

## *Submission Template*

# **The right to interpretation and translation and the right to information in criminal proceedings in the EU**

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## Contents

Section A: The right to interpretation and translation in criminal proceedings	3
1. Right to interpretation	3
2. Right to translation of documents	11
3. Rights concerning both interpretation and translation	15
Section B: Right to information in criminal proceedings	22
1. Provision of information on the procedural rights	22
2. Letter of Rights	33
3. Right to information about the accusation	44
4. Right of Access to Case Materials	48
5. Cross-cutting issues: Languages, complaint mechanisms, recording & special measures	55

# QUESTIONS

As envisaged in the section on Research Methodology, please note that some questions require consultation with organisations and/or practitioners working in relevant fields covered by the research to cross-check findings from the desk research with respect to the way in which the examined rights are applied in practice (such as judges, lawyers, interpreters and translators or civil society organisations active in the field of legal assistance in criminal proceedings).

## Article I. SECTION A: The right to interpretation and translation in criminal proceedings

1.	RIGHT TO INTERPRETATION	Brief Description
1.1		<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <ul style="list-style-type: none"><li>a) Who has the responsibility for determining the need of interpretation at each stage of the proceedings?</li><li>b) How it works in practice for the various stages of the proceedings to ascertain whether suspected or accused persons speak and understand the language of the proceedings?</li><li>c) Who bears the cost of interpretation at each stage?</li><li>d) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</li></ul> <p><b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>

<p>1.1.1</p> <ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) Act XIX of 1998 on Criminal Proceedings (<i>1998. évi XIX törvény a büntetőeljárásról</i>; hereinafter referred to as the Criminal Procedure Code)<sup>1</sup> establishes the right to use one's native language in criminal proceedings. Article 9(2) of the Criminal Procedure Code provides that suspects and accused persons can use their mother tongue or regional/ethnic language on the basis of international agreement promulgated by law both verbally and in writing. These rules apply to all stages of the criminal proceedings.</p> <p>During the investigation phase, the responsibility for determining the need of interpretation lies with the investigating authorities, e.g. the Police, and the Customs and Excise Office<sup>2</sup>. Interpreters are generally provided on the suspect's request or when it is clear to the investigating authorities that the suspect does not speak or understand the language of the proceedings.<sup>3</sup> There are, however, no uniform criteria prescribed by law to assess whether or not the suspect requires the assistance of an interpreter. In practice, however, the investigating authority first has to find out the nationality of the suspect before questioning and, in case of a suspect whose mother tongue is not Hungarian, the assignment of an interpreter is obligatory even if they speak and understand Hungarian.<sup>4</sup></p> <p>In other cases, if suspects want to be assisted by an interpreter, the investigating authority must assign one and interpretation has to be arranged before the start of the Police questioning.</p> <p>Act II of 2012 on misdemeanours, misdemeanour proceedings and the registration of misdemeanours (<i>2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről</i>; hereinafter referred to as the Code of Misdemeanour Procedure),<sup>5</sup> establishes the right to use one's native language in misdemeanour proceedings (quasi-criminal proceedings).<sup>6</sup> The same rules applying to criminal proceedings also apply to misdemeanour proceedings. The responsibility for</p>
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<sup>1</sup> Act XIX of 1998 on Criminal Proceedings (*1998. évi XIX törvény a büntetőeljárásról*; hereinafter referred to as the Criminal Procedure Code), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=34361.291612](http://njt.hu/cgi_bin/njt_doc.cgi?docid=34361.291612).

<sup>2</sup> According to Article 36 of the Criminal Procedure Code the general investigating authority is the Police but for certain criminal offences the Customs and Excise Office conducts the investigation.

<sup>3</sup> Hungary, criminal lawyer and representative of the National Police.

<sup>4</sup> Article 175 of Joint Decree 23/2003 (VI. 24) of the Ministry of Interior and Ministry of Justice on the detailed rules of investigations of investigation authorities under the auspices of the Ministry of Interior and on the rules of recording investigation actions (*23/2003. (VI. 24.) BM-IM együttes rendelet a belügyminiszter irányítása alá tartozó nyomozó hatóságok nyomozásának részletes szabályairól és a nyomozási cselekmények jegyzőkönyv helyett más módon való rögzítésének szabályairól*), available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=74379.244213](http://njt.hu/cgi_bin/njt_doc.cgi?docid=74379.244213).

<sup>5</sup> Hungary transposed some provisions of Directive 2010/64/EU in Article 67 and 91 of the Code of Misdemeanour Procedure. This code is applicable to misdemeanour-related offences. Misdemeanours are less severe offences than crimes and the cases, depending on the severity, are either heard by courts or administrative authorities. Act II of 2012 on misdemeanours, misdemeanour proceedings and the registration of misdemeanours (*2012. évi II. törvény a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről*; hereinafter referred to as the Code of Misdemeanour Procedure) is available at: [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=143166.254714](http://njt.hu/cgi_bin/njt_doc.cgi?docid=143166.254714).

<sup>6</sup> Article 36 of the Code of Misdemeanour Procedure.

		<p>determining the need of interpretation of a suspect or accused person lies with the misdemeanour authority (e.g. the Police, and the National Tax and Customs Office).<sup>7</sup></p>
		<p>b) The law does not prescribe a specific procedure or mechanism to ascertain whether suspects or accused persons speak or understand the language of the proceedings. The investigating authority/judge usually makes this assessment by simply asking the suspect/accused person whether he/she needs an interpreter for the specific procedural action.</p> <p>However, Judicial Decision No. 2014/203 of the Supreme Court<sup>8</sup> states that it is not enough to ask the accused person whether he/she understands the language of the proceedings. The competent authority/judge has to specifically ask whether the suspect or accused person prefers to use his/her native language during the proceedings. The suspect or accused person does not need to demonstrate that he/she speaks or understands Hungarian. To have the right to an interpreter, it is sufficient for the suspect/accused person to unambiguously state that he/she wants to use his/ her native language. If, at the Police station, the suspect speaks a language that the authorities do not understand, the competent Police officers have to check his/her identity card, passport or any other document that could reveal his/her nationality and provide an interpreter.<sup>9</sup></p> <p>The same rules applying to criminal proceedings also apply to misdemeanour proceedings.</p>
		<p>c) Article 339 of the Criminal Procedure Code provides that the state bears the cost of interpretation and translation during criminal proceedings. In practice, suspects or accused persons who do not understand the language of the proceedings are assisted by an interpreter or translator free-of-charge in all the different stages of the proceedings, including the interim hearings,<sup>10</sup> and while communicating with their lawyers in direct connection with any questioning and hearing during the proceedings.<sup>11</sup></p> <p>Article 67(4) of the Code of Misdemeanour Procedure provides that the interpreter's and translator's fees and costs are borne by the State.</p>
		<p>d) There is no specific provision prescribing a timeframe or deadline for providing interpretation during criminal and misdemeanour proceedings.</p>

<sup>7</sup> Hungary, criminal lawyer.

<sup>8</sup> Judicial Decision 203/2014 of the Criminal Department of the Supreme Court (203/2014 számú *Büntető határozat*), not available online.

<sup>9</sup> Hungary, representative of the National Police.

<sup>10</sup> Interim hearings are usually hearings where the court decides on urgent issues that cannot wait until the final hearing of the court.

<sup>11</sup> Hungary, criminal lawyer; criminal judge.

		In practice, the time passed between the identification of the need for an interpreter and the provision of the service depends on the availability of an interpreter for the relevant language. In Hungary, it is usually fairly easy to find an interpreter for English, German, French, Spanish, Chinese and for official languages of neighbouring countries, such as Croatian, Slovakian, and Romanian. For other languages, such timeframe may vary. <sup>12</sup> Investigating authorities try to ensure the presence of an interpreter without undue delay because suspects or accused persons cannot be questioned in the absence of an interpreter, unless they speak Hungarian and renounce their right to use their native language.
1.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) During the trial phase of criminal proceedings and misdemeanour proceedings, the responsibility to determine the need for interpretation prior to the first hearing lies with the presiding judge. If an interpreter already assisted the accused during the pre-trial phase (e.g. during the questioning by the public prosecutor), interpretation is arranged before the court hearing. The accused person can request the presence of an interpreter at any stage of the proceedings, even in the course of the court hearings. In that case, the court hearing is adjourned and the presiding judge summons an interpreter for the following hearing.<sup>13</sup></p> <p>b) As above. See answer 1.1.1/b.</p> <p>c) As above. See answer 1.1.1/c.</p> <p>d) As above. See answer 1.1.1/d.</p>
1.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) As above. See answer 1.1.2/a.</p> <p>b) As above. See answer 1.1.1/b.</p> <p>c) As above. See answer 1.1.1/c.</p> <p>d) As above. See answer 1.1.1/d.</p>
1.1.4	<ul style="list-style-type: none"> <li>• Any communication between suspects and accused persons and their legal counsel in direct connection</li> </ul>	<p>a) The Criminal Procedure Code and the Code of Misdemeanour Procedure do not expressly provide for interpretation services during consultation between the suspect or accused person and his/her lawyer. However, in practice, when an interpreter is assigned, he/she is at the suspect's or accused person's disposal during all procedural stages where there is communication in direct connection with any questioning or hearing during the proceedings between the suspect or accused person and his/her legal counsel.<sup>14</sup></p>

<sup>12</sup> Hungary, criminal lawyer; criminal judge.

<sup>13</sup> Hungary, criminal judge.

<sup>14</sup> Hungary, criminal lawyer.

	<p>with any questioning or hearing during the proceedings?</p>	<p>In practice, ensuring interpretation for lawyer consultations during criminal proceedings is crucial to safeguard the fairness of the proceedings and the right of defence of the suspect or accused person.<sup>15</sup></p> <p>b) As above. See answer 1.1.1/b.</p> <p>c) As above. See answer 1.1.1/c.</p> <p>In addition, Guiding Decision No. 1/2013 of the Criminal Department of the <i>Kúria</i> (Supreme Court of Hungary) states that the cost of interpretation for any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during criminal proceedings are borne by the State.<sup>16</sup> In practice, communications between suspects/accused persons and their lawyers in direct connection with any questioning, hearing or other procedural actions are available free-of-charge and there is no temporal limit imposed.<sup>17</sup></p> <p>Regarding misdemeanour proceedings, Hungarian Law does not expressly provide interpreter services during consultation between suspects or accused persons and their legal counsel. However, in practice, the same rules apply.<sup>18</sup></p> <p>d) As above. See answer 1.1.1/d.</p>
<p><b>1.2</b></p>	<p>How do authorities ensure interpretation into rare/lesser known languages where no certified interpreters exist? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>According to Article 114(1) of the Criminal Procedure Code, if the native language of the suspect or accused person is a rare/lesser known language for which no certified interpreters exist, and sourcing an interpreter would involve unreasonable difficulties for the competent authorities, interpretation for another language – defined by the suspect or accused person as one of the languages that he/she can speak, must be provided. If, however, at a later stage of the proceedings, an interpreter for the native language in question can be found, it is preferable<sup>19</sup> to assign him/her to the suspect or accused person. Under Article 114(3) of the Criminal Procedure Code, when the suspect or accused person wishes to use a language pursuant to Article 9(2) of the Criminal Procedure Code, for which no certified interpreter exists, and he/she does not speak any other languages, the competent authority must assign an <i>ad hoc</i> interpreter. <i>Ad hoc</i> interpreters are persons who have satisfactory command of the language in question but are not qualified to be interpreters. <i>Ad hoc</i> interpreters, however, can only be considered in exceptional cases.<sup>20</sup></p>

<sup>15</sup> Hungary, criminal lawyer.

<sup>16</sup> Guiding Decision No. 1/2013 of the Criminal Department of the *Kúria* (1/2013. számú büntető elvi döntés), available at: [www.lb.hu/hu/elvdont/12013-szamu-bunteto-elvi-dontes](http://www.lb.hu/hu/elvdont/12013-szamu-bunteto-elvi-dontes).

<sup>17</sup> Hungary, criminal lawyer..

<sup>18</sup> Hungary, criminal lawyer..

<sup>19</sup> Legal Commentary of the Criminal Procedure Code (*Kommentár – a büntetőeljárásról szóló 1998. évi XIX. törvényhez*), not available online.

<sup>20</sup> Hungary, criminal judge.

		Article 67(3) of the Code of Misdemeanour Procedure provides that when no certified interpreters exist or no certified interpreter is available, another person with a satisfactory command of the language in question ( <i>ad hoc</i> interpreter) can be assigned.
1.3	Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no interpretation is needed? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>In criminal proceedings, no special procedure exists to challenge the decision that no interpretation is needed. However, suspects or accused persons can challenge such decisions, depending on the phase of the proceedings, through the general complaint procedure, or when filing an appeal against the court’s decision. According to Article 195(1) of the Criminal Procedure Code, during the investigation phase, the decision of the prosecutor or the investigating authority is subject to legal remedy and the suspect, “affected by the dispositions in the decision of the prosecutor or the investigating authority, may protest it within eight days following the communication”. The complaint is then admitted or rejected by the prosecutor or the superior prosecutor within 15 days of receipt. During the trial stage, the decision that no interpretation is needed can be challenged by the accused by means of an appeal to a higher court as part of the general appeal against a court’s judgment. In practice, however, it is very unlikely that criminal justice authorities refuse to appoint an interpreter.<sup>21</sup> If a suspected or accused person asks to be assisted by an interpreter, the competent authorities will provide interpretation and do not usually question the need for it. Even if the native language of the suspected or accused person is Hungarian, authorities will rely on the suspect’s or accused person’s own assessment as to whether or not he/she speaks and understands the language of the proceedings.<sup>22</sup></p> <p>In misdemeanour proceedings, the same rules apply. There is no special procedure to challenge the decision that no interpretation is needed. However, under Article 98(1) of the Code of Misdemeanour Procedure, the person subject to the proceedings may file a complaint against such a decision, through the general appeal procedure challenging the court decision within eight days following the communication of such a decision. During court proceedings, the decision that no interpretation is needed can be challenged by the person subject to the proceedings – by means of an appeal to a higher court as part of the general appeal against the district court’s decision. <sup>23</sup> In practice, however, misdemeanour authorities are not likely to refuse to appoint an interpreter. As in cases of criminal proceedings, if a suspect or accused person asks to be assisted by an interpreter, the competent authority will provide interpretation and does not usually question the need for it. Even if the native language of the suspect or accused person is Hungarian, the authority will rely on the suspect’s or accused person’s own assessment as to whether or not he/she speaks and understands the language of the proceedings.<sup>24</sup></p>
1.4	With regard to remote interpretation via communication technologies :	

<sup>21</sup> Hungary, criminal lawyer.

<sup>22</sup> Hungary, criminal lawyer.

<sup>23</sup> Article 121(1) of the Code of Misdemeanour Procedure.

<sup>24</sup> Hungary, criminal lawyer.



<p>a) Can communication technologies for the purpose of remote interpretation be used? If so, at what stage(s) of the proceedings?</p>	<p>There is no specific provision in the Criminal Procedure Code for the use of communication technologies for the purpose of remote interpretation. Article 244/B of the Criminal Procedure Code only regulates the holding of a trial by way of a closed-circuit communication system where the accused is examined in the presence of an interpreter if necessary.</p> <p>However, the use of communication technologies for the purpose of remote interpretation is not forbidden by law and, in urgent and exceptional cases, the use of videoconference with an interpreter (e.g. during Police questioning) is possible.<sup>25</sup> It is nevertheless still rare in Hungary that the interpreter and suspect are in two different places. Face-to-face interpreting is considered more efficient than remote interpretation, which is much more challenging for both the interpreter and the non-native speaker. Moreover, high-quality sound and video cannot always be provided and this could prejudice the fairness of the proceedings.</p> <p>Article 67(12) of the Code of Misdemeanour Procedure specifically provides for the use of communication technologies for the purpose of remote interpretation. This Article states that the use of videoconference, telephone or internet videoconferences for the purpose of remote interpretation is possible at all stages of the proceedings – if the necessary tools are provided. Communication technologies for the purpose of remote interpretation however, should only be used when the appearance of the interpreter is not possible for reasons of time or distance and when the physical presence of the interpreter is not required to safeguard the fairness of the proceedings.</p> <p>In practice this Article is rarely applied; competent authorities rarely decide to use communication technologies for the purpose of remote interpretation. As long as a qualified interpreter is available locally, face-to-face interpreting is always the preferred option.</p> <p>Applicable legislation does not specify whether or not a proceeding would be postponed in cases where a qualified interpreter is not locally available. In practice and as a general rule, the procedure would not be postponed in cases where a qualified interpreter is not locally available, as Hungary is a rather small country and long waiting due to time-consuming travel for the interpreters is usually not an issue.<sup>26</sup></p>
<p>b) Which technologies are used, if any (videoconference, telephone, internet, etc.)</p>	<p>In criminal proceedings, authorities can only use technologies that are audiovisual, i.e. with both sound and a visual element. For example, videoconferences through the internet.<sup>27</sup></p> <p>Article 67(12) of the Code of Misdemeanour Procedure specifically provides for the use of communication technologies for the purpose of remote interpretation. In misdemeanour proceedings, the use of videoconference, telephone and videoconferences through the internet is therefore possible.</p>

<sup>25</sup> Hungary, criminal lawyer.

<sup>26</sup> Hungary, criminal lawyer.

<p>c) Do competent authorities rely on the tools developed in the context of European e-Justice (e.g. information on courts with videoconferencing equipment provided on the European E-justice Portal)? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>Authorities have access to the European e-Justice Portal. However, in practice, they do not regularly rely on the tools developed in the context of European e-Justice.<sup>28</sup></p>		
<p><b>TRAINING</b></p>	<p><b>Yes</b></p>	<p><b>No</b></p>	<p><b>Brief Description</b></p>
<p><b>1.5</b></p> <p>Are providers of judicial training requested to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication? If yes, briefly provide details.</p>		<p>No</p>	<p>According to the stakeholders consulted<sup>29</sup>, no special attention to the particularities of communicating with the assistance of an interpreter is provided at general judicial training.</p> <p>In Hungary, the current training system does not provide lifelong-learning for the judicial body. Compulsory training is only organised occasionally for the initial training of judges, or in case of legislative changes. Although other training is organised regularly, participation is not compulsory and it is left to the personal interest of the individuals.<sup>30</sup></p>

<sup>28</sup> Hungary, criminal lawyer; criminal judge; representative of the Ministry of Justice; representative of the Secretariat of the Deputy Secretary of State for Judicial Cooperation in the EU.

