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# Minimum Age of Criminal Responsibility as Part of Criminal Policies

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## Abstract

The increase in peer violence and juvenile delinquency from year to year has kept the question of minimum age of criminal responsibility open around the world. States, not only in different parts of the world, but also within smaller regions territorially connecting them, have been developing various criminal legal responses to this question. Reasons behind such a variety lie in circumstances of economic, social, cultural, religious, political, and even political nature. In theory and practice, two opposing concepts can be distinguished – the so-called repressive and holistic concepts. Advocates of the first concept believe that a strict criminal policy is the safest way toward decreasing criminality among children and minors. On the other side, supporters of the holistic approach believe children in early age cannot understand the meaning of their actions, that is why lowering the age of criminal responsibility would introduce children to the criminal legal system too early when society could take timely measures that would prevent children from adopting a criminal pattern of behaviour. Using the comparative law method, as well as other qualitative and quantitative methods necessary for a productive analysis and deduction of valid conclusions, in this paper we aim to point up key aspects of the differences between the repressive and holistic approach to determining the minimum age of criminal responsibility. The final result is a firmly established belief that it is necessary to give advantage to the approach that does not see the children and minors drawn into the criminal milieu as part of the problem but as part of the solution.

*Keywords:* juvenile delinquency, peer violence, MACR, penal policy, criminal policy

## Minimum Age of Criminal Responsibility as Part of Criminal Policies

One of the most important issues for the policy of combating juvenile delinquency is the age at which a child can be considered criminally responsible for acts defined as criminal-by-criminal legislation. There is no unified position on this issue in the world, and often not even within a single country. It is certain that economic, social, cultural, religious, political, and sometimes historical circumstances greatly influence it. Therefore, the lower limit of criminal responsibility is regulated differently from country to country, whereby it is noticeable that European countries lean towards a higher age. With a noticeable increase in family violence (Bjelajac & Merdović, 2019), as well as peer violence in recent years, especially considering the emergence of new forms, such as digital violence (Bjelajac & Filipović, 2021), the number of children is not only increasing as victims but also as perpetrators of criminal acts. That's why, from time to time, thoughts about lowering the minimum age for criminal responsibility appear in the public eye (Shigong, 2020; Tanjug, 2019; UNICEF, 2019; Pill Damm et al., 2017). Such thoughts are supported by the fact that violent behaviour among children is increasingly taking on the characteristics of very serious crimes and that it is, therefore, necessary to lower the age limit of criminal responsibility. Those views are defended with claims that the increasing crime rate among younger and younger perpetrators can only be suppressed by a harsher state reaction. Opponents of such an approach point out that by lowering the age limit, a greater number of children are introduced into the criminal justice system, which only worsens the problem. Accordingly, in many countries, there are numerous initiatives to raise the age of criminal responsibility for children to a higher level than the existing one (Kemp, 2022; Amnesty International, 2022; National Juvenile Defender Center [NJDC], 2020). Through a comparative analysis of applied solutions in different criminal justice systems, we highlight the advantages and disadvantages of a holistic and repressive approach to this problem, to arrive at a valid conclusion on which concept of control of youth behavioural disorders is more

appropriate considering the characteristics of that age.

In the first part of the paper, the approaches of different countries by continents, to this issue are analysed to get a more vivid picture of the diversity of approaches according to the specifics of the economic, political, social and cultural environment. In the following, the arguments of the repressive and holistic approaches are compared, to illuminate the greater justification of one or the other. In the final part, before drawing the conclusion, an overview is given of the situation in Serbia in relation to the region, and the reality of the need to improve juvenile justice in that segment, in order to harmonize it with the standards of the European Union.

### **Minimum Age of Criminal Responsibility Around the World**

Already the very fact that the picture of a minimum age of criminal responsibility (MACR) around the world is diverse tells us about different approaches to this issue. For a better insight into this diversity, we will show a brief cross-section of the current situation (June 2022) separately for each continent, according to data from the Child Rights Information Network [CIRN] – international research, policy and advocacy organisation working to advance children’s rights. This approach is justified by the fact that cultural differences have a significant impact on the development of criminal policy in a certain state, as well as in a broader region.

#### ***MACR in the Americas***

Within the most part of the North American continent, the minimum age of criminal responsibility is very low – from the age of a baby to 10 years of age. This is characteristic of most states within the United States, as well as independent countries: Antigua and Barbuda, The Bahamas, Belize, Saint Vincent and the Grenadines, Saint Kitts and Nevis, as well as Trinidad and Tobago. In other countries of this continent, MACR is established between 12 and 18 years of age, and it is most often at the endpoints of this range.

