



## CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN UKRAINE: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

### **National Report for AIMJF's Comparative and Collaborative Research.**

Niños por debajo de la edad de responsabilidad penal en Ucrania: medidas, derechos, procedimiento, participación

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

Enfants n'ayant pas atteint l'âge de la responsabilité pénale en Ukraine: mesures, droits, procédure, participation

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

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**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on children below the age of criminal responsibility. The article explains the applicable measures and the procedure adopted, the child's rights and his or her participation in the Protective and Justice System in Ukraine.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre niños por debajo de la edad de responsabilidad penal. El artículo explica las medidas aplicables, el procedimiento adoptado, los derechos del niño y su participación en el sistema de protección y de justicia en Ucrania.

**Résumé:** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur les enfants n'ayant pas atteint l'âge de la responsabilité pénale. L'article explique les mesures passibles d'application et la procédure adoptée, les droits des enfants et leur participation dans le système de protection et de justice en Ukraine.

### **Introduction**

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<sup>1</sup> Judge in Ukraine



The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of measures, procedure, rights and participation of children below the minimum age of criminal responsibility.

This national report is based on a questionnaire prepared by AIMJF.

## Questionnaire

### 1. General information

**1.1. What is the minimum age of criminal responsibility in your country (the age of criminal responsibility is the age below which a child is deemed incapable of having committed a criminal offense, it can also be referred as age of accountability, age of responsibility, and age of liability for children and it is different of the age when a person becomes an adult)?**

General age of criminal responsibility

According to **Part One of Article 22 of the Criminal Code of Ukraine**, persons who have reached the **age of sixteen** before committing a criminal offense are subject to criminal liability.



**1.2. Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?**

A lower age of criminal responsibility is also provided for, but only for certain types of offenses.

According to **Part Two of Article 22 of the Criminal Code of Ukraine**, persons who committed criminal offenses **between the ages of fourteen and sixteen are subject to criminal liability only for certain types of criminal offenses.**

In particular, intentional murder (Articles 115-117), encroachment on the life of a state or public figure, an employee of a law enforcement agency, a member of a public formation for the protection of public order and the state border or a military serviceman, a judge, a people's assessor or a juror in connection with their activities related to the administration of justice, a defense lawyer or a representative of a person in connection with activities related to the provision of legal assistance, a representative of a foreign state (Articles 112, 348, 379, 400, 443), intentional grievous bodily harm (Article 121, part three of Articles 345, 346, 350, 377, 398), cruelty to animals (Article 299), intentional moderate bodily harm (Article 122, part two of Articles 345, 346, 350, 377, 398), sabotage (Article 113), banditry (Article 257), terrorist act (Article 258), hostage-taking (Articles 147 and 349), rape (Article 152), sexual violence (Article 153), theft (Article 185, part one of articles 262, 308), robbery (Articles 186, 262, 308), robbery (Article 187, part three of articles 262, 308), extortion (Articles 189, 262, 308), intentional destruction or damage to property (part two of articles 194, 347, 352, 378, parts two and three of article 399), damage to means of transport and communication (Article 277), hijacking or seizure of railway rolling stock, aircraft, sea or river vessel (Article 278), illegal seizure of a vehicle (Parts 2, 3 of Article 289), hooliganism (Article 296).

**Children aged 11 to 14 (in some cases up to 16) are subject to compulsory educational measures. We will discuss such children further.**

**No measures are applied to children under the age of 11 years of age and criminal proceedings are closed.**



There are no other exceptions to the age of criminal responsibility in Ukraine.

## 2. Age assessment

**2.1. In case of application of the ‘doli incapax rule’, how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?**

This rule does not apply in Ukraine.

**2.2. In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?**

There is no specific legislative regulation on this issue.

However, the Supreme Court has developed certain recommendations in which it noted that<sup>2</sup>:

The age of a minor is determined by documents indicating the date of his/her birth, such as a passport or birth certificate.

In their absence, the relevant data can be obtained from the civil status registration book, certificates from the internal affairs bodies at the place of registration of citizens, newborn registration journals, etc.

In the absence of relevant documents and the impossibility of obtaining them, the age of a minor is determined by a forensic medical examination. In this case, the last day of the year named by the expert is considered the birthday. When determining age in terms of the minimum and maximum

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<sup>2</sup> Resolution of the Plenum of the Supreme Court of Ukraine “On the practice of applying legislation by the courts of Ukraine in cases of juvenile crimes” dated 16.04.2004 No. 5



number of years, the court makes a decision based on the minimum age established by the expert.

Currently, such recommendations need to be updated taking into account current conditions.

### **3. Police intervention**

**3.1. In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?**

Thus, the initiation of criminal proceedings takes place on general grounds and children may be taken to a police station.