<sup>29</sup> Hungary, representatives from the National Police, the Criminal Department of the Kúria, and a Criminal Judge.

<sup>30</sup> Hungary, legal advisor in the Criminal Department of the Kúria; criminal judge.

2.	RIGHT TO TRANSLATION OF DOCUMENTS	Brief Description
2.1	<p>Please provide answers to the following for each stage of proceedings as indicated below:</p> <p>a) Which documents (according to national law or established practice) are considered essential to translate in order to safeguard the fairness of the proceedings?</p> <p>b) Who bears the cost of translation at each stage?</p> <p>c) What is the timeframe (deadline) for the translation of documents at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk-research by consulting relevant organisations and/or practitioners.</b></p>	
2.1.1	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) Article 9(3) of the Criminal Procedure Act provides that the documents that are necessary to be translated into a language the suspect or accused person understands, in order to safeguard the fairness of criminal proceedings, are the decisions and other official documents to be served to the suspect or accused. In Hungary, the documents to be served are usually the decision on detention, the indictment, the decision to send a criminal case to court, and any decisive judgment.<sup>31</sup> These rules apply to all stages of the criminal proceeding. The authority that issued the document has the responsibility to make the necessary arrangements to have it translated.</p> <p>Article 67(10) of the Code of Misdemeanour Procedure provides that during Police questioning, all documents related to the arrest, the formal accusation, and all other documents that the competent authorities - ex officio (by virtue of position), or at the justified request of the suspect and deemed essential to safeguard the fairness of the proceedings, are considered essential documents that are necessary to have translate into a language the suspect understands.</p> <p>b) As above. See answer 1.1.1/c.</p>

<sup>31</sup> Guiding Decision No. 1/2013 of the Criminal Department of the Kúria (1/2013. számú büntető elvi döntés), available at: [www.lb.hu/hu/elvdont/12013-szamu-bunteto-elvi-dontes](http://www.lb.hu/hu/elvdont/12013-szamu-bunteto-elvi-dontes).

		<p>c) There is no legally prescribed timeframe or deadline for the translation of documents in the Criminal Procedure Code. It is the competent criminal justice authority's (investigating authority, prosecutor or judge) responsibility to ensure translation of the essential documents at all stages of the criminal proceeding. In practice, the length of time it takes to translate a document varies depending mainly on the length and the complexity of the document.<sup>32</sup> In practice, the authority responsible for ensuring the translation of the documents, and the appointed translator, agree on a time limit for providing translation. In urgent cases, the criminal justice authority can set a shorter time limit that the translator will either accept or refuse.<sup>33</sup></p> <p>Article 67(7) of the Code of Misdemeanour Procedure provides that during the procedure at the Police station, authorities must ensure the translation of essential documents without undue delay.</p>
2.1.2	<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>	<p>a) As above. See first paragraph of answer 2.1.1/a</p> <p>Additionally, Article 67(10) of the Code of Misdemeanour Procedure provides that the essential documents that are necessary to have translated into a language the accused person understands are: decisions on the merits, decisions on appeal, requests for retrial and all other documents that are essential to the fairness of the proceedings.</p>
		<p>b) As above. See answer 1.1.1/b</p>
		<p>c) As above. See first paragraph of answer 2.1.1/c</p> <p>There is, however, a legally prescribed timeframe for the translation of documents in misdemeanour proceedings during the trial phase. Article 67(7) of the Code of Misdemeanour Procedure provides that the court must ensure translation of essential documents, if possible, within 15 days, into a language understood by the person subject to the proceedings. In practice, however, when requested by the translator, the misdemeanour authority can accept a longer timeframe in case of a lengthy and complex document.<sup>34</sup></p>
2.1.3	<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) As above. See answer 2.1.1/a.</p>
		<p>b) As above. See answer 1.1.1/c.</p>
		<p>c) As above. See first paragraph of answer 2.1.1/c.</p> <p>There is no mention of interim hearings in Article 67(7) of the Code of Misdemeanour Procedure.</p>

<sup>32</sup> Hungary, legal advisor of the Criminal Department of the Kúria.

<sup>33</sup> Hungary, criminal lawyer.

<sup>34</sup> Hungary, criminal lawyer.

2.1.4	<ul style="list-style-type: none"> <li>Any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?</li> </ul>	<p>a) Communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during criminal and misdemeanour proceedings is predominantly oral communication, and therefore requires the assistance of an interpreter. In practice, there is usually no need for the translation of documents at this stage of the proceedings. However, in case the suspect or accused person needs translation of a document or a section of a document, oral translation will be provided by the interpreter.<sup>35</sup></p> <p>b) As above. See answer 1.1.1/c.</p> <p>c) In practice, there is no need for written translations at this stage of the proceedings. Therefore, there is no timeframe for providing such translations. Oral translation is provided immediately.<sup>36</sup></p>
2.2	<p>How do the competent authorities ascertain whether oral translation or oral summary of essential documents may be provided instead of a written translation? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>According to Article 9(3) of the Criminal Procedure Code, competent authorities have the responsibility to ensure the translation of decisions and other official documents to be served. Other documents can be translated orally to the suspect or accused person. In practice, an oral summary of essential documents is provided in a language understood by the suspect or accused instead of an oral translation when the document is very lengthy or detailed. However, the suspect or accused person can always request the exact oral translation of a document or of a specific passage of a document.<sup>37</sup></p> <p>In addition, Article 9(4) of the Criminal Procedure Code states that the suspected or accused person can explicitly waive the right to the translation of documents to be served.</p> <p>Article 67(11) of the Code of Misdemeanour Procedure provides that the court or the Police authorities can order oral translation or oral summary of essential documents – if the person subject to the proceedings gives his/her prior consent orally or in writing.</p>
2.3	<p>Please describe procedures in place, if any, to ensure that suspects or accused persons have the right to challenge the decision that no translation is needed? <b>Please cross-check findings from the desk research by consulting</b></p>	<p>Same procedure as above. See answer 1.3.</p>

<sup>35</sup> Hungary, criminal lawyer.

<sup>36</sup> Hungary, criminal lawyer.

<sup>37</sup> Hungary, criminal lawyer.

	relevant organisations and/or practitioners.			
		Yes	No	Brief Description
2.4	Do all documents that the suspected or accused person has to sign during the proceedings have to be translated?	Yes		<p>Documents that the suspect or accused person has to sign during the proceedings have to be translated. However, according to Article 9(3) of the Criminal Procedure Code, written translation is only necessary for documents to be served.<sup>38</sup> For all other documents, an oral translation or oral translated summary can suffice.</p> <p>Similarly, under Article 67(7) of the Code of Misdemeanour Procedure, written translation is only necessary for essential documents listed in Article 67(10) of the Code of Misdemeanour Procedure. For all other documents, an oral translation or oral translated summary can suffice.</p>
2.5	Is it possible to waive the right to translation of documents and if so, what form can it have and under which conditions can it be accepted?	Yes		<p>Under Article 9(4) of the Criminal Procedure Code, it is possible for the suspect or accused person to waive the right to the translation of documents.</p> <p>The suspect or accused person has to specifically waive this right in a written statement signed by the suspect or accused person, or in an oral statement – of which a record should always be kept by the competent authorities.<sup>39</sup></p> <p>Article 67(8) of the Code of Misdemeanour Procedure provides that suspects or accused persons subject to the proceedings can waive the right to the translation of documents at any time during the proceedings, in writing, or in a voluntary, explicit declaration. However, according to Article 67(9) of the Code of Misdemeanour Procedure, the waiver can be revoked – orally, or in writing, at any time during proceedings. Procedural actions before the declaration of withdrawal do not need to be repeated but the person subject to the proceedings can ask for the translation of essential documents that arose before the withdrawal.</p>

<sup>38</sup> Documents to be served are all legal papers to be delivered to the person who would be required to respond to them.

<sup>39</sup> Hungary, criminal lawyer; criminal advisor of the Criminal Department of the Kúria.

3.	<b>RIGHTS CONCERNING BOTH INTERPRETATION AND TRANSLATION</b>			
3.1	<b>With regard to use of registers of interpreters and translators in EU Member States:</b>	<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
	a) Do national databases or registers exist for legal translators and interpreters?		No	<p>In Hungary, no national database or register exists for legal translators and interpreters.</p> <p>However, there is a state-owned Hungarian Office for Translation and Attestation Ltd; hereinafter referred to as OFFI,<sup>40</sup> that provides a significant part of the interpretation services needed by the Hungarian authorities, including the courts, prosecutors and investigating agencies. OFFI mainly performs interpretation services for authorities based in Budapest, but the number of requests for official interpretation and translation outside the capital is growing. There is, however, no obligation for authorities to use interpreters and translators from OFFI and often they require interpretation services from private agencies.</p> <p>Article 5 of Directive 2010/64/EU on the Right to Translation and Interpretation<sup>41</sup> states that “Member States shall endeavour to establish a register of independent translators and interpreters”. According to the stakeholders consulted, the Ministry of Justice is planning to establish a national database following the recommendation of the EU Directive.<sup>42</sup></p>
	b) Do translators and interpreters have to be listed in databases/registers for their services to be used? In other words, is membership/registration mandatory?		No	

<sup>40</sup> Hungarian Office for Translation and Attestation Ltd. (*Országos Fordító és Fordításhitelesítő Iroda*), website available at: [/www.offi.hu](http://www.offi.hu).

<sup>41</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280/1, 26 October 2010, available at : [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0064&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0064&from=EN).

<sup>42</sup> Hungary, representatives of the Ministry of Justice and the Secretariat of the Deputy Secretary of State for Judicial Cooperation in the EU.

	c) Who has access to these databases?	<b>Brief Description:</b> NA		
	d) Which professional qualifications are needed by: <ul style="list-style-type: none"> <li>• translators and</li> <li>• interpreters</li> </ul> in order to be registered in the database?	<b>Brief Description:</b> As mentioned above (see question 3.a), in Hungary, translators and interpreters do not have to be registered in a national register or database. However, under paragraph 2 of the Decree of the Council of Ministers on interpretation and translation, only qualified interpreters and translators can be summoned during criminal proceedings. <sup>43</sup> This means that they have to obtain a degree in translation and interpretation and be holders of an interpreters card issued by the competent local authority, which is usually a local government office, or be holders of a certificate attesting their capability to translate – issued by OFFI. <sup>44</sup>  In practice, interpreters in Police stations and courts are usually required to provide evidence of qualification. <sup>45</sup>		
	e) Are there any requirements in place to ensure the independence of interpreters and translators? If yes, provide a brief overview (for both translators and interpreters).	Yes		See answer 3.2.a.
	f) Is access to existing databases provided through the <a href="#">European e-Justice portal</a> ? How is this register available to legal counsel and relevant authorities?		No	
	g) Are criminal justice institutions required to use interpreters and translators listed in these registers?		No	

<sup>43</sup> Decree of the Council of Ministers No. 24/1986. (VI. 26.) on interpretation and translation (*A Minisztertanács 24/1986. (VI. 26.) számú rendelete a szakfordításról és tolmácsolásról*), available at : [net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=98600024.MT](http://net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=98600024.MT).

<sup>44</sup> Hungary, criminal lawyer.

<sup>45</sup> Hungary, criminal lawyer.



3.2	With regard to other mechanisms/procedures:	Yes	No	Brief Description
	<p>a) Are there other mechanisms or procedures in place to ensure the quality and independence of interpretation and translation during the course of the proceedings? Are there any quality checks? Who is responsible for carrying them out?</p>			<p>Article 114(3) of the Criminal Procedure Code stipulates that provisions relating to court experts also apply to interpreters and translators. Article 103 of the Criminal Procedure Code guarantees the independence of court experts and, therefore, of interpreters and translators, by setting out some exclusion criteria. For example, a court interpreter or translator cannot be replaced by a judge, prosecutor or a member of the investigating authority involved into the proceedings and who would be capable of interpretation.<sup>46</sup> Similarly, any person who has participated in the case as a witness or a victim or a relative of those cannot act as an interpreter for the suspect or accused person.<sup>47</sup> The Law however does not prohibit a family member of the suspect/accused to serve as an ad hoc interpreter if no other person speaking the same language is available. Nevertheless, in practice, authorities try to make sure that it only happens in exceptional cases.<sup>48</sup> Stakeholders consulted for the purpose of this report have never come across such cases in Hungary.<sup>49</sup></p> <p>In addition, interpreters and translators participating in criminal proceedings have an obligation to maintain confidentiality concerning facts and data of specific cases.<sup>50</sup> In case of a breach of this obligation, interpreters and translators must be replaced.</p> <p>To ensure the quality of interpretation and translation during proceedings, only qualified interpreters and translators can be assigned.<sup>51</sup> Concerning the quality of interpretation, interpreters cards can be obtained from the local government offices. Regarding the quality of translation, certificates attesting his/her capability to translate can only be obtained – unless provided otherwise by law, through OFFI, operating under the supervision of the Ministry of Justice.<sup>52</sup> There are, however, no quality checks of interpretation or translation services provided during criminal and misdemeanour proceedings.<sup>53</sup></p>

<sup>46</sup> Article 103(1b) of the Criminal Procedure Code.

<sup>47</sup> Article 103(1a) and (1c) of the Criminal Procedure Code.

<sup>48</sup> Hungary, criminal judge.

<sup>49</sup> Hungary, criminal lawyer; criminal judge; representative of the police.

<sup>50</sup> Paragraph 3 of the Decree of the Council of Ministers No. 24/1986. (VI. 26.) on interpretation and translation (*A Minisztertanács 24/1986. (VI. 26.) számú rendelete a szakfordításról és tolmácsolásról*, hereinafter referred to as Decree of the Council of Ministers No. 24/1986. (VI. 26.) on interpretation and translation), available at : [net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=98600024.MT..](http://net.jogtar.hu/jr/gen/getdoc2.cgi?dbnum=1&docid=98600024.MT..)

<sup>51</sup> Paragraph 2 of the Decree of the Council of Ministers No. 24/1986. (VI. 26.) on interpretation and translation.

<sup>52</sup> Paragraph 5 of the Decree of the Council of Ministers No. 24/1986. (VI. 26.) on interpretation and translation.

<sup>53</sup> Hungary, criminal judge.

	<p>b) Is there any procedure in place to ensure that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation?</p>		<p>There is no specific rule in the Criminal Procedure Code providing for a procedure ensuring that suspects or accused persons have the possibility, when interpretation and translation has been provided, to complain about the quality and independence of the interpretation and translation.</p> <p>However, in practice, at the beginning of each procedural action, the competent criminal justice authority has to ask the suspect or accused person, through the interpreter assigned, whether he/she understands him/her.<sup>54</sup> The answer of the suspect or accused person has to be written in the minutes taken during the questioning or hearing. If the suspect or accused person does not understand the interpreter, the competent authority is obliged to summon another interpreter. However, if the suspect or accused has no objection to the interpreter at the beginning of the procedural action, it is much more difficult to complain about the quality of interpretation at a later stage of the proceedings.<sup>55</sup> If it becomes clear during the trial or questioning that the quality of interpretation is not sufficient and, as a result, the suspect or accused person cannot fully participate in the proceedings, another interpreter has to be appointed.</p> <p>In Hungary, this problem arises mostly in relation to the Chinese language because interpreters and suspects or accused persons often do not speak the same dialect.<sup>56</sup></p> <p>Regarding translation, no specific provision or established practice was found, but presumably, the same rules described above with regard to interpretation would apply.<sup>57</sup> In practice, upon receiving the translation of a document, the suspects/accused persons and their counsel can complain about the quality of the translation and ask for a new translator if they believe that the quality of the translation is not sufficient to safeguard the fairness of the proceedings.<sup>58</sup></p> <p>There is, however, a legally prescribed procedure in the Code of Misdemeanour Procedure. Article 67(5) of the Code of Misdemeanour Procedure providing that if the quality of interpretation violates the right to a fair proceeding of the person subject to the proceedings, he/she or his/her counsel can complain about this and the competent authority must appoint another interpreter. Article 67(6) Code of Misdemeanour Procedure states that the same procedure applies to translators.</p>
	<p>c) Are there any mechanisms in place that allow for the replacement of the appointed</p>		<p>As above. See answer 3.2/b.</p>

<sup>54</sup> Commentary of the Criminal Procedure Code, not available online.

<sup>55</sup> Hungary, legal advisor in the Criminal Department of the Kúria.

<sup>56</sup> Hungary, criminal lawyer.

<sup>57</sup> Hungary, criminal judge.

<sup>58</sup> Hungary, criminal lawyer.

	<p>interpreter or a new translation when the quality of the interpretation or the independence of the interpreter is considered insufficient? If yes, briefly provide information.</p>			<p>In addition, the competent criminal justice authority has a responsibility to ensure the quality of interpretation and if the quality is not sufficient to guarantee the fairness of the proceedings, the authority can replace the appointed interpreter.</p> <p>Furthermore, the lawyer of the suspect or accused person has a professional duty to alert the presiding judge or the competent investigating authority if he/she believes that the insufficient quality of interpretation or the independence of the interpreter may prejudice the suspect's or accused persons' rights to a fair proceeding. In this case, the presiding judge, or Police officer, summons a new interpreter.<sup>59</sup> It is particularly important to be cautious when <i>ad hoc</i> interpreters (any person having a satisfactory command of the language in question but not holding a qualification in interpretation,) are employed. In fact, besides having good linguistic skills, interpreters also need to be able to use legal terms in criminal proceedings.<sup>60</sup></p>
<b>3.3</b>	<p>Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons which affect their ability to communicate effectively? If yes, briefly provide information on those mechanisms considering the following vulnerable groups:</p>			
	<p>a) suspect or accused persons with physical impairment or disability;</p>	Yes		<p>Article 114(2) of the Criminal Procedure Code provides that deaf, dumb or speech-impaired persons must be questioned by way of a sign interpreter, or by way of written communication.</p> <p>In addition, Article 46 of the Criminal Procedure Code stipulates that a defence counsel in criminal proceedings is statutory if the suspect or accused person is deaf, dumb or blind. The defence counsel is a lawyer who represents the suspect or accused person in a criminal proceeding.</p> <p>A new provision amending Article 62 of the Criminal Procedure Code entered into force on 1 January 2015,<sup>61</sup> providing that the investigating authority, the prosecutor and the court, must inform and advise the suspect or accused person, with</p>

<sup>59</sup> Hungary, criminal lawyer.