According to the National Juvenile Defender Centre in Washington,

DC, statutes of only 21 of 50 states and one of five inhabited territories of the United States of America have prescribed MACR (NJDC, 2020, January 20). The lower limit of criminal responsibility ranges from 6 (North Carolina) to 12 years of age (California and Massachusetts). Most often (14 states and one territory) the lower limit of criminal responsibility is 10 years. Other US territorial units (29 states, the District of Columbia, as well as four inhabited territories) have a more rigorous attitude since their criminal legislature does not prescribe the MACR. It means that theoretically even a baby can be criminally processed. However, it is quite clear that both, non-prescribing MACR and so low age limit, are subjects of the human rights organizations' critiques, which we will be discussed later.

Outside the USA, the lowest MACR is provided in the Caribbean. Seven-year-old children can be held criminally liable in Trinidad and Tobago as well as in Grenada. In Trinidad and Tobago, this is not regulated by the national legislation but is the result of case law. In the same way, the standard on the criminal responsibility of a child between 10 and 14 years of age has been set. Namely, there is no presumption of criminal responsibility at that age, but it must be proven from the circumstances before and during the criminal act itself (the child's mental state and awareness of wrongdoing), as well as afterwards (the child's behaviour) (Government of Trinidad and Tobago, 2004, para 248). Unlike Trinidad and Tobago, the Criminal Code sets seven years as the minimum age of criminal responsibility in Grenada. Life imprisonment for children between the ages of 13 and 18 cannot be imposed in Grenada. Eight-year-old children can be held criminally liable in Antigua and Barbuda, Saint Vincent and the Grenadines, as well as in Saint Kitts and Nevis. In Belize, a child cannot be held criminally liable if he/she is under the age of 9, and for a criminal responsibility between the ages of 9 and 12, the child's maturity to understand the nature and consequences of its action is assessed. In the Bahamas, it is determined in the same way whether there are grounds for criminal responsibility of children between the ages of 10 and 12, while children under the age of 10 cannot be held criminally responsible. A similar

principle applies to Barbados for people older than 11.

Various approaches are represented in the rest of the continent, but children in those countries cannot be criminally responsible under the age of 12 years – Dominica, Jamaica, Canada, Panama and Saint Lucia. In the Dominican Republic, Guatemala, Haiti, and Nicaragua MACR are 13. On the other hand, the MACR is 18 in El Salvador, Costa Rica, and Honduras. There are some circumstances when children between the ages of 13 and 18 years can be criminally responsible, but they cannot be imprisoned. Guatemala's Constitution (National Constituent Assembly, 1985/1993, Art. 20) provides engagement of specialized institutions and personnel if the minors violate a penal law and do not allow their imprisonment in adult penitentiaries. In Canada, one cannot be criminally responsible before turning 12 years old. Like in the United States' case, states within Mexico have the discretion to determine the minimum age of criminal responsibility. Article 18 of the Mexican Constitution limits this right to a range of 12 to 18 years, while children under the age of 12 may be subject to certain socialization measures. Cuba is especially interesting because a socialist model of social organization is still present, with a specific approach to the education of children and youth. The Criminal Code of this country stipulates that the lower limit of criminal responsibility is 16 years of age at the time of the commission of the crime (Asamblea Nacional del Poder Popular, 2020, Art. 16) and contemplates multiple provisions for differentiated treatment for those between 16 and 18 (Art. 17). Certain mitigations of punishments are prescribed for younger categories of perpetrators of criminal acts.

The situation with MACR is much simpler in South America. There is no country in which criminal responsibility can be attributed to someone under the age of 10. Criminal liability for this age (10 years) is prescribed only in Guyana and Suriname. In Venezuela, when they reach the age of 12, children are subject to punishment for crimes, including imprisonment. MACR in Paraguay is 14, but a child between the ages of 14 and 18 can be held criminally liable only if it is determined that he or she is mature enough to understand the essence of the act and the consequences. In Argentina, a child cannot be

criminally responsible between the ages of 16 and 18. There is a limitation for these ages because someone can be held criminally responsible only if he or she commits a criminal offence punishable by imprisonment for 2 years or more. In Bolivia, MACR is identical, and children between the ages of 12 and 16 can be subjected to social and educational measures, which are regulated by a special law. In other South American countries (Brazil, Chile, Ecuador, Peru and Uruguay), no one can be held criminally liable if he or she is under 18 years of age. Special laws regulating the responsibility of children and adolescents for illegal acts prescribe appropriate social and educational measures for ages between 12 (Uruguay – 13) and 18 years of age (CRIN, n.d.).

