

Theoretical and Practical Analysis on Abuse of Minors

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Motto

*„Anyone who can tell the difference between a slap in the face and a punch already knows what violence against children is.”
Henry Kempe*

Abstract

The protection of our children is the cornerstone of our society. However, the protection of minors was not always so clear and certain. The most striking example of this was the issue of infanticide, since it was not punished at all until the Middle Ages. A sick, underdeveloped child was worthless to the family. Nowadays, however, homicide against minors is one of the most serious crimes¹.

In my study, I deal with abuse of minors from the perspective of theory and practice. In connection with the topic, it is essential, among other things, to examine the family as the basis of national survival. Within this unit, the children play a vulnerable role, they are in a dependent position, which is related to the behavior of their parents. The minor can assert himself properly and develop only if he receives the necessary care, concern and love from the other members of the family. However, sometimes this internal unity breaks down. The reasons for this cannot be exhaustively listed, so there are a few cases: financial crisis, emergence of various addictions: alcohol addiction, drug problems, and different degrees and types of aggression. All of these can lead to the fact that the minor's physical, intellectual, emotional and moral development is endangered by the persons whose duty it is to do the exact opposite.

Keywords: *children, abuse, protection, criminal law, duty*

I. Basic Definitions

„Abuse of adults is physical abuse. Abuse of animals is animal cruelty. Abuse of children is "for their benefit"². Nowadays, corporal punishment, inhumane treatment and humiliation are prohibited behaviors towards all people and unacceptable behaviors in the society. We must pay particular attention to the protection of children. Young people are in a vulnerable situation, their families and relatives are often the dangerous

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¹ I. Komlósiné, *A kiskorú veszélyeztetés büntetvény fogalmi meghatározása, szabályozásának fejlődése [The conceptual definition of the crime of endangering minors and the evolution of its regulation]*, Magyar Jog, 7-8/2017, p. 481.

² http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

factors in their lives. The world has been changed a lot. In the past, corporal punishment was an accepted method of discipline in school rules, and it was no different for families. Where is the limit of the discipline and what constitutes a crime? There are many definitions of corporal punishment, according to some authors "punishment of a child in any way that, if done to an adult, would legally constitute physical injury." Parents tend to invent words to hide the seriousness and severity of physical abuse³.

The UN Committee on the Rights of the Child defines corporal punishment as follows: "physical by applying force any penalty which intended to cause even the slightest pain or discomfort cause Its most common form is hitting children (ears, wedding feast, neck soup) by hand or with some tool – whip, stick, belt, shoe, wooden spoon, etc. But may this is, for example, kicking, shaking, throwing the child, scratching, pinching, biting, pulling hair, slapping, uncomfortable forcing into body positions, burning, scalding or forcing various things into the mouth (for example, the child's mouth washing with soap or forcing hot spices to swallow)"⁴.

For many centuries, children could not participate as legal entities in various legal transactions, the reason for this being that minors were considered the property of the father⁵. There was no sensitivity towards children either, child mortality was very high in the Middle Ages number, so the parents showed a kind of distance towards them. The little ones were already treated the same as adults after they turned 6 or 7⁶. The artistic depictions also support the spirit of the age, as children are mostly presented as young adults. Infanticide was classified more lightly in the previously Hungarian Penal Code (Act IV of 1978). 166/A §.: A woman who kills her unborn child during childbirth or immediately after childbirth commits a crime and is punishable by imprisonment from two to eight years".

In 1989, the UN General Assembly unanimously adopted the Convention on the Rights of the Child (Resolution 44/25), according to which a child is a person who has not reached the age of eighteen, unless he or she has already reached the age of majority according to national legislation⁷. Despite the creation of the concept, there is still no unity on this issue in all parts of the world. Even today, there is a huge difference between a child living in Europe and a minor living in an African tribe.

