

## THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY ACROSS CENTRAL EASTERN EUROPEAN COUNTRIES

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This article examines the legal frameworks for juvenile justice across Croatia, Serbia, Slovenia, Hungary, Slovakia, the Czech Republic, and Poland, focusing on the minimum age of criminal responsibility (MACR), juvenile offender categorization, and applicable legal measures. While these countries share a focus on rehabilitation and developmental considerations, significant differences exist in age thresholds and the treatment of young offenders. The MACR is an ongoing issue, shaped by legal, developmental, and societal factors. Two main trends emerge: one advocates for lowering the age and imposing stricter punishments, while the other emphasizes children's rights and rehabilitation. International standards, such as those from the Committee on the Rights of the Child, promote diversion programs to avoid stigmatization, yet no global consensus exists on the MACR. Pressure to lower the MACR, as seen in Hungary and Serbia, contrasts with neuroscientific findings that full maturity occurs in the third decade of life. A holistic approach integrating legal, psychological, and developmental perspectives is essential to balance accountability, rehabilitation, and the protection of children's rights in juvenile justice systems.

**KEYWORDS:** juvenile justice, minimum age of criminal responsibility, central europe, children's rights

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## Legal Frameworks Across Jurisdictions of Central Eastern European Countries

Understanding the legal frameworks surrounding juvenile offenders and the age of criminal responsibility is crucial for ensuring a fair and effective justice system, especially across diverse jurisdictions. In this chapter, we explore the approaches taken by Croatia, Serbia, Slovenia, Hungary, Slovakia, Czech Republic, and Poland in defining the age of criminal responsibility, categorizing juvenile offenders, and prescribing appropriate legal measures. The selected countries represent a diverse range of legal systems within Eastern Europe. These nations offer a comprehensive view of the various approaches to juvenile justice and the age of criminal responsibility prevalent in the region. This short comparative analysis aims to shed light on the complexities of juvenile justice and highlights commonalities and differences in approaches across Eastern European countries.

### *Croatia*

In the Croatian legal system, in accordance with the provisions of the CRC (United Nations, 1989), any individual under the age of 18 is considered a child. When discussing the sphere of criminal law, the Croatian Criminal Code legislation addresses the application of criminal law concerning young individuals. According to its provisions, criminal legislation does not extend to children under the age of fourteen at the time an offense is committed.<sup>1</sup> This provision acknowledges the developmental stage and immaturity of children below this age, recognizing their incapacity for full criminal responsibility. Individuals aged 14 to 21 at the time of committing a criminal act fall under the provisions of criminal law unless otherwise stipulated by specific legislation.<sup>2</sup> This framework balances accountability with recognizing the developmental stage of young individuals and sets the MACR to the age of 14.

On that trace, Croatian criminal law distinguishes between the terms *child* and *juvenile*. For that matter, every individual below the age of 18 falls within the scope of the *child* as defined in the CRC, only within the framework of criminal protection for children. Therefore, we can say that under the Croatian criminal legislation child is considered every person under the age of 14. However, when we talk about the offenders of the criminal acts who, at the time of the omission of the crime, have not yet reached the age of 18, Croatian Law on Youth Courts uses the term *juvenile* and establishes the jurisdiction (Dragičević Prtenjača, Bezić, 2018, 2) in the trials

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<sup>1</sup> Article 7, paragraph 1 of the Croatian Criminal Code.

<sup>2</sup> Article 7, paragraph 2 of the Croatian Criminal Code.

on criminal matter. Juveniles who commit a criminal offense between the ages of 14 and 18 are divided into two groups: younger juveniles (14-16)<sup>3</sup> and older juveniles (16-18).<sup>4</sup> This categorization is significant regarding the types of sanctions that can be imposed on each offender.<sup>5</sup>

Even further, the Article 2 of the mentioned law prescribes the jurisdiction of the courts for youth in a case when a young adult is an individual who, at the time of committing an act, is between the ages of 18 and 21. From this provision, we can see that Croatian legislator decided to divide child offenders into two categories. As children under the age of 15 are not criminally liable, the first category encompasses individuals aged 15 to 18, while the second category pertains to what are commonly referred to as young adults, up to 21 years of age. This extends the application of the law to individuals who, according to international standards, are considered adults.

### *Serbia*

While Serbia is currently not a member state of the European Union, its legal system concerning juvenile offenders and the MACR will be analyzed as it falls within the scope of Eastern European countries. As per the Criminal Code of the Republic of Serbia, the *child* is defined as a person under the age of 14.<sup>6</sup> Therefore, taking into account the similarities resulting from years of shared social and legal frameworks, the age threshold for criminal responsibility and its approach to it closely resemble those of other former Yugoslavian countries (Marković, Spaić, 2022, p. 147). Furthermore, the distinction is made between individuals who have not yet reached the age of 18, referred to as *minor persons*<sup>7</sup> in a broader and more general sense, and another category including individuals between the ages of 14 and 18, who are referred to as *minors*.<sup>8</sup> On that note, Serbian Criminal Code states that criminal sanctions cannot be imposed on a person who was under 14 of age at the time the act was committed.<sup>9</sup> Taking into account the conditions that must be met

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<sup>3</sup> Article 5, paragraph 1 of the Law on Youth Courts.

<sup>4</sup> Article 5, paragraph 2 of the Law on Youth Courts.