### ***MACR in Australia and Oceania***

In all Australian states and territories, children under the age of 10 cannot be held criminally responsible, while for the age between 10 and 14 years the prosecution may conduct a procedure to determine the child's ability to understand the essence and consequences of his or her act, as a precondition for the child's criminal responsibility. A similar principle has applied in most countries of Oceania – Fiji, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Tuvalu and Vanuatu. There are some differences in New Zealand since according to the Crimes Act 1961 younger than 18 years can be held criminally responsible only for the most serious crimes (Sections 21(1 and 2) and 272). Thus, children aged 10 and 11 years can be criminally responsible for murder or manslaughter, while children aged 12 and 13 can be prosecuted for “offences for which the maximum penalty is or includes imprisonment for life or where the maximum penalty is 10 years’ imprisonment or more” (CRIN, n.d.). In Samoa, children aged between 10 and 12 years can be held criminally liable if they had the capacity to know that their criminal behaviour had been amoral, or a violation of the law. According to Federal law of the Federated States of Micronesia, there is no lower age limit for the sentence to confinement, but a child cannot be prosecuted as

an adult under the age of 16. As for individual states within this federation, differences exist in Chuuk State Law, which allows for the possibility of challenging the decision that children between the ages of 10 and 14 cannot be criminally liable (CRIN, n.d.). The largest deviations in the direction of lower MACR exist in the Solomon Islands and Tonga. The criminal legislation of the Solomon Islands stipulates that the lower limit of criminal responsibility is the age of 8, whereby in the case of it is about the ages between 8 and 12, the ability of a child to understand the act he has committed is determined. When it comes to Tonga, the same principle applies, except that the lower limit has been lowered to the age of seven.

### ***MACR in Africa***

Africa consists of 56 independent states, so explaining how the lower limit of criminal responsibility is determined in each of them would exceed the goal and projected scope of this work. Therefore, we will point out the most specific examples, according to the data at the Child Rights International Network disposal (CRIN, n.d.). In most countries, MACR is linked to the age between 12 and 14, but there are also a significant number of countries where the age limit is lower than 12, with a few countries raising the criminal responsibility age limit to more than 14. A child cannot be held criminally responsible at the age of under 7 (the existence of criminal responsibility at a certain age is conditioned by the assessment of the child's ability to understand the essence and significance of the law violation) in Malawi (7–12), Mauritania, Namibia (7–14), Nigeria, Seychelles (7–12), Sudan, Swaziland (7–14), United Republic of Tanzania (7–12), and Zimbabwe (7–14). MACR is 8 in Kenya (8–12) and Zambia (8–12), while children in Ethiopia cannot be criminally responsible at the age below 9. Children under the age of 10 cannot be held criminally liable in Cameroon, Cote d'Ivoire, Guinea, Lesotho, and South Africa. Additionally, in some of these countries, boys in age under 12 years cannot be prosecuted for sexual offences because of a presumption that they are not physically capable of sexual intercourse – in Malawi, Seychelles, and Zimbabwe. However,

when it comes to Zimbabwe, this presumed physical incapability may be challenged in court. MACR is higher than 14 in only six countries, as follows: 15 – Burundi; 16 – Cape Verde, Equatorial Guinea, Guinea-Bissau, Liberia, and Sao Tome and Principe.

### ***MACR in Asia***

Asia is the most populous continent in the world. The oldest cultures in the history of the world had developed on this continent, so it is quite logical that the tradition is most present in the countries of that area. The most conspicuous mixture of the old and the new is on this continent, which is also reflected in the diversity of legal systems. Sharia law is applied in many countries, and this has also an impact on the establishment of a minimum age of criminal responsibility. According to Sharia rules, a child can be held criminally liable when reaching puberty. In the Islamic Republic of Iran, this is a basic rule applied in judicial practice. At the same time, there is a noticeable inequality in the treatment of male and female children, because it is considered that boys reach maturity at 15 lunar years (14 years and 7 months), while for girls it is the age of 9 lunar years (8 years and 9 months). In the United Arab Emirates, Sharia law takes precedence, but there is also a secular regulation under which a child under the age of seven cannot be held criminally liable. The same principle is in force in Pakistan, and according to secular law, the lower limit is also seven years, but at the age of 7–12 determining the child's ability to understand the circumstances and consequences of his actions is necessary. This applies as well to Brunei Darussalam, India, Jordan, Kuwait, Lebanon, Mongolia, Qatar, Singapore, and Thailand (the age of checking maturity is 7–14). Next, the MACR in Indonesia is seven, while it is nine in Bangladesh, Iraq and Oman. Children under 10 can be criminally responsible in Bhutan, Hong Kong Special Autonomous Region within China, Nepal (10–13) and Syria, as well as in Malaysia, where sharia rules are also applicable. The MACR is 12 in only five countries – Afghanistan, Israel, Palestine, Saudi Arabia, and Sri Lanka (12–14). Great progress in the holistic direction has