Article 498 of the Criminal Procedure Code of Ukraine provides for the grounds for the application of compulsory educational measures.

Thus, criminal proceedings regarding the application of compulsory educational measures, provided for by the Law of Ukraine on Criminal Responsibility, are carried out as a result of the commission by a person who, after reaching the age of eleven and before reaching the age from which criminal responsibility may arise, committed a socially dangerous act that falls under the characteristics of an act provided for by the Law of Ukraine on Criminal Responsibility.

According to Article 499 of the Criminal Procedure Code of Ukraine, a pre-trial investigation in criminal proceedings regarding the application of compulsory educational measures is carried out in accordance with the rules provided for by this Code. Such a pre-trial investigation is carried out by an investigator, an inquirer, who are specially authorized by the head of the pre-trial investigation body to conduct pre-trial investigations regarding minors.

During the pre-trial investigation, the necessary procedural actions are carried out to clarify the circumstances of the commission of a socially dangerous act and the identity of the minor.

**3.2. In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this**



**context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?**

The police must comply with the general guarantees that apply to minors in conflict with the law.

The participation of a defense attorney in criminal proceedings is mandatory.

The participation of the child's legal representative is also mandatory.

According to Article 499 of the Criminal Procedure Code of Ukraine, if there are sufficient grounds to believe that such a person has committed a socially dangerous act that falls under the characteristics of an act for which the Criminal Code of Ukraine provides for a penalty of imprisonment for a term of more than five years, he or she may be placed in a reception-distribution center for children for a term of up to thirty days on the basis of a ruling of an investigating judge or a court issued at the request of a prosecutor in accordance with the rules provided for the selection of a preventive measure in the form of detention.

The investigating judge or court shall refuse to place a person in a reception and distribution center for children if the prosecutor does not prove that there are sufficient grounds to believe that the person has committed a socially dangerous act that falls under the characteristics of an act for which the Criminal Code of Ukraine provides for a penalty of imprisonment for a term of more than five years, the presence of risks that give sufficient grounds to believe that the person may commit the actions provided for in Part One of Article 177 of this Code, and that none of the more lenient measures can prevent this.

The term of detention of a person in a reception and distribution center for children may be extended by a decision of the investigating judge or court for another period of up to thirty days. The issue of canceling or extending the term of detention of a person in a reception and distribution center for children is resolved in accordance with the procedure provided for canceling a preventive measure in the form of detention in custody or extending the term of detention in custody, respectively.

#### **4. Measures**

**4.1. In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?**

The application of appropriate measures applies to children who have not reached the age of criminal responsibility from 11 years of age to 14 years of age (in some cases 16 years of age).

**No measures are applied to children under the age of 11 years of age and criminal proceedings are closed.**

Children from 11 years of age to 14 (16) years of age are subject to compulsory educational measures provided for by the Law of Ukraine on Criminal Responsibility (Article 498 of the Criminal Procedure Code of Ukraine).

According to Article 105 of the Criminal Code of Ukraine, the court applies the following compulsory educational measures to a minor:

- 1) a warning;
- 2) restriction of leisure time and establishment of special requirements for the behavior of a minor;
- 3) transfer of a minor to the supervision of parents or persons replacing them, or to the supervision of a pedagogical or labor collective with his consent, as well as individual citizens at their request;
- 4) imposing on a minor who has reached the age of fifteen and has property, funds or earnings the obligation to compensate for the property damage caused;
- 5) sending a minor to a special educational institution for children and adolescents until his correction, but for a period not exceeding three years. The conditions of stay of minors in these institutions and the procedure for their leaving shall be determined by law.

Several compulsory educational measures may be applied to a minor, as provided for in part two of this article. The duration of the educational



measures provided for in paragraphs 2 and 3 of part two of this article shall be established by the court that appoints them.

The court may also deem it necessary to appoint a tutor to the minor in accordance with the procedure provided for by law.

**4.2. Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?**

Yes, such measures are provided for by Ukrainian legislation.

As mentioned above, this may be the referral of a minor to a special educational institution for children and adolescents for his correction, but for a period not exceeding three years. The conditions of stay of minors in these institutions and the procedure for their leaving are determined by law.

Minors who have left the control of their parents or persons replacing them, are not subject to educational influence and cannot be corrected by applying other compulsory educational measures, are referred to special educational institutions. Persons recognized as disabled, as well as those for whom, according to the conclusion of relevant specialists, staying there is contraindicated due to their health status due to the presence of certain diseases, cannot be referred to such institutions.

## **5. Procedure**

### **5.1. Who imposes such measures?**

Appropriate measures are applied solely on the basis of a **court decision**.

