree 5/1991. (IV. 4.) IM of the Minister of Justice on the Advanced Legal Exam, Article 5

<sup>133</sup> Government Decree 217/2012. (VIII. 9.) on the Professional Requirement Modules of the Specialized Qualifications Acknowledged by the State, Point 376

<sup>134</sup> The Hungarian Justice Academy, operating as part of the National Judicial Office, launched the program in March 2015. So far a one-day train-the-trainers training has been held, which is to be followed by local level training sessions around the country.

framework of the Social Renewal Operative Program (“TÁMOP”) realized from European Union and national sources, through a central program and calls for applications for local organizations. The programs had research and education elements and they involved civil society organizations, but only to a small extent. Neither the call for proposal, nor the actual project submitted included the LGBT community or the victims of hate crimes as target groups; LGBT organisations were not involved in the implementation of the programs as partners either. In the framework of the above initiative, a cooperation agreement was signed with only a few civil society organizations. In the framework of the central project a helpline available free of charge from anywhere in the country was established, which received 7,434 in merit calls in 2012. Also in the framework of the TÁMOP programs training courses designed for adults were accredited, trainings were held, and an e-learning curricula was prepared. At the Faculty of Law of the University of Miskolc a training course for crime prevention coordinators was launched as a specialized part-time postgraduate course. In the course of implementing the programs, publications on victim support of varying quality were published on different internet sites; all of them failed to cover LGBT aspects.

## Recommendations

1. Amend the Criminal Procedure Act to introduce the notion of “aggrieved parties with specific protection needs” including explicit references to victims of hate crimes, and victims vulnerable due to their sexual orientation or gender identity. The amendment should mandate law enforcement agencies to collect sensitive data, offer on opt-out possibility for victims, and order such data to be treated confidentially.
2. Amend the Criminal Procedure Act to allow aggrieved parties to be accompanied to hearings during the investigation by a person of their choice regardless of whether the person is an attorney or not.
3. Amend the Criminal Procedure Act to abolish unjustified differentiation between the rights of aggrieved parties less than 14 years old and aggrieved parties between 14 and 18 years old.
4. Amend the Victim Support Act to introduce the notion of “victims with specific protection needs” including explicit references to victims of hate crimes, and victims vulnerable due to their sexual orientation or gender identity. The amendment should mandate victim support services to collect sensitive data, offer on opt-out possibility for victims, and order such data to be treated confidentially.
5. Amend the Victim Support Act to include psychological counselling as a specific service offered by the Victim Support Service.
6. Amend the Victim Support Act to make all services accessible to victims regardless of whether they have reported the crime to the authorities, and clarify that victim support personnel cannot report a crime learnt during their work unless specifically requested by the victim.
7. Amend the Victim Support Act to make victim support services available to all persons residing in Hungary regardless of the legality of their stay.
8. Amend the Victim Support Act to allow the Victim Support Service to initiate contact with the victim in case the victim has agreed to it during the police interview.
9. Amend the Legal Aid Act to make free legal aid accessible during the investigation phase.
10. Amend the ministerial decree on the victim support tasks of the police to include the basic rules on the individual assessment of victims to identify their specific protection needs.
11. Amend the police order on the victim support tasks of the police to include the detailed rules on the individual assessment of victims to identify their specific protection needs.
12. Introduce a screening questionnaire to be filled out by victims when they come in contact with law enforcement agencies or victim support services to identify their specific protection needs. The questionnaire should contain specific questions on the victim’s personal characteristics including sexual orientation and gender identity. Completing the questionnaire should be optional.
13. Amend the police order on the victim support tasks of the police to include hate crimes in the list of crimes needing specific attention, and LGBT persons in the list of vulnerable victim groups needing specific attention of victim support police officers.

14. Introduce legislation to prescribe that no new court buildings may be built in which there are no separate waiting areas for victims.
15. Amend legislation on the training requirements of police officers, lawyers, judges and prosecutors to give more prominence to the rights and needs of victims of crime with a specific attention to the needs of vulnerable victims including LGBT victims of crime.
16. Include the rights and needs of victims with a specific attention to the needs of vulnerable victims including LGBT victims of crime as a priority issue in the training strategy of the police, the judiciary, the prosecution service and the victim support service. In-service training on these issues should be systemic and reach a large number of professionals.
17. Prepare and disseminate a guide to victims of crimes explaining the criminal procedure and their rights during the proceedings in a simple and accessible manner. The guide should be available in police waiting rooms and on the website of the police.
18. Prepare an online collection of guides targeted to victims of specific types of crimes including hate crimes containing contacts to available specialized support services and other resources, and tips on how to avoid repeat victimization and overcome the negative consequences of victimization. A copy of the relevant guide should be handed over to the victim during the police interview.
19. Strengthen efforts to provide free, prompt and good quality interpretation and translation services for victims who do not speak Hungarian by for example introducing a telephone based interpretation service at the police.
20. Strengthen and formalize cooperation between civil society organizations and the Victim Support Service, including cooperation with local victim support units. Include civil society organizations working with victims of hate crimes and LGBT victims of crimes as official partners.
21. Set up reference groups at the police and the victim support service with the participation of civil society organizations working with vulnerable victims of crimes to provide guidance and monitor the practice of these authorities.
22. Create a system of anonymous satisfaction surveys at law enforcement and criminal justice institutions and use data from those surveys as performance indicators.
23. Introduce LGBT liaison officers at the police following the model of minority liaison officers.
24. Include victims of hate crimes and LGBT victims of crimes as a specific target groups in crime prevention and victims support campaigns, as well as in public funding opportunities for such activities.