been made in other Asian countries. Thus, for the most serious crimes, a child at the age of 14 can be held criminally liable in Cambodia, Japan, Kazakhstan, the Democratic People's Republic of Korea, the Republic of Korea, Kyrgyzstan, Tajikistan, Turkmenistan, Viet Nam, and Uzbekistan. For minor crimes, in these countries, the MACR is 16, while this age limit is unconditional in Timor-Leste. Criminal responsibility can be attributed between the ages of 15 and 18 in Bahrain, the People's Democratic Republic of Laos, Maldives, as well as the Philippines (CRIN, n.d.).

### ***MACR in Europe***

The largest number of countries in Europe is gathered in the European Union (EU), where some standards are established on many legal issues, especially in the field of human rights, which are binding on all member states. However, criminal law is not codified within the EU, so there are different views on the minimum age of criminal responsibility. The United Kingdom withdrew from the EU, but even before it withdrew, a standard was established there that largely deviates from the demands of human rights defenders within the EU regarding the decriminalization of children. MACR in the UK is 10, except for Scotland, where it is 12. In Switzerland, which is not among the EU members, children the age of 10 or older can be held criminally responsible. In Ireland, a child also can be held criminally liable at the age of 10, but for murder manslaughter and rape, while MACR for other crimes is 12. The age of 12 is the lower limit for criminal responsibility in Andorra, Belgium, Hungary (14 for less serious crimes), Netherlands, San Marino, and Turkey (a child between the ages of 12 and 14 can be held criminally liable only if it is determined that he or she is mature enough to understand the essence of the act and the consequences). Monaco is the only country where MACR is 13. The largest number of countries (26, whereby 12 of them are not members of the EU) determined the age of 14 as the lower limit of criminal responsibility. However, in the case of some of those countries, there are certain specifics. Regardless of the severity of the crime, this standard is

applied in Croatia, Cyprus, Estonia, Germany (14–18), Italy (14–17), Latvia, Malta, Romania (14–16), Slovakia (15 for sexual abuse), Slovenia, Spain, as well as in non-members of the EU – Bosnia and Herzegovina, Georgia, Liechtenstein, Montenegro, North Macedonia, and Serbia. Some countries have a general MACR of 16, except for serious crimes for which children the age of 14 or older can be held criminally responsible – Armenia, Azerbaijan, Belarus, Lithuania, Moldova, Russia, and Ukraine. The age of 14 is the lower limit for attributing criminal responsibility in Albania. On the other hand, MACR in Hungary is 14. Still, children in the age of 12 can be held liable for very serious crimes (homicide, voluntary manslaughter, battery, robbery and plundering), previously undergone checking the capability for understanding the importance of the law violation and consequences (CRIN, n.d.). Other countries have a more tolerant approach. Thus, the MACR is 15 in Denmark, Finland (15–18), Greece (educational and therapeutic measures are carried out at a younger age), Iceland, Norway and Sweden; 16 in Portugal; 17 in Poland (15 for the most serious crimes); 18 in Luxembourg (16 for the most serious crimes). The most complex situation is in France, where there is no MACR in general, but it is possible that children aged 13 to 18 years can be prosecuted for crimes, while children aged 16 to 18 can even be undergone sentences for adults (CRIN, n.d.).

### **Holistic vs. Repressive Approach in a Global Context**

In the previous part of the paper, we have seen that there are great differences in the states' attitudes towards the criminal responsibility of children – from those who consider that even a baby can be criminally responsible, to those who take the position that only adults can be held criminally liable. The age of 12 years as the minimum age of criminal responsibility is the median (an equal number of countries have MACR on both sides of this age), so discussions about the advantages and disadvantages of a holistic and repressive approach to this problem most often take that age as a benchmark.

