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2 - Reporting a crime and my rights during the investigation or trial

How do I report a crime?

Anyone can report a crime.

Crimes are generally reported to the prosecutor or to the investigating authority:

- personally (in writing or orally) – oral reports are recorded by a representative of the authority, who will ask you about the elements and circumstances of the crime committed against you, the identity of the offender and any evidence you may possess;
- by phone – the police also operates a free hotline called 'Phone Witness', through which witnesses and victims can report criminal offences anonymously. The toll-free hotline number is 003680555111 and it operates 24 hours a day with the associates of Budapest Police Headquarters taking the reports. More information on the hotline is available in Hungarian on the official website of the Hungarian Police at <http://www.police.hu/en>;
- by any other means of communication, including dialling the EU emergency number: 112

Reports may also be accepted by other authorities or courts, which are obliged to send them to the investigating authority. If the report requires immediate action, it must be accepted.

All submitted reports are registered immediately.

You can report anonymously, meaning that it is not obligatory to submit your identification or contact details. Your report needs to contain details about the crime. There is no special form required by the authorities for reporting crimes.

There is no expressed deadline for reporting a crime, but the authorities will reject your report if it is made past a certain period. This period (the so-called limitation period) is usually equivalent to the maximum period of penalty for a given offence and is at least 5 years.

For some crimes, you may also submit a private motion, which is a statement where you expressly request that the perpetrator be punished and you have 30 days to submit the private motion after you get to know the identity of the offender.

How do I find out what's happening with the case?

The complainant or, if the report was not made by the victim but she or he is known, are notified about the initiation of the investigation.

The complainant and the civil claimant must be notified about the rejection of the report.

The court will decide on and notify you of the following:

- the rejection of your request to become a substitute private prosecutor,
- the termination of the procedure if the investigation ordered on the basis of your report submitted as a private prosecutor was not successful.

During the investigation, the police or the prosecutor may inform you about:

- investigative actions,
- appointing an expert in the case,
- issuing a restraining order against the offender.

As a victim of a crime, you have several privileges which allow you obtain information about the investigation:

- you may be present (but your presence is not obligatory) at the hearing of experts, the inspection of a scene or an object, evidentiary experiments and identification line-ups, and you should be notified about these actions, but such notification may be dispensed with if it is justified by the urgency of the investigative act, and the notification must be dispensed with if the protection of the person involved in the proceedings cannot be otherwise guaranteed,
- you may inspect the minutes of any investigative actions where you can be present, and other files may be inspected only if this is not contrary to the interests of the investigation,
- in case of investigative acts where your presence is obligatory or you may be present, your representative, supporter and, if it does not violate the interests of the proceedings, a person who is of age designated by you may also be present at your side; in case you are interviewed as a witness, a person who is of age designated by you may also be present at your side beside the lawyer representing your interests,
- you have the right to be notified upon your request, in connection with the crime concerning you, about:
 - the release or escape of the defendant in pre-trial detention,
 - the release on parole or final discharge or escape as well as interruption of the execution of the term of imprisonment of the person sentenced to a term of imprisonment,
 - the release or escape of the person sentenced to custodial arrest as well as the interruption of the execution of custodial arrest,
 - the release or escape of the person under temporary involuntary medical treatment,
 - the release, leave without permission and adaptation leave of the person under involuntary medical treatment,
 - in case of education for young offenders, the temporary or permanent release, leaving the institution without permit and interruption of education of young offenders,
- you may obtain copies of expert opinions and files on investigative actions during which you may be legally present; other copies may be obtained only if that is not contrary to the interests of investigation and only after you have given testimony as a witness; once the proceedings are terminated you can receive copies of all files created by the police or the prosecutor upon request,
- you may inspect case files after the end of the investigation, submit requests and make observations.

Am I entitled to legal aid (during the investigation or trial)? Under what conditions?

Yes.

In criminal proceedings, the State grants the following aid within the framework of legal aid:

- personal exemption from costs for substitute private prosecutors,
- representation through a litigation friend for injured parties, private prosecutors, private parties and other interested parties as well as for substitute private prosecutors.

You are entitled to such aid if you are considered in need in accordance with the provisions of the Act on Legal Aid, but the right to representation through a litigation friend is granted only to victims, private prosecutors, and other interested persons who are in need if, because of the intricacy of the case, their lack of legal expertise or other personal circumstances, they would not be able to effectively assert their procedural rights if they proceeded personally.

Applications for aid may be submitted to the legal aid service by filling in the form prescribed for this purpose in one copy, and applicants must attach the documents and/or official certifications providing proof of eligibility for aid or must present the official card evidencing their eligibility for aid.

Applications for aid may be submitted to the legal aid service at the latest during the litigation stage of the criminal proceedings before the divisional session of the court held for adopting a peremptory decision.

As far as the legal aid service allows you to use legal aid, you can select a legal aid provider from a register

provided for that purpose.