<sup>5</sup> According to the Croatian legislation, juveniles who have reached the age of fourteen but have not yet reached the age of sixteen at the time of committing a criminal offense may be subject to educational measures and security measures, while older juveniles who have reached the age of sixteen but have not yet reached the age of eighteen at the time of committing a criminal offense may be subject to educational measures and security measures, and under the conditions provided by this Law, juvenile prison.

<sup>6</sup> Article 112, paragraph 8 of Criminal Code of Republic of Serbia.

<sup>7</sup> Article 112, paragraph 10 of the Criminal Code of Republic of Serbia.

<sup>8</sup> Article 112, paragraph 9 of the Criminal Code of Republic of Serbia.

<sup>9</sup> Article 4, paragraph 3 of the Criminal Code of Republic of Serbia.

for an act to be deemed criminal, including guilt in relation to the act,<sup>10</sup> Vuković observes that besides insanity, an individual may lack guilt due to inadequate maturity (Vuković, 2021, p. 132). As the result, criminal act is deemed as non-existent. Consequently, it can be concluded that individuals under the age of 14 are permanently excluded from criminal prosecution and any form of sanction. Contrarywise, for the group referred as *minors*, comprising those between the ages of 14 and 18, various criminal sanctions and educational measures may be implemented under the conditions prescribed by a special law.<sup>11</sup> Once more, the special Law on Juvenile Perpetrators and Criminal Protection of Juveniles reaffirms the age of criminal responsibility by excluding every individual who has not reached the age of 14 at the time of committing a crime from the provisions of this legislation.<sup>12</sup> Comparable to certain other countries in this region, Serbian legislation also distinguishes between younger juveniles, typically aged between 14 and 16 years,<sup>13</sup> and older juveniles, typically aged between 16 and 18 years.<sup>14</sup> Namely, individuals under the age of 14 are exempt from any responsibility for their actions, whereas those between 14 and 18 can be held accountable through a specialized procedure focused on protection and assistance, rather than punishment (Bačićanin, Hubić Nurković, 2022, p. 302). Furthermore, the law offers the opportunity for a young adult who committed a criminal offense as an adult (after turning 18), but was still under 21 years of age<sup>15</sup> at the time of the trial, to be adjudicated under the provisions of this law if it is foreseeable that educational measures will accomplish the intended outcome that would have been achieved through sentencing.<sup>16</sup> From this, it becomes evident that the legal system employs broad interpretations of juvenile offenders and leans towards safeguarding and advocating for young offenders.

### *Slovenia*

In 2020, Slovenia introduced the Liability of Minors for Criminal Offenses Act, but unfortunately, the legislation did not gather the necessary support.<sup>17</sup> While Slovenian criminal legislation does not explicitly outline the criteria for juvenile liabi-

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<sup>10</sup> Other elements are: involvement of human action, a committed act must be prescribed by law as a criminal offense and act must be illegal; Article 14 of the Criminal Code of Republic of Serbia.

<sup>11</sup> Article 4, paragraph 3 of the Criminal Code of Republic of Serbia.

<sup>12</sup> Article 2 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

<sup>13</sup> Article 3, paragraph 2 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

<sup>14</sup> Article 3, paragraph 3 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

<sup>15</sup> According to Marković and Spaić, 2022, p. 148, the purpose of such classification is to mitigate the penal policy according to these age categories for certain crimes.

<sup>16</sup> Article 41 of Law on Juvenile Perpetrators and Criminal Protection of Juveniles.

<sup>17</sup> See more in: <https://rm.coe.int/case-law-analysis-slo-moj-revised-final/1680adde86> [Online] (Accessed: 22 August 2024).

lity, the Slovenian Criminal Code does specify age limits for criminal responsibility. In the provisions regulating the age of criminal responsibility, the law uses the term *child*, while in other provisions concerning individuals in that age group, it employs the term *juvenile*. Furthermore, according to Slovenian Criminal Code law, individuals under the age of 14 are not deemed offenders for committing unlawful acts.<sup>18</sup> Similarly to the Croatian legal system, Slovenia distinguishes between younger juveniles (ages 14 to 16) and older juveniles (ages 16 to 18). This differentiation is crucial as it influences the potential penalties that may be imposed later on. The provisions are structured to emphasize the rehabilitation and successful reintegration of juvenile offenders, shifting the focus away from punitive measures. In addition to the mentioned categories, the law recognizes *young adults* as those who have committed a criminal offense as adults but have not yet reached the age of 21.<sup>19</sup> Considering the prioritization of the rehabilitative approach, Slovenian legislation extends beyond the legally established age of criminal responsibility, including the other specifics of juvenile liability, such as assessing the intellectual maturity, psychological characteristics, motivations for the offense, prior education, and the juvenile's environment and living conditions (Filipčič, 2004, p. 495).

### *Hungary*

In Hungary, Act C of 2012 on the Criminal Code<sup>20</sup> is the main legal document regulating the age of criminal responsibility. Section 16 of this act establishes the age of criminal responsibility at 14 as a general principle. Nevertheless, in contrast to previous regulations governing juvenile offenders, the new Criminal Code of 2012 lowered<sup>21</sup> the age of criminal responsibility for certain violent crimes to 12 years of age, opening the possibility for children between 12 and 14 to be held criminally responsible for specific offenses, including homicide,<sup>22</sup> voluntary manslaughter,<sup>23</sup> battery,<sup>24</sup> robbery<sup>25</sup> and plundering (Gönczöl, 2022, pp. 112-113). In light of this, it is important to emphasize that while the Committee on the Rights of the Child raised specific concerns about Hungary's significant breach of the UN Convention on the Rights of the Child through regulations that clash with UN standards on juvenile criminal justice, the Hungarian Ministry of Justice opposed saying they are not viola-

<sup>18</sup> Article 21 of the Criminal Code of Republic of Slovenia.