<sup>60</sup> Hungary, representative of the Ministry of Justice, the Secretariat of the Deputy Secretary of State for Judicial Cooperation in the EU.

<sup>61</sup> Article 62/A(2) of the Criminal Procedure Code introduced by paragraph 28 of Act LXXII of 2014, entered into force on 1 January 2015.

				<p>physical impairment or disability, of his/her rights and obligations in a way that takes into account the vulnerability and physical limitations of the person involved in the proceedings.</p> <p>Article 67(2) of the Code of Misdemeanour Procedure provides that deaf or dumb persons must be questioned by way of a sign interpreter and speech-impaired persons can make statements in writing instead of being questioned.</p>
	b) suspect or accused persons with intellectual impairment or disability;	Yes		<p>Article 46 of the Criminal Procedure Code states that the participation of a defence counsel in criminal proceedings is statutory if the suspect or accused person is – regardless of his/her legal responsibility, mentally disabled. The mental health of the suspect or accused person can decrease his/her ability to collaborate with the judicial authority or to understand the alleged crime and, therefore, endangers the defendant’s procedural rights. The participation of a defence counsel is mandatory as he/she has the legal duty to identify the mental illness and advocate accordingly.<sup>62</sup></p> <p>When the suspect or accused person is – regardless of his/her legal responsibility, mentally disabled, the investigating authority, the prosecutor and the court, must inform and advise the person with a disability in a manner that he/she understands, taking into account the vulnerability and intellectual limitations of the suspect or accused person.<sup>63</sup></p> <p>Regarding misdemeanour proceedings, there is no specific provision relating to suspects or accused persons with intellectual impairment or disability.</p>
	c) i) children who are suspects/defendants, and/or ii) holders of parental responsibility (please distinguish between the two).			<p>i)</p> <p>If the suspect or accused person is a child under the age of 18, the court, the prosecutor and the investigating authority must inform and advise him/her of his/her rights and obligations in a manner that takes into account the characteristics of his/her age and maturity, making sure that the suspect or accused child understands his/her rights and the implications that his/her answers might have on the outcome of the proceedings.<sup>64</sup></p> <p>The participation of a defence counsel in criminal proceedings against children is statutory.<sup>65</sup> Criminal procedure against a child is a potentially sensitive situation where his/her vulnerability is not always duly taken into account. The assistance of a child by a defence counsel is ensured at all stages of the criminal proceeding.<sup>66</sup></p>

<sup>62</sup> Hungary, criminal lawyer.

<sup>63</sup> Article 62/A(2) of the Criminal Procedure Code introduced by paragraph 28 of Act LXXII of 2014, entered into force on 1 January 2015

<sup>64</sup> Article 62/A(1) of the Criminal Procedure Code introduced by paragraph 28 of Act LXXII of 2014 entered into force on 1 January 2015.

<sup>65</sup> Article 450 of the Criminal Procedure Code.

<sup>66</sup> Hungary, criminal lawyer.

			<p>During misdemeanour proceedings, authorities have to take into account the characteristics of the age of the child offender and the proceedings must be carried out in a way aimed at promoting a child's respect for the law.<sup>67</sup> Indeed, authorities try to ensure that the child offenders evolve in the right direction and become responsible members of society.<sup>68</sup></p> <p>Article 134(4) of the Code of Misdemeanour Procedure provides that the hearing of a child offender is held in the presence of his/her legal representative or a legal guardian.</p> <p style="text-align: center;">ii)</p> <p>There is no specific provision for holders of parental responsibility. The general rules described in the previous sections apply.</p>
3.4	Is there any recording procedure to note that interpretation and translation have occurred and in which form? If yes, briefly provide information on how this procedure is organised in practice.	Yes	<p>During the investigation phase, the investigating authority must take minutes on the procedural actions that contain a description of the course of the investigatory action – including the testimony of the suspect and any interpretation and translation that occurred. The minutes are signed by the investigating authority, the keeper of the minutes<sup>69</sup>, the suspect, the witness and the interpreter.<sup>70</sup></p> <p>During the trial phase, “the keeper of the minutes shall take minutes on the procedure of the court, as a rule, simultaneously therewith” .<sup>71</sup> The interpretation and translation that occurred during court hearings are indicated in the minutes.</p> <p>The presiding judge can also order ex officio, or at the request of the prosecutor, the accused or the counsel of the defence, a recording of the procedural action at the trial with an audio and video recorder.<sup>72</sup></p> <p>As set out in Article 91 of the Code of Misdemeanour Procedure, the same rules apply to misdemeanour proceedings as to criminal proceedings. Additionally, Article 91(5) of the Code of Misdemeanour Procedure states that it is obligatory to</p>

<sup>67</sup> Article 134(1) of the Code of Misdemeanour Procedure.

<sup>68</sup> Article 134(1) of the Code of Misdemeanour Procedure.

<sup>69</sup> The keeper of the minutes during the investigation phase is a member of the investigating authority (police) and during the court hearings a member of the court administration.

<sup>70</sup> Article 166 of the Criminal Procedure Code.

<sup>71</sup> Article 250 of the Criminal Procedure Code.

<sup>72</sup> Article 302(1) of the Criminal Procedure Code.

				record the testimony, or any other declaration of the offender, that were made before the courts or administrative authorities.
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## SECTION B: RIGHT TO INFORMATION IN CRIMINAL PROCEEDINGS

1.	PROVISION OF INFORMATION ON THE PROCEDURAL RIGHTS <sup>73</sup>	Brief Description
1.1		<p><b>Please provide answers to the following for each stage of proceedings as indicated below:</b></p> <p>a) What information is provided?</p> <p>b) How is it provided (e.g. orally or in writing)?</p> <p>c) What is the timeframe (deadline) for providing interpretation at each stage of the proceedings?</p> <p><b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>
	<ul style="list-style-type: none"> <li>• police questioning;</li> </ul>	<p>a) In Hungary, ‘criminal charges’, within the meaning of the case law of the European Court of Human Rights, may be brought against someone under criminal and administrative offence procedures (misdemeanour or quasi-criminal). Criminal proceedings are launched in cases of offences of higher gravity, while misdemeanour procedures concern “minor” offences of lesser gravity (e.g. many traffic offences). In cases of misdemeanour, confinement is also applicable as a punishment, and courts have to decide the case, which justifies the applicability of Directive 2012/13/EU of the European Parliament and of the Council of 22 May, 2012, on the right to information in criminal proceedings (hereinafter, Directive 2012/13/EU).<sup>74</sup></p> <p>l) General rules</p>

<sup>73</sup> See in particular Article 3 and relevant recitals of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1 June 2012.

<sup>74</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1–10.

A) In **criminal proceedings**, the prosecutor or the investigation authority may interrogate the person concerned.<sup>75</sup> It is not only the Police who may act as an investigation authority, but also, for example, the National Tax and Customs Administration of Hungary (*Nemzeti Adó és Vámhivatal*, NTCA).

In general, before performing any procedural actions extending to interrogations, the courts, the prosecutors and the investigating authorities inform and advise the persons involved in the action of their related rights and obligations and the persons concerned have the right to receive this information.<sup>76</sup>

Notification, in a subpoena or warrant, to appear at a police questioning in misdemeanour proceedings, does not have to contain information on the status (of witnesses or suspects), or the procedural rights of the persons concerned. In criminal proceedings, the status of the person summoned has to be indicated. It is also possible to summon someone by phone, fax, or e-mail.<sup>77</sup>

B) District courts act as first instance authorities in misdemeanour proceedings (*szabálysértési eljárás*) that concern offences punishable by “misdemeanour confinement”.<sup>78</sup> In other cases, namely, when the penalties foreseen differ from confinement, administrative authorities proceed as first instance authorities. Decisions of administrative authorities could be appealed against before the courts. Unless provided otherwise, rules set out in Code of Misdemeanour Procedure are equally applicable to proceedings before the administrative authorities and courts. These bodies are often referred to in applicable legislation under the term ‘offence authority’.

The offence authority, in general, provides information on: the right to choose a defence counsel, the right to use one’s mother tongue, the right to demand an interpreter or translator, the right to deny making a statement, and the right to be informed of the charges against him/her in a simple and plain manner (Decree 22/2012 (IV.13) of the Ministry of the Interior on the implementation of the Code of Misdemeanour

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<sup>75</sup> Articles 179(1) and 217(2) of the Criminal Procedure Code.

<sup>76</sup> Articles 62 and 43(2)(f) of the Criminal Procedure Code.

<sup>77</sup> Article 87(6) of Code of Misdemeanour Procedure and Article 67(2) of the Criminal Procedure Code.

<sup>78</sup> Article 38(3) of the Code of Misdemeanour Procedure.

Procedure on offences, procedures in relation to offences and the offence record system and on the amendment of certain related regulations<sup>79</sup> – hereinafter, Decree 22/2012 (IV.13) of MI, Article 10/A(1)).<sup>80</sup>

## **II) Specific information provided on certain rights**

Questioning begins with the ‘indoctrination’ of the suspect – during which, the investigation authority provides information about a number of rights.

### **1. Right not to make a statement, right not to make self-incriminatory statements**

A) In criminal proceedings, Article 8 of the Criminal Procedure Code contains the right to not make self-incriminatory statements. The investigation authority has to warn the suspect about: a) his/her right to not make self-incriminatory statements, his/her right to refuse to make a statement or respond to any of the questions posed during the questioning, and his/her right to make a statement at any time – even if he/she has previously refused to do so; b) anything that he/she says or provides may be used as evidence.

If the person concerned refuses to make a statement, the investigation authority has to inform him/her that this does not prevent the continuation of the proceedings. However, they may not ask further questions of him/her concerning those criminal offences about which he/she refused to make a statement. The suspect may not be confronted with other suspects or witnesses, unless he/she decides to make a statement beforehand. The refusal to make a statement does not affect the right of the suspect to ask questions, make objections, or motions. If the suspect decides to make a statement, the investigation authority warns him/her against falsely accusing others with the commission of a criminal offence, because then, he/she would commit a crime. The investigation authority has to enter the above warnings and given responses into the records. In the absence of such warnings, the testimony of the suspect may not be admitted as a means of evidence.<sup>81</sup>

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<sup>79</sup> Decree 22/2012 (IV.13) of the Ministry of the Interior on the implementation of Act II of 2012 on offences, the procedure in relation to offences and the offence record system and on the amendment of certain related regulations, (22/2012. (IV.13.) *BM rendelet a szabálysértésekről, a szabálysértési eljárásról és a szabálysértési nyilvántartási rendszerről szóló 2012. évi II. törvény végrehajtásával kapcsolatos rendelkezésekről, valamint ahhoz kapcsolódó egyes rendeletek módosításáról*), available at: [njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=147526.263251](http://njt.hu/cgi_bin/njt_doc.cgi?docid=147526.263251).

<sup>80</sup> Ministerial decrees have general applicability and binding force.

<sup>81</sup> Article 117(2) and Article 117(4) of the Criminal Procedure Code.



B) In misdemeanour proceedings, Article 33 of the Code of Misdemeanour Procedure ensures that no-one is obliged to make self-incriminatory statements. The offence authority has to warn the person concerned, in the way it would happen in criminal proceedings, to this right – at the same time as his/her summoning.<sup>82</sup> The offence authority enters the warning and the given response into the records – otherwise the statement may not be used as evidence.

If the offence may be punished by confinement and the person concerned is taken into custody, the police bring him/her to the court for the purpose of an accelerated judicial procedure. The Police must inform the person concerned of the offence that forms the basis of the proceedings and the evidence substantiating it.<sup>83</sup> Similar rules apply if the offence may be punishable by confinement and the person authorised to impose an ‘on the spot’ fine decides to bring the person concerned to justice.<sup>84</sup>

## **2. Right to choose a defence counsel**

A) A suspect in a criminal proceeding has the rights to defence and to choose a defence counsel, or request the appointment of a counsel – which the authorities must ensure. During the “indoctrination”, the investigation authority has to warn the suspect of these rights. If the participation of a defence counsel in the procedure is obligatory, the authority also warns the suspect that if he/she does not choose a defence counsel within three days, the prosecutor or the investigating authority will appoint one.

If the person concerned is in detention, the appointment of a defence counsel is obligatory before the first questioning. The investigation authority has to inform the appointed lawyer of the projected place and time of the questioning. The court, the prosecutor and the investigation authority can assign a defence counsel – even if it is not obligatory, upon the request of a disadvantaged suspect or accused person.<sup>85</sup>

B) Article 34 of the Code of Misdemeanour Procedure ensures the right to defence in misdemeanour procedures and that the authorities guarantee the exercise of this right during the procedures. Article 10/A(1) of Decree 22/2012 (IV.13) of MI also prescribes that the person concerned is informed of his/her right to have a defence counsel. When the offence may be punishable by confinement and the police decide to bring the person to justice, if the person concerned does not have a defence counsel, the police will appoint one. The police notify the defence counsel of the time of the session of the court and ensure that he/she may examine the case and communicate with the person concerned before the session of the court.<sup>86</sup>

<sup>82</sup> Article 71(2)-(3), Article 112(3) of the Code of Misdemeanour Procedure; Article 10/A and Decree 22/2012 (IV.13) of MI.

<sup>83</sup> Article 124(1)-(2) of the Code of Misdemeanour Procedure.

<sup>84</sup> Article 126/A (1)-(2) of the Code of Misdemeanour Procedure.

<sup>85</sup> Article 5, Article 179(3), Article 48(1)(2) of the Criminal Procedure Code.

<sup>86</sup> Article 124(3)-(4) of the Code of Misdemeanour Procedure.

### **3. Right to free legal aid**

A) In criminal procedures, Article 74(3) of the Criminal Procedure Code contains rules on the availability and right to free legal aid. The investigation authority has to warn the suspect that if he/she would be incapable to pay the costs of the criminal proceedings due to his/her disadvantaged position, upon request, he/she may be entitled to have all expenses paid by the State – including free legal aid.<sup>87</sup> Joint Decree 9/2003 of the Ministry of Justice, Ministry of the Interior and the Ministry of Finance, on the application of exemption of bearing the costs in criminal proceedings<sup>88</sup>, Articles 1-2 contain detailed rules on the conditions for having all of the expenses paid.

B) In misdemeanour procedures, the exemption of costs is not ensured.

### **4. Right to be informed of the suspicion: See section B/3.**

### **5. Right to interpretation and translation: See section A**

Interpreter and translator.

### **III) Main problems in practice**

1) Recording of procedural acts: in criminal proceedings, unless provided otherwise by the Criminal Procedure Code, the prosecutor and the investigating authority prepare minutes/records of the investigatory actions, e.g. of the questioning. The records have to contain a brief description of the course of the investigatory action in a way that enables verification of the authorities' compliance with procedural rules (such as the obligation to provide information).<sup>89</sup> Despite this obligation, a member of the investigation authority may also prepare a report of investigatory actions – instead of preparing proper records. While proper records have to be signed by the suspect and/or his/ her defence counsel, the reports do not. In theory, the report also contains a brief description of the actions implemented and makes possible the verification of compliance with procedural rules. However, there is no obligation to provide proper indoctrination before performing actions entered into these reports. Though reports may not be prepared for the questioning of suspects, witnesses or for confrontation, they may still

<sup>87</sup> Article 179(3a) of the Criminal Procedure Code.

<sup>88</sup> Joint Decree 9/2003 of the Ministry of Justice, Ministry of the Interior and the Ministry of Finance on the application of exemption of bearing the costs in criminal proceedings (9/2003. (V. 6.) IM–BM–PM együttes rendelet a személyes költségmentesség alkalmazásáról a büntetőeljárásban), available at: [njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=73823.261173](http://njt.hu/cgi_bin/njt_doc.cgi?docid=73823.261173).

<sup>89</sup> Article 117(2), Article 166(3) of the Criminal Procedure Code.

contain data, e.g. on the conversations of a member of the investigation authority with the suspect.<sup>90</sup> Defence counsels find that preparing reports on conversations with suspects can be problematic, since this may circumvent basic procedural guarantees, such as the obligation to properly inform the suspect of his/her rights and obligations before questioning.<sup>91</sup> The prosecutor may order the repetition of certain investigatory actions, including drawing-up proper minutes.

**2) Information is not provided, or not provided in a simple and plain manner:**

A) In criminal proceedings, during the 'indoctrination' the suspect is provided with information in form of a 3-4 pages long model form containing reference to the suspects' relevant rights. This form is downloadable from the Robocop system, which is an integrated system of case and data processing, and the management of documents.<sup>92</sup> The model form contains information comparable to that of Directive 2012/13/EU (see point 3 below). The form is copied word-by-word from the relevant legal acts, without any further explanation since it is completely referenced to the relevant articles and paragraphs of legislative acts – whose titles are indicated in an abbreviated manner, e.g. 'Be.' stands for the Code on Criminal Proceedings (*büntetőeljárás törvény*). This makes the text incomprehensible for persons without legal backgrounds. At the end of the questioning, the member of the investigation authority enters the model form into the records in the same format, which the suspect has to sign. This implies that authorities do not provide information in an individualised manner in view of the special needs of the suspect, or in a simple and plain manner so that the persons concerned could truly understand its significance, relevance and meaning. Verification of whether or not the suspect understood the information provided is confined to asking verification of understanding at the end of the reading. When the defence counsel is not present at the questioning, it is likely that the suspect understands even less. Cases were also reported by practitioners where, in the absence of the defence counsel, investigation authorities failed to provide information properly on those rights that the form contains.<sup>93</sup>

B) According to the form provided by the Ministry of the Interior, in misdemeanour proceedings, the applied form contains only half of a page of information on certain basic rights (see point 3/B) below) in an accessible language.<sup>94</sup>

**3) Missing or surplus information:**

<sup>90</sup> Article 168(1) of the Criminal Procedure Code.

<sup>91</sup> Hungary, defence counsels; representatives of the Hungarian Helsinki Committee.

<sup>92</sup> Hungary, representative of the Ministry of the Interior.

<sup>93</sup> Hungary, defence counsels; representatives of the Hungarian Helsinki Committee.

<sup>94</sup> Hungary, representative of the Ministry of the Interior.