The very fact of the number of countries with a low age limit of criminal

responsibility is an indicator of how much a repressive approach is present in the world. The number of states in which MACR is under 12 is equal to the number of states that have set a minimum age of criminal responsibility at 12 and over. At the same time, supporters of lowering that age limit declare more often, so a repressive approach prevails in the world. This is the approach that takes a view that only a strict penal policy toward young delinquents can deter young people from committing crimes. This is often supported by statistics that show that the number of juvenile offenders is growing, and these data are usually presented when an extreme case related to juvenile criminality occurs. Thus, a tragic event in Canada in which a ten-year-old boy beat a six-year-old on the street and caused his death triggered an avalanche of demands that the minimum limit of criminal responsibility be lowered from 12 to 10 years, and even lower. A boy named Derek, who violently caused the death of another child, was previously known to both the police and social services, and he was involved in the child protection services program. The ineffectiveness of the measures taken was the main argument of those who demanded a more repressive attitude towards the criminal responsibility of children. This argument is further strengthened by the fact that due to the impossibility of initiating criminal proceedings against a child at a certain age, the crime remains unpunished, and in the case of property crimes, a person who suffered damage by a criminal act cannot be indemnified because a child is not subject to criminal responsibility. However, accepting a repressive approach just because some measure was ineffective in a particular case would be to walk the path of least resistance. In a specific case in Canada, it was found that the agency in charge of caring for the boy Derek, the Yorkton Tribal Council Child and Family Services, went through a long history of problems with him not seriously enough, including fetal alcohol syndrome, which he had. The boy is described as a pleasant child, cheerful, who likes to play with other children. However, he came from a troubled family, which did not take care of him, giving him a bad pattern of behaviour. The reports from the school were not adequately responded to, even in the extreme case when he with another boy broke into someone's house and killed a pregnant dog. If it had been reacted at

that moment, the boy who was killed later would probably still be alive today, and Derek would have been given the opportunity to fit into social life. Further analysis led to the conclusion that the relevant Ministry did not exercise adequate supervision over the work of that agency (CBC News, 2014). If we take family circumstances, the omissions of the agency in charge of social care for the boy, as well as the relevant ministry, into account we cannot avoid the conclusion that the problem is actually in adults, and not in children. This tells us that by lowering the age limit of criminal responsibility, we are expanding the limit of abolishing adults, who are actually responsible for the criminal behaviour of children. At the same time, a larger number of children are being introduced into the criminal justice system. At the other end of the planet, in Australia, in one of many similar cases, police arrested a thirteen-year-old boy on charges of stealing a \$ 2.40 match. The arrest was made in the school classroom, and the boy spent three days in detention, from where he was released on bail. Eight months later, the prosecution dropped out due to a lack of evidence. The boy did not go to school for the next seven months (Victoria Legal Aid) due to shame and fear. What society has gained from such a repressive approach? It probably lost a future loyal citizen, and this child was only collateral damage in the children's treatment as criminals. Every year in Australia, about 600 children under the age of 14 are imprisoned, and court records show that most of them are in custody before being found guilty of any crime (Victoria Legal Aid). Most of them are Aboriginal children from the Torres Strait Islands, i.e., children from a poor environment, or from disturbed family backgrounds. Organizations that fight against this approach point out that timely intervention and support for these children would prevent the adoption of permanent patterns of misbehaviour.

A holistic view of the problem of juvenile delinquency, in general, requires looking at juveniles as part of the solution, not the problem. This implies the action of all competent institutions, bodies, and even legislation, in a way that enables the most painless reintegration of minors into society. The goal of this approach is through educational activities to prevent the juvenile from committing criminal acts. With the engagement of experts of different profiles from the community, these educational actions are carried out not only in

the family but also in the social environment in which the minor lives, primarily in school. These include developing communication within the family and peer group, developing various skills in minors (sports, art, etc.) that will fill his free time, enrich the meaning of life and separate him from the criminogenic environment, as well as developing the educational segment of the personality of minors. In the function of these actions, legal solutions are also aimed at re-education of juveniles of delinquent behaviour by special measures, as well as at their sanctioning in serious cases. It is clear from this that a holistic approach advocates determining the older age of the juvenile as MACR. What are the arguments of the holistic approach proponents?