<sup>19</sup> Article 5, paragraph 3 of the Criminal Code of Republic of Slovenia.

<sup>20</sup> The act C of 2012 on the Criminal Code of Hungary.

<sup>21</sup> Section 160, subsections 1-2 of the Criminal Code of Hungary.

<sup>22</sup> Section 161 of the Criminal Code of Hungary.

<sup>23</sup> Section 164, subsection 8 of the Criminal Code of Hungary.

<sup>24</sup> Section 365, subsection 1-4 of the Criminal Code of Hungary

<sup>25</sup> Section 366, subsections 2-3 of the Criminal Code of Hungary.

ting the CRC's provisions arguing that the CRC does not specify the exact age of criminal responsibility but rather mandates State Parties to establish the limit (Balogh, 2014, pp. 259-273; Hollán, Venczel, 2021, pp. 381-398). Moreover, the age of 14 will stay as a general rule, whereas for the five crimes listed above, the presumption is that a child under the age of 14 lacks the capacity to comprehend they are committing a crime (Coufalová, 2018, p. 243). However, if the presumption gets rebutted any child above the age of 12 can face criminal prosecution for offenses from this exhaustive list, provided they possess the capacity to understand the nature and consequences of their actions. In addition to determined age, to be criminally responsible juvenile offenders must fulfill the condition of sanity and mental (moral) maturity.<sup>26</sup>

Like other countries in the region, the Hungarian legal system differentiates between various terms regarding children and their criminal liability within the realm of criminal law. Consequently, Hungary has enacted a separate Act on Child Protection,<sup>27</sup> which provides definitions of important terms. Accordingly, the Act on Child Protection defines a *minor* as a person under the age of 18.<sup>28</sup> Another term introduced by this legislation is *child*, which, according to criminal law, has a more restricted meaning. It refers to a person who has not yet reached the age of 14 and lacks the capacity to act or be responsible for their actions.<sup>29</sup> Furthermore, when we talk about *juveniles*, the law recognizes them as a separate category which includes individuals between the ages of 14 and 18.<sup>30</sup> Finally, Hungarian legislation recognizes the term *young adult* which includes every person who has not reached the age of majority and has not yet attained the age of 24 years.<sup>31</sup>

### Slovakia

Following the ratified CRC, Slovakia defines a *child* as an individual under the age of 18.<sup>32</sup> Furthermore, in the subsequent paragraph, Slovakian Criminal Code<sup>33</sup> provides a term *person close to the age of minors* describing it as someone who has reached the age of 18 but has not yet turned 21. In that context, similar to other countries in the region, Slovakia also establishes special circumstances for the exclusion of cri-

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<sup>26</sup> Act XXXI of 1997 on Child Protection.

<sup>27</sup> Article 5(a) of the Act XXXI of 1997 on Child Protection refers to the provisions of the Hungarian Civil Code which defines child as a person who has not yet reached the age of eighteen years.

<sup>28</sup> Article 5(a) of the Act XXXI of 1997 on Child Protection refers to the provisions of the Hungarian Civil Code which defines child as a person who has not yet reached the age of eighteen years.

<sup>29</sup> Section 16 of the Act C of 2012 on the Criminal Code of Hungary.

<sup>30</sup> Article 5(b) of the Act XXXI of 1997 on Child Protection.

<sup>31</sup> Article 5(c) of the Act XXXI of 1997 on Child Protection.

<sup>32</sup> Section 127, paragraph 1 of the Criminal Code of Slovakia.

<sup>33</sup> Criminal Code of Slovakia.

criminal liability. According to Article 22 of the Criminal Code of Slovakia, the age of criminal responsibility is set at 14 years old.<sup>34</sup> This means that any person who has not reached the age of 14 at the time of committing a criminal offense, can not be liable and, thus, prosecuted for it. Additionally, Slovak regulation provides one exception to the general rule whereas it puts the limit to the age of 15. In cases involving specific criminal acts like sexual abuse, the law specifies that individuals aged 15 or younger who are victims of sexual intercourse or other forms of sexual abuse will not be held criminally responsible for those acts.<sup>35</sup> This provision serves to enhance the protection of children as they can often be vulnerable to manipulation by adults regarding sexual behaviors (Gwoździewicz, 2015, p. 167). Furthermore, it places greater responsibility on adults emphasizing their obligation to act responsibly and ethically, particularly in their interactions with minors when it comes to matters of sexuality. In Slovakia, the criminal law system recognizes the term *juvenile* defining it as an offender under the age of 15, lacking adequate intellectual and moral development to comprehend the unlawfulness of their actions or to control their actions, and as such is not subject to criminal responsibility.<sup>36</sup> In that context, the age of an individual becomes relevant when the court needs to establish whether the child has the capacity to recognize the unlawfulness of their actions or to control their behavior regarding the criminal offense. If a person aged 14 or 15 commits a criminal offense, the court must determine this through an independent expert assessment. Nevertheless, such assessment is initiated by the court solely in cases where doubts arise regarding the juvenile's fulfillment of the necessary criteria for ascertaining culpability in committing a criminal offense.<sup>37</sup>

### *The Czech Republic*

The primary legal framework governing criminal law and penalties in the Czech Republic is provided by the Criminal Code.<sup>38</sup> Within the provisions of the mentioned legislation, a *child* is defined as a person under 18 years of age.<sup>39</sup> However, the Criminal Code's provisions defer to a separate law for matters concerning their criminal liability and penalties that could be imposed on juvenile offenders.<sup>40</sup> Act Concerning Youth Responsibility for Unlawful Acts and Judiciary in Suits of Youth

<sup>34</sup> Section 22 of Criminal Code of Slovakia.