A) In criminal proceedings the model form taken automatically from Robocop contains information similar to that which Directive 2012/13/EU requires. The form is not individualised, and certain information that does not necessarily concern all suspects, e.g. warnings to ask that the investigation authorities to notify the consular authorities, or the formula on how the information should be provided in view of the age and maturity of juvenile suspects, are also included with an asterisk at the end of the sections concerned. This surplus, non-individualised information may be problematic – especially if not provided in an accessible language, because crucial information may be lost amidst the excess of information provided.

Main missing elements: a) The form contains a warning on the possibility of using his/her mother tongue and making a statement in his/her mother tongue – whose translation has to be attached to the documentation of the case. It does not contain, however, any specific reference to the possibility of using other languages, or to the right to free interpretation or translation, or to the exact content of these rights. b) The form does not contain information on the possibility and modalities of free legal aid. Meanwhile, the contents of the right to defence – including the right of access to a lawyer and communication with him/her, or the contents of the right to have access to documents, are treated more extensively in the model form.

B) In misdemeanour proceedings, according to the form provided by the Ministry of the Interior, information is provided on the right to not make self-incriminatory statements, on the right to know what act, facts and evidence form the basis of the misdemeanour procedure, the right to make observations, ask questions, submit motions, and the right to have access to the documents (case materials) of the case.<sup>95</sup>

**4) Questioning of suspects in custody:** the questioning of suspects in custody raises specific problems. Suspects in custody have to be interrogated within 24 hours from the moment they are brought before the investigating authorities.<sup>96</sup> At the same time, the investigating authority has to arrange the questioning in such a way that the suspect has adequate time and opportunity for the preparation of his/her defence and has to inform the defence counsel of the time and the place of the interrogation.<sup>97</sup> This may result in, e.g. the proper notification of the chosen or assigned defence counsel not happening in due time, thus, the defence counsel may not be present at the first questioning of the suspect to monitor the due process of the interrogation.

**5) The practice of (deceptive) questioning witnesses** may also be problematic, especially if the investigation authority is well aware of the facts that there are substantial grounds for believing the witness in question could also become a suspect. Witnesses do not enjoy the same procedural rights and standing as suspects in the procedure, which may make it easier for the authorities to obtain self-incriminatory evidence against them. If the authorities summon a person as a witness, they have to inform the person concerned of his/her right not to make self-incriminating statements, or any statements incriminating close relatives.<sup>98</sup> Though it is possible for witnesses to recourse to legal aid and

<sup>95</sup> Hungary, representative of the Ministry of the Interior.

<sup>96</sup> Article 179(1) of the Criminal Procedure Code.

<sup>97</sup> Article 179(4) of the Criminal Procedure Code.

<sup>98</sup> Article 60, Article 62(3) of the Code of Misdemeanour Procedure; Article 82(1)-(2) of the Criminal Procedure Code.

		<p>have their legal representatives present at their questioning, authorities do not have to inform them of this possibility and witnesses have no recourse to free legal aid either, since, formally, they are not suspects. In practice, the absence of a legal representative may contribute to the witness pronouncing self-incriminatory statements or statements incriminating his/her close relatives. If this happens, under Article 181(2) of Act IXI of 1998, the authority has to warn the witness again of his/her right to not make such statements and the authority has to enter the warning and the witness' response into the records. However, the harm has already been done, since the witness' first statement may be used against him/her as evidence later in the proceedings.</p>
		<p>b) Orally.</p>
		<p>c) See Section A).</p>
<ul style="list-style-type: none"> <li>• court hearings;</li> </ul>		<p>a) General rules on questioning preceding and during trial</p> <p>A) In criminal proceedings, general provisions on the questioning of suspects, described above, also apply to questioning by the court<sup>99</sup> – with the following differences:</p> <ol style="list-style-type: none"> <li>1. The notification of the bill of indictment to the accused person – without delay after 30 days (assigned for examining the documents) from the arrival of the documentation of the case to the court<sup>100</sup>, and 15 days before the first trial, is the obligation of the president of the judicial chamber assigned to the case (also called the presiding judge).</li> <li>2. At the beginning of the trial, the prosecutor delineates the bill of indictment upon the call of the presiding judge.<sup>101</sup></li> <li>3. Taking evidence begins with the questioning of the accused person. The presiding judge asks the accused person if he/she understood the charges and, if not, he/she explains them.<sup>102</sup></li> </ol> <p>B) In misdemeanour proceedings:</p> <ol style="list-style-type: none"> <li>1) If the district court is competent to decide over the case at first instance, the general rules on the obligations of the offence authority outlined in 1.1.1. apply.</li> </ol>

<sup>99</sup> Articles 117-118, Articles 288-289 of the Criminal Procedure Code.

<sup>100</sup> Article 263(1)-(2) of the Criminal Procedure Code.

<sup>101</sup> Article 284(2) of the Criminal Procedure Code.

<sup>102</sup> Article 286(1) and Article 288(3) of the Criminal Procedure Code.

		<p>2) If the person concerned objects to the decision of the first instance offence authority (e.g. the police), and the court decides to hold a trial, the judge summarises the core content of the decision of the offence authority and the plea against it.<sup>103</sup></p> <p>C) In practice, a number of model forms are used by the courts based on orders issued by the National Office for the Judiciary, which binds only judicial bodies. Such orders are public law instruments regulating the organisation, structure and operation of authorities. They are issued by the head of an administration central authority<sup>104</sup>. These cover Order 5/2003 of the National Office for the Judiciary on the regulation of the application of certain documents used during criminal proceedings as model forms<sup>105</sup>, and Order 5/2014. (IV. 18.) of the National Office for the Judiciary on the regulation of the application of certain documents used during misdemeanour proceedings as model forms<sup>106</sup>, which contain relevant information in a more accessible language than the model form taken from Robocop, on the procedural rights of the persons concerned in criminal and misdemeanour proceedings, .</p> <p>The model form used in summoning the person concerned contains – besides the bill of indictment, information on: the right to choose a defence counsel or request the assignment of one; the right to ask personal cost exemption; the right to have access to documents related to the case and ask for a free copy of them; the possibility to designate evidence 15 days prior to the session. However, the model form also contains surplus information irrelevant to some defendants, e.g. on the use of specially-protected witnesses or expert opinions. Regarding the ‘surplus’ information, the courts indicate the relevant ones in various manners that, according to practitioners, is difficult for the persons concerned to understand. The court applies, however, model forms containing explanations of basic legal terms and concepts – in view of the age and maturity of juvenile defendants, on the basis of Order 12/2014 (VII. 11.) of the National Office for the Judiciary on the regulation of the application of documents related to the guidance of juveniles, as model forms in criminal, civil and misdemeanour proceedings.<sup>107</sup></p> <p>b) Orally and in writing.</p> <p>c) See Section A).</p>
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<sup>103</sup> Article 111(2) of the Code of Misdemeanour Procedure.

<sup>104</sup> Article 23 of Act CXXX of 2010 on legislation (2010. évi CXXX törvény a jogalkotásról), available at: [njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=132774.265405](http://njt.hu/cgi_bin/njt_doc.cgi?docid=132774.265405) .

<sup>105</sup> Order 5/2003 of the National Office for the Judiciary on the regulation of application of certain documents used during criminal proceedings as model forms (5/2003 OIT szabályzat a büntetőeljárás során használt egyes iratok nyomtatványként történő rendszeresítéséről), available at: [birosag.hu/sites/default/files/allomanyok/obh/sz\\_2003\\_5.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/sz_2003_5.pdf).

<sup>106</sup> Order 5/2014. (IV. 18.) on the the regulation of application of certain documents used during misdemeanour proceedings as model forms<sup>106</sup> (5/2014. (IV. 18.) OBH utasítás a szabálysértési eljárás során használt egyes iratok nyomtatványként történő rendszeresítéséről szóló szabályzatról), available at: [birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/5\\_obh\\_utasitas.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/5_obh_utasitas.pdf).

<sup>107</sup> Order 12/2014 (VII. 11.) of the National Office for the Judiciary on the regulation of application of documents related to the guidance of juveniles as model forms in criminal, civil and misdemeanour proceedings (12/2014. (VII. 11.) OBH utasítása a büntető-, polgári és szabálysértési eljárás során használt, kiskorúak tájékoztatásához fűződő iratok nyomtatványként történő rendszeresítéséről szóló szabályzatról), available at: [http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/12\\_2014.pdf](http://birosag.hu/sites/default/files/allomanyok/obh/dokumentumok/12_2014.pdf).

<ul style="list-style-type: none"> <li>• any necessary interim hearings;</li> </ul>	<p>a) The same rules apply as to “police” and “court” questioning, respectively.</p> <p>b) The same rules apply as to “police” and “court” questioning, respectively.</p> <p>c) See Section A).</p>
<ul style="list-style-type: none"> <li>• any communication between suspects and accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings?</li> </ul>	<p>a)</p> <p><b>A) In criminal proceedings:</b></p> <p>1) According to Article 184(1)-(3) of the Criminal Procedure Code, only those may be present at an investigatory action whose presence the law allows. The defence counsel of the suspect may be present at the questioning. The defence counsel may also be present at the interrogation of witnesses whose questioning had been requested either by the defence counsel or by the suspect concerned. The defence counsel may communicate with the suspect before the questioning. The form used by the authorities provides information about the right to choose a defence counsel, the right to request the assignment of one, the right of the suspect to be entitled to contact his/her lawyer, to communicate with a defence counsel, and communicate orally or in writing without supervision.</p> <p>2) Detained suspects have the right to communicate orally, or in writing, with their defence counsel or consular representatives, unhindered and in a free/uncontrolled manner.<sup>108</sup> In particular, they may consult their lawyers before questioning.<sup>109</sup> It is not specified by law as to how information is provided on this, since the authorities are only under the obligation to provide information about the right to defence in the letter of rights and not necessarily about its content (see also Section B/2.)</p> <p>3) Under Article 289(3) of the Criminal Procedure Code, during trial, the accused person is free to consult his/her defence counsel. However, during his/her questioning the presiding judge has to allow the accused persons’s communication with the defence counsel. The investigative judge, who decides upon e.g. the maintenance of a pre-trial detention, may also hold the session by way of a closed-circuit communication system. In this case, the presence of the defence counsel is obligatory and, in principle, he/she has to be at the same place as the suspect, and the defence counsel and suspect may communicate with each other. If the defence counsel is at the court session, while the person concerned is interrogated by way of a closed-circuit communication system elsewhere, the possibility of communication between the defence counsel and the accused must be ensured by phone.<sup>110</sup> It is not specified by law as to how information is provided on this, i.e. Article 62 of the Criminal Procedure Code contains only the general obligation to provide information on procedural acts (see also Section B 1.1. I.A).</p>

<sup>108</sup> Article 43(3a) of the Criminal Procedure Code.

<sup>109</sup> Article 184(3) of the Criminal Procedure Code.

<sup>110</sup> Article 211(5) and Article 244/C of the Criminal Procedure Code.

		<p><b>B) Misdemeanour proceeding:</b> No specific rules apply.</p>
		<p>b) Orally and in writing.</p>
		<p>c) See Section A).</p>
<p><b>1.2</b></p>	<p>Do authorities provide information about any other procedural rights (apart from those established in Article 3 of the Directive)? If yes, briefly provide information.</p>	<p><b>A) In criminal proceedings,</b> before performing any procedural action, the court, the prosecutor and the investigation authority have to inform and advise the person involved in the action of his/her related rights and obligations.<sup>111</sup> This implies, in particular, that the person concerned would receive information, or be warned about the following, e.g: a) that he/she shall not accuse anyone of committing a crime falsely;<sup>112</sup> b) at the time of notification of the bill of indictment, if the conditions of a referral to mediation are met, the presiding judge informs the accused person and his/her defence council about his/her right to request such a referral, and of the consequences of such a procedure;<sup>113</sup> c) the presiding judge informs the accused person and his/her defence counsel: if the prosecutor intends to use the statement of a specifically-protected witness as evidence; their possibility to consult the abstract of records containing the statement of a specifically-protected witness; the possibility to motion posing questions to the specifically-protected witness; the cessation of the status of a specifically-protected witness;<sup>114</sup> d) under Article 289(2) of the Criminal Procedure Code, the president of the judicial council warns the accused person at the beginning of the trial that if he/she refuses to make a statement during the trial, his/her earlier statement as a suspect may be reviewed or read aloud to the court. The president of the judicial council also informs the suspect that, during the evidence-taking procedure, the suspect may pose questions to the interrogated persons, submit motions and make an observation; e) under Article 19(1) of Decree 16/2014 (XII.19) of the Ministry of Justice on the detailed rules of the implementation of imprisonment, confinement, pre-trial detention and confinement replacing disciplinary penalty<sup>115</sup>, hereinafter Decree 16/2014 (XII.19) of MJ) persons in pre-trial detention, confinement, confinement replacing penalty, are also informed, after their admission to the penal institution, about the possible coercive measures and about their duty to give notice about changes of address and on the legal consequences of failing to comply with this duty.</p>

<sup>111</sup> Article 62 and Article 43(2)(f) of the Criminal Procedure Code.

<sup>112</sup> Article 117(4) of the Criminal Procedure Code.

<sup>113</sup> Article 263(4) of the Criminal Procedure Code.

<sup>114</sup> Article 263(3) of the Criminal Procedure Code.

<sup>115</sup> Decree 16/2014 (XII.19) of the Ministry of Justice on the detailed rules of the implementation of imprisonment, confinement, pre-trial detention and confinement replacing disciplinary penalty (16/2014. (XII. 19.) IM rendelet a szabadságvesztés, az elzárás, az előzetes letartóztatás és a rendbíróság helyébe lépő elzárás végrehajtásának részletes szabályairól), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1400016.IM](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400016.IM).



		<b>B) In misdemeanour proceedings</b> the offence authority informs the person concerned, e.g: a) that he/she shall not accuse anyone of committing a crime falsely; <sup>116</sup> b) if the offence authority or the court establishes that the conditions for referral to mediation are met, before rendering the conclusive decision at first instance, it calls the person concerned to make a statement in which it provides information about the possibility, rules, conditions and costs of mediation. <sup>117</sup>
<b>2.</b>	<b>LETTER OF RIGHTS<sup>118</sup></b>	<b>Brief Description</b>
<b>2.1</b>	What rights does the letter of rights provide information about? What information is included in the letter of rights when children are arrested or detained?	<p><b>I. Legal basis:</b> the authorities' obligation to provide information to detained persons may vary according to the type of detention applied and whether or not the person was taken on remand in a criminal or misdemeanour procedure. Hungarian legal texts generally do not provide a proper definition of the letter of rights, but only contain a reference to the obligation to provide information in writing. Model forms, i.e. information leaflets, are used (see in detail below), which, however, are not necessarily unified.</p> <p><b>II. "Model Information Leaflets":</b> according to information provided by the Ministry of the Interior, both the Hungarian Prison Service Headquarters (<i>Büntetés-végrehajtás Országos Parancsnoksága</i>, BVOP) and the Hungarian National Police Headquarters (<i>Országos Rendőrfőkapitányság</i>, ORFK) use model forms to provide information on the rights and obligations of detainees.<sup>119</sup> The Ministry of Interior provided two model forms used by BVOP and ORFK, respectively. The model "Information Leaflet in Hungarian on the rights and obligations of persons detained by the police and on the rules of detention"<sup>120</sup> used by the Hungarian National Police Headquarters is based on Order 3/2015 (II. 20) of the National Police Headquarters<sup>121</sup> (hereinafter: Information Leaflet on the rights and obligations of persons detained by the police), which is binding for the police.</p> <p>In contrast, no such legal basis has been indicated by the MI for the model information leaflet applied by the Hungarian Prison Service Headquarters (General Information Leaflet of the Hungarian Prison Service Headquarters for non-Hungarian national detainees<sup>122</sup>, <i>A Büntetés-végrehajtási Szervezet Általános tájékoztatója nem Magyar állampolgárságú fogvatartottak részére</i>, hereinafter: General</p>

<sup>116</sup> Article 71(3) of the Code of Misdemeanour Procedure.

<sup>117</sup> Article 82/A(3) of the Code of Misdemeanour Procedure.

<sup>118</sup> See in particular Article 4 and relevant recitals of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1 June 2012.

<sup>119</sup> Hungary, representative of the Ministry of the Interior.

<sup>120</sup> Information Leaflet in Hungarian on the rights and obligations of persons detained by the police and on the rules of detention (*Magyar nyelvű tájékoztató a rendőrségen fogvatartott személyek jogairól és kötelezettségeiről, valamint a fogva tartás rendjéről*), available at: [police.hu/sites/default/files/ot\\_3.doc](http://police.hu/sites/default/files/ot_3.doc).

<sup>121</sup> Order 3/2015 (II. 20) of the National Police Headquarters, (11. melléklet a 3./2015 (II.20) ORFK utasításhoz), available at: [police.hu/sites/default/files/ot\\_3.doc](http://police.hu/sites/default/files/ot_3.doc).

<sup>122</sup> General Information Leaflet of the Hungarian Prison Service Headquarters for non-Hungarian national detainees (*A Büntetés-végrehajtási Szervezet Általános tájékoztatója nem Magyar állampolgárságú fogvatartottak részére*). Not available online.

Information Leaflet of the Hungarian Prison Service Headquarters). According to information provided by the MI, the General Information Leaflet of the Hungarian Prison Service Headquarters is applied in the following types of detention: pre-trial detention, detention under European Arrest Warrant procedures, and temporary involuntary medical treatment (see also point III). It is important to note that no information was provided on the use of differently-formulated model forms when, for example, children are arrested. On the exact content of the model forms, see 2.1. point VI below and 2.4. On child-specific references contained in the relevant legal texts and the model forms, see Section B/ 5.