While in Western civilization we uniformly consider an adult under the age of 18 as a child, this is not so clear in other societies (e.g. Africa, Asia). Tribal customs are very strongly present in the countries here, which serves as the basis for a 12-13-year-old offspring they grow up. Typically, they become breadwinners, get married and found a family at a very young age. Another reason for the difference can be mentioned is the different expected life expectancy around the world. An 18-year-old has a different status in a society where 40-50 years is the norm than in a society where life expectancy is 70-80 years⁸.

³ http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

⁴ http://www.europatanacs.hu/pdf/Key_points-H.pdf (accessed on 9.01.2023).

⁵ E. Végh, *Gyermekkatonák – a Sierra Leone-i polgárháború igazi áldozatai [Child soldiers – the real victims of the civil war in Sierra Leone]*, <https://btk.ppke.hu/uploads/articles/6414/file/veghezster.pdf> (accessed on 14.11.2020).

⁶ N. Faix, *A gyermeki jogok kialakulása a nemzetközi jogban és az igazságszolgáltatásra gyakorolt hatásuk [The development of children's rights in international law and their impact on justice]*, *Eljárásjogi szemle*, 4/2016, p. 1.

⁷ Convention on the Rights of the Child; <http://www.unicef.hu/gyermekjog-egyezmeny.jsp> (accessed on 14.11.2020).

⁸ E. Végh, *cited*.

The significance of age in Hungarian criminal law is dominant in several aspects, one is the perpetrator's side and the other is the victim's side. If we are talking about the offender, we must first determine the minimum age of criminal liability, based on this, the Hungarian Criminal Law Code defines the following:

Persons under the age of fourteen years at the time the criminal offense was committed shall be exempt from criminal responsibility, with the exception of:

- a) homicide [Subsections (1)-(2) of Section 160],*
- b) voluntary manslaughter (Section 161),*
- c) battery [Subsection (8) of Section 164],*
- d) assault on a public official [Subsections (1)-(3) of Section 310],*
- e) assault on a person entrusted with public functions [Section 311, where Subsections (1)-(3) of Section 310 apply],*
- f) assault on a person aiding a public official or a person entrusted with public functions [Section 312, where Subsections (1)-(3) of Section 310 apply],*
- g) acts of terrorism [Subsections (1)-(2) of Section 314],*
- h) robbery [Subsections (1)-(4) of Section 365], and*
- i) plundering [Subsections (2)-(3) of Section 366], if over the age of twelve years at the time the criminal offense was committed, and if having the capacity to understand the nature and consequences of his acts at that time⁹.*

The minimum age is 14. in criminal liability. However, in connection with certain delicts, the legislator allows criminal liability upon reaching the age of 12, but here one more condition must be met, namely that the perpetrator has the insight necessary to recognize the consequences of the crime, i.e. the discretionary power. The regulation of juvenile is basically based on the regulation of childhood¹⁰. Juvenile offender' shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense¹¹. When prosecuting juveniles, the goal of the legislator is to educate and steer the child in the right direction. Therefore, compared to adults, legislator imposes lighter sanctions. Therefore, the order in which the sanction is applied is as follows:

- non-custodial measure,
- non-custodial sentence,
- measure involving deprivation of liberty,
- penalty involving deprivation of liberty.

Age is also important on the part of the victim. From the point of view of our study, the definition of a minor is necessary. *A minor is someone who has not reached the age of eighteen, unless he or she is married*¹². In the following, a crime committed against a minor will be analyzed.

II. Analyzing the Crime

The legal definition of the Abuse of a minor is provided as follows:

(1) A person who is given custody of a minor to maintain and care for the person in his charge – including the domestic partner of the parent or guardian exercising

⁹ Hungarian Criminal Law Code 2012, § 16.

¹⁰ http://projektjeink.birosag.hu/sites/default/files/allomanyok/e-learning/btk/buntetojog1.1/lecke6_lap1.html (accessed on 21.07.2022).

¹¹ Hungarian Criminal Law Code 2012, 105. §.