<sup>35</sup> Section 22, paragraph 2 of the Criminal Code of Slovakia.

<sup>36</sup> Section 95 of Criminal Code of Slovakia.

<sup>37</sup> Study on the children's involvement in judicial proceedings, 2013 [Online] Available at: <https://data.europa.eu/euodp/repository/ec/dg-justi/criminal-justice/contextual-overviews/Slovakia.pdf>, p. 15 (Accessed: 23 August 2023).

<sup>38</sup> Criminal Code of the Czech Republic.

<sup>39</sup> Section 126 of the Criminal Code of the Czech Republic.

<sup>40</sup> Section 109 of the Criminal Code of the Czech Republic.

and Amendments to Some Acts<sup>41</sup> in Article 2 provides three different definitions. *Youth* is understood to include all children under the age of 15, as well as *juveniles*, who are defined as individuals who have completed the age of 15 but still have not yet attained the age of 18. Criminal responsibility commences at the age of 15, yet this responsibility is qualified by two additional conditions: mental capacity and attainment of intellectual and moral maturity (Coufalová, 2018, p. 240). Furthermore, an extra layer of protection for children's rights can be seen in the fact that this law allows for circumstances where a juvenile, who lacked the cognitive and ethical maturity to comprehend the danger of their actions at the time of committing an offense, shall not be held accountable under criminal law.<sup>42</sup> Instead, the law stipulates that procedures and measures outlined for children under 15 years old can be applied to those individuals.

### *Poland*

Under the Polish Penal Code any person referred to as *juvenile*, who commits a criminal act after the age of 17 shall be liable.<sup>43</sup> While the general rule in the Polish legal system sets the age of criminal responsibility at 17 years old, some provisions allow minors who have reached the age of 15 to be held responsible for specific criminal acts they have committed.<sup>44</sup> In that regard, the Penal Code stipulates the potential for minors aged 15 and above to be held accountable for certain crimes, including an attempt on the life of the President of the Republic of Poland,<sup>45</sup> homicide,<sup>46</sup> grievous bodily harm,<sup>47</sup> crime of causing a life-threatening event,<sup>48</sup> piracy,<sup>49</sup> disasters,<sup>50</sup> rape,<sup>51</sup> active assault,<sup>52</sup> taking a hostage<sup>53</sup> and armed robbery.<sup>54</sup> This determination is dependent upon the circumstances of the case, the offender's level of mental development, personal characteristics, and situation, particularly if prior

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<sup>41</sup> Act Concerning Youth Responsibility for Unlawful Acts and Justiciary in Suits of Youth and Amendments to Some Acts.

<sup>42</sup> Article 5, paragraph 1 of Act Concerning Youth Responsibility for Unlawful Acts and Justiciary in Suits of Youth and Amendments to Some Acts

<sup>43</sup> Article 10, paragraph 1 of Polish Penal Code.

<sup>44</sup> Article 10, paragraph 2 of the Polish Penal Code.

<sup>45</sup> Art 134 of the Polish Penal Code.

<sup>46</sup> Art 148, paragraph 1, 2 and 3 of the Polish Penal Code.

<sup>47</sup> Art 156, paragraph 1 and 3 of the Polish Penal Code.

<sup>48</sup> Art 163, paragraph 1 and 3 of the Polish Penal Code.

<sup>49</sup> Art 166 of the Polish Penal Code.

<sup>50</sup> Art 173, paragraph 1 and 2 of the Polish Penal Code.

<sup>51</sup> Art 197, paragraph 1, 3, 4 and 5 of the Polish Penal Code.

<sup>52</sup> Art 223, paragraph 2 of the Polish Penal Code.

<sup>53</sup> Art 252, paragraph 1 and 2 of the Polish Penal Code.

<sup>54</sup> Art 280 of the Polish Penal Code.



educational or corrective interventions have proven ineffective.<sup>55</sup> In that context, the Polish legislative body has chosen to incorporate an extra provision, designated as paragraph 2a of Article 10, which specifies that minors who commit homicide after turning 14 but before reaching 15 years of age are subjected to the same conditions. However, the same rationale as that for offenders above the age of 15 for specific criminal acts can be applied. This includes the importance of considering the circumstances of the case alongside the offender's stage of development, attributes, and personal circumstances (Klaus, Rzeplińska and Woźniakowska-Fajst, 2016, p. 796).

Considering the central focus of juvenile proceedings is the well-being of the child, the proceedings characterize the aim to educate and support juvenile offenders in managing their situations effectively (Bojarski, Kruk and Skretowicz, 2014, pp. 50-63). In this context, it is notable that the provision concerning juvenile offenders allows the court, if deemed suitable, to employ educational, therapeutic, or corrective measures specifically designed for young offenders rather than imposing penalties, if the individuals commit a crime between the ages of 17 and 18.<sup>56</sup>

Table 1

*Age of criminal responsibility*

Country	Age of criminal responsibility (juvenile criminal law must be applied)	Age at which juvenile can be subject to either juvenile or adult criminal law	Other requirements (e.g. moral maturity, intellectual maturity, psychological characteristics, living conditions) <sup>57</sup>
Croatia	14	18-21	no
Serbia	14	18-21	no
Slovenia	14	18-21	yes
Hungary	14 (12)	18	yes
Slovakia	14 (15)	18-21	yes
The Czech Republic	15	18	yes
Poland	17 (15)	18	yes

<sup>55</sup> Art 10, paragraph 2 of the Polish Penal Code.

