



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

Niños por debajo de la edad de responsabilidad penal en Alemania: 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 Allemagne : 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 Germany

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 Alemania

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 Allemagne.

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 offence, 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**)?

14 (age at commitment of the offence)

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?

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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 question of age is part of the normal investigation, thus all respective regulations apply, including “in dubio pro reo”.

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?

That depends on the situation. If it is clear that the person is under age, it is illegal to treat him or her as accused person. However, it may be allowed or even mandatory to take the child to the police station for its own safety e.g. if it cannot be given in the custody of a legal guardian.

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?

Police would be in a preventive role and have to act accordingly, legal guarantees are under police law. A child cannot be put into a prison.

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?

Any measure would be within family law, not as a sanction. Measures can not be imposed as such. If for reasons of best interest of the child, a measure (therapy, housing arrangements...) is necessary and parents are not willing to consent to that measure, their rights can be restricted or taken.



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?

s.o. only for protective reasons, only as long as necessary

5. procedure

5.1. Who imposes such measures?

Family courts

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

Family court cases are civil cases ruled by special procedural law. Family Courts conduct official investigations; youth welfare service is closely involved. Parents and the child have to be heard.

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

Yes, but all under the idea of child welfare, not treatment of criminal cases.

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?

Family courts hear the youth welfare service as expert institution; they can request additional expert opinion if needed to assess the situation. There is no formal fixed protocol.

7. legal and procedural guarantees

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

Right to be heard, special legal counsel (Verfahrensbeistand)

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

Since the whole procedure is following a protective paradigm, the will of the child is relevant as part of its best interest. Family Court decisions



can be challenged by all parties, including the child (represented by his or her guardian)

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

Since the measures are not sanctions, there are no formal sanctions for not fulfilling obligations.

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...)?

Family Court as described above.

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

See above

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?

See above

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)?

The youth welfare system offers a great number of services to parents and children. If the problem is medical, treatment is available in the health system (in practice there is shortage of psychotherapeutic services for 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?



See above

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?

There is no formal register since criminal proceedings are ended immediately. However, cases reported to the system are recorded in internal systems. There is no formal consideration in later cases (also because the cases are not cleared up), however informally they may be considered.

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?

Remedy is through civil law. Victims have no say on measures.

12. reforms in progress

12.1. Are there ongoing reforms on this subject?

There is recurrent debate on lowering the age of criminal responsibility and/or widening compulsive measures regarding of unter 14-year-olds and/or introducing sanctions against parents.