In the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), the starting point is reaching emotional, mental, and intellectual maturity (1985, Rule 4.1). As we have seen in many countries, this condition usually stands out for a certain age, such as the one in Germany:

A youth shall bear criminal liability if, at the time of the act, he has reached a level of moral and intellectual maturity sufficient to enable him to understand the wrongfulness of the act and to conduct himself in accordance with such understanding (Jugendgerichtsgesetz, 1974, Section 3).

The general attitude of the UNICEF is that "lowering the age of criminal responsibility is against child rights" (UNICEF, 2019). This position was emphasized on the occasion of the expressed intention in the Congress of the Philippines to lower the MACR of 15 to the age of 9–12. The attempt was called an act of violence against children. On that occasion, it is emphasized that children are victims of adult conflict, poverty, and exploitation and that it is necessary to protect them from exposure to violence and crimes, and not to punish them. According to the same source, "scientific studies show that brain function reaches maturity only at around 16 years old, affecting children's reasoning and impulse control". On that occasion, it justifiably pointed out

the paradox that the law does not allow marriage before the age of 18, and at the same time prescribes a much lower age limit for criminal responsibility. When you look at the overall picture of the set standards in each of the independent states, it can be seen at first glance that they are influenced by historical, social, religious, and cultural differences. Thus, the International Committee on the Rights of the Child has noted that even 34 countries adopted MACR of 7 years from English common law. As an example of religious influence, we can cite states in which Sharia law is in force, so there are two minimum ages of criminal responsibility – the one prescribed by secular law, and the one determined in accordance with Sharia law. There is considerable agreement among Muslim jurists “that the criminal responsibility of a child begins at the age of seven years and continues to be treated as a child until he attains puberty”, so the punishment imposed must be moderate as well (Mousavi & Nordin, 2012, p. 5).

There is no unique MACR in the world around which spears are broken. It is simply the result of the legislator's will. The UN Convention on the Rights of the Child requires signatory states to “determine the minimum age below which children cannot be considered capable of violating criminal law”, without imposing a certain age (1989, Art. 40, para 3(a)). However, the same convention prohibits the exposure of a child to torture, inhuman or degrading treatment or punishment, and emphasizes in particular that the death penalty and life imprisonment without the possibility of release may not be imposed on persons under 18 years of age (1989, Art. 37, para 1(a)). The International Committee on the Rights of the Child is empowered to monitor respecting this Convention, and States Parties are required to report on that, firstly two years after ratification and every five years thereafter. This committee has repeatedly criticized countries whose MACR is 10 years or less. Proponents of a holistic approach insist on considering the age of the child and the desire to improve his reintegration and give him a constructive role in society. Each country individually they are always committed to raising the statutory MACR, regardless of whether it is about the age of six or 12 years. Modern developmental

neuroscience and psychology provide evidence that it would be reasonable to raise MACR to 15 years of age. This opinion is based on the fact that the child's brain has a special phase of development during adolescence, and only in this period does the prefrontal cortex develop, which regulates behavioural control, planning, and risk assessment. In other words, adolescents do not have a physiological basis for rationality and decision-making, unlike the centre associated with seeking sensations and rewards, which is why adolescents are impulsive and subordinate their behaviour to potential rewards (Victoria Legal Aid). Thus, it is clear that the child's inability to understand the significance of his actions at a certain age cannot be interpreted as incompetence, in the way the law defines it. The fact is that excluding the possibility that a child at a certain age can be held criminally liable implies the child's inability to bear the guilt, but this is not about incompetence but about their absolute inability of bearing guilt that is defined completely objectively and is based solely on the age of the perpetrator (Škulić, 2010, p. 202).

### ***Circumstances and Tendencies in Serbia***

The cited examples from Canada, Australia, or the Philippines can be found in every country in the world, as well as similar reactions from the public and some lawyers. This is especially present in countries where there is an increase in juvenile delinquency, or only in its individual manifestations, such as peer violence. Reading the media in Serbia it is created a perception of an increase in juvenile criminality in recent years, but it is actually about an increase in peer violence in its broader sense. Due to the way of life, with numerous movement restrictions and reduced social activities during the COVID-19 pandemic, it seems in this case justified to neglect statistical data on the trend of juvenile crime in 2020 and 2021. Comparing the official data on the number of filed criminal charges in the period from 2015 to 2019, there is an increase in juvenile criminality in 2019 by 6% compared to 2018 (SBS, 2020), but it is still smaller than in the first three years of these five years. Also, the participation of juveniles in the total number of crimes is only 3.13%, which is less than