<sup>56</sup> Article 10, paragraph 4 of the Polish Penal Code.

<sup>57</sup> It must be noted that without mental capacity, offenders (juvenile or adult) cannot be held accountable for their actions. However, it is worth mentioning that certain countries (indicated with a "yes" in this table) have specific provisions concerning juvenile offenders which require additional special criteria beyond simply being above the MACR.

The legal frameworks for juvenile justice in Eastern European countries exhibit both similarities and differences. Across all nations examined, there is a common acknowledgment of an age below which individuals are deemed incapable of full criminal responsibility, typically ranging from 14 to 17 years old. Moreover, each country distinguishes between juveniles and adults within their legal systems, with provisions often aimed at rehabilitation rather than punishment. However, differences emerge in the specific age thresholds for criminal responsibility and the categorization of offenders. Some countries delineate between younger and older juveniles, while others categorize offenders based on their capacity to understand the unlawfulness of their actions. Additionally, legal terminology varies, with terms like child, juvenile, or young adult having specific legal meanings in some jurisdictions, while others use broader terms like minor or youth. These variations reflect diverse legal traditions, societal norms, and legislative priorities within each country, underscoring the complexities of juvenile justice in the region.

The examination of legal frameworks across Croatia, Serbia, Slovenia, Hungary, Slovakia, Czech Republic, and Poland reveals both similarities and disparities in approaches to juvenile justice and the age of criminal responsibility within Eastern Europe. Despite variations in terminology and specific provisions, there is a shared emphasis on balancing accountability with the recognition of the developmental stage and immaturity of young offenders. These countries demonstrate a commitment to safeguarding the rights of juveniles while also promoting rehabilitation and reintegration into society. Understanding the diverse approaches taken by these nations allows policymakers and stakeholders to collaborate effectively in creating juvenile justice systems that are more equitable and efficient, with a focus on safeguarding the well-being and future prospects of young individuals involved in criminal legal proceedings.

## Challenges

In defining the age at which individuals bear criminal responsibility, numerous challenges arise, reflecting a complex interplay of legal, developmental, and societal factors. Presently, two prevailing trends exist regarding the minimum age of criminal responsibility. One trend advocates for lowering the age limit and favors stricter punishment (Sontheimer, 2001, pp. 89–91), while the other approach supports raising the threshold with focus on the child and its rights.<sup>58</sup> Notably, the challenge is

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<sup>58</sup> In this context, rehabilitative and restorative methodologies, including the implementation of teen or peer courts (e.g. the USA, Canada, Germany, Sweden) and specialized restorative justice programs designed for juvenile offenders who predominantly committed minor offenses, have already been

to establish a suitable age at which to set the boundary for criminal responsibility, balancing the need to provide children with the chance for rehabilitation through restorative methods due to their youth, while also avoiding setting the age limit too low. Within this framework, the Committee on the Rights of the Child highlights the importance of introducing diversion programs. These initiatives involve moving cases away from formal criminal proceedings towards alternative programs or activities, with the goal of avoiding stigmatization and the formation of a criminal record (General comment No. 24, 2019, para. 15-18).

Moreover, as there is currently no unified European or global agreement on the appropriate minimum age of criminal responsibility, signatory states of the CRC preserve the right to independently decide on this matter. However, allowing the discretion to potentially label pre-adolescent or early adolescent children as criminals could be viewed as an implicit acknowledgment of the belief that children have the cognitive capacity for criminal responsibility at an early developmental stage (Duncan, 2022, p. 628). Proponents of reducing the age of criminal liability often cite issues of non-compliance with international standards, but this argument is increasingly challenged as these standards generally leave the specific age limit to the discretion of each nation. This allows for significant variation and suggests that setting the MACR at a higher level is consistent with international norms. Despite the prevalent incorporation of a minimum age of criminal responsibility set at 14 years in the legal systems of most Central and Eastern European countries,<sup>59</sup> there are some recent examples of opposite opinions regarding the MACR. In some legal systems, the accelerated biological development of children in modern times is interpreted as if children nowadays mature earlier, leading to a perceived need for reducing the minimum age of criminal responsibility (Gönczöl, 2022, p. 267; Tanjug, 2019, [Online]). Comparable situation happened in Hungary a decade ago while passing a new Criminal Code. At the time Hungarian government opted to reduce the age of criminal responsibility for the selected, most violent crimes.<sup>60</sup> This decision faced loud critics, particularly from Hungarian UNICEF and the Ombudsman, which strongly objected to the proposed idea, seeing it as a serious violation of the CRC (UNICEF, 2012, [Online]; Child-friendly Justice from the Ombudsman's Perspective, 2012, [Online]). They highlighted the lack of an appropriate criminal legal framework, but also practical staff, capable of effectively addressing offenders of

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initiated. For more information on this topic consult in: Butts, 2000; Braithwaite, 2002.

<sup>59</sup> It must be mentioned that the Czech Republic and Poland have established different age limits for criminal responsibility, whereas Hungary and Slovakia have set lower thresholds for certain crimes outlined in their domestic laws.

