

March 2016

Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile - Germany

Yanna Papadodimitraki, CYCJ

This international profile presents information and evidence on the minimum age of criminal responsibility in Germany. It specifically focuses on policies and practices about investigating offences committed by children/young people.

Key Findings:

- MACR is 14; however, it depends on the age and mental development of the child
- Every participant in criminal proceedings (adult or child) has the right to be heard before the court (respond to the charges or not to make any statement)
- Provisions in place to ensure identity of defendants (children or adults) is protected
- Detention of children is a last resort measure
- In cases involving young people, all measures should be according to the principle ‘leniency before severity’
- Fundamental principle of educational measures above custodial sentences
- Best interests of the child are of prime consideration

Background

In Germany, the minimum age of criminal responsibility depends on the age and mental development of the youth/ young adult, not on the offence. Any person 14 to 18 is considered to be a youth and any person 18 to 21 is considered to be a young adult. Children under 14 are not held responsible; however, a child can be held responsible for damage caused to someone else according to civil law. A child above 14 is only held responsible if he/ she is morally and mentally mature when the offence took place; this way he/she can realise the unlawfulness of his/her behaviour and act according to that realisation. However, the minimum age of procedural capacity is 14 for cases relating to family/placement in care, 15 for employment and 16 for migration and asylum.

If children are involved in criminal proceedings, the cases take place in youth courts, which are less intimidating and more child friendly. Judges and prosecutors handling cases with children should have specialised training and experience in upbringing children.

In youth trials the participation of Youth Courts Assistance Service (YCAS) is required. They are social workers of the youth welfare offices responsible for describing the aspects of education, social life and welfare of the child relevant to the case. Their participation is also required to give evidence on the child's background and help in finding the appropriate sanction.

Private prosecution against children is not possible. It only takes place if the victim of a serious offence (against life, physical integrity or sexual self-determination) has been gravely damaged or endangered.

The youth court can impose supervisory measures, disciplinary measures and youth penalty. The court can apply to young adults the provisions that apply to children above 14, if at the time of the offence his/her moral and mental development was equivalent to that of a child between 14 and 18 (while taking into consideration the family environment), or if the type and circumstances of the offence indicate the offence was youth misconduct. Youth penalty refers to measures including deprivation of liberty in an appropriate facility. It can be imposed if supervisory measures or disciplinary measures are not sufficient, or if necessary due to the seriousness of the offence. The German Constitution states personal freedom is 'inviolable', therefore imprisonment can only be imposed by a judge and is kept between six months and 10 years. The number of children in contact with the Police in 2010 was 231,543 (10.8% of all contacts with the Police). The number of convictions for the same year was 55, 388.

Findings

If a child above 14 is going to be subjected to a penalty, the prosecutor or the president of the youth court must interview the child before he/she is charged. He/she must be informed of his/her rights according to his/her development, education and majority. The parents/guardians/legal representatives of the child, in general, hold the same rights as the child and must be informed of his/her rights as well; if they are not present, they must be informed in writing.

Before the first interview by the prosecutor or the president of the youth court takes place, a child above 14 should be informed of: the offence and law provisions, the right to respond or not make a statement on the charges, the right to consult a lawyer at any stage, the right to request evidence to be taken in his/her defence, the right to submit a written statement under certain circumstances, the possibility of perpetrator-victim mediation, the opportunity to dismiss the reasons for suspecting him/her and recognise the facts in his/her favour.

When court proceedings commence, an investigation into the child's family background, development, school environment, past conduct, etc. should be conducted and everyone involved should be heard, if possible, to help in the assessment of his/her character, psychological and emotional state. Also, the parents/guardians/legal representatives share the same rights with the child to be heard, ask questions and be present during the investigation.

The parents/guardians/legal representatives of the child have the right to choose a lawyer and file for legal remedies. However, if they are believed to be involved in the child's misconduct, the judge can revoke these rights. If these rights have been revoked, the judge (with family or guardianship matters jurisdiction) can appoint a carer to make sure the child's interests are preserved.

YCAS must be informed if a custody order is issued for a child and if he/she is to be placed under temporary arrest. There are no specific provisions on how the child is arrested and transported to the police station or to the prison; however handcuffs should not be used on children below 15.

Pre-trial detention should only be imposed on children above 14: if necessary and proportional, if it is strongly believed the child has committed the offence and, therefore, there is a ground for arrest, if there are facts that the child is evading arrest or the criminal proceedings or he/she might tamper with the investigation. For children under 16, pre-trial detention due to a risk of flight is accepted only if the child has already succeeded in/ attempted to evade arrest/criminal proceedings or does not have a fixed residence. It should not last longer than six months, however, it can last for more than six, if due to major difficulties, a judgment has not been issued.

If pre-trial detention is ordered during the investigation, the court must justify the insufficiency of other measures and prove the proportionality of the detention (while taking into consideration the stress it causes to children). If a child is being held in pre-trial detention, he/she is automatically eligible for mandatory defence. The proceedings must be conducted quickly to protect the child and YCAS must be informed. Detention should be based on educational principles according to the child's needs and be set in a safe environment. If possible, the child must be placed in a special institution (or in a special department of the prison/youth detention facility). However, children may be placed with adults.

The judge may allow the absence of the child during the hearing, if it is believed this is against the child's educational and developmental needs. However, the child must be kept informed of the proceedings. Also, the child's parents/guardians/legal representatives may be excluded from the hearing if: there is risk of harm to the child, witness or other person, they are suspected of being involved in the offence,

their presence prevents revealing the truth or if the personal life of a person involved is discussed. To prevent violations of child rights and avoid stigmatisation, the court may request a closed trial. The publication or broadcast of any recording of the hearing is prohibited; moreover, the media self-regulate to protect the right to privacy of the child.