¹² http://projektjeink.birosag.hu/sites/default/files/allomanyok/e-learning/btk/buntetojog1.1/lecke6_lap1.html (accessed on 21.07.2022).

parental custody, as well as any parent who has been deprived of the right of parental custody, if living in the same household or in the same home with the minor – and who seriously violates the obligations arising from such duty and thereby endangers the physical, intellectual, moral or mental development of the minor, is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person over the age of eighteen years who:

- a) persuades or makes any attempt to persuade a person under the age of eighteen years to commit a criminal or misdemeanor offense, or to engage in immoral conduct,*
- b) offers a person under the age of eighteen years for the commission of a crime, is punishable in accordance with Subsection (1), insofar as the act did not result in a more serious criminal offense¹³.*

It is a sensitive and complex area, and due to its investigation and proof difficulties, endangering a minor is one of the most complex crimes in the criminal case¹⁴. It was formulated by a Hungarian criminal judge. The prosecuting authority is not in an easy situation in relation to the crime, it is necessary to shed light on life situations that happen behind closed doors. It should be noted that the situation of the person concerned is extremely special, which may be further damaged during a criminal proceeding. The detection of the crime is also made more difficult by the fact that the group of perpetrators consists of persons whose primary duty is to protect, support, and care for minors. The facts have two basic cases, so they are analyzed separately during the analysis.

1. The first case of the crime (Section 208 (1))

The first aspect of analysis is the legal subject of the crime. In this case, the value to be protected is the minor's physical, mental and moral development. The victim of the crime will be the minor discussed above. The act of committing the crime is serious breach of duty¹⁵. Everyone makes mistakes, even the most careful parent. Therefore, it is important to emphasize that endangering a minor will only occur if it is a serious breach of duty. Above all, a distinction must be made between whether something is one-off, random or regular¹⁶. Duties falling within the scope of parental duty are the following: education, supervision and care. If the parent makes a mistake in these responsibilities so seriously that it endangers the minor's physical, intellectual, and moral development, then the crime can be established¹⁷.

Child abuse, domestic violence is not synonymous with this crime, it includes child abuse, but the crime can include not only physical abuse, but also behavior that endangers the mental development of the minor. (the child does not go to school)¹⁸ Another characteristic of perpetrating behavior is that it is usually carried out by omission. „*In practice, this mostly appears as a series of different types of misconduct,*

¹³ Hungarian Criminal Law Code 2012, 208.§

¹⁴ <https://birosag.hu/hirek/kategoria/magazin/meg-legaprob-jelzesek-arulkodok-lehetnek-jogkerdes-kiskoru-veszelyeztetese> (accessed on 21.07.2022).

¹⁵ M. Tóth, Z. Nagy, *Magyar Büntetőjog. Különös rész [Hungarian Criminal Law. Special Part]*, Osiris Kiadó, Budapest, 2014, p. 154.

¹⁶ <https://birosag.hu/hirek/kategoria/magazin/meg-legaprob-jelzesek-arulkodok-lehetnek-jogkerdes-kiskoru-veszelyeztetese> (accessed on 21.07.2022).

¹⁷ M. Tóth, Z. Nagy, *cited*, p. 154.

¹⁸ I. Komlósiné Sógor, *cited*, p. 481.

but their common feature is that they usually affect both the physical and mental development of minors"¹⁹.

Some examples from judicial practice:

- Demonstrating immoral behavior in the presence of minors, leads a regular drinking lifestyle, as a result of which he or she abuses the family.
- The parent does not provide the medicines prescribed by the doctor. They do not provide the necessary care for the sick child.
- The offender obstructs the minor for a long period of time in order to complete his school studies²⁰.
- The parent does not feed the child.
- The parents do not provide the child with clothing suitable for the season²¹.

In general, minor acts of misconduct add up to a serious act of misconduct that constitutes a crime. Hungarian judicial practice does not establish the endangerment of minors in the situation of children brought up in a broken marriage or in a toxic relationship²². In fact, the behavior was not factual even in the case when the parent did not ask for the vaccination for his child. The condition for this was that the lack of vaccination should not hinder the minor's healthy physical development²³. In my opinion, the vaccination against Covid is not necessary for the healthy physical development of the young child, so based on the established Hungarian judicial practice, the endangerment of the minor is not realized. „*The perpetrator is only responsible for the physical, mental, and moral endangerment of the minor if it is causally related to the serious breach of duty*”²⁴.