### **III) Types of detention to which Directive 2012/13/EU is applicable**

A) In criminal procedures, the three types of detention to which the right to be informed according to Directive 2012/13/EU applies are: taking into custody for 72 hours – after which the person concerned has to be released or brought to justice, for ordering his/her pre-trial detention,<sup>123</sup> pre-trial detention if, for example, the person concerned absconded or there are substantial grounds for believing that he/she would attempt to abscond,<sup>124</sup> and temporary involuntary medical treatment that may be ordered if there are substantial grounds to believe that the conditions of involuntary medical treatment are met.<sup>125</sup>

Pre-trial detention is implemented in penal institutions, unless psychiatric treatment of the person concerned is necessary, in which case he/she stays in the Forensic Diagnostic and Mental Institution (*Igazságügyi Elmeszakértői Intézet, IMEI*). If it is necessary for an investigatory action, the prosecutor may order the pre-trial detention of the person concerned in a police custodial institution – for a maximum period of 30 days, after which the court may extend for an additional period of 30 days. Temporary involuntary medical treatment is implemented in the Forensic Diagnostic and Mental Institution.<sup>126</sup>

However, Article 107(1) – (3) of the Criminal Procedure Code also allows the court, on the basis of expert opinion, to order the one-month observation of the suspect's or accused person's mental state in a psychiatric institution. and, If the suspect's or accused person's formal detention had not been ordered without the guarantees attached, this measure may also entail severe restrictions of the personal freedom of the person concerned, i.e. he/she may not be allowed to leave the institution. An investigation conducted by the ombudsman, in the case of a person whose observation the court ordered in a psychiatric institution,<sup>127</sup> established the uncertainty of the exact content of the measure

<sup>123</sup> Article 126(2) of the Criminal Procedure Code.

<sup>124</sup> Article 129(2) of the Criminal Procedure Code.

<sup>125</sup> Article 140(2) of the Criminal Procedure Code.

<sup>126</sup> Article 135(1)-(2), Article 141(2), Article 144(1) of the Criminal Procedure Code.

<sup>127</sup> Report of the ombudsman in case no AJB-5564/2010. 03.10.2011. (*Az állampolgári jogok országgyűlési biztosának Jelentése az AJB-5564/2010. számú ügyben*).

	<p>under the relevant legal provisions (largely leaving its extent to the discretion of the psychiatric institution in question). According to the ombudsman this lack of clarity led to much controversy and, in the end, to the establishment of the violation of the applicant's right to personal freedom. In particular, the ombudsman established that the application of biological or chemical coercive measures to prevent the departure of the applicant, without the court ordering the temporary involuntary medical treatment, is not permissible.</p> <p>Similarly, under Article 138(1) of the Criminal Procedure Code, the suspect or the accused person may also be placed on home arrest, which means that he/she may only leave the dwelling designated by the court, and the enclosed area attached to it, for a genuine reason, at the specified time and within the distance specified in the court decision, i.e. specifically for the purpose of complying with everyday basic necessities or medical treatment. Under Article 92(1) of Act C of 2012 on the Penal Code<sup>128</sup> (hereinafter Act C of 2012) the whole duration of home arrest has to be deduced from the duration of the inflicted imprisonment though its exact reckoning depends on the detention regime. These forms of the restriction of the freedom of movement in certain cases depending on their effects and their manner of implementation they may reach the threshold required for detention under the Strasbourg case law,<sup>129</sup> while they cannot fall under the scope of national provisions implementing Directive 2012/13/EU.</p> <p><b>B) In misdemeanour procedures</b>, the offence authority may order an offence custody of the person surprised in the act for the purpose of accelerated judicial procedure – if the offence is punishable by confinement. Offence custody is generally implemented in police custodial institutions, e.g. police jails.<sup>130</sup></p> <p>C) The police may order <b>custody for public security reasons</b> of someone if it is necessary for establishing the identity of the person concerned. This may last only for 24 hours, under Article 34 of Act XXXIV of 1994 on the police (<i>1994. évi XXXIV. törvény a Rendőrségről</i>).</p>
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<sup>128</sup> Act C of 2012 on the Penal Code (*2012. C törvény a Büntető Törvénykönyvről*), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV).

<sup>129</sup> ECtHR, *Mancini v. Italy*, No. 44955/98, 2 August 2001, par. 17.; Council of Europe/European Court of Human Rights (ECtHR) (2014), *Guide on Article 5 of the Convention Right to Liberty and Security*, 2014, p. 7.

<sup>130</sup> Article 73(1), (1a) if the Code of Misdemeanour Procedure.

D) **European Arrest Warrant:** Article 2 of Act CLXXX of 2012 on the judicial cooperation in criminal matters with Member States of the European Union<sup>131</sup> (hereinafter: Act CLXXX of 2012), prescribes the application of the Criminal Procedure Code – unless it is provided otherwise by Act CLXXX of 2012. Article 2 c extends the scope of application of Act CCXL of 2013 on the implementation of punishments and penal measures, coercive measures and offence custody<sup>132</sup> (hereinafter Act CCXL of 2013), and to persons detained under Act CLXXX of 2012 (further information provided in part III below). Specific provisions: under Article 11(1) of Act CLXXX of 2012, a Capital Court (*Fővárosi Törvényszék*) holds a session and informs the person concerned of the possibility of simplified transfer. The participation of a defence counsel during the procedure is obligatory.<sup>133</sup>

#### IV) Information provided

A) In criminal proceedings, under Article 169(2)-(3) of the Criminal Procedure Code and Article 58(1) of Joint Decree 23/2003. (VI. 24.) of MI – MJ, the decision on taking the person concerned into custody has to contain the core content of the criminal offence – which forms the basis of the measure, the reason for ordering detention, contains the facts and circumstances supporting the measure, the beginning and the end date of detention (day, hour), the place of detention and information about the available remedies.

Under Article 63(2) of the same Decree, the motion for pre-trial detention comprises of the legal qualification of the criminal offence under the penal code, its statement of facts, the substantiated suspicion, grounds substantiating that the conditions of pre-trial detention are met, and in the case of a person already in detention – the beginning of it (date, hour, minute), information on the defence counsel and his/her contact details. The decision taken by the investigative judge on the motion for pre-trial detention contains<sup>134</sup> the core content of the motion, the brief description of the criminal act forming the basis of the proceeding and its legal qualification, the evaluation on whether or not the conditions of pre-trial detention set by law are met.

<sup>131</sup> Act CLXXX of 2012 on the judicial cooperation in criminal matters with Member States of the European Union (*2012. évi CLXXX. törvény az Európai Unió tagállamaival folytatott bűnügyi együttműködésről*), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200180.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200180.TV).

<sup>132</sup> Act CCXL of 2013 on the implementation of punishments and penal measures, coercive measures and offence custody (*2013. évi CCXL. törvény a büntetések, az intézkedések, egyes kényszerintézkedések és a szabálysértési elzárás végrehajtásáról*), available at: [complex.hu/kzldat/t1300240.htm/t1300240.htm](http://complex.hu/kzldat/t1300240.htm/t1300240.htm).

<sup>133</sup> Article 11(1) b, (2) of Act CLXXX of 2012.

<sup>134</sup> Article 214(1) of the Criminal Procedure Code.

		<p>Under Article 12 of Act CCXL of 2013, persons detained under pre-trial detention, and temporary involuntary medical treatment also receive information about a number of their rights at the time of their admission to the penal institution, in writing, in a language they understand and in a simple and plain manner.<sup>135</sup> Thus, the persons concerned have to be informed about: <i>a)</i> their right to make a complaint, or an appeal, in matters related to the prison service; <i>b)</i> their right to defence in matters related to the prison service; <i>c)</i> their right to use their mother tongue; <i>d)</i> their right to have access to documents concerning prison service measures or to medical documentation; <i>e)</i> the possible ways of exercising their right to communication; <i>f)</i> their right to notify consular authorities (foreign nationals may notify and communicate with consular authorities<sup>136</sup> – Article 177-179, Joint Decree of MI – MJ 23/2003. (VI. 24.); <i>g)</i> the code of conduct of the institution, its rules of disciplinary procedure and their disciplinary responsibility; <i>h)</i> coercive and security measures – especially the decrees concerning the application of electronic surveillance systems; <i>i)</i> the first and last date of detention; <i>j)</i> the rules on responsibility for damages; <i>k)</i> their right to medical care; <i>l)</i> patient rights.</p> <p>Under Article 12(5) of Act CCXL of 2013, persons taken into pre-trial detention or receiving temporary involuntary treatment shall also receive, in relation to the criminal proceedings, information at their admission – in writing, in a language they understand, in a simple and plain manner on the <i>a)</i> right to defence; <i>b)</i> right to request personal cost exemption and its conditions; <i>c)</i> right to know the core content of the act forming the basis of the suspicion or indictment and on their right to know any changes thereof; <i>d)</i> right to use their mother tongue; <i>e)</i> right to inspect documents related to the criminal proceedings; <i>f)</i> right to not make a statement; <i>g)</i> the maximum duration of detention, on the rules of its supervision, and on the right to submit an application for release; <i>h)</i> the right to notify the relative or other person chosen by the detainee of the rendering, extension and maintaining of detention – the detainee has to make a statement on this, the notification has to take place within 24 hours from rendering the detention, and has to be recorded<sup>137</sup>.</p> <p>B) The authority ordering an <b>offence custody</b> informs the person concerned in writing, in a language he/she understands, in a simple and plain manner on the: <i>a)</i> right to defence in misdemeanour procedures; <i>b)</i> right to know the core content of the act forming the basis of the misdemeanour procedure and on the right to know any changes thereof; <i>c)</i> right to use their mother tongue; <i>d)</i> right not to make a statement; <i>e)</i> right to have access to documents related to their misdemeanour proceedings; <i>f)</i> right to notify consular authorities, a relative or any other person assigned by them; <i>g)</i> the maximum duration of the offence custody and the possibility of extending it; <i>h)</i> right to remedy against the</p>
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<sup>135</sup> Article 12(4), Act CCXL of 2013; see also Article 19(2), Article 181 of Decree 16/2014 (XII.19) of MJ.

<sup>136</sup> Article 43(3)(a) of the Criminal Procedure Code.

<sup>137</sup> Article 128(1) of the Criminal Procedure Code; Article 59 of Joint Decree of MI – MJ 23/2003. (VI. 24.).

		<p>decision ordering or lengthening offence custody.<sup>138</sup> According to Article 14(1) of Decree 56/2014 (XII.5.) of the Ministry of the Interior on the rules on police custodial institutions<sup>139</sup> (hereinafter Decree 56/2014 (XII.5.) of MI), persons under offence custody and public security custody have to receive information in a language they understand – in a simple and plain manner, of the: <i>a)</i> right to use their mother tongue; <i>b)</i> right to medical treatment; <i>c)</i> right of communication; <i>d)</i> code of conduct of police custodial institution, rules of disciplinary procedure and their disciplinary responsibility; <i>e)</i> security measures; <i>f)</i> rules on responsibility for damages.</p> <p><b>V) Recording of the information provided</b></p> <p><b>A) Pre-trial detention / temporary involuntary medical treatment:</b> the provision of information has to be recorded. If the person in pre-trial detention or temporary involuntary medical treatment has already received information contained in Article 12(5) and Article 12(4) f) and k) of Act CCXL of 2013, at his taking into custody for 72 hours, it does not have to be repeated. The detainee may keep the letter of rights on them.<sup>140</sup></p> <p><b>B) Custody under misdemeanour procedures:</b> the provision of information and its acknowledgement have to be recorded. Detainees may keep the letter of rights on them.<sup>141</sup></p> <p><b>VI. Detailed rules and main problem areas in practice</b></p> <p><b>1. The right of access to a lawyer, access to free legal assistance</b></p> <p>Article 12 of Act CCXL of 2013 or Article 73(11) of the Code of Misdemeanour Procedure prescribe that, for persons taken on remand before their trial or conviction or in misdemeanour procedures, the authorities provide information on the right to defence in criminal/misdemeanour proceedings and in relation to the implementation of detention – but the content of the right to defence is not specified and the right of access</p>
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<sup>138</sup> Article 73(11) of the Code of Misdemeanour Procedure.

<sup>139</sup> Decree 56/2014 (XII.5.) of the Ministry of the Interior on the rules on police custodial institutions<sup>139</sup> (56/2014. (XII. 5.) *BM rendelet a rendőrségi fogdák rendjéről*), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1400056.BM](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1400056.BM).

<sup>140</sup> Article 12(6)-(8) of Act CCXL of 2013.

<sup>141</sup> Article 14(2)-(3) of Decree 56/2014 (XII.5.) of MI.

to a lawyer is not specifically mentioned. Meanwhile, Article 135(3) and Article 144(2) of the Criminal Procedure Code ensures the right of the person under pre-trial detention, or temporary involuntary treatment, to exercise his/her rights in the criminal procedure – in particular, the right to consult with his/her lawyer or consular representative. Besides, in theory, the detainee may also consult his/her lawyer before his/her questioning.<sup>142</sup> Free legal assistance is not provided in misdemeanour procedures. Although, in criminal proceedings, Article 12(5)b) of Act CCXL of 2013 contains the obligation to provide information on the right to request personal cost exemption and its conditions, but again, it is not made clear that the authorities have to refer specifically to free legal aid.

## **2) the right to interpretation and translation**

In criminal proceedings, Article 12(1) – (3) of Act CCXL of 2013 ensures that no disadvantage may fall upon detained persons due to their lack of knowledge of Hungarian. During the implementation of detention, the detained person may use his/her mother tongue or regional/ethnic language based on international agreement promulgated by law, or if he does not know Hungarian, any other language that he/she may know. In matters related to the prison services, or in relation to detention, a member of the authority who has adequate language competence may act as an *ad hoc* interpreter. According to information provided by defence counsels, in practice:

there are no adequate rules to ascertain the language competence of members of the prison service, who are thus not “accredited”;

members of the prison service are rarely ever assigned as interpreters since they have no adequate language competence – while other prisoners may act as *ad hoc* interpreters.<sup>143</sup>

The prison service authority has to provide information to the detained person in his/her mother tongue or regional/ethnic language on the basis of an international agreement promulgated by law or, if he does not know Hungarian, any other language that he/she may know on the rules on implementation, on the core content of his/her rights and obligations in relation to the implementation of detention, and on the regulations of the institution. The authorities ensure that the translations of decisions are rendered into the appropriate language if the person concerned specifically requests so at the time of the notification of the decision. The detained person is warned of this right.

See also Section B.5

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<sup>142</sup> Article 184(3) of the Criminal Procedure Code.

<sup>143</sup> Hungary, defence counsels; representatives from the Hungarian Helsinki Committee.

**VII. Content of model forms provided by the authorities:**

**a) Information Leaflet on the rights and obligations of persons detained by the police** is a document of 11 pages. The model form provides non-individualised information on the rights of the detainees in criminal and misdemeanour procedures, on their rights related to the implementation of detention and on the rules applicable to detention. The form contains detailed information – in particular on the following rights, both in the context of criminal and misdemeanour proceedings and in relation to detention:

1. The rights of defence: the model form states that the person concerned may exercise this right in criminal proceedings “according to the act on criminal proceedings” (p. 3), without specifying what this comprises. More information is provided on the rights of defence counsels in the context of misdemeanour procedures. While the model form also mentions that the participation of a defence counsel is obligatory in criminal proceedings, if the person concerned is detained, no information is given on any entitlement to free legal advice and the conditions for obtaining such advice. The model form specifically refers to the right of access to a lawyer (p. 3), and it also specifies the possible ways the detainee and the defence counsel may communicate during the detention (p. 5). The document specifies, in particular, that the detainee may communicate with his/her defence counsel freely, without surveillance (p. 6). He/she may keep his/her notes concerning the criminal proceedings and may give these notes freely, without control, to his/her defence counsel. Reference is also made to the documents and phone calls between the person concerned and his/her defence counsel that may not be controlled (p. 7) – although the identity of the source of the phone call or the letter may be checked (p. 7).
2. The right to be informed of the accusation: information is only provided in relation to misdemeanour procedures (p. 4).
3. The right to interpretation and translation: the document contains the basic rules on the right to interpretation and translation – both in criminal and misdemeanour proceedings (p. 4-5). In particular, it draws the attention of the detainee where he/she is entitled to free translation of the official documents in criminal proceedings (p.4) and that he/she has to specifically request the translation of the decision on detention at its moment of communication (p. 5).
4. The right to remain silent: no information is provided.
5. The right of access to the materials of the case: the model form contains basic information on the right of access to documents (covering materials of the case) in the context of detention, e.g. it provides information on the inspection of the documents of the investigation (see Section B/4.2.) and on the right of access to documents related to detention (p. 4).
6. The right to have the consular authorities and one person informed: the model form draws the attention of the detainee to the fact that he/she has the right to have consular authorities informed and to communicate unhindered, without surveillance, with the consular



	<p>representative of his/her State of nationality, and also specifies the possible ways, i.e. modalities, of communication (p. 5-6). Similarly, the document provides information on the possibility of designating a relative as the contact person (p.6).</p> <p>7. The right of access to urgent medical assistance: the model form contains information on the right to receive free basic and clinical health care (p. 8).</p> <p>8. The maximum number of hours or days that a suspect or accused person may be deprived of liberty before being brought before a judicial authority: no general information is provided in the model form.</p> <p>9. Remedies against detention: the model form contains detailed information on the remedies against detention, on the system of bails.</p> <p>10. Complaint procedures: the model form gives detailed information on various complaint procedures, such as, e.g. i) on the possibility to lodge a complaint against any decision taken in relation to detention and on the possibility to turn to court if the complaint does not succeed; ii) on the possibility to lodge a complaint with the prosecutor. The document mentions, but does not elaborate on, the possibility i) to initiate the proceedings of the ombudsman if fundamental rights are violated; ii) to turn to “international organisations” (which remain unspecified by the model form, p. 1). Later, however, the form gives information on the possibility to communicate freely, without control, with international organisations such as the European Court of Human Rights (p. 6) and about the freedom of correspondence between international human rights bodies or the ombudsman and the detainee (p. 7). The model form also contains detailed information on the available complaint procedures in criminal and misdemeanour proceedings and on the complaint procedure against measures taken by the police (p. 2).</p> <p>11. Reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed: no information is provided in the model form.</p> <p>12. Information on the code of conduct, disciplinary responsibility, disciplinary procedures and the possible security measures is also provided by the model form (pp. 8-11).</p> <p><b>b) General Information Leaflet of the Hungarian Prison Service Headquarters:</b> according to information provided by the Ministry of the Interior,<sup>144</sup> the leaflet is applied in the case of persons under the European Arrest Warrant, pre-trial detention and involuntary compulsory medical treatment. Specific reference is only made to pre-trial detention in the leaflet.</p> <p>Regarding persons under pre-trial detention, the model form only states, that they “receive information at their admission” on a number of procedural rights applicable in criminal proceedings covered by the Directive 2012/13/EU – without containing any information on these rights (p. 12). Thus, the document may not be regarded as a proper letter of rights for the purposes of the implementation of Directive 2012/13/EU. The rights and subject matters to be covered by the information given would be the: right of defence in criminal proceedings, right to request personal exemption of costs, right to be informed of the accusation, right to use one’s mother tongue, right to remain silent, right to have</p>
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<sup>144</sup> Hungary, representative of the Ministry of the Interior.

access to case documents (materials), right to have consular authorities and one person informed, right to health care, right to be informed of the maximum duration of pre-trial detention, right to lodge a complaint in matters related to the implementation of detention, possible means and modalities of communication, code of conduct in prison service institutions, their disciplinary responsibility and procedures, security measures and indemnity. The response of the Ministry of the Interior to repeated requests for public data states that the rights concerned “do not appear in detail” in the General Information Leaflet of the Hungarian Prison Service Headquarters “since detainees receive information at their admission on the possibility to consult the relevant legal acts in force in the libraries of the prison institutions”.<sup>145</sup> It is important to note, however, that, in fact, detainees are not given this information in a written form. Furthermore, detainees have little free access to libraries in these institutions. The Ministry of the Interior also claims that the revision of the information leaflets provided is “under way”.

