



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

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

Niños por debajo de la edad de responsabilidad penal en Serbia: 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 Serbie: 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 Serbia.

**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 Serbia.

**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 Serbie.

## 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

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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**)?

The MACR in Serbia is 14. Article 4 of the *Criminal Code* specifies that criminal sanctions may not be imposed on a person who, at the time the act was committed, had not reached 14 years of age. Educational measures and other criminal sanctions may be imposed on a child offender (14-18) under the conditions prescribed by a special law, i.e. the *Law on Child Offenders and Criminal Justice Protection of Children*.

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)?

No.

## 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?

In Serbia, there are currently no specific procedures or protocols for age assessment of children in relation to the application of the *doli incapax* rule. In practice, cases requiring formal age assessment are rare due to almost universal birth registration, hence, all children are registered by relevant public bodies. In cases where it is necessary to determine a child’s age, the prosecutor or judge may engage an independent court expert to carry out the assessment and submit their findings and opinion.

Also, the age assessment determination has been discussed and applied through various pilot projects in the context of children on the move. There are currently no formal procedures for age assessment and reliance is placed on the statement of the child or the accompanying adult. In practice, it is known that relying solely on such statements can result in a child not being recognised as such (particularly in cases involving children aged 16–17), which fails to ensure the necessary protection. Conversely, young adults (aged 18–23 or older) may be identified as children, which can pose serious risks to other children in migration contexts, especially in collective or residential care settings. The lack of a valid age assessment procedure in Serbia hinders the determination of the best interests of the child and undermines protection for children in migration. It is therefore essential to establish a procedure aligned with international standards.

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?

The *Rulebook on the Manner and Conditions of Applying Police Powers to Minors* provides that when, at the scene of a criminal offence or misdemeanor, a person is found who, after their identity has been established, is determined to be a child, their parent or guardian, the representative of the guardianship authority (i.e. social services) or the representative of the institution in which the child is placed shall be immediately notified. Also, the police shall always notify the child justice public prosecutor or the misdemeanour court judge, to whom a report shall be submitted upon their request.

The child justice procedures stipulated in the *Law on Child Offenders and Criminal Justice Protection of Children* apply only to children above the MACR and provide for almost all safeguards in line with international standards. Actions concerning children below the age of 14 is regulated by social welfare legislation, which is currently



insufficiently defined and lacks clarity. In such cases, general provisions regulating the work of social services in relation to vulnerable children apply.

To conclude, regulations governing the roles and responsibilities of all actors who come in contact with the child below the age of 14 should be improved, in particular the police officers, (child justice) public prosecutors and social services professionals.

### 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?

It is not mandatory but there are no clear procedures that outline detailed steps in this regard.

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?

Procedures governing the handling of children below MACR in conflict with the law are not explicitly defined in legislation. In practice, police officers immediately notify social service professionals, i.e. centre for social welfare (CSW) and public prosecutors. While children under the MACR cannot be placed in police custody or other type of pre-trial detention facilities, they may be referred to a social welfare institution. This arrangement presents significant shortcomings as CSWs currently lack the specialized capacity, resources and institutional arrangements to address the needs and behaviour of children who commit criminal offences, particularly more serious ones. There are no dedicated programmes or facilities designed to provide intensive behavioural interventions, rehabilitative support or secure care for this group of children.

A notable example is the case of KK, who was 13 years old when he committed a series of murders during a school shooting in May 2023. According to media reports, as the public has not been informed on the outcome of this case, he was placed in the mental health ward of a hospital, where he remains, and has been subject to multiple expert forensic examinations. This case illustrates the systemic gap, particularly in the social welfare system, in preventing and responding to serious offences committed by children below the MACR, underscoring the need for a clearly defined legal framework and specialized service provision.

### 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?



As noted above, there are no specialized programmes and services for children below the MACR. In practice, they are typically placed in social welfare institutions, defined as ‘institutions for the upbringing of children and youth’, according to the *Law on Social Welfare*, often alongside children above the age of criminal responsibility, who have undergone formal child justice proceedings. These institutions are open-type facilities where children attend regular school and can freely leave the institution in their leisure time during the day, usually until the evening. This arrangement raises concerns regarding the appropriateness of care, the safeguarding of children and the potential for negative peer influence, given the absence of tailored interventions and rehabilitative measures designed specifically for this age group. In practice, these institutions have been consistently lacking capacities, resources and do not provide children in need with adequate care and protection.

There are also additional risks associated with this approach. The neighborhoods in which these institutions are located can expose children to contact with adult criminal groups who are aware that, due to their age, such children cannot be prosecuted and are perceived as “safe” recruits for criminal activity, in particular substance abuse-related offences. This vulnerability is compounded by the fact that many of these children grow up in alternative care (institutions or foster care), without parental support, have histories of exposure to violence in childhood and often lack protective family or community networks. Such conditions heighten the risks of further exploitation, re-victimisation and entrenchment in cycles of offending and victimhood, underscoring the urgent need for specialized, secure and rehabilitative facilities in line with international standards.