<sup>60</sup> Hungary made a groundbreaking move by introducing this for the first time, given that the minimum age of criminal responsibility in Hungary had remained at 14 years old from 1961 to 2013.

such a young age. Nevertheless, this provision was adopted and the law was passed with the proposed changes.

Another very recent example from this region was initiated by the shocking murder in Serbia. In May of 2023, a thirteen-year-old boy killed nine children and one adult in a school shooting.<sup>61</sup> Given the age of criminal responsibility in Serbia is set at the age of 14, the young perpetrator is not subject to criminal liability under the law and therefore will not face prosecution. That event caused heated discussion in the sphere of both, public and legal discourse. In such occurrences that seriously disturb society, we often witness penal populism, where legislators, influenced by societal pressures, endorse significant changes as a response to the event. The idea of lowering the MACR is often a quick response to high-profile incidents that are widely criticized as a reactionary approach that does not address the root causes of youth crime. On that note, research also shows that juvenile crime is generally not increasing, suggesting that harsher measures may be unnecessary and ineffective (Bajović, 2024, p. 102; Ćopić, 2023, p. 241). However, there are several key reasons to oppose lowering the age of criminal responsibility in Serbia, such as compliance with international documents setting standards for acting in the best interests of the child, comparative solutions, and the mere purpose of criminal-legal responses to juvenile crime (Ćopić, 2023, p. 237). Considering this, lawmakers often attempt to justify the potential reduction of the limit of juvenile criminal responsibility threshold by citing statistical data. As illustrated by these two examples, both Hungary<sup>62</sup> and Serbia<sup>63</sup> do not show any increase in the commission of criminal acts by juvenile offenders. This further weakens the justification for reducing the MACR, as the lack of a rise in juvenile crime contradicts arguments that tougher measures are required to deter minors from engaging in crime. In that context, some critics argue that reducing the age limit would result in more children being drawn into the criminal justice system, intensifying the issue rather than resolving it (Marković, Spaić, 2022, p. 133). On the contrary, other scholars claim that by lowering the MACR and introducing the possibility of actually facing the criminal responsibility might serve as a deterrent, discouraging them from engaging in criminal behavior (Bajović, 2024, p. 97). Furthermore, according to some authors (Bajović, 2024; Đokić, 2016; Drakić, 2010) the argument that lowering the age of criminal responsibility is incompatible with international standards lacks substantial support. Although international fra-

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<sup>61</sup> Available at: <https://www.bbc.com/news/world-europe-65468404> [Online]. (Accessed 24 August 2024).

<sup>62</sup> Hungarian Central Statistics Office [Online]. Available at: [https://www.ksh.hu/stadat\\_files/iga/en/iga0004.html](https://www.ksh.hu/stadat_files/iga/en/iga0004.html) (Accessed: 24 August 2024).

<sup>63</sup> Statistical Office of the Republic of Serbia, 2023, [Online]. Available at: <https://publikacije.stat.gov.rs/G2023/PdfE/G20235703.pdf> (Accessed 24 August 2024).

networks, such as the UN Convention on the Rights of the Child, recommend establishing a minimum age, they leave the specific age limit to each country's discretion, resulting in considerable global variation. The diversity of age limits among different legal systems indicates that compliance with international standards does not necessarily require a higher threshold, underscoring the need for a careful approach to setting these limits.

Furthermore, while all examined countries have set the MACR there is a noticeable development regarding the determination of an upper age limit within juvenile justice systems. This phenomenon can be attributed to criminological acknowledgment of the transitional phases individuals undergo as they move from adolescence to adulthood, considering contemporary societal contexts (Dünkel, F et al., 2010, p. 46). Recent neuroscientific research presents compelling evidence indicating that complete maturity and psychosocial development occur only by the third decade of life (Weijers and Grisso, 2009, pp. 45–67). As explained in the previous chapter, a child's brain undergoes growth during adolescence, whereby the prefrontal cortex, responsible for regulating behavioral control, planning, and risk assessment, develops (Torma, 2021, pp. 170-171; Marković, Spaić, 2022, pp. 149-150). Due to this, adolescents do not have a physiological capability for rationality and decision-making. In connection with this, current research in developmental neuroscience and psychology indicates that it would be reasonable to raise the minimum age of criminal responsibility to 15 years (Marković and Spaić, 2022, p. 146). An additional point to consider is that due to the ongoing development of adolescent brains (Midson, 2012, p. 700), which are not yet fully matured like those of adults, the law should prioritize the protection rather than the punishment of children who commit crimes while still minors. Nevertheless, while it is necessary to establish an upper limit for criminal responsibility, the individualized development and growth of each child, and later adults, pose challenges not only for academic discourse but also for legislators.