As the leaflet covers those imprisoned and under offence custody, it contains specific information, at length, on the implementation of these punishments and on the related rights and obligations.

Information on the following rights covered by Directive 2012/13/EU is also available in a scattered manner in the document:

1. The rights of defence: the model form refers to the right to receive information on the rights of defence (p. 12). It also mentions that the content of the correspondence, or the telephone communication between the detainee and his/her defence counsel, or between enumerated international bodies, such as the European Court of Human Rights, is not controlled (p. 6, p. 15) – although, the identity of the source of the phone call or letter may be checked (p. 15). The model form specifically refers to the right of access to a lawyer and specifies the possible ways of communication and contact during detention (p. 15). The document states, in particular, that the person concerned may communicate with his/her defence counsel freely, without surveillance, and that he/she may keep his/her notes concerning the criminal proceedings and may give these notes freely, without control, to his/her defence counsel (p. 15). No information is given on any entitlement to free legal advice and the conditions for obtaining such advice.
2. The right to be informed of the accusation: no detailed information is provided.
3. The right to interpretation and translation: the document contains basic information on the right to use one’s mother tongue during detention, and on the right of the detainee to receive information on his/her rights and obligations in his/her mother tongue, or in a language he/she understands (p. 3). The model form also informs the detainee that the costs of interpretation, in relation to matters concerning detention, are born by the prison service, while costs related to criminal proceedings are regulated by the relevant legal acts (p. 3).
4. The right to remain silent: no detailed information is provided.

		<p>5. The right of access to the materials of the case: the model form contains information on the right to use the prison service to be able to exercise one's right of access to case documents (materials) in criminal proceedings (p. 5).</p> <p>6. The right to have consular authorities and one person informed: the model form draws to the attention of the detainee that the consular authorities of his/her states are notified of his/her admission to the prison service institution – unless he/she explicitly requests otherwise. It also informs the detainee that he/she has the right to communicate with a member of the diplomatic mission of his/her state according to relevant international treaties (p. 2 and p. 5).</p> <p>7. The right of access to urgent medical assistance: the model form contains non-detailed information on the right to receive health care necessitated by the state of health of the detainee (p. 4).</p> <p>8. The maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority: no information is provided.</p> <p>9. Remedies against detention: no information is provided.</p> <p>10. Complaint procedures: the model form gives detailed information on the possibility of complaint in matters related to detention (pp. 10-11), but only lists those who may receive complaints from the detainee, such as the prosecutor, the ombudsman or international organisations (p. 11).</p> <p>11. Informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed: no information is provided in the model form.</p> <p>12. Information on the code of conduct, disciplinary responsibility, disciplinary procedures and on the possible security measures, is provided by the model form (pp. 9-10, pp. 18-189).</p> <p>13. Information on the possibility of requesting transfer to another state is also provided to the person concerned (p.2).</p>
2.2	<p>At what stage of the proceedings is the letter of rights provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p>Information is provided at the notification of the custodial decision in misdemeanour procedures and at the admission of the person concerned into the police/penal institution. See 2.1. above.</p>

<sup>145</sup> Hungary, representative of the Ministry of the Interior.

2.3	Is the letter of rights drafted in simple and accessible language? How do competent authorities verify whether the language is simple and accessible enough for the suspects or accused persons and/or that the suspects or accused persons understand the language? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	The relevant legal provisions provide that the letter of rights shall be drafted in simple and accessible language. In practice, similar concerns apply, though maybe on a lower scale – as in the case of information provided during questioning (see, in particular, 1.1.). In the framework of an EU-funded project, the Hungarian Helsinki Committee ( <i>Magyar Helsinki Bizottság</i> , hereinafter: HHC) will undertake, as of September 2015, a sociolinguistic survey to test whether or not the official Hungarian letter of rights is “simple and accessible” for non-lawyers. Working with experts in law and sociology, HHC will develop a series of control questions to assess the extent to which people have understood the letter of rights, and will perform a survey with up to 300 persons. 150 will be given information on their rights orally, as in some cases in Hungary, and 150 will be given information in writing, which usually happens when suspects are detained. Drawing on information from the survey and on the indicative model letter of rights in the Directive 2012/13/EU, HHC intends to prepare an alternative letter of rights and re-run the empirical research with another 150 persons to test whether or not the language of the alternative letter of rights is more accessible.
3.	<b>RIGHT TO INFORMATION ABOUT THE ACCUSATION<sup>146</sup></b>	<b>Brief Description</b>
3.1	What information is provided to the suspects or accused persons regarding what they have been accused of and how is it provided (e.g. orally or in writing)	<b>I) During investigation</b> A) The suspect in criminal proceedings has the right to be informed about the ‘subject matter’ of the accusation and its charges/changes. At the beginning of the questioning, the investigation authority has to inform the suspect of the core content of the suspicion and the applicable legal regulations – at least verbally, but the suspect is not informed of the evidence against him or her. If charges change, the investigation authority has to inform the suspect before his/her (next) questioning <sup>147</sup> . B) In misdemeanour procedures, Article 52(2) of the Code of Misdemeanour Procedure ensures the right to be informed of the charges, facts and evidence supporting them. The offence authority has to inform the persons concerned of the core content of the charges against him/her and of his/her right to such information at the beginning of the questioning. The information has to be provided in writing if the authority does

<sup>146</sup> See in particular Article 6 and relevant recitals of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1 June 2012.

<sup>147</sup> Article 43(2)(a) and Article 179(2) of the Criminal Procedure Code; Article 119 of Joint Decree 23/2003. (VI. 24.) of MI – MJ.

not interrogate the person concerned<sup>148</sup>. If the offence may be punishable by confinement, and the person concerned is taken into custody, the police bring him/her to justice for the purpose of an accelerated judicial procedure. The police inform the person concerned of the offence that forms the basis of the proceedings and the evidence substantiating it<sup>149</sup>. Similar rules apply if the offence may be punishable by confinement and the person authorised to impose a fine 'on the spot' decides to bring the person concerned to justice<sup>150</sup>.

## **II) Bill of indictment**

1. Under Article 217(3) (b-j) of the Criminal Procedure Code, the bill of indictment contains: a) the description of the act forming the basis of indictment, b) its legal qualification under Act C of 2012 (Penal Code), c) certification of meeting possible special conditions of indictment (e.g. private motion), d) proposal for imposing a punishment or applying a penal measure, e) civil claims and other motions, f) a proposal concerning the persons to be summoned to the hearing and the persons to be notified thereof, g) description of the means of evidence as well as the facts they prove, h) a proposal for the order of taking evidence at the hearing.

Article 70(1)b) and c) of Order 11/2003 (ÜK 7) of the Prosecutor General,<sup>151</sup> which is binding for the Prosecutor's offices, contains detailed rules on the compulsory elements of the bill of indictment. The second part of the bill of indictment has to contain a brief description of the act (acts) forming the basis of the charges, and indicating the means of evidence. From the statement of facts, it has to be obvious which facts form the basis of the charges. The statement of facts also must indicate the time and the place of the criminal offence committed, its motivation, its means, and its consequences. The third part contains the indictment itself and the qualification of the charges according to the Penal Code. If it is necessary, the bill of indictment also has to indicate which qualification refers to which element of the statement of facts. In practice, the bill of indictment only enumerates the means of evidence without specifying which elements, or which parts, e.g. expert opinions, are considered to be relevant by the prosecutor, and which part (element) of the accusation makes the position of defence harder.

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<sup>148</sup> Article 10/A(1) and Article 10/B of Regulation 22/2012 (IV.13) of MI.

<sup>149</sup> Article 124(1)-(2) of the Code of Misdemeanour Procedure.

<sup>150</sup> Article 126/A(1)-(2) of the Code of Misdemeanour Procedure.

<sup>151</sup> Order 11/2003 (ÜK 7) of the Prosecutor General (11/2003 (ÜK 7) *LÜ utasítás*), available at: [mklu.hu/pdf/uk/uk\\_2006\\_9.pdf](http://mklu.hu/pdf/uk/uk_2006_9.pdf).

2. Sending out a written notification of the bill of indictment 15 days prior to the first session of the trial, without delay after the expiry of the 30 days made available for the court to examine the documents of the case following its registry at the court, is the obligation of the presiding judge in the case.<sup>152</sup>
3. The presiding judge opens the session and specifies the charges in the indictment. At the beginning of the trial the prosecutor presents the bill of indictment upon the call of the presiding judge.<sup>153</sup>
4. Taking evidence begins with the questioning of the accused person. The presiding judge asks the accused person whether he/she understood the charges, if not he/she explain it to them.<sup>154</sup>

### **III) Private accuser**

Under Article 230 of the Criminal Procedure Code, if the victim acts as a substitute private accuser, he/she shall submit, by way of his/her legal representative, a private motion for prosecution to the prosecutor's office of first instance, which forwards it, together with the documentation of the case, to the competent court. The private motion for prosecution has to contain data required under Article 217(3) b), c), g) and h) of the Criminal Procedure Code and the private accuser's reasons for bringing the case to court – despite the dismissal of the complaint, the termination of the investigation, or the partial omission of the indictment by the prosecutor.

B) In misdemeanour proceedings if: a) the person concerned submits a plea against a decision of the offence authority and the proceeding court decides to hold a trial, the judge summarises the core content of the decision of the offence authority and the plea against it.<sup>155</sup>; b) if the offence may be punishable by confinement, the police bring to justice the person taken into custody and inform him/her of the offence and the evidence which forms the basis of his/her presence in court.<sup>156</sup> Similar rules apply if the offence may be punishable by confinement and the person authorised to impose a fine on the spot decides to bring the person concerned to justice.<sup>157</sup>

<sup>152</sup> Article 263(2) of the Criminal Procedure Code.

<sup>153</sup> Article 281(1) and Article 284(2) of the Criminal Procedure Code.

<sup>154</sup> Article 286(1) and Article 288 (3) of the Criminal Procedure Code.

<sup>155</sup> Article 111(2) of the Code of Misdemeanour Procedure.

<sup>156</sup> Article 12(1)-(2) of the Code of Misdemeanour Procedure.

<sup>157</sup> Article 126/A(1)-(2) of Code of Misdemeanour Procedure.

3.2	At which stage of the proceedings is the information provided? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b>	<p>In criminal proceedings, during the investigation phase, at the beginning of the questioning, the authorities inform the suspect of the core content of the suspicion and the applicable legal regulations, but not of the evidence supporting these allegations. The judicial phase begins with the notification of the bill of indictment (see 3.1.).</p> <p>In misdemeanour proceedings, information has to be provided at the beginning of the questioning (see 3.1. above).</p>
3.3	How are suspects or accused persons informed when, in the course of the criminal proceedings, the details of the accusation change?	<p><b>A) In criminal procedures</b>, the suspect/accused person has the right to be informed of the change of charges.<sup>158</sup> At his/her questioning, the investigating authority informs the person concerned if, during the investigation, after notifying the person concerned of the charges, substantial grounds support that he/she committed another crime, or if the qualification of the charges has to be changed<sup>159</sup> Similarly, Article 8(2) of Order 11/2003 (UK 7) of the Prosecutor General, prescribes that the person concerned – in order to ensure the exercise of his/her rights, shall be informed at his/her next questioning about the changes in the details of the accusation. In practice, nothing prevents the prosecutor including charges, which had not been raised during investigation, into the bill of indictment or extending them. Even if it can be established from the documents attached to the case that the investigation authority (prosecutor) was well aware of the change or extension of the charges before the closure of the investigation, the court does not consider this a substantial breach of procedural rules and guarantees – even though it impairs the rights of the defence.</p> <p>Article 310 of the Criminal Procedure Code contains rules on the amendment of the charges after the filing of the bill of indictment. If the prosecutor considers that the accused committed a different or additional criminal offence other than the one contained in the bill of indictment, he/she may amend or extend the charges before the court session closing the evidentiary procedure (when the court withdraws to adopt the decision after hearing the pleadings, remarks and the last say of the accused person). The prosecutor may also motion for the adjournment of the trial in order to supplement the indictment. If the indictment is amended, upon the motion of the prosecutor or, if in order to prepare for the defence, the accused or the defence counsel requests so, the court may adjourn the trial. If the indictment is expanded, upon the joint request of the accused and the defence counsel, the court has to adjourn the trial for a minimum of eight days, or has to separate the case to which the indictment has been extended. In this case, the court may also adjourn the trial ex officio.</p>

<sup>158</sup> Article 43(2)(a) of the Criminal Procedure Code.

<sup>159</sup> Article 119(2) of Joint Decree of MI – MJ 23/2003. (VI. 24.).

		<b>B) In misdemeanour procedures</b> no specific rules apply. <sup>160</sup>
<b>4.</b>	<b>RIGHT OF ACCESS TO CASE MATERIALS<sup>161</sup></b>	<b>Brief Description</b>
<b>4.1</b>	What material evidence can be accessed by suspected or accused persons (e.g. documents, photographs, audio, video, summaries...)?	<p><b>A) In criminal proceedings</b>, under Article 115 - 116 of the Criminal Procedure Code, “documents” cover various types of case materials, namely all means of evidence prepared and suitable for proving that a fact or data is true, that an event has taken place, or that a statement has been made. The rules on documents also apply to abstracts made from documents and drawings, and to objects recording data by way of technical, chemical or other methods, for the purpose of verifying that a fact or data is true, that an event has taken place, or that a statement has been made. Rules on documents do not apply to, e.g. seized computer systems or data storage media containing data recorded by such systems, which constitute means of evidence.<sup>162</sup> Thus, the right of “access to documents” implies access to all of the case materials specified above.</p> <p>Video/audio recording of investigation actions and questioning:</p> <p>a) the questioning of suspects, in principle, is not recorded;</p> <p>b) inspections, reconstructions and presentations for identification have to be recorded by an audio or video recorder or other equipment. The audio or video recordings have to be attached to the documents of the case<sup>163</sup>;</p> <p>c) the prosecutor and the investigation authority may order the recording of the investigatory action by shorthand, audio (video) recorder, or any other equipment. The prosecutor, or the investigation authority, has to order this upon the request of the prosecutor or the suspect/defence counsel – if the latter submit his/her request in due time and pay the costs in advance. Such recordings do not substitute for the minutes. However, if concurrent audio (video) recording takes place at the procedural action, the compulsory content of the minutes is limited.<sup>164</sup></p>

<sup>160</sup> Article 10/A(1) of Decree 22/2012 (IV.13) of MI.

<sup>161</sup> See in particular Article 7 and relevant recitals of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1 June 2012.

<sup>162</sup> Article 151(2) of the Criminal Procedure Code.

<sup>163</sup> Article 123(5) of the Criminal Procedure Code.

<sup>164</sup> Article 167(1) of the Criminal Procedure Code.



		<p>d) the court may order the recording of the whole procedure, or part of it, by shorthand, audio (video) recorder, or any other equipment. The court has to order the recording upon the request of the prosecutor, the accused person or the defence counsel, if they submit their request in due time and pay the costs in advance. The notes of the stenographer or the recordings do not substitute official records.<sup>165</sup></p> <p><b>B) In misdemeanour proceedings</b> ‘documents’ covers all documents issued to certify facts or circumstances, or documents suitable for proving facts or circumstances. The rules on documents also apply to abstracts made from documents and to objects recording data by way of technical, chemical or other methods. The authority has to attach the description, photos or recordings of physical evidence unsuitable for seizure, to the documentation of the case.<sup>166</sup></p>
4.2	<p>At what stage of the proceedings is access to case materials granted? <b>Please cross-check findings from the desk research by consulting relevant organisations and/or practitioners.</b></p>	<p><b>A) In criminal proceedings</b> access to documents is significantly restricted during the investigation phase, while access to documents is “full” after the bill of indictment is issued – with notable exceptions applying to qualified data, or to the statements of specially-protected witnesses.</p> <p>Article 43(2)b) and c) of the Criminal Procedure Code ensures the right of the suspect and the accused to access documents related to him/her and the right to have enough time for the preparation of the defence. In general, during the performance of procedural actions, human dignity, personality rights and piety rights have to be respected, and data on the private life is not be made public unnecessarily.<sup>167</sup> Otherwise, the right to have access to documents may not be restricted.<sup>168</sup> In principle, upon request within eight days, the court, the prosecutor or the investigation authority, has to issue a copy of any documents obtained or produced by the court, prosecutor or investigation authority or submitted/attached by other participants of the procedure, to the suspect/accused person or his/her defence counsel. In case the authorities refuse to issue a copy, there is a possibility to lodge a complaint. Those who are entitled to receive copies may request the documents in a digital format. If the requested document is available in digital format, the authorities have to issue the document in such a format.<sup>169</sup> The issuance of copies for the first time and the inspection of documents is free (Article 57(2) e), Act XCIII of 1990 on fees (<i>1990. évi XCIII törvény az illetékekről</i>, hereinafter referred to as Act XCIII of 1990)<sup>170</sup>). The authority keeps a registry of issued documents (e.g. how many copies of which documents, and to whom were issued), whose issuance is free for the first occasion.<sup>171</sup></p>

<sup>165</sup> Article 252(2)-(3) of the Criminal Procedure Code.

<sup>166</sup> Article 68-69 of the Code of Misdemeanour Procedure.

<sup>167</sup> Article 60(1) of the Criminal Procedure Code.