The perpetrator of the crime is special because it is only the person responsible for the education and supervision of the minor and the spouse of the parent or guardian exercising parental supervision, and also the parent deprived of the right of parental supervision if he or she lives in the same household or in the same apartment as the minor. The crime can only be committed intentionally²⁵. The number of female offenders in abuse of a minors is high, but according to a summary study, the gender ratio is 40%-60% in favor of men²⁶.

2. The second case of the crime (Section 208 (2))

The legal object of the crime is the moral development of the minor. The passive subject of the crime can be a person who has not reached the age of 18, even if he or she has otherwise reached the age of majority through marriage. The act of committing the crime is the act of inducing or attempting to induce a person to commit a crime, rule violation, disorderly lifestyle, or offering to commit a crime²⁷.

According to BH 1985.51., the continuation of a depraved lifestyle is a lifestyle that lasts for a long time and is morally highly objectionable (e.g. begging, regular drug

¹⁹ M. Tóth, Z. Nagy, *cited*, p. 154.

²⁰ I. Komlósiné Sógor, *cited*, p. 484.

²¹ M. Tóth, Z. Nagy, *cited*, p. 155.

²² Penal decision no. 1491/2006.

²³ Penal decision no. 2029/2009.

²⁴ M. Tóth, Z. Nagy, *cited*, p. 155.

²⁵ *Ibidem*.

²⁶ A. Solt, *Bírói ítélkezési gyakorlat a kiskorú veszélyeztetése tárgyában [Case-law in the matter of endangering a minor]*, <http://tamogatoweb.hu/olvasnivalo/soltagnestanulmany.pdf> (accessed on 25.07.2022).

²⁷ M. Tóth, Z. Nagy, *cited*, p. 155.

consumption, drinking lifestyle, prostitution, regular vagrancy). In the case of coercion, the victim's moral development is exposed to actual damage (there is not only a risk of this), while in the case of coercion, the perpetrator's intention is directed towards this²⁸.

The perpetrator of the crime can be a person who has reached the age of eighteen, so it is not only persons who are responsible for the education, supervision and care of the minor. This form of abuse of minors is subsidiary in nature and can only be established if a more serious crime is not committed²⁹.

III. Practical Difficulties

During the decision the judge must examine quantitative and qualitative criteria. After establishing that the victim is a minor and the perpetrator is a special person, i.e. a person obliged to educate, supervise, and care for the minor, he must consider whether the act or omission is considered a breach of duty in education, supervision, or care. (qualitative criterion) Several circumstances for this, the victim's age, personality, and health must be taken into account³⁰. The Court took the position that when establishing a delict, it is sufficient that the task is well known³¹. The quantitative criterion indicates whether the breach of duty was serious. If the serious nature cannot be determined, it can be assessed as a minor educational error, which is outside the scope of criminal law, although it may justify a child protection measure. The same conduct is judged differently in different age stages of the victim. A parent who leaves a child unattended is responsible for committing a delict, even if he/she leaves him/her alone once and only for a few hours, if the child is a minor. In the case of a preschool-age child, a repetitive nature is necessary for implementation³². It cannot be identified as an educational error for children in elementary school, nor can it be established for older children³³. It has been a long-standing principle that a parent has the right to discipline their child at home, and this is no different nowadays, because according to the current regulations, discipline can be considered a reason for excluding criminal liability. Over the years, its boundaries have changed significantly. According to the Csemegi Codex, discipline extended to the infliction of light bodily harm, however, this is covered by Article III. It was repealed in 1948 by a penal novel. Nowadays, judicial practice recognizes defamation by act and short-term restriction of personal freedom as a disciplinary right, if it is done for the purpose of education³⁴. Furthermore, practicing this cannot be abusive, because then it exhausts the fact of endangering the

²⁸ I. Komlósiné Sógor, *cited*, p. 484.