### **5.2. Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it succinctly?**

The Criminal Procedure Code of Ukraine contains a separate section that regulates the procedure for applying compulsory educational measures to minors who have not reached the age of criminal responsibility.

Article 499 of the Criminal Procedure Code of Ukraine regulates pre-trial investigation in criminal proceedings regarding the application of



compulsory educational measures and indicates that it is carried out in accordance with the rules provided for by this Code.

Such pre-trial investigation is carried out by an investigator, an inquirer, who are specially authorized by the head of the pre-trial investigation body to conduct pre-trial investigations regarding minors.

During the pre-trial investigation, the necessary procedural actions are carried out to clarify the circumstances of the commission of a socially dangerous act and the identity of the minor.

The participation of a defense attorney in criminal proceedings is mandatory.

Article 500 of the Criminal Procedure Code of Ukraine establishes the procedure for trial.

The trial is conducted in a court session with the participation of the prosecutor, legal representative, defense counsel, and representatives of the children's service and the authorized unit of the National Police, if they appeared or were summoned to the court session, in accordance with the general rules of this Code.

The trial is concluded by issuing a ruling on the application of compulsory educational measures or on the refusal to apply them.

Article 501 of the Criminal Procedure Code of Ukraine establishes the requirements for a court ruling in criminal proceedings on the application of compulsory educational measures

When issuing a ruling in criminal proceedings on the application of compulsory educational measures, the court shall clarify the following issues:

- 1) whether a socially dangerous act has taken place;
- 2) whether this act was committed by a minor aged from eleven years to the age of criminal liability for this act;
- 3) whether a compulsory educational measure should be applied to him and, if so, which one.



If during the trial one of the circumstances provided for in clause 1 or 2 of part one of this article is not proven, the court shall be obliged to issue a ruling on the refusal to apply compulsory educational measures and close the criminal proceedings.

When applying a compulsory measure to a minor in the form of referral to a special educational institution, the authorized unit of the National Police shall be obliged to deliver the minor to the special educational institution.

The ruling issued as a result of the consideration of a petition for the application of compulsory educational measures may be appealed in accordance with the procedure provided for by this Code.

Closed consideration of cases of the specified category is permissible by a reasoned court ruling.

At the court hearing, representatives of the involved authorities express their opinion on which compulsory educational measure will be the most effective in a particular case.

By court order, a person may be released early from a compulsory educational measure.

### **5.3. Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?**

It is in these situations that Ukrainian legislation does not contain provisions on the application of additional mechanisms to such children.

When implementing pilot projects and discussing the prospects for improving child-friendly justice, these issues are the subject of discussions.

## **6. Assessment**

### **6.1. Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?**



There is no specific protocol for assessing a child.

However, during the investigation and trial, a number of circumstances are clarified.

To clarify them, the involved entities provide information about the child.

This is information from the children's service, police authorities, and probation services.

Initially, the relevant data is collected by the investigating authority and subsequently evaluated by the court.

The Supreme Court guided the courts that it is necessary to fully and comprehensively clarify:

- 1) personal data of the minor - age (date, month, year of birth, other biographical data; age and psychological characteristics (temperament, level of general development, interests, value orientations, etc.); state of health; social (public) characteristics (relationships in the family and team, attitude to work, education, participation in public life, etc.). If there is data on the minor's mental retardation, not related to a mental illness, it should also be clarified whether he is able to fully realize the meaning of his actions and to what extent he can control them, for which, if necessary, an examination is prescribed with the participation of specialists in the field of child or adolescent psychology or expert psychiatrists;
- 2) the minor's attitude to the consequences of the act he committed;
- 3) data on the minor's parents (their criminal record, deprivation of their parental rights, their lifestyle, ability to provide educational influence on the minor and constant control over his behavior);
- 4) circumstances that negatively affected the upbringing of the minor;
- 5) the presence of adult instigators and other persons who involved the minor in criminal activity.

## **7. Legal and procedural guarantees**



### **7.1. What are the rights of the child in this procedure (legal and procedural guarantees)?**

A child has a general set of rights that a child in conflict with the law has.

That is, a child has the same rights as an adult, but taking into account his age and psychological characteristics.

The right to a defense attorney and legal representative (parents), the right not to testify against himself, the right to familiarize himself with the case materials, the right to confidentiality and the right to psychological assistance, as well as procedures that ensure the protection of his interests, the involvement of additional subjects during interrogation (psychologist), the participation of children's services, juvenile prevention and probation units are established.

Special rules for interrogation are established.

### **7.2. Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?**

A child does not have the right to refuse the application of compulsory educational measures, since they are by their nature “compulsory”.

However, the child has the right to express his/her opinion on the proposed measures and has the right to appeal the court’s decision on the application of such measures.