<sup>168</sup> Article 70/B(6) of the Criminal Procedure Code.

<sup>169</sup> Article 70B of the Criminal Procedure Code.

<sup>170</sup> Act XCIII of 1990 on fees, (*1990. évi XCIII törvény az illetékekről*), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99000093.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99000093.TV).

<sup>171</sup> Article 13/A of Joint Decree of MI – MJ 23/2003. (VI. 24.).

**I) Main restrictions before the closure of investigation:**

During the investigation, the suspect, or his/her defence counsel, may not access all of the documents and they are only entitled to receive a copy of those documents to which they do have access.<sup>172</sup>

The scope of the right to have access to documents:

1) Until the conclusion of the investigation, the suspect, the defence counsel, or the legal representative of a minor, may receive a copy of the expert opinion, those documents produced on the investigatory actions, or other documents – if this does not interfere with the interests of the investigation.<sup>173</sup> If the documents in question are produced before the questioning of the suspect, or before the official appointment or authorisation of the defence counsel, the right to receive a copy applies after: a) the delivery of the warrant for the suspect to appear at the first questioning, and b) the appointment or authorisation of the defence counsel.<sup>174</sup>

2) Those whose presence is allowed by law at/during an investigatory action may have instant access to the records taken there. The defence counsel may be present during the questioning of the suspect, or at the questioning of those witnesses whose interrogation the defence counsel, or the suspect whom he/she defends, requests it. During the questioning of a foreign suspect, the consular representative of his/her state may be present.<sup>175</sup>

3) The suspect, the counsel for the defence, and the victim, may also inspect the expert opinion during the investigation, and they may only inspect additional documents if this does not injure the interests of the investigation.<sup>176</sup>

4) The motion for pre-trial detention has to contain those circumstances which form its basis,<sup>177</sup> – but not the substantiating documents. The investigative judge, however, has to attach a copy of those investigatory documents that substantiate the motion for pre-trial detention and send it to the suspect and to his/her defence counsel.<sup>178</sup> This possibility is a relatively new development – partly induced by the necessity to implement Directive 2012/13/EU, and the judgment rendered by the European Court of Human Rights in the case of *Hagyó v Hungary* in which the court established the violation of Article 5(4) of the European Convention on Human Rights on account of denying access to evidence supporting the pre-trial detention of the applicant.<sup>179</sup>

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<sup>172</sup> Article 186(3) of the Criminal Procedure Code.

<sup>173</sup> Article 70B(2) of the Criminal Procedure Code.

<sup>174</sup> Article 70B(4) of the Criminal Procedure Code.

<sup>175</sup> Article 184(1)(2), 5 and Article 186(1) of the Criminal Procedure Code.

<sup>176</sup> Article 186(2) of the Criminal Procedure Code.

<sup>177</sup> Article 132(5) of the Criminal Procedure Code.

<sup>178</sup> Article 211(1) of the Criminal Procedure Code.

<sup>179</sup> ECtHR, *Hagyó v Hungary*, No. 52624/10, 23 April 2013, par. 65-71.

**II) Inspection of the documents of the investigation after its closure:**

After the conclusion of the investigation, the prosecutor, or the investigation authority, has to hand over the compiled documents of the investigation to the suspect and the defence counsel, in a room designated for this purpose, and has to inform the suspect and his/her defence counsel of the deadline for the inspection. The suspect and the defence counsel can inspect all documents that may serve the basis for indictment – except for those treated confidentially. They may also access the documents after the set deadline. Upon request, detained suspects are taken to the designated room before the closing date of inspection. The suspect and the defence counsel may request supplementary investigations, make observations, and request copies of the documents. The suspect has to be informed of these rights. Documents related to any supplementary investigation action also have to be made accessible until the closure of the extended investigation. The authority takes minutes of the hand-over – the records of which have to contain the description of the documents handed over, the beginning/end of the inspection, and the motions or observations made by the suspect and the defence counsel.<sup>180</sup> Access to documents obtained after the closure of the investigation, or during its extension, is also ensured.<sup>181</sup>

**III) Qualified data:**

In criminal proceedings, the suspect/accused person, and the defence counsel, may have access to qualified data that is in the documents that they may examine under the Criminal Procedure Code. The authority, or organisation classifying or managing the qualified data as specified in Act CLV of 2009 on the protection of qualified data,<sup>182</sup> (hereinafter: Act CLV of 2009), has to ensure access to the qualified data they are permitted to view during the criminal proceedings – even if specific conditions prescribed by a separate law have not been fulfilled. In such cases, the competent authority informs them of their obligation to keep qualified data confidential and the consequences of misusing qualified data, which has to be entered in the records.<sup>183</sup>

Documents containing qualified data are to be delivered at the official premises of the court, the prosecutor's office, or the investigating authority, in compliance with the Act CLV of 2009 on the protection of qualified data. Before the delivery, the addressee has to make a statement that he/she fulfils the required conditions for being able to access the qualified data – which the authorities have to verify. If the addressee cannot, or does not, intend to make such a statement, the competent authority provides the persons concerned with a copy of the document containing the qualified data. However, he/she may not take out either the document or its copy from the designated office room and only an abstract of the document – not containing any qualified data, may be delivered to him/her. They must have unhindered access

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<sup>180</sup> Article 70/B and Article 193-194 of the Criminal Procedure Code; Article 136-138 of Joint Decree of MI – MJ 23/2003. (VI. 24.)

<sup>181</sup> Article 216(4) of the Criminal Procedure Code.

<sup>182</sup> Act CLV of 2009 on the protection of qualified data (2009. évi CLV. törvény a minősített adat védelméről), available at: [net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900155.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900155.TV).

<sup>183</sup> Article 70/C(1)-(2) of the Criminal Procedure Code; Article 14 of Act CLV of 2009.

to the document during official hours – without restrictions, and in the official premises of the court during the hearing of the case. The above restrictions do not apply to organisations with internal regulations on the protection of classified information.<sup>184</sup>

**IV) Bill of indictment:**

If the prosecutor decides to file an indictment, he/she has to ensure that, prior to this, the suspect and the defence counsel may examine the documents of the investigation. In other cases, this possibility is granted upon request.<sup>185</sup> After the admission of a private accusation by the court, the accused person is entitled to have access to the documents related to the investigation.<sup>186</sup>

The prosecutor has to submit a number of copies of the bill of indictment, i.e. sufficient for one copy for the court and one copy to each of the accused persons and defence counsels. If the accused does not understand Hungarian, the part of the indictment concerning him/her is translated into his/her native, regional or minority language or, upon request, into another language defined by him/her as a language spoken and formerly used. If the name and data of the witness is to be handled confidentially, the data will not be part of the bill of indictment. If the prosecutor intends to use the testimony of a specially-protected witness as evidence in the court procedure, he/she has to attach the abstract, of the minutes taken at the questioning of the witness concerned, to the documents supporting the indictment, and the prosecutor notifies the suspect's defence counsel of the possibility to consult this document. If the prosecutor attaches this document after the disclosure of the files of the investigation (see above, point II), both the suspect and the defence counsel have to be notified and be granted the possibility to examine the subsequently attached document.<sup>187</sup>

**V) Procedure of the court**

In general, upon request, all documents produced or obtained during the criminal proceedings (by the prosecutor, the investigating authority or the court), and all documents submitted or attached by the participants of the criminal proceedings, have to be made available to the accused person or his/her defence counsel for reading at the official premises of the court. This may not jeopardise the continuity and the work of the court and may not result in unlacing or damaging the laced documents. On the day of the trial, and on the preceding working day, an express permission of the presiding judge is also necessary for examining the documents. At the request of a detained accused person, the presiding judge may permit the examination of the documents at the penal institution.<sup>188</sup>

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<sup>184</sup> Article 70/C(3)-(5) of the Criminal Procedure Code.

<sup>185</sup> Article 193 and Article 216(4) of the Criminal Procedure Code.

<sup>186</sup> Article 233(2) of the Criminal Procedure Code.

<sup>187</sup> Article 219(1), (2)-(4) of the Criminal Procedure Code.

<sup>188</sup> Article 253(2)-(4) of the Criminal Procedure Code.

		<p>B) In misdemeanour procedures, the person concerned has access to the documents of the procedure at all phases of the procedure, unless it is prescribed otherwise by law. The person concerned may consult the documents, ask for a copy of them, or make a copy of them, but he/she may not take any copies, containing the qualified data, out of the office building.<sup>189</sup></p>
<p>4.3</p>	<p>Under what circumstances is access to material refused? Who takes the decision of refusal?</p>	<p><b>A) In criminal proceedings:</b></p> <p>a) No copy of the draft decisions of the prosecutor, or the investigation authority, or of documents created in the course of communications between them, may be issued.<sup>190</sup></p> <p>b) Access to certain data or documents related to the case may be restricted in order to protect the victim or the witness. In order to protect the life, physical integrity or personal freedom of the witness, to ensure that the witness fulfils the obligation of giving testimony, and that the testimony is given without any intimidation, the witness has to be provided with protection. The witness, or the lawyer acting on behalf of him/her, may request the court to order that the personal data of the witness – except for his name, be handled separately and confidentially among the documents (the court may also order this ex officio). In exceptionally-justified cases, the confidential treatment of the name of the witness may also be ordered. In such cases, only the court proceeding in the case, the prosecutor, and the investigation authority, have access to the data concerned. No copy of any document containing confidential data may be issued. The witness has to consent to the termination of confidential treatment of the personal data of the witness.<sup>191</sup> Upon request, the investigation judge may order the recording of the questioning of the witness by an audio/video recorder, or any other equipment. It is possible to distort – by technical means, the individual features of the witness on the copy of the recording, which could lead to his/her identification, e.g. face or voice. The rules on confidential treatment also apply to the video/audio recordings of the questioning of the witness concerned.<sup>192</sup></p> <p>c) Specially-protected witnesses: a witness may be declared specially-protected if: a) his/her testimony relates to the substantial circumstances of a particularly serious case; b) the evidence expected by his/her testimony cannot be substituted; c) the accused and the defence counsel do not know the identity, the place of stay of the witness, or about the fact that the prosecutor or the investigating authority intends to hear him or her; d) the exposure of the identity of the witness would seriously jeopardise the life, physical integrity or personal freedom of either the witness or his/her relatives.<sup>193</sup> If the accused, or the defence counsel, names or unambiguously identifies the specially-protected witness in any other way, the court has to terminate his/her specially-protected status. In such a case, the witness has to be summoned and questioned according to the general rules. If necessary, the presiding judge may – ex officio, or upon a request, initiate another form of witness protection.<sup>194</sup></p>

<sup>189</sup> Article 52(3) of the Code of Misdemeanour Procedure.

<sup>190</sup> Article 186(4) of the Criminal Procedure Code.

<sup>191</sup> Article 95-96 of the Criminal Procedure Code.

<sup>192</sup> Article 213(4) of the Criminal Procedure Code.

<sup>193</sup> Article 97 of the Criminal Procedure Code.

<sup>194</sup> Article 272(8) of the Criminal Procedure Code.

	<p>At the questioning of specifically-protected witnesses, only the investigative judge, the keeper of the minutes and, if necessary, the interpreter, the prosecutor, and the lawyer acting on behalf of the witness, may be present. Of the minutes taken at the questioning, an abstract has to be made which contains only the name of the investigative judge and the prosecutor attending, the indication of the specially-protected status of the witness, and his/her testimony. The abstract may not imply the identity or the location of the specially-protected witness and the prosecutor keeps and handles it separately until the indictment. Before the indictment, only the prosecutor and the investigation authority may have access to the abstract of the minutes.<sup>195</sup> The rules on confidential treatment also apply to the video/audio recordings of the questioning of a specially-protected witness.<sup>196</sup></p> <p>If the prosecutor intends to use the testimony of a specially-protected witness as evidence in the court procedure, the presiding judge obtains the minutes taken on the questioning of the specially-protected witness from the investigative judge. Only members of the court may consult the minutes – of which no copy may be issued. If the accused, his defence counsel, and the prosecutor, request to ask questions from a specially-protected witness, or the presiding judge have such questions, the court orders a repeat questioning of the specially-protected witness by the investigative judge, who asks the questions requested and returns the minutes to him/her.<sup>197</sup></p> <p>d) Confidential treatment of certain parts of the expert opinion: the expert opinion includes information on the object, the procedures and tools of the examination, as well as the changes in the object of the examination (diagnosis). The accused person or suspect, the witness, or the victim (or their legal representatives), may request the confidential treatment of this part of the expert opinion. Those statements, which the accused made before the expert about the act which is the subject of the proceedings and which form part of the diagnosis, may not be admitted as evidence.<sup>198</sup></p> <p>e) The court, the prosecutor, or the investigation authority, may order the preservation of data stored in an IT system, which constitute the means of evidence, are necessary for tracing means of evidence, or for revealing the identity of the suspect or his/her location. Those obliged to preserve such data have to ensure their preservation, safe storage – if necessary, separately from other data files, and have to prevent their modification, deletion, destruction, transmission, unauthorised copying, or unauthorised access to them. While the measure is in effect, only the court, the prosecutor, or the investigation authority, which issued the order and, with their permission, the person possessing or managing the data may have access to them. The latter may only provide information to anyone else with the express permission of the issuer of the order.<sup>199</sup></p>
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<sup>195</sup> Article 213(2) of the Criminal Procedure Code.

<sup>196</sup> Article 213(4) of the Criminal Procedure Code.

<sup>197</sup> Article 268(3)-(4) of the Criminal Procedure Code.

<sup>198</sup> Article 108(2), (7)-(8) of the Criminal Procedure Code.

<sup>199</sup> Article 158/A (1)-(3), (5) of the Criminal Procedure Code.

		<p>f) Minutes taken on the deliberation of the court and the attached documents are accessible only to the court of appeal or to the court and the prosecutor acting in an extraordinary legal remedy procedure. No copy of such minutes, the draft decision of the court, or of the dissenting opinion of the minority, may be issued.<sup>200</sup></p> <p><b>B) In misdemeanour proceedings</b>, the offence authority may order the confidential treatment of the personal data of the witness under Article 63(1) of the Code of Misdemeanour Procedure. These data will only be accessible to the offence authority, the court or to the prosecutor.</p>
<b>5.</b>	<b>CROSS-CUTTING ISSUES: LANGUAGES, COMPLAINT MECHANISMS, RECORDING &amp; SPECIAL MEASURES<sup>201</sup></b>	<b>Brief Description</b>
<b>5.1</b>	In which languages can information be provided for the following?	
	a) information on procedural rights	<p><b>In criminal proceedings</b>, the person concerned may use his/her mother tongue or regional/ethnic language, based on international agreement promulgated by law, or if he/she does not know Hungarian, in any other language that he/she may know.<sup>202</sup> If the person concerned does not speak Hungarian, the participation of a defence counsel in the proceedings is obligatory.<sup>203</sup></p> <p><b>In misdemeanour procedures</b> Article 36 of the Code of Misdemeanour Procedure ensures the right to use one's mother tongue or regional/ethnic language on the basis of international agreement promulgated by law, or if he/she does not know Hungarian, any other language that he/she may know, and Article 67(1) of the same Act prescribes the obligation to use an interpreter if the person concerned does not speak Hungarian requires it.</p>
	b) letter of rights	<p><b>A) Pre-trial detention, temporary involuntary medical treatment, European Arrest Warrant:</b> Article 12(1) – (3) of Act CCXL of 2013 ensures that no disadvantage may fall upon detained persons because of their lack of knowledge of Hungarian. During detention, the detainee may use his/her mother tongue, or regional/ethnic language, based on international agreement promulgated by law, or if he/she does not know Hungarian, in any other language that he/she may know. In matters related to prison service, or to detention, a member of the prison service, who has adequate language competence, may act as an <i>ad hoc</i> interpreter. The authorities ensure the translation of decisions</p>

<sup>200</sup> Article 255(2)-(3) of the Criminal Procedure Code.

<sup>201</sup> See in particular Articles 3 - 8 and relevant recitals of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, OJ L 142, 1 June 2012.

<sup>202</sup> Article 9 of the Criminal Procedure Code.

<sup>203</sup> Article 46(d) of the Criminal Procedure Code.

	<p>rendered in such matters into the appropriate language – if the person concerned specifically requests so at the time of the notification of the decision. The detained person shall be warned of this right. The prison service authority has to provide information to the person in custody in his/her mother tongue, or regional/ethnic language, on the basis of international agreement promulgated by law, or if he does not know Hungarian, in any other language that he/she may know, on the rules of the implementation of detention, on the core content of his/her rights and obligations during detention, and on the regulations of the penal institution. If the letter of rights, namely information provided under Article 12(4)-(5) of Act CCXL of 2013, is not available in a language the person concerned understands, it is provided orally in the presence of two witnesses and has to be recorded. If the letter of rights becomes available in writing in a language the detained person understands, it has to be given to him or her without delay.<sup>204</sup></p> <p><b>B) Misdemeanour and public security custody:</b> If the information that the authority is to provide under Article 14(1) of Decree 56/2014 (XII.5.) of MI, which is understood as a letter of rights, is not available in a language the person concerned understands, the authority provides it orally in the presence of two witnesses and takes minutes of it. The authority has to take measures for the translation and the delivery of the letter of rights without delay.<sup>205</sup></p> <p>In practice, according to information provided by the Ministry of the Interior, the Information Leaflet on the rights and obligations of persons detained by the police and on the rules of detention, is not yet available in foreign languages, although its translation to Afghani, Albanian, Kosovar, English, Arab, French, Croatian, Chinese, Polish, Italian, Romanian, Spanish, Serbian, Syrian, Turkish and Ukrainian is ‘under way’<sup>206</sup>. An “official translation” of the General Information Leaflet of the Hungarian Prison Service Headquarters for non-Hungarian national detainees is available in Albanian, English, Arab, French, Croatian, Chinese, Polish, Lovari, German, Slovakian, Slovenian, Vietnamese, Russian, Romanian, Spanish, Serbian, Turkish and Ukrainian.</p>
c) information about the accusation	<p>A) In criminal proceedings in the investigation phase, the general rules apply (see point a above). If the accused does not understand Hungarian, the part of the bill of indictment concerning him/her has to be translated into his/her native, regional or minority language or, upon request, into another language defined by him/her as a language spoken and formerly used in the proceedings.<sup>207</sup></p> <p>B) In misdemeanour proceedings: see point d.</p>
d) case materials	<p>A) Concerning the availability of languages, the general rules apply, (see point a). The court, the prosecutor, or the investigation authority, provides the translation of those official documents, e.g. the bill of indictment (see point b), or the judgment, – the cost of which is undertaken</p>

<sup>204</sup> Article 12(8) of Act CCXL of 2013,

<sup>205</sup> Article 14(4) of Decree 56/2014 (XII.5.) of MI.