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?

Please see the response 4.1. above.

5. procedure

5.1. Who imposes such measures?

Social services, i.e. CSWs are in charge of imposing these measures.

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?

Please see 4.1. above.

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

Yes, it is possible. Based on their specialized knowledge and skills, case managers in CSWs may perform specific professional tasks or provide services, such as individual and



group counselling, including mediation, if trained and certified to provide this type of services.

## 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?

The assessment is regulated by social welfare legislation. The *Law on Social Welfare* regulates the procedures for exercising rights and delivering of services within the social welfare system. Article 43 provides for the assessment and planning services. This includes the assessment of the situation, needs, strengths and risks of the beneficiary and other significant persons in their environment; assessment of guardians, foster carers and adoptive parents; preparation of an individual or family plan for the provision of services and legal protection measures, as well as other assessments and plans. Planning services include individual service planning for the purpose of their use or the determination of protection measures.

In addition, the *Rulebook on the Organisation, Norms and Standards of Work of Centres for Social Welfare* regulates the activities of the CSW in the exercise of public authority. The CSW also delivers social work services and initiates legal proceedings when authorized by law.

A case manager within the CSW evaluates and coordinates the assessment process for an individual user's needs, implements measures and coordinate actions to protect and support the user. In doing so, case managers utilize the resources of the CSW and other services and resources within the local community. Case manager prepares the findings and professional opinions when required to submit the results of assessments to the court, another authority or institution, or when referring users to services in another institution or organization.

Additionally, based on their specialized knowledge and skills, case managers may perform specific professional tasks or provide services, such as individual and group counselling, among others. A case manager may also be appointed as a temporary guardian, except in proceedings related to the deprivation of legal capacity and parental right.

## 7. legal and procedural guarantees

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

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

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



The rights of children below MACR are not regulated by the justice sector legislation. There is no specially organised, intensive intervention, nor legal guarantees ensuring procedures that respect children's rights in line with international standards.

According to article 47 of the *Law on Child Offenders and Criminal Justice Protection of Children*, when the child justice public prosecutor determines that the person against whom a criminal charge or the injured party's motion to initiate proceedings has been filed had not reached the age of 14 at the time of the commission of the criminal offence, the prosecutor shall dismiss the criminal complaint or the injured party's motion. The decision on dismissal shall be submitted to the guardianship authority (i.e. social services) for the undertaking of measures within its competence.

Similarly, if, during the course of proceedings, the court determines that the child had not reached the age of 14 at the time of the commission of the criminal offence, the criminal proceedings shall be discontinued, and the decision on discontinuation shall be submitted to the guardianship authority for the undertaking of measures within its competence.

#### 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...)?

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

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?

According to the *Law on Police*, in the pre-investigation and investigation procedures, the police exercise their powers as defined by the *Criminal Proceedings Code* and act in accordance with the orders and requests of the public prosecutor and the court. A police officer is obliged to accept a report of a committed criminal offence. The received criminal report must be immediately forwarded by the police officer to the public prosecutor. A police officer exercises police powers on their own initiative, under the order of a superior officer, or upon the instruction of the public prosecutor, issued in accordance with the law. The police is required to comply with the prosecutor's requests and to keep the prosecutor informed of all actions taken to uncover offences or identify suspects.

#### 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)?

This is described above, under 6. A case manager within the CSW evaluates and coordinates the assessment process for an individual user's needs, implements measures and coordinate actions to protect and support the beneficiary, using the resources of the CSW and other services and resources within the local community. However, in practice, these resources are scarce and CSWs do not have options at the community level to refer children.

#### 10. child participation

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

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

10.3. Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

Child participation is not sufficiently operationalized in national legislation. There is no explicit legal obligation for state authorities to hear and consider a child's opinion or provide information for informed choices. Child participation is only regulated by the *Family Law* in relation to family law matters. Even the *Law on the Foundations of the Education System* does not explicitly guarantee the right of the child to be heard. Hence, this is a serious gap in Serbian legislative framework.

#### 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?

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?

Records on children under the MACR are generally not used in criminal proceedings. However, in practice, prosecutors and judges do receive information about the child's background, including any instances of being in conflict with the law before the age of 14. These data are not public nor accessible by other public bodies, however, they are considered when conducting the child's individual assessment.

#### 12. reforms in progress

12.1. Are there ongoing reforms on this subject?

The Child Rights Centre has been consistently advocating for the clear regulation of this area and investment in early detection of the causes of offending behaviour, prevention



and strong family- and community-based programmes and services, along with the capacity building of relevant professionals.

It should be noted that the case of KK, mentioned above, continues to resonate strongly with the public. In response to public pressure, the government initially proposed lowering the MACR from the current 14 years to 12, a proposal that was the subject of public debate for some time. The Child Rights Centre has consistently advocated against this change, even engaging with the Committee on the Rights of the Child to support its position. However, the government is now drafting amendments to the Criminal Code, raising concerns that the issue may be revisited. The drafting process is taking place without public transparency, and its details remain unknown.