



CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY IN SWITZERLAND: MEASURES, RIGHTS, PROCEDURE, PARTICIPATION
National Report for AIMJF's Comparative and Collaborative Research.

Niños por debajo de la edad de responsabilidad penal en Suiza: 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 Suisse: mesures, droits, procédure, participation

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

Gian Carlo Pellizzari¹

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 Switzerland.

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 Suiza.

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 Suisse,

Introduction

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

¹ youth lawyer in the canton of St. Gallen, Switzerland



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 considered incapable of committing a criminal offence; it may also be referred to as **the age of responsibility, the age of accountability, and the age of liability for children and is distinct from the age at which a person becomes an adult**)?

In Switzerland, 10 years

1.2. Is there more than one minimum age for criminal responsibility? Which one? Is it possible in your country to apply the "doli incapax rule" (the possibility of proving that the child is sufficiently mature and capable of understanding that the behaviour constitutes a criminal offence and can therefore be held criminally responsible)?

No.

2. Age assessment

2.1. How is this assessment carried out in cases where the "Doli Incapax rule" applies? Is there a specific methodology for this assessment? Is there a protocol for carrying out the assessment? Who assesses the child? Is the child heard during this procedure? Does the child have legal



representation in this situation? Can the child challenge the results of this assessment?

2.2. How is this assessment carried out if it is necessary to determine the child's age (due to the lack of a birth certificate)? Is there a procedure? Is the child heard during this procedure? Does the child have legal representation in this situation? Can the child challenge the results of this assessment?

If it is necessary to determine the age of a person in Swiss juvenile criminal proceedings (in cases where there is no proof of identity, the question is whether the child is already of legal age), a medical-forensic age assessment is carried out on behalf of the youth public prosecutor's office or the court. The child is granted the right to be heard. The law does not provide for mandatory legal representation.

3. Police intervention

3.1. If a child who has not yet reached the minimum age of criminal responsibility commits an act that is considered a criminal offence, is the child taken to the police station? Is this mandatory? If not, in what situations is it necessary to take the child to the police station?

As a rule, children below the age of criminal responsibility are not taken to a police station. However, if the child's age is unknown or if the child needs to be questioned, it may be necessary to take the child to the police station.

3.2. What is expected of the police when a child is taken to a police station? What legal safeguards apply to the child in this context? Is it possible, under certain circumstances, for the child to be detained, even if only for a short period of time? How long can the child be deprived of their liberty in this case?

In exceptional cases, if the police summon a child to the police station for questioning, the child must be accompanied by their legal representative. Criminal detention is not possible.

4. Measures

4.1. Can any measures be imposed on a child who has not yet reached the minimum age of criminal responsibility and has committed an act that is considered a criminal offence? If so, what measures?

If the child does not receive the necessary care and education from their parents, civil law measures will be considered.



4.2. Is it possible to order placement outside the parental home (e.g. in an alternative care facility, in an institution or foster family, in health care facilities)? Under what circumstances? For how long?

This is possible as a last resort. If the danger to the child cannot be averted in any other way, the civil authority will withdraw the parents' right to determine the child's place of residence. The child may be placed in a foster family or a suitable institution. This measure may remain in place until the child reaches the age of majority.

5. Procedure

5.1. Who imposes such measures?

The civil authorities (child and adult protection authority)

5.2. Is there a legal procedure for determining these measures? What does this procedure look like? Can you describe it briefly ?

The measure can be reviewed by a court (multiple levels of appeal up to the Federal Supreme Court).

5.3. Is it possible to use alternative dispute resolution mechanisms such as mediation or victim-oriented justice in such situations?

No, this is not possible. However, the civil law withdrawal of custody is a last resort and serves to protect the child.

6. Assessment

6.1. Is there any kind of assessment of the child for the imposition of such measures (in terms of vulnerability, risk, violations of rights)? Who assesses the child? Is there a protocol or guideline for assessing the child? Can you please provide this?

The civil child protection authority makes an overall assessment of the child's personal situation. This assessment is carried out by specialists. The assessment/evaluation is recorded in writing. However, there is no standardised instrument for assessing the child's personal situation throughout Switzerland.

7. Legal and procedural safeguards

7.1. What rights does the child have in these proceedings (legal and procedural guarantees)?

Right to be heard, legal assistance, etc.



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

If civil child protection measures are deemed necessary for the protection of the child, these are ordered by the child protection authority. These measures can be challenged through legal appeal.

7.3. What happens if the child fails to fulfil the obligations associated with these measures?

8. The role of the judiciary

8.1. Is it possible in your country for the judiciary to intervene in such situations? In what situations (e.g. to impose or review the measure if the child or their family resist, or to issue a child protection order)? For what purpose? Which judicial authority is involved (juvenile court, family court, child protection court, criminal court, etc.)?

A civil child protection measure can be reviewed by a court. This is a civil procedure and not a criminal procedure. There are several levels of appeal.

8.2. If the judicial authorities are involved, can you briefly describe the procedure?

The decision of the child protection authority can be appealed all the way to the Federal Supreme Court.

8.3. What rights does the child have in these proceedings? Does the child have the right to legal representation? The right to appeal against any type of decision?

The child has the right to legal representation. The child can challenge the decision and have it reviewed through legal appeal.

9. Assistance or support

9.1. In addition to the measures imposed on children, are there other types of assistance that can be accessed on a voluntary basis (social, psychological, medical assistance)?

In Switzerland, there is a wide range of low-threshold support services (family assistance, medical services, school psychology services, etc.).

10. child participation



10.1. Will the child be heard in these proceedings? By whom? At what stage of the proceedings?

Yes, the child is heard (right to be heard). Provided that the child is capable of doing so. The hearing is conducted with the involvement of specialists.

10.2. Is the child heard more than once in these proceedings? How often?

As a rule, yes. How often depends on the individual case.

10.3. Are there any protocols or guidelines on how children are heard in this situation? Can you please provide us with these?

All essential procedural actions are recorded. We are not aware of any uniform guidelines.

11. Legal implications

11.1. Are there records of offences committed by children below the age of criminal responsibility? Are these records taken into account when the child reaches the age of criminal responsibility?

No.

11.2. What rights and legal remedies does the victim have in the event of damage in relation to the child and the family? In addition to financial compensation (), does the victim also have the opportunity to influence the measures taken against the child?

The victim can assert civil claims for damages against the child and the head of the family in court. If the conditions for liability are met, the victim must be compensated.

The victim has no influence on the child protection measures.

12. Ongoing reforms

12.1. Are there any reforms currently underway in this area?

No