<sup>206</sup> Hungary, representative of the Ministry of the Interior; representative of the Hungarian National Police Headquarters.

<sup>207</sup> Article 219(3) and Article 262(6) of the Criminal Procedure Code.



		<p>by the state and the service of which is obligatory.<sup>208</sup> The costs of the translation of other case materials (such as minutes prepared on procedural actions) are born by the suspect/accused person.</p> <p>B) In misdemeanour proceedings: the court obtains, within 15 days, the translation of those documents which are considered essential, such as the documents related to custodial measures, the denunciation, the conclusive decision of the authority or any documents that the court considers essential, upon request, or on its own initiative, for the exercise of the right to fair procedure and the right to defence. The police obtain the translation of documents related to custodial measures, denunciation or anything they consider essential, upon request, or on their own initiative, for the exercise of the right to fair procedure and the right to defence.<sup>209</sup></p>		
		<b>Yes</b>	<b>No</b>	<b>Brief Description</b>
<b>5.2</b>	<p>Is there any procedure to ensure that suspects or accused persons have the right to challenge the failure or refusal to provide information on the following?</p> <p><b>If yes, briefly describe the procedure where relevant.</b></p>	Yes		
	a) information on procedural rights	Yes		<p>A) There is no specific complaint procedure for cases where information on procedural rights is refused. The general rules applying to criminal proceedings (see Section B/1). Article 3(3) and Article 43(2)e) of the Criminal Procedure Code, contain the right to complaint. Anyone may lodge a complaint against those decisions or measures of the prosecutor and the investigation authority, which affect him or her directly, or against the omission of such decisions or measures, within eight days following their communication or from the time of learning about the acts disputed.<sup>210</sup> The decision of the investigative judge may be appealed at the time of its notification. If the person concerned was not present at the session concerned, or</p>

<sup>208</sup> Article 9(3) of the Criminal Procedure Code.

<sup>209</sup> Article 67(7) and (10) of the Code of Misdemeanour Procedure.

<sup>210</sup> Article 195(1) and Article 196(1) of the Criminal Procedure Code.

			<p>when the decision was delivered, he/she may lodge an appeal within three days from the session or the delivery of the decision.<sup>211</sup> In general, against non-conclusive decisions of the court, there is no possibility to lodge separate complaints.<sup>212</sup></p> <p>B) In misdemeanour procedures, the right to appeal against the decision or measure of the offence authority, or the court, or against the omission of a measure by the authorities, is available unless the law prescribes otherwise. The person affected by the decision or the measure has to lodge the complaint within eight days from the notification of the decision or measure, or from learning about the act disputed. The prosecutor decides on the complaint within eight days.<sup>213</sup></p>
	b) letter of rights	Yes	<p>A) Pre-trial detention, temporary involuntary medical treatment, European Arrest Warrant: the detainee, the defence counsel, the legal representative by law of a minor or of a person under temporary involuntary medical treatment, his/her spouse or partner, a contact person, on whom the decision or the measure of the penal institution, or the omission of a decision or a measure may affect, may lodge a complaint to the head of the penal institution within 15 days from the notification of the decision or measure or from their omission, in writing. The complaint has to be recorded. The head of the penal institution has to decide on the complaint within 30 days. No further appeal is available.<sup>214</sup></p> <p>B) Misdemeanour and custody for reasons of public security: Persons taken to an offence or public security custody, at a police custodial institution, may ask for an appointment with the head of the institution or may write to him/her.<sup>215</sup> They may also turn to the prosecutor in matters related to detention.</p>
	c) information about the accusation	Yes	See 5.2. point a.
	d) access to case materials	Yes	<p>A) In criminal proceedings, if the authorities refuse to issue a copy of the documents required, there is a possibility to lodge a “separate remedy”.<sup>216</sup> Decisions taken under this separate remedy</p> <p>could be contested before prosecutor’s office in form of motion for review within eight days from delivery of the decision; the prosecutor’s office shall forward the motion for review, together with the documents and its own motion, to the court within three days. The investigative judge decides over the motion for review.<sup>217</sup></p>

<sup>211</sup> Article 215(1) of the Criminal Procedure Code.

<sup>212</sup> Article 260(2) of the Criminal Procedure Code.

<sup>213</sup> Article 35, Article 98 of the Code of Misdemeanour Procedure.

<sup>214</sup> Article 21(1)-(5) of Act CCXL of 2013.

<sup>215</sup> Article 22 of Decree 56/2014 (XII.5.) of MI.

<sup>216</sup> Article 70/B(8) of the Criminal Procedure Code.

<sup>217</sup> Article 195(6) and Article 207(2)(e) of the Criminal Procedure Code.

				B) In misdemeanour procedures the general rules, described above, apply.
<b>5.3</b>	Is any official record kept to note the provision of information about the following?  <b>If yes, briefly describe where relevant.</b>			
	a) information on procedural rights	Yes		<p>A) In criminal proceedings, the prosecutor and the investigation authority have to take minutes on investigatory actions, including the measures taken by the prosecutor and the investigation authority. The minutes contain a brief description of the course of the investigatory action - in such a way to make the verification of compliance with procedural rules possible. The prosecutor, or the court, may also order stenographic, audio or video recording of the investigatory action.<sup>218</sup> See Sections B/1 and B/4. The procedure of the court is also recorded by minutes, which have to describe the course of actions and all significant formalities of the procedure in a way that makes the verification of the observance of procedural rules possible. The court may order the recording of the whole procedure, or part of it, in shorthand, by audio (video) recorder, or any other equipment.<sup>219</sup> The investigation authority warns the suspect that if he/she decides to make a statement by which he/she falsely accuses others of a criminal offence, he/she would commit a crime. The investigation authority has to enter the above warnings, and the responses given, in the records. In the absence of such warnings, the testimony of the suspect may not be admitted as a means of evidence.<sup>220</sup> (See also 1.1.1. point V. on the main concerns).</p> <p>B) In misdemeanour procedures the authorities have to record in form of minutes the procedural acts in a way that makes the verification of the observance of the rules of the procedure possible.<sup>221</sup> The warning given to the person concerned about his or her right not to make self-incriminatory statements shall be recorded such as his or her answer to it. If the authorities omit this recording the statement of the person concerned may not be taken into consideration as evidence.<sup>222</sup></p>

<sup>218</sup> Article 166(1),(3) and Article 167 of the Criminal Procedure Code.

<sup>219</sup> Article 250(1),(3) and Article 252 (2)-(3) of the Criminal Procedure Code.

<sup>220</sup> Article 117(2) of the Criminal Procedure Code.

<sup>221</sup> Article 91(1), (3) of the Code of Misdemeanour Procedure.

<sup>222</sup> Article 71(2) of the Code of Misdemeanour Procedure.

	b) letter of rights	Yes	<p>A) Pre-trial detention, temporary involuntary medical treatment, European Arrest Warrant: Information provided under Article 12 of Act CCXL of 2013, and the answer of the person concerned, has to be recorded.<sup>223</sup> See Section B/3.</p> <p>B) Misdemeanour and custody for public security reasons: the provision of the information and its acknowledgement have to be recorded.<sup>224</sup></p> <p>In practice, the Information Leaflet on the rights and obligations of persons detained by the police, and on the rules of detention, contains a model statement on the fact that information was provided about the complaint procedure, the rights of defence, the right of access to documents (case materials), on the modalities and means of communication, on the right to interpretation and translation, on the right to have consular authorities informed, on the code of conduct and disciplinary procedures, on security measures, on indemnity, on the beginning and end of detention, on the right to health treatment – which has to be signed by the detainee (p. 12). It also has to be signed by the detainee that he/she received information according to the General Information Leaflet of the Hungarian Prison Service Headquarters for non-Hungarian national detainees (p. 21.).</p>
	c) information about the accusation	Yes	See 5.3 point a).
	d) access to case materials	Yes	<p>A) In criminal proceedings, the authority keeps a registry of those issued documents (e.g. on how many copies of which documents and to whom they were issued), the issuance of which is free for the first occasion.<sup>225</sup> The authority takes minutes of the hand-over of the documentation of the investigation at its closure. The records have to contain: a) the description of the documents handed over and the time of the start and finish of the inspection, and b) the motions and observations made by the suspect and the defence counsel. It has to be recorded if the person concerned does not appear for the hand-over.<sup>226</sup></p> <p>B) Misdemeanour proceedings: the Code of Misdemeanour Procedure and its implementing decree contain no specific rules, but Article 91 of the Code of Misdemeanour Procedure states that all procedural acts shall be recorded.</p>

<sup>223</sup> Article 12(8) of the Act CCXL of 2012

<sup>224</sup> Article 14(3) of the Decree 56/2014 (XII.5.).

<sup>225</sup> Article 13/A of Joint Decree 23/2003. (VI. 24.) of MI – MJ.

<sup>226</sup> Article 194(1) of the Criminal Procedure Code; Article 138 of Joint Decree 23/2003. (VI. 24.) of MI – MJ.

<p><b>5.4</b></p>	<p>Are there special procedures designed to take into account the special needs of vulnerable suspects or vulnerable accused persons (e.g. because of any physical impairments which affect their ability to communicate effectively (persons with hearing, sight or speech impediments), intellectual disabilities or in case of children and the holder of parental responsibility) in relation to:</p> <p>a) suspect or accused persons with physical impairment or disability;</p> <p>b) suspect or accused persons intellectual impairment or disability;</p> <p>c) suspects or accused children who are suspects/defendants and/or the holder of parental responsibility.</p> <p><b>If yes, briefly provide information on those mechanisms in relation to each of the listed vulnerable groups. Is this information</b></p>	<p>Yes</p>	<p>In theory, most relevant legal acts applicable to criminal proceedings contain safeguards for taking into account the special needs of vulnerable suspects/accused persons, though the formulation of these provisions may vary considerably in determining the target group.</p> <p>Inconsistencies on the normative level also exist in misdemeanour proceedings. The main problem is still that, in practice, the authorities hardly pay adequate heed to these requirements.<sup>227</sup> The obligatory participation of defence counsels in these procedures may mitigate the significance of this. The provision of adequate information in an adequate manner then depends on the commitment of the defence counsels.</p>
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<sup>227</sup> Hungary, lawyer.

	in simple and accessible language?			
<ul style="list-style-type: none"> <li>information on procedural rights</li> </ul>	a)	Yes		<p>A) The participation of a defence counsel is obligatory in criminal proceedings if the defendant is deaf, mute, blind or mentally disabled.<sup>228</sup> If the person concerned is deaf, mute, unable to speak or mentally disabled, the court, the prosecutor and the investigation authority provide information about his/her procedural rights and obligations in view of his/her state, and in a manner he/she could understand.<sup>229</sup> Minutes of the court's proceedings are prepared simultaneously if the accused person is deaf and a sign language interpreter is not available. If the person to be interrogated is deaf or deafblind, upon request, the participation of a sign language interpreter is obligatory during the questioning. Deaf or mute persons may also make a statement in writing.<sup>230</sup></p> <p>B) In misdemeanour procedures, if the person concerned is deaf or deafblind, upon request, the application of a sign language interpreter is obligatory. Those unable to speak may make a statement in writing.<sup>231</sup> However, the relevant Articles 10/A and 10/B of Decree 22/2012 (IV.13) of MI, do not contain any specific arrangement on to how to provide information to them.</p>
	b)	Yes		See point a.
	c)	Yes		<p>A) Criminal proceedings against a juvenile offender are conducted by taking into account the characteristics of his/her age. The participation of a defence counsel is obligatory.<sup>232</sup> If, at the time of the questioning, the person concerned has not reached the age of 18, the court, the prosecutor, and the investigation authority, provides information about his/her procedural rights and obligations in view of his/her age and maturity, and in a manner he/she could understand.<sup>233</sup> Holders of parental responsibility have to be informed of the questioning of the juvenile person, and holders of parental responsibility may act on behalf of the juvenile person – with the same rights as a defence counsel.<sup>234</sup> In practice, the model form taken from Robocop contains an asterisked formula requiring the provision of information in view of the age and maturity of</p>

<sup>228</sup> Article 46(c) of the Criminal Procedure Code.

<sup>229</sup> Article 62/A of the Criminal Procedure Code.

<sup>230</sup> Article 114(2) of the Criminal Procedure Code.

<sup>231</sup> Article 67(2) of the Code of Misdemeanour Procedure.

<sup>232</sup> Article 447(1) and Article 450 of the Criminal Procedure Code.

<sup>233</sup> Article 62/A of the Criminal Procedure Code.

<sup>234</sup> Article 68(2), Article 70/B (2), (5)-(6) and Article 451 of the Criminal Procedure Code.

			<p>juvenile suspects. It does not require the provision of information in an adequate manner. In contrast, the model forms the courts use are reformulated in a more accessible language and, in view of the age of an accused juvenile, certain explanations are also included.</p> <p>B) In misdemeanour procedures, warnings and information are provided to the person concerned on his/her right to not self-incriminate himself/herself – in view of his or her age and maturity and in a manner he/she could understand.<sup>235</sup> In general, offence misdemeanour proceedings have to be performed in a manner taking into consideration the age of the minor.<sup>236</sup> Holders of parental responsibility have to be informed of the time and place of questioning of the juvenile person concerned and, normally, they have to be present at the questioning and may act on behalf of him/her at any phase of the procedure.<sup>237</sup></p>
• letter of rights	a)	Yes	<p>A) Pre-trial detention, temporary involuntary medical treatment, European Arrest Warrant: Under Article 12(8)-(9) of Act CCXL of 2013, if the detained person cannot write or read information has to be provided orally. The authority has to provide information to persons with physical impairments or disabilities, to persons with mental impairment or disability, to persons unable to write or read information that has to be provided in a manner they can understand and in view of their state, abilities and situation,. The Ministry of the Interior stated that the same General Information Leaflet of the Hungarian Prison Service Headquarters<sup>238</sup> is applied in the case of persons under involuntary medical treatment. Note, however, that even the relevant applicable legal provisions may be different case-to-case, from those applicable to pre-trial detention.</p> <p>B) Misdemeanour and public security custody: if the person concerned is deaf, blind, deafblind or mentally disabled, information has to be provided in view of his/her state.<sup>239</sup> If the detained person cannot write or read, information has to be provided orally in the presence of two witnesses and it has to be recorded Article 14(3), Decree 56/2014 (XII.5.).</p> <p>In practice, only the Information Leaflet in Hungarian on the rights and obligations of persons detained by the police, and on the rules of detention, contains any reference to specific procedures applicable in the case of the interrogation of persons</p>

<sup>235</sup> Article 71(5) of the Code of Misdemeanour Procedure.

<sup>236</sup> Article 134(1) of the Code of Misdemeanour Procedure.

<sup>237</sup> Article 53(1), Article 134(3)-(4) of the Code of Misdemeanour Procedure.

<sup>238</sup> Hungary, representative of the Ministry of the Interior.

<sup>239</sup> Article 73(12) of the Code of Misdemeanour Procedure.

				living with disabilities. Thus, it mentions e.g. that in criminal or misdemeanour proceedings if the person to be interrogated is deaf or deafblind, upon request, the participation of a sign language interpreter is obligatory during the questioning, while deaf or mute persons may make a statement in writing too.
	b)	Yes		See point a.
	c)	Yes		<p><b>A) Pre-trial detention, temporary involuntary medical treatment:</b> Under Article 12(8)-(9) of Act CCXL of 2013, the authority has to provide information to children with a view of their state, abilities and situation, in a manner he/she can understand. The Ministry of the Interior stated that the same General Information Leaflet of the Hungarian Prison Service Headquarters<sup>240</sup> is applied in the case of children.</p> <p>Child-specific references included in the General Information Leaflet of the Hungarian Prison Service Headquarters comprise information given on the following:</p> <ul style="list-style-type: none"> <li>a) minors are entitled to special protection (p. 5);</li> <li>b) minors may exercise their rights in person and by way of an authorised representative (p. 8);</li> <li>c) minor pre-trial detainees have to be separated from adults (p. 14);</li> <li>d) in cases prescribed by law, or if ordered by the court, the pre-trial detention of minors must be executed in youth detention centres (reformatory) (p. 16);</li> <li>e) if the pre-trial detention of minors is executed in prison service institutions, the institutions may recommend that prosecutors request the change of location of pre-trial detention (p. 16);</li> <li>f) minor pre-trial detainees may be punished with solitary confinement of up to a maximum of 10 days (p. 16);</li> <li>g) in the case of minors, if still in compulsory education, the institution is obligated to ensure the continuation of primary school studies, with an individual curriculum if necessary (p. 18).</li> </ul>

<sup>240</sup> Hungary, representative of the Ministry of the Interior.



				<p><b>B) Misdemeanour and public security custody:</b> no specific guarantees are attached.</p> <p>Child-specific references included in the Information Leaflet in Hungarian on the rights and obligations of persons detained by the police comprise information given on the following:</p> <ul style="list-style-type: none"> <li>a) right of the legal representative of the minor to have access to documents (case materials) related to detention (p. 4);</li> <li>b) right of the minor to communicate with holders of parental responsibility if there is no reason to prevent communication (p. 6);</li> <li>c) right of the minor to communicate without surveillance or control with his/her defence counsel, consular representative, guardian assigned by the child protection system, probation officer, and international human rights organisation (p. 6);</li> <li>d) right of the minor to communicate with the teacher of his/her educational institution (p. 6);</li> <li>e) on security measures applicable in the case of minors (p. 11).</li> </ul>
	<ul style="list-style-type: none"> <li>• information about the accusation</li> </ul>	a)	Yes	See information on procedural rights.
		b)	Yes	See information on procedural rights.
		c)	Yes	See information on procedural rights.
	<ul style="list-style-type: none"> <li>• access to case materials</li> </ul>	a)	Yes	General rules apply.
		b)	Yes	General rules apply.
		c)	Yes	Access of the holder of parental responsibility to case materials is specifically ensured by Article 70/B(2) of the Criminal Procedure Code, in the same way as access to case materials by the suspect/accused person and his/her defence counsel.

