



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

Niños por debajo de la edad de responsabilidad penal en Letonia: 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 Lettonie: 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 Latvia.

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 Letonia.

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 Lettonie

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



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**)?

According to Section 11 of the Criminal Law and Section 57 of the Law on the Protection of Children's Rights, a natural person who has reached the age of fourteen by the day the criminal offense is committed shall be subject to criminal liability. A minor, that is, a person who has not reached the age of fourteen, shall not be subject to criminal liability.

Criminal Law <https://likumi.lv/ta/en/en/id/88966-criminal-law>

Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

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)?

There is only one minimum age of criminal responsibility – 14 years. Latvian legislation does not provide for the application of the "doli incapax" rule regarding the age of criminal responsibility.



Criminal Law <https://likumi.lv/ta/en/en/id/88966-criminal-law>

Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

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?

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 police first try to establish age verbally and check it against state registries. If there is any doubt, the Orphan's Court and social services are involved.

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?

In accordance with Section 59 of the Protection of the Rights of the child Law:

(1) A child shall be conveyed to a police station, if the child:

1) has committed activities for which criminal liability is provided;

2) has committed an administrative offence if it is not possible to determine the identity of the child otherwise and take a decision to commence an administrative offence proceedings;

3) is found in a public place in a state of intoxication;

4) is begging;

5) has not attained 16 years of age and is present in a public place during night-time without the presence of an adult person who is responsible for the supervision of the child;

6) is lost or abandoned, or is found in such circumstances as are dangerous for a child or may harm his or her development;

7) has arbitrarily left his or her family, guardian, foster family, or child care institution.

(2) In the cases provided for in Paragraph one, Clauses 3 - 7 of this Section, the conveyance of a child to the police is permissible if it is not possible to provide assistance to the child in another way. In cases where the police determine that the child is vagrant, begging, intoxicated with narcotic or toxic substances or alcoholic beverages or there is an unfavourable family environment or that other circumstances exist as may be harmful to the child, they shall inform the relevant Orphan's and Custody Court and the social service office.

(3) A child conveyed to the police may not be held together with adult violators of the law, and the child shall be provided with constant adult supervision. The child may not

be subjected to any physical or mental influence, and may not be forced to testify or to confess guilt.

(4) Explanations may be requested from a child who has been conveyed to a police institution in relation to the circumstances referred to in Paragraph one of this Section by a police officer who has the special knowledge specified in Section 5.¹, Paragraph one of this Law in the field of the protection of the rights of the child, with the participation of the parent, guardian, representative of the Orphan's and Custody Court (if the child has been placed with a foster family) or a child care institution or their authorised person (hereinafter - the parent). If participation of the parent is in contradiction with the interests of the child, the parent refuses to participate in requesting explanations or cannot be reached, the police officer shall invite another person whom the child trusts or a psychologist.

(5) If a child with special needs has been conveyed to the police, the conditions for satisfying his or her special needs shall be ensured, and also a specialist for the provision of medical and other assistance to the child shall be invited, if necessary.

(6) The Cabinet shall determine the procedures by which the police shall ascertain whether the child has special needs, and invite a competent specialist, and also determine the procedures by which the police shall ensure conditions for satisfying special needs of the child.

Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

Procedures by which the Police shall Ascertain whether a Child has Special Needs, Invite a Competent Specialist and Ensure the Conditions for Satisfying Special Needs of a Child <https://likumi.lv/ta/en/en/id/266339-procedures-by-which-the-police-shall-ascertain-whether-a-child-has-special-needs-invite-a-competent-specialist-and-ensure-the-conditions-for-satisfying-special-needs-of-a-child>

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 ensure the child's safety, investigate the circumstances of the incident, inform the legal representatives and pass the information on to the Orphan's Court.

In accordance with Section 60 of the Protection of the Rights of the child Law:

Section 60. Measures to be Taken if a Child Requires Assistance

(1) If a child has been conveyed to the police institution due to circumstances referred to in Section 59, Paragraph one of this Law, the child may be held there until given over to the parents, guardian, foster family, representative of a child care institution, or their authorised person.

(2) If within a period of four hours it is not possible to determine the identity of a child and to give the child to his or her parents, foster family, guardian, child care institution that he or she has left or their authorised person and if as a means of security imprisonment is not applied to the child, the police shall place the child in a foster family, a crisis centre, or a child care institution, but if it is not possible in a prevention institution, and not later



than the next working day shall inform the Orphan's and Custody Court and the local government social service office thereof.

(3) If a child who has been conveyed to the police is under the influence of alcoholic beverages, narcotic, or toxic substances or other intoxicating substances or there is suspicion that the child is being sexually abused, has become the victim of illegal activities or has been induced to beg, the police shall determine the circumstances of the acquisition and use of the intoxicating substances, and the persons who have induced the child to engage in activities harmful to him or her or have performed illegal acts against the child.

(4) If a child who has been conveyed to the police requires medical assistance, the police shall organise the conveyance of the child to a medical treatment institution and ascertain that the child has been accepted therein or outpatient medical treatment assistance has been provided to him or her.

Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

The child has the right to the presence of a legal representative, to legal assistance, as well as the right to be heard, taking into account his or her age and maturity.

A child who has not reached the age of criminal responsibility cannot be imprisoned.

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?

If a minor who has not reached the age of 14 commits a criminal offence provided for in the Criminal Law, the criminal proceedings shall be terminated in accordance with Section 377, Paragraph 2 of the Criminal Procedure Law and the person directing the proceedings may decide to send the materials to the court for the application of a compulsory measure of an educational nature in accordance with Section 392.1, Part Seven of the Criminal Procedure Law.

Compulsory measures of an educational nature may be applied to children aged 11 to 18. The types of compulsory measures of an educational nature and the procedure for their application are specified in the Law "On the Imposition of Compulsory Measures of an Correctional Nature to Children".

If a child is under 11 years of age, then educational coercive measures cannot be applied, but in this case, a behavioral social correction program may be developed for the child in accordance with Article 58 of the Children's Rights Protection Law.

In accordance with Section 58 of the Children's Rights Protection Law,
Section 58. Organisation of Work for the Prevention of Violations of Law

(1) Work with children for the prevention of violations of law shall be carried out by local governments in collaboration with the parents of children, educational institutions, the State Police, the State Probation Service, if the child is a probation client, public organisations and other institutions.

(2) A local government shall establish a prevention file and draw up a programme for social correction of behaviour for each child who:

1) has committed a criminal offence;



- 2) is found guilty of the commission of a criminal offence, but whose sentence is not connected with deprivation of liberty;
 - 3) is released from criminal liability;
 - 4) is released from imprisonment or from the place where they are serving sentence;
 - 5) has committed, prior to attaining 14 years of age, illegal acts provided for in the Criminal Law;
 - 6) has committed an administrative offence more than twice;
 - 7) begs, is vagrant, or performs other acts which may lead to illegal actions.
- (3) The State Police may enter into prevention records children indicated in Paragraph two, Clauses 1 - 6 of this Section and other children for whom there is a prevention file established at a local government, if the drawn-up programme for social correction of behaviour provides for the joint participation of the police in a specific case.

Materials of terminated criminal proceedings and materials regarding an offense that a procedurally authorized official has determined was committed by a child who has not reached the age of 14, and in relation to which a decision has been made to refuse to initiate criminal proceedings and send the materials for departmental examination, shall be examined and compulsory measures of an educational nature shall be applied by a district (city) judge alone. In turn, administrative violation cases and materials regarding the violation shall be examined by the municipal administrative commission.

Criminal Procedure Law <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>
Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>
On the Imposition of Compulsory Measures of a Correctional Nature on Children <https://likumi.lv/ta/en/en/id/68489-on-the-imposition-of-compulsory-measures-of-a-correctional-nature-on-children>

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?

It is not a matter within the competence of the Ministry of the Interior.

5. procedure

5.1. Who imposes such 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?

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

It is not a matter within the competence of the Ministry of the Interior.

From the age of 11-14, educational measures are applied by a court or a municipal administrative commission.

In turn, social correction programs are developed and services are offered by municipal social 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?

It is not a matter within the competence of the Ministry of the Interior.

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?

It is not a matter within the competence of the Ministry of the Interior.

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?

It is not a matter within the competence of the Ministry of the Interior.

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)?

It is not a matter within the competence of the Ministry of the Interior.

10. child participation

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

The child is heard at all stages of the procedure, taking into account his or her best interests.

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

Criminal Procedure Law <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>

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The child may be heard several times, depending on the complexity of the case and the need to fully clarify the circumstances of the incident and the child's opinion.

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

There are training programs for professionals who work with children to ensure that the child is heard in a child-friendly manner.

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?

The information systems will have a record and it will serve more as a means of support and monitoring than for the purposes of punishment and criminal liability.

When a child reaches the age of criminal responsibility, the police and judicial authorities may take into account the child's previous behavior and social records as part of the assessment, for example, to assess the risks and the need for social rehabilitation, to assess the risk of recidivism. These records are not directly related to criminal liability, and previous offenses committed before the age of criminal liability do not affect the application of criminal penalties.

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?

It is not a matter within the competence of the Ministry of the Interior.

12. reforms in progress

12.1. Are there ongoing reforms on this subject?

Within the competence of the Ministry of the Interior, no reforms are carried out.

Law on the Protection of the Children's Rights <https://likumi.lv/ta/en/en/id/49096-law-on-the-protection-of-the-childrens-rights>

Criminal Law <https://likumi.lv/ta/en/en/id/88966-criminal-law>

Criminal Procedure Law <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>

Law on Police <https://likumi.lv/ta/en/en/id/67957-on-police>

Law on the Imposition of Compulsory Measures of a Correctional Nature on Children <https://likumi.lv/ta/en/en/id/68489-on-the-imposition-of-compulsory-measures-of-a-correctional-nature-on-children>



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