in some previous years, but it is still not a reason for satisfaction because it coincides with the participation of juveniles in the total population of the Republic of Serbia. (Ignjatović, 2014, p. 177). What coincides with the mentioned media perception is the increase in the number of criminal charges for crimes against life and body, as well as against the freedoms and rights of man and citizen. These data refer to the age of 14 to 18 years. The Criminal Code of the Republic of Serbia stipulates those criminal sanctions cannot be imposed on children, and on that occasion, the child is defined by criminal law as a person under the age of fourteen (Narodna skupština, 2005/2019, Art. 4(3) & Art. 112 (9)). The Law on Juvenile Offenders and Criminal Protection of Juveniles provides a more precise definition, prescribing those criminal sanctions may not be imposed, or other measures applied to a person who was not fourteen years old at the time of the commission of the criminal offence (2005, Art. 2). This is significant due to a possible misinterpretation that the legal restriction regarding the imposition of criminal sanctions does not actually mean a ban to declare a child under the age of 14 to be held criminally responsible, which would further give the injured party the right to seek compensation in civil litigation (Bajović, 2017, p. 220). At this point, we conditionally use the term criminal responsibility when we talk about Serbia, because that term has been removed from the valid Criminal Code. In order for a criminal offence to exist, the court must establish the existence of all its obligatory elements determined by the Criminal Code, so that in the absence of guilt, there is no criminal offence (Škulić, 2010, p. 202). In this context, the term minimum age of criminal responsibility (MACR) is also applicable to Serbia, because it explains what is discussed in this paper. As for the region, in other countries that emerged from the disintegration of Yugoslavia, MACR is also 14, and having in mind other similarities arising from decades of sharing the same social and legal environment, the attitude towards this issue is very similar.

The previously mentioned data on the increase of juvenile criminality of a violent character is worrying because it speaks of an increase in aggressivity at that age. What's worse, children between the ages of 10 and 12 are increasingly

making so-called clans for abusing their peers at school, which is why advocates of a tougher course towards juvenile criminality are appearing, including lowering the age limit for imposing criminal sanctions. Proponents of a holistic approach are especially concerned that police officials are joining the demands for lowering the age limit for imposing a criminal sanction in Serbia to 12 years (Tanjug, 2019). In Serbia, a holistic approach is visible in the Law on Juvenile Offenders and Criminal Protection of Juveniles, by classifying juveniles into younger juveniles (14–16 years of age) and older juveniles (16–18 years of age) (2005, Art. 3). Also, adults who turned 18 at the time of the crime and did not turn 21 at the time of the trial were classified as younger adults and the court also can apply some of the educational measures to them (2005, Arts. 3 & 41). The purpose of such classification is to mitigate the penal policy according to these age categories for certain crimes, i.e., to move the age limit of minors and then adults in the early years of adulthood, to impose a prison sentence. There is a relatively small number of juveniles who are criminally prosecuted in relation to the number of crimes committed at that age, which was achieved thanks to the holistic approach of the legislator in passing the Law on Juvenile Offenders and Criminal Protection of Juveniles. Educational orders have been implemented in this law, as an educational measure, which avoids initiating criminal proceedings against a juvenile or suspends the already initiated proceedings, and the condition is that the juvenile admits the commission of a criminal offence and has a positive attitude towards the injured party (Igrački & Ilijić, 2016, pp. 187 & 195). In addition, this law prescribes the following educational measures: warning and guidance measures, measures of intensified supervision, and institutional measures, as the final educational solution that is applied when it is necessary to increase the influence on the minor. The purpose of such legal measures is the reintegration of minors into society, with prior professional engagement in their upbringing, which focuses on strengthening the sense of responsibility. Therefore, there is a strong basis for a holistic approach to prevail in the event of a public debate on lowering the age limit for imposing a criminal sanction, although such debate in the current circumstances does

not seem as likely as it did at the time of the adoption of the Chapter 23 EU Action Plan.