Lastly, a significant concern is the lack of clear direction regarding the MACR. When determining the age threshold for criminal liability, lawmakers should consider not only the age at which a child commits a crime but also other factors such as whether they have the ability to actively and effectively participate in criminal proceedings. Moreover, the decisions of the European Court of Human Rights (hereinafter: ECtHR) which plays a crucial role in interpreting the European Convention on Human Rights and adjudicating cases involving alleged violations of human rights by member states, had a great impact on the question of effective participation. Namely, the minimum age of criminal responsibility is significant in shaping the legal landscape and policies related to juvenile justice in Europe. The ECtHR has not directly stipulated a specific minimum age for criminal responsibility, but it has addressed this issue several times

in its decisions. The so-called Bulger case<sup>64</sup> in which the applicant at the age of ten, together with another ten-year-old<sup>65</sup> boy abducted a two-year-old boy from a shopping area and later brutally assaulted him to death and abandoned his body on a railway line, where he was struck by a train. Despite being minors, the trial was conducted with adult formalities, though some modifications like shorter hearing times and breaks were made to accommodate their age. In both instances, juveniles were not tried in a special juvenile proceeding, but in accordance with the same rules that govern adult trials as that is permissible under British law. This means that while procedural adjustments were present, the overarching approach did not differ significantly from adult criminal trials. During the trial, there was intense media attention when measures were taken to protect the identities of the boys. The focal point of the prosecution was to establish criminal responsibility by presenting evidence indicating their understanding of right and wrong at the time of the crime. Both boys were finally convicted of murder and abduction. This case raised questions not only about the appropriate age for criminal responsibility but also about the treatment of juvenile defendants in serious criminal trials. Importantly, the trial and subsequent rulings highlighted that under British law, the determination of the minimum age for criminal responsibility falls within the scope of national legislatures, reflecting domestic policy choices rather than explicit requirements set by the ECtHR. In the relevant case, the ECtHR emphasized the importance of considering the age of a child, maturity level, and cognitive abilities when dealing with their involvement in legal proceedings.<sup>66</sup> The ECtHR concluded that attributing criminal responsibility to the applicants did not constitute inhuman or degrading treatment, thus not breaching Article 3. However, the violation of the right to a fair trial guaranteed under Article 6(1) was confirmed since the applicant, due to his young age, could not participate effectively in the process. The ECtHR's findings underscored that while procedural adaptations were made, these adjustments were insufficient to ensure meaningful and effective participation by the juvenile defendants. Additionally, several judges issued dissenting opinions strongly advocating that trying such young offenders in adult courts inevitably infringes upon their rights.<sup>67</sup> Furthermore, it was noted that the application of adult trial procedures, even with modifications, inherently limited the capacity of young defendants to engage fully and effectively in their defense. The ECtHR asserted in both instances that the 10-year threshold was not established at a low level in British law, but rather was

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<sup>64</sup> <https://www.independent.co.uk/news/uk/crime/james-bulger-murder-jon-venables-parole-b2446946.html>, [Online] (Accessed: 22 August 2024).

<sup>65</sup> A separate application to the ECtHR was submitted under the *Application no. 24888/94*.

<sup>66</sup> *T. v. The United Kingdom*, Application no. 24724/94, paragraph 29.

<sup>67</sup> *T. v. The United Kingdom*, Application no. 24724/94, pp. 41-60.

a matter for the legislature at the national level to determine. Moreover, in another case *S.C. v. The United Kingdom*<sup>68</sup> the violation of the applicant's right to a fair trial during criminal proceedings was examined. At the time of the trial, the applicant was 11 years old and had a low level of intellectual ability. Similarly to the previous case, the ECHR took the position that while holding an eleven-year-old criminally responsible is not inherently a breach of the Convention, it's crucial to consider the child's age, maturity level, and intellectual capacity.<sup>69</sup> The ECtHR emphasized that while children may not need to understand every legal detail, they should have a general understanding of the trial process and its implications, including potential penalties (General Comment No. 10, 2007, para. 46). This observation reinforced the idea that the procedural safeguards tailored for adults may be insufficient to address the specific needs and limitations of young defendants. Despite efforts to adapt the proceedings to the applicant's age, the ECtHR found a violation of Article 6 of the ECHR stating that he was unable to effectively participate in his trial. In that regard, the rulings of the ECtHR have influenced the Committee on the Rights of the Child which emphasizes the child's right to comprehend the charges, consequences, and penalties, enabling them to participate effectively in the trial and make informed decisions with the guidance of legal representation (General Comment No. 10, 2007, para. 46). Considering that these issues could have appeared in any other Member State, we can see that they stress the pressing need to advance the treatment of children in both judicial and non-judicial settings, emphasizing the best interests of the child is prioritized and that justice is administered effectively (Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2020, p. 38).

Lastly, taking into account not only the decisions of the ECtHR, but also the previously examined research on the cognitive and emotional development of adolescents, the question arises: at what age does a juvenile offender possess the necessary skills and capability to adequately participate in criminal proceeding before the court.

## Conclusion

The treatment of juvenile offenders throughout history reflects an evolving understanding of childhood, culpability, and societal responsibility. Over time, concepts like discernment emerged, emphasizing the important role of a juvenile's intellectual capacity when assessing criminal responsibility. This principle, incorporated into legal systems across the globe, aimed to ensure that young offenders were not merely punished for actions stemming from immaturity rather than malicious intent.

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<sup>68</sup> *S. C. v. The United Kingdom*, Application no. 60958/00.

<sup>69</sup> *S. C. v. The United Kingdom*, Application no. 60958/00, paragraph 28.

Certainly, addressing minors within the realm of criminal law poses a significant challenge, given that their involvement in criminal activities and the state's response to such involvement can profoundly impact their lives and future prospects (Šimić, Kazić, 2017, p. 43). The direction of juvenile justice demonstrates a gradual movement towards more compassionate and individualized approaches, recognizing that children are still developing and can be positively influenced through supportive interventions. While challenges persist, particularly in ensuring consistent implementation of juvenile rights and protections worldwide, the historical progression highlights a commitment to improving outcomes for young individuals in conflict with the law. Namely, establishing a distinct justice system for children acknowledges the importance of prioritizing the best interest of the child, leading to a significant shift in global approaches towards juveniles (Duncan, 2022, p. 628).