²⁹ M. Tóth, Z. Nagy, *cited*, p. 156.

³⁰ A. Balogh, *Kiskorú veszélyeztetésének büntette a bírósági határozatok kritikai tükrében – különös tekintettel a fizikailag bántalmazott gyermekekre – II. rész: A cselekmény és az eredmény [The crime of endangering a minor in the critical light of court decisions – especially with regard to physically abused children - II. part: The act and the result]*, in: *Ügyészek Lapja* 6/2018, <http://ugyeszeklapja.hu/?p=2277> (accessed on 29.09.2022).

³¹ Penal decision no. 1560/2012/5.

³² BJD 8895.

³³ A. Balogh, *cited*.

³⁴ E. Csemáné Váradi, I. Görgényi J. Gula, T. Horváth, J. Jacsó, M. Lévy, F. Sántha *Magyar büntetőjog – általános rész. Digitális kiadás [Hungarian criminal law – general part. Digital edition]* Budapest, Wolters Kluwer, 2017, <https://doi.org/10.55413/9789632956282> Letöltve: https://mersz.hu/hivatkozas/wk83_141_p1/#wk83_141_p1 (accessed on 30.09.2022).

minor³⁵. Court practice is wide-ranging and the decision of the Supreme Court BH 1992 No. 623 is often still a reference today, despite the fact that it could be understood more as a case of legal history. In this decision, the Supreme Court found that the fact of endangering a minor does not occur if the perpetrator, in some cases, physically disciplined the minor to an excessive extent, as it did not endanger the minor's physical, intellectual, or moral development, nor is it considered a serious breach of the duty of education³⁶.

Some examples from practice: Budapest II. and III. District Court 5.B.797/2011. from judgment no.: a mother raising an 11-year-old minor slapped her daughter on one occasion because she was disobedient. The child's face was slightly swollen and suffered an injury that healed within 8 days. According to the court's opinion, a blow to the face, which caused redness, is not considered a crime. The activity is behavior that falls under parental disciplinary authority, it did not exceed it, so the act does not pose a danger to society.

According to PKKB 13.B.23.574/2013. in the judgment no. This form of educational abuse took place on another occasion. As a result, he suffered injuries that healed within 8 days. According to the court's opinion, the breach of duty was not considered so serious that it could be determined that the minor was endangered.

Although the same advice of this court 13.B.X.28.049/2011. In his judgment no. 1, in connection with an almost identical situation, regarding abuse with a trouser belt, he explained how painful it is and how much fear it causes in children, so in this case he established the fact of endangering a minor³⁷. The Pest Central District Court 2.B.32.579/2014. According to the facts contained in his judgment no. Based on the reasoning of the first-instance court, the foster father's behavior is factual, as it endangered the mental and emotional development of the minor. However, the Capital Court as a court of second instance 22.Bf.12.261/2015. came to a position contrary to his judgment no³⁸.

It can be seen from the above that the judicial practice is not consistent in when certain acts of perpetration are considered factual. It should be taken into account that some reference bases are out of date and priority should be given to the requirements contained in newer conventions.

IV. Conclusion

In the above, abuse of a minor was analyzed as a crime based on the Hungarian criminal code. It can be seen that it is a crime involving a very rich criminal behavior. Despite the fact that the family must provide the protection function for children, this is often not realized. Hungarian judicial practice is consistent in that it does not establish abuse of minors in the event of not administering the Covid vaccine. The shortcomings of the system must be remedied because the fate of the future generation is in our hands.

³⁵ A. Horváth, *Mi jár egy pofonért? [What's a slap in the face?]*, https://arsboni.hu/mi-jar-egy-pofonert/#_ftn10 (accessed on 29.09.2022).

³⁶ A. Balogh, *cited*.

³⁷ *Idem*.

³⁸ *Idem*.

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