## **Conclusion**

The picture of the minimum age of criminal responsibility (MACR) around the world is diverse. Despite the requirement of the UN Convention on the Rights of the Child that States parties set a minimum age below which children cannot be considered capable of violating criminal law, there are states that do not have a prescribed MACR. Theoretically, in these countries, it is possible to hold a baby criminally responsible in a certain situation. It is interesting, that an equal number of countries have established MACR below and above the age of 12. Such division, as well as the demands for lowering or increasing MACR, is a consequence of two diametrically opposed approaches to the problem of child/juvenile crime – repressive and holistic. Proponents of the repressive approach believe that only a strict criminal policy can suppress the criminality of children and minors, for which it is not enough to just implement educational measures or sanction parents, but also to apply detention, i.e., imprisonment. The holistic approach does not look at juveniles who have committed a crime as part of the problem, but as part of the solution, insisting on preventive measures whose planning and implementation will involve professors, lawyers, sociologists, and the medical profession. Insisting that it is necessary for criminal responsibility that a child understands the meaning of his/her actions and the severity of the consequences, which is present in many national criminal codes, is only the starting point of the holistic approach. Namely, the life circumstances of a criminalized child that negatively affected his mental health and caused cognitive impairments, and for which the society did not take timely and adequate care, must not be neglected. Paying attention to early intervention and providing support to those children is more effective than criminal sanctions because it gives greater chances to prevent the permanent adoption of criminal behaviour patterns. It has been scientifically proven that the centre for behaviour control, planning, and risk assessment

in children's brains develops only in adolescence, which is why children before that period are prone to impulsiveness and pliable behaviour that leads to a certain tempting reward. Therefore, children at an early age are not able to understand the significance of their actions. Lowering the age of criminal responsibility leads to the excessive and premature introduction of children into the criminal justice system. Due to insufficient physiological and related to it mental development, such criminal proceedings do not provide a fair and impartial response to criminal behaviour, as children are not able to participate in such proceedings satisfactorily because of limited attention capacity, suggestibility, and propensity to give false confessions. The preference for a repressive approach in different parts of the world is a consequence of specific cultural, religious, economic and social influences. Therefore, the holistic concept is not applicable in such countries until such influences change with the progressive development of society.

We believe that the scientific arguments, which speak in favour of the holistic concept, do not have an adequate response from the representatives of the repressive concept. Therefore, the legislative authorities in the countries where the repressive approaches are applied should respect the competent scientific opinions and raise the MACR to at least 14 years, as is the case in the significant number of developed democracies in Europe.

Bearing in mind that the MACR in Serbia is identical to the countries in the region, of which Croatia, Slovenia, Hungary, Romania, and Bulgaria are members of the EU, and that this corresponds to a holistic approach to this problem, we believe that there are no justified reasons to consider the issue of reducing the MACR below the age of 14. The improvement of the criminal policy with regard to juvenile delinquency should be aimed at expanding the spectrum of the application of educational orders and developing restorative justice to ensure more successful reintegration of juveniles into society and thus reducing the scope of recidivism.

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## Minimalni uzrast za krivičnu odgovornost kao deo kriminalnih politika

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### Sažetak

Porast vršnjačkog nasilja i maloletničke delinkvencije iz godine u godinu širom sveta drži pitanje donje starosne granice za krivičnu odgovornost otvorenim. Države, ne samo u različitim delovima sveta već i u okviru užeg regiona koji ih teritorijalno spaja, razvijaju različite krivičnopravne odgovore na ovo pitanje. Razlozi za takvu različitost leže u okolnostima ekonomske, socijalne, kulturne, verske, političke, pa i istorijske prirode. U teoriji i praksi se izdvajaju dva suprotstavljena koncepta, tzv. represivni i holistički. Zagovornici prvog koncepta smatraju da je oštra kriminalna politika najsigurniji put ka suzbijanju kriminaliteta među decom i maloletnicima. Na drugoj strani, pristalice holističkog pristupa smatraju da deca u ranom uzrastu ne mogu da shvate značaj svojih postupaka, te bi se snižavanjem starosne granice krivične odgovornosti izvršilo prerano uvođenje dece u krivičnopravni sistem, umesto da društvo preduzme pravovremene mere na sprečavanju trajnog usvajanja obrazaca kriminalnog ponašanja. Koristeći se uporednopravnim metodom, kao i drugim kvalitativnim i kvantitativnim metodama neophodnim za produktivnu analizu i izvođenje validnih zaključaka, želimo da ovim radom istaknemo ključne aspekte različitosti represivnog i holističkog pristupa određivanju minimalnog uzrasta za krivičnu odgovornost. Konačni rezultat je čvrsto utemeljeno uverenje da je neophodno dati prednost onom pristupu koji na decu i maloletnike uvučene u kriminalni milje ne gleda kao deo problema već rešenja.

*Ključne reči:* maloletnička delinkvencija, vršnjačko nasilje, MACR, kaznena politika, kriminalna politika