Can I claim expenses (for taking part in the investigation/trial)? Under what conditions?

Yes.

If you participate in the proceedings as a victim, private prosecutor, substitute private prosecutor or civil claimant, the following expenses incurred by you or your representatives will be reimbursed:

- travel and accommodation expenses,
- costs of the opinion of the expert, invited by yourself, with the consent of the prosecution/court,
- expenses of full or partial video or audio recording of the proceedings/stenography,
- expenses for one copy of the case files,
- communication expenses (phone, fax, post, other),
- representatives' fee.

Your out-of-pocket expenses and those of your representatives, as well as the representatives' fees are advanced by yourself, irrespective of your capacity in the proceedings.

Expenses incurred as a result of your participation in the proceedings as a witness (travel expenses, accommodation expenses, board expenses, expenses related to taking days off work) will be reimbursed upon your request.

Travel expenses: expenses actually incurred in connection with the journey from the place of residence of the witness to the place of the hearing and the return journey.

Accommodation expenses: if the hearing of the witness started at a time when the journey from the place of residence to the place of the hearing would be started during the night hours, the expenses of accommodation for the witness in commercial accommodation or at a family resort will be reimbursed.

Board expenses: board expenses will be paid to the witness if he or she is entitled to a reimbursement of accommodation expenses or if the whole duration of the journey from the place of residence to the place of the hearing and the return journey plus the hearing exceeds 6 hours within a day.

Expenses related to taking days off work: a witness who is not entitled to payment for a period of absence for the time taken off work for the hearing is entitled to a reimbursement of 1.5% of the minimum pension per hour for the period taken off work, including the period spent travelling.

The witness who was present at the expert investigation must send the supporting evidence for the expenses to the authority or court that ordered the expert investigation, which will determine the amount of reimbursement after the receipt of the expert opinion.

If you are enforcing a civil claim as a civil claimant, the court will order the defendant to pay your out-of-pocket expenses and the out-of-pocket expenses and fees of your representative if the court's resolution upholds your civil claim. If the claim is partially upheld, the defendant will be obliged to pay a proportionate amount of costs.

If you are a substitute private prosecutor, the court will order the defendant to pay your out-of-pocket expenses and the out-of-pocket expenses and fees of your representative if the prosecution is represented by the substitute private prosecutor and the court finds the defendant to be guilty.

Can I appeal if my case is closed before going to court?

The victim may file an appeal, in the case specified by the law, if the investigating authority or the prosecution rejected the report or terminated the investigation. In case of rejection of the report, the victim may only request an investigation if he or she made the report.

Protest against the decision rejecting the report or the decision terminating the investigation may be filed within eight days from the communication of the decision. If the investigating authority or the prosecution adopting the

decision does not sustain the protest, it must submit it to the prosecutor who is entitled to judge it. The decision made on the protest by the prosecutor may not be subject to further legal remedies.

Can I be involved in the trial?

After the notification of the indictment, the court establishes the date of the trial and makes arrangements for the trial, as well as for summons and notices. Persons whose presence at the trial is obligatory are summoned to attend and notification are sent to those whose presence at the trial is allowed by the law.

The order of evidentiary actions at the trial is decided by the court. The evidentiary procedure starts with the questioning of the defendant, and the victim is usually the first among the witnesses to be heard. While a witness is being questioned, no other witnesses who have not yet been questioned may be present. Derogation from this rule is, however, permitted in the case of questioning the victim as a witness. The legal representative of the victim may be present throughout the course of the trial so the victim may be informed about any evidentiary procedures that took place in his or her absence through his or her legal representative.

What is my official role in the justice system? For example, am I or can I choose to be a: victim, witness, civil party or private prosecutor?

The victim may participate in the criminal proceedings in four roles under procedural law, as follows:

- witness: a person who may have knowledge of the fact to be proven;
- civil party: a victim enforcing a civil claim (most often a claim for damages) in criminal proceedings;
- private prosecutor: in the case of some criminal offences specified by the law, the victim may represent the prosecution himself as private prosecutor;
- substitute private prosecutor: in the case of some criminal offences which are otherwise subject to public prosecution, as specified by the law, the victim may represent the prosecutor.

If it is deemed necessary for the evidentiary procedure, the victim is obliged to make a testimony or contribute to the procedure in other ways in the cases and by the means defined by the law. By contrast, acting as civil party, private prosecutor or substitute private prosecutor is up to the victim's decision alone.

What are my rights and obligations in this role?

At every stage of criminal proceedings, the victim is entitled to:

1. be present at the procedural actions and inspect the documents affecting him or her in course of the procedure (unless otherwise provided for by the law),
2. make motions and objections at any stage of the procedure,
3. receive information from the court, the prosecutor and the investigating authority concerning his or her rights and obligations during the criminal proceedings,
4. file for legal remedy in cases specified by the law
5. be notified upon his or her request in connection with the crime concerning him or her about the release or escape of the detained defendant, or of the defendant sentenced to a term of imprisonment or under involuntary medical treatment.