Furthermore, international standards concerning the administration of juvenile justice and the establishment of the MACR represent a significant step forward in safeguarding the rights and well-being of young individuals in conflict with the law. These standards prioritize the best interests of the child, recognizing their developmental differences and vulnerabilities. They advocate for rehabilitative approaches over punitive measures, emphasizing the importance of non-institutional treatment and alternative forms of care for juvenile offenders. On that note, research shows that in all Central and Eastern European countries, it is becoming evident that there is a greater emphasis on adhering to the principle of using imprisonment as an *ultima ratio* resort (Dünkel, 2016, p. 42).

The examination of legal frameworks across Croatia, Serbia, Slovenia, Hungary, Slovakia, the Czech Republic, and Poland highlights the complexities and nuances involved in addressing juvenile justice and setting the age of criminal responsibility within Central Eastern Europe. Even though the MACR is still a disputed question in the European Union (Dünkel, 2014, pp. 43-46), there is a common recognition of an age below which individuals are deemed incapable of full criminal responsibility, typically ranging from 14 to 17 years old. This acknowledgment reflects an understanding of the developmental stage and immaturity of young offenders, aligning with international standards and best practices in juvenile justice.

Moreover, all examined countries demonstrate a commitment to balancing accountability with rehabilitation and reintegration into society. This is evident in various legal provisions aimed at providing educational, therapeutic, or corrective measures tailored for young offenders, emphasizing their well-being and future prospects. Considering that international law on this topic does not provide a conclusive age limit, it is worth mentioning the European Network of Children's Ombudspersons which advocates that the minimum age be raised to 18 in every Member States with focus on their reeducation, reintegration and rehabilitation (Guidelines of the Com-



mittee of Ministers of the Council of Europe on child-friendly justice, 2010, para. 79). On that note, there are already several initiatives to raise the age of criminal responsibility (Amnesty International, 2022, [Online]). UNICEF's statement reflected a similar viewpoint, stressing that "lowering the age of criminal responsibility is against child rights." (UNICEF, 2019, [Online]).<sup>70</sup>

The examination of developmental changes during childhood and adolescence highlights the complexity of determining the appropriate age for assigning criminal responsibility to juvenile offenders. In that regard, developmental psychology underscores notable cognitive and intellectual disparities between adolescents and adults, particularly in the early teenage years. Therefore, establishing the appropriate age for assigning criminal responsibility to juvenile offenders requires a comprehensive understanding of cognitive, psychological, and neurodevelopmental factors. In light of these considerations, the legal community must continue to engage with research from developmental psychology, neuroscience and related fields to create policies and practices that prioritize the well-being and rehabilitation of juvenile offenders. Notably, international law outlines that a higher MACR does not imply a lenient attitude towards crime, but it signifies the importance of alternatives to introducing children into the criminal justice system (Duncan, 2022, p. 624).

By taking a holistic approach that integrates scientific evidence with legal principles, societies can develop more equitable and effective juvenile justice systems that align with the evolving understanding of child and adolescent development. Such a holistic approach views juveniles who have committed a crime not as part of the problem, but as part of the solution, advocating for preventive measures that require the involvement of not only lawyers but also sociologists and medical professionals (Marković and Spaić, 2022, p. 149). Ultimately, the goal must be to promote the well-being and future prospects of young individuals involved in criminal legal proceedings while ensuring public safety and upholding justice.

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<sup>70</sup> This opinion was created when the Congress of the Philippines indicated its intention to decrease the MACR from 15 to 9 to 12 years old.

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## MINIMALNA STAROSNA GRANICA KRIVIČNE ODGOVORNOSTI U ZEMLJAMA SREDNJE I ISTOČNE EVROPE

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U članku se ispituju pravni okviri maloletničkog pravosuđa u Hrvatskoj, Srbiji, Sloveniji, Mađarskoj, Slovačkoj, Češkoj Republici i Poljskoj, sa fokusom na minimalnu starosnu granicu krivične odgovornosti (MACR), kategorizaciju maloletnih prestupnika i primenljive pravne mere. Iako se u odabranim slučajevima uočavaju sličnosti u fokusu na rehabilitaciju i razvojne aspekte, postoje značajne razlike u starosnim granicama i tretmanu maloletnih prestupnika. MACR ostaje aktuelno pitanje oblikovano pravnim, razvojnim i društvenim faktorima. Dva glavna trenda se izdvajaju: jedan zagovara snižavanje starosne granice i strože kazne, dok drugi stavlja akcenat na prava dece i rehabilitaciju. Međunarodni standardi, kao što su oni iz Komiteta za prava deteta, promovišu diverzione programe kako bi se izbegla stigmatizacija, ali ne postoji globalni konsenzus o MACR-u. Pritisak za snižavanje MACR-a, primećen u Mađarskoj i Srbiji, suprotstavlja se neurološkim nalazima da potpuna zrelost nastupa tek u trećoj deceniji života. Holistički pristup koji integriše pravne, psihološke i razvojne perspektive neophodan je kako bi se postigla ravnoteža između odgovornosti, rehabilitacije i zaštite dečjih prava u sistemima maloletničkog pravosuđa.

**KLJUČNE REČI:** maloletničko pravosuđe, minimalna starosna granica krivične odgovornosti, centralna evropa, prava dece.

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