### **7.3. What happens if the child does not fulfill the obligations inherent to these measures?**

Ukrainian legislation does not provide for legal consequences in the event that a child fails to fulfill the obligations arising from these measures.

However, practice is oriented towards the compulsory application of such measures.

It is also possible to change one measure to another.

## **8. The role of the justice system**



**8.1. Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court...)?**

The procedure was described above.

The application of appropriate measures is carried out exclusively by the court.

The case in court is considered by a judge who is specially authorized to consider cases involving children (juvenile judge).

Additionally, see the answer to the question in Section 5.

**Please note that only a child who has committed a criminal offense between the ages of 11 and 14 (in some cases 16) years old can go to court.**

**Younger children do not go to court and no measures of influence are applied to them.**

**8.2. In case of involvement of the justice system, can you briefly describe the procedure?**

The procedure is described in the answers to the questions in Section 5.

**8.3. What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?**

The answer to this question is described in paragraphs 7.1. and 7.2.

Legal aid is mandatory and the child has the right to appeal the court decision.

See also Section 5.



## **9. Assistance or support**

### **9.1. Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?**

In the event that such a child comes into conflict with the law, law enforcement agencies notify the children's service about the child. The child can be registered as a child in difficult life circumstances and appropriate work on social and psychological assistance can be carried out with him.

There are a number of public organizations that take care of children's rights and can accompany a child after he comes into conflict with the law. Such work is voluntary and depends on the region and whether the public organization works in a certain territory.

## **10. Child participation**

### **10.1. Is the child heard in this procedure? By whom? At which stage of the procedure?**

Yes, the child's opinion is heard.

The child's opinion is heard at the stage of pre-trial investigation, which does not exclude the child's questioning during the trial.

Today, the process of questioning the child is being actively implemented using the "Barnahus" model, "Green Rooms" and child-friendly spaces.

### **10.2. Is the child heard more than once in this procedure? How many times?**

State policy and judicial practice are oriented towards the fact that the child is heard less often. This approach is very much manifested in the protection of the rights of victims.

However, if the issue is being resolved regarding children who have committed offenses, then their participation in the trial is mandatory, so there can be at least two interviews.



**10.3. Is there a protocol or instruction on how to listen to a child in this situation? Can you please share it?**

There is no such document at the level of regulatory acts.

However, there are methodological recommendations for investigators, prosecutors and judges on the use of the “Green Room Methodology” and organization.

Experts have developed a “checklist” for interviewing children in criminal proceedings, which is attached.

Please note that these are only recommendations for specialists.

## **11. Legal implications**

**11.1. Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?**

Yes, information about a child who committed an offense is stored in the database of criminal offenses and measures applied to the child.

Such measures should not be directly taken into account when the child reaches the age of majority, but their existence can indeed create an idea of what the child has done before and in some way affect the characteristics of the person.

This is an existing problem in Ukraine and the subject of discussions when improving the principles of child-friendly justice.

There was even a lawsuit when a person asked to exclude relevant information about the offense committed, which was granted by the court.

**11.2. In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?**



The victim has the opportunity to express his/her opinion on what measures of influence should be applied to the child. This can be done both during the investigation and the trial.

Other measures to protect the rights of the victim are general, in particular the issue of compensation for damage (can be raised with the legal representatives of the child).

## **12. Reforms in progress**

### **12.1. Are there ongoing reforms on this subject?**

The National Strategy for the Protection of Children's Rights in the Sphere of Justice for the Period Until 2028 and the Approval of the Operational Plan of Measures for its Implementation in 2025-2028 draw attention to the fact that the following issues remain unresolved: ensuring the participation of minors who have not reached the age of criminal responsibility in restorative justice, developing a set of agreed additional means for the reintegration and resocialization of minors in conflict with the law and identifying the entities that will implement them; developing a mechanism for monitoring the effectiveness of procedures that ensure restorative justice at the state level.

One of the tasks aimed at solving existing problems is:

the introduction of uniform criteria for the training (retraining, advanced training) of specialists participating in criminal proceedings involving a child, including defense lawyers involved in providing legal assistance to a child participating in investigative (search) and procedural actions, regardless of the child's procedural status;

improving access to justice for children, taking into account their best interests, as well as the use of information materials;



ensuring the development and approval of a methodology (standards, protocols) for conducting a procedural interview (interrogation/survey) with a child in criminal proceedings, taking into account best international practices and adhering to the principles of child-friendly justice;

implementing comprehensive approaches to working with children who, at the time of committing a socially dangerous act, have not reached the age of criminal responsibility, and children who are subjects of a criminal offense, conducting preventive work, etc.;

improving the organization of social and educational work with minors who have served a sentence in the form of deprivation of liberty for a certain period of time, to ensure their resocialization and social adaptation.