If it is deemed necessary for the evidentiary procedure by the investigating authority, the prosecution or the court, the victim is obliged to make a testimony or contribute to the procedure in other ways in the cases and by the means defined by the law. This primarily means fulfilling the obligation of giving testimony, exceptions from which are cases where the victim may not be heard as witness at all (e.g. legal professional privilege, knowing a secret as a clergyman) and cases where the victim may refuse to give testimony (e.g. relative of the defendant, or victims who would incriminate themselves or their relatives).

The victim may participate as civil party in the criminal proceedings and may indicate already at the time of reporting the crime that he or she intends to enforce a civil claim (typically a claim for damages). The enforcement of civil claims is exempt from fees. In this case, the court decides on the defendant's criminal liability and the civil claim within one criminal proceeding, which has the advantage for the civil party that he or she does not have to initiate a civil procedure. During the criminal proceedings the civil party may make a motion for sequestration on

the defendant's property if there are reasonable grounds to assume that the satisfaction of the claim will be frustrated.

In case of criminal offences defined by the law (assault, invasion of privacy, violation of secrecy of correspondence, libel, defamation and irreverence) the victim may act as private prosecutor. In the case of the abovementioned criminal offences, the victim must report the crime within 30 days after the victim learned the identity of the offender. In the report, the victim must indicate any evidence of the crime, and must expressly declare if he or she requests the punishment of the defendant.

The crime can be reported to the court orally or in writing. The court will order an investigation if the defendant's identity, personal data or place of residence are unknown, or if locating the means of evidence is necessary. The court will terminate the proceedings if the identity of the offender could not be determined during the investigation.

The court will set a personal hearing at which it will endeavour to reconcile the victim and the defendant. If the attempt at reconciliation is successful, the court will terminate the proceedings; otherwise the proceedings will continue in a public trial.

If the victim withdraws or drops the charge, the proceedings will be terminated. Similar consequences apply if the victim does not attend the personal hearing or the trial and fails to provide a substantial excuse in advance, or if the victim could not be summoned because he or she did not report a change of address.

The private prosecutor has the full rights that the representation of the prosecution entail, including the rights that may be exercised during the course of the proceedings and the right to legal remedy against the decisions made by the court.

After exhaustion of the possibilities for legal remedy available during the investigation, it is possible in some cases for the victim to act as a substitute private prosecutor and represent such cases at the court himself. Among other cases, you may act as a substitute private prosecutor if the report of the crime was rejected or the investigation was terminated on the grounds that the action was not a criminal offence or if any grounds for preclusion of punishability exists (e.g. coercion and duress, mistake, lawful self-defence or imminent danger). If in a specific case it is possible to act as a substitute private prosecutor under the law, the prosecutor deciding on the protest will specifically inform the victim about this.

If the protest is rejected due to the refusal of the report or the termination of the investigation, the victim will be allowed to examine the documents pertaining to the criminal offence committed against the victim at the official premises of the prosecutor's office. A victim acting as a substitute private prosecutor may submit a motion for prosecution to the prosecutor's office of first instance having proceeded in the case within sixty days of the rejection of his or her protest. The legal representation (by a lawyer) of the substitute private prosecutor is obligatory. The acceptability of the motion for prosecution is decided by the court.

Can I make a statement during the trial or give evidence? Under what conditions?

The victim is entitled to be heard during the criminal proceedings. In accordance with the provisions of the law, the victim is not only obliged but also entitled to cooperate at his or her own discretion in the evidentiary procedure. The victim may give a testimony and may also serve evidence in other ways (e.g. by providing documentary evidence to the authority). The victim may make motions and objections at any stage of the procedure. Generally, from among the witnesses, the victim is questioned first.

After the prosecutor speaks for the prosecution, the victim may make an address and may state if he or she requests the establishment of the defendant's criminal liability and punishment. The civil party may make a statement in connection with the civil claim intended to be enforced.

What information will I receive during the trial?

Before trial, the witness summoned to the trial may contact a witness supporter of the court for proper information. The witness supporter of the court is a judicial administrator who provides the witness with information about

giving testimony and facilitates the attendance necessary for it. Witness support does not cover information about the case and may not have the effect of influencing the witness.

In the criminal proceedings the victim is entitled to receive information concerning his or her rights and obligations and about the case and, unless otherwise provided for by the law, to be present at the procedural actions and to inspect the documents about the crime committed against him or her and receive copies after the investigation is concluded.

The victim must be informed about the indictment and must be notified about any decisions concerning him or her as well as the conclusive decision.

Will I be able to access court files?

The victim is entitled to inspect the documents about the crime committed against him or her and receive copies at any time after the investigation is concluded.

The court must ensure the right to inspect documents in such a way as to avoid unnecessary disclosure of data on privacy. However, the issuance of copies of documents may only be limited on grounds of human dignity, personality rights and right of reverence.

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