To avoid trial, the prosecutor may abandon the case if: the child has committed a misdemeanour, the offence is minor and there is no public interest in the prosecution. In order to do so, the prosecutor does not need a judge's consent. In general, if children commit less serious offences, the investigations can end with diversion measures.

If the child is found guilty, he/she will be notified orally and, later, in writing. The judgment should include: the circumstances which determined the sanction, the measures ordered or the reasons from refraining from them. While doing so, it should take in consideration the moral, intellectual and physical capacity of the child. However, the child may not be informed if it is to have a negative impact on his/her education and development.

Sanctions imposed on children above the minimum age of criminal responsibility are usually not registered in the Federal Crime Register (FCR), but in an access-restricted one. Only youth penalties -suspended or not- are recorded in the FCR. If the proceedings end with instructions (not a final judgment), the case will not make part of the child's criminal record. However, it will make part of the Educative Measures Register (EMR). Courts, prosecution and prison service, police, tax authorities and other organisations have unrestricted access to information included in the criminal records, which can be accessed by requesting a register statement. When the child is above 14, he/she may inspect his/her files upon request.

A certificate of conduct may be requested by an employer, however it includes less information than the register statement, e.g. day fines and very short prison sentences will not be included if no other information can be located in the register. Only non-suspended prison sentences of more than two years will be recorded with regard to children. The information on children's offences will be deleted after a shorter period of time than those of adults, i.e. after three to 20 years, depending on the sanction.

Evidence

The information presented was based on data collected and collated through policy and evaluation documents and academic papers on the criminal justice system, human rights and rights of the child in Germany. Further contacts have been made (Federal Ministry of the Interior) to gather relevant information, however, no materials have been made available yet.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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March 2016

Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Republic of Ireland

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This international profile presents information and evidence on the minimum age of criminal responsibility in the Republic of Ireland. It specifically focuses on policies and practices about investigating offences committed by children/young people.

Key Findings:

- MACR is 12
- Prosecution & imprisonment of children should be a last resort
- System more lenient when children are involved in criminal proceedings than when adults are
- Reforms in law and practice and establishment of Irish Youth Justice Service
- Police to refer children to health board, if they believe they are endangering their health, safety, welfare or they do not receive satisfactory care/support
- Child-specific provisions on confidentiality
- No specialised training provided to members of the police force dealing with children
- Gaps in decision making processes and services for children

Background

In Ireland, the age of criminal responsibility was raised from seven to 12 in October 2006; however any person under 18 is considered a child according to law. Children 10 or 11 can be charged with murder, manslaughter and certain sexual offences (rape, aggravated sexual assault); however, when a child under 14 is charged, the consent of the Director of Public Prosecutions (DPP) is needed for the case to proceed. Moreover, children under 12 could go through the Health Service Executive (HSE) rather than the Criminal Justice System (CJS).

A Children Court was established to separate criminal court proceedings involving children from those of adults and has the power to deal with most criminal offences committed by children. All minor and most serious offences are held there. Under certain circumstances, when a child is charged with a serious offence, the Children Court may decide to deal with the charge in a summary manner. This way limited penalties may be imposed, if he/she is found guilty. When deciding on whether to waive the right to jury trial or not, the child can request the help of his/her parents/guardians.

When a child is accused of any offence, the court may suspend the trial and refer the case to HSE to pinpoint the appropriate support for the child. After HSE informs the court, the court can dismiss the charges. Children may be subject to corrective measures such as fines, community sanctions, detention and supervision orders. However, no maximum period of detention has been set for children.

Police (Garda), prosecution and court service do not receive specialised training on dealing with children; however, there is specialist training on victim interviewing to some members of the police and specialist training to judges who deal with children who have offended. There is an informal multidisciplinary cooperation among practitioners, however there is a need for the agencies involved in youth justice to co-ordinate and ensure they have relevant capability and knowledge to deal with children and ensure their best interests. The number of convictions for 2010 was 1,706.

Findings

In general, as stated by the law, children under 12 will not be charged and convicted of an offence. However, it is on Garda's discretion to take a child under 12 to his/her parents/guardians, when the child is believed to have offended, but cannot be charged because of his/her age. If taking the child to the parents/guardians is not possible, he/she will be handed over to HSE by the Garda.

The court may impose a detention period on a child. If the child is under 16, he/she will be detained in a child detention school, if a place is available. If 16/17, he/she will be detained in a child detention centre. However, this is only if the court believes it is the only suitable way to deal with the child.

When a child over 12 is arrested and suspected of an offence, the member of the police in charge at the particular station must ensure the child is informed without delays on: the offence he/she is suspected of, his/her right to consult a lawyer and

how to do this, and inform his/her parents/guardians of the arrest and request their presence at the station. This information must be in a language appropriate to child's age and mental capacity. However, it seems there are not specific provisions with regard to preparation of children for interviews/court sessions, as there are no provisions ensuring the information gathered is admissible in court. Moreover, there is no maximum time limit regarding pre-trial detention of children.

Moreover, the member in charge at the particular station must inform the parents/guardians of the child's arrest, the offence he/she is suspected of, his/her right to consult a lawyer and request their presence at the station. If not possible to contact the parents/guardians of the child, or if they cannot be present within reasonable time, the member in charge must inform the child of this and of his/her right to name another adult and request their presence at the station. Furthermore, the member in charge should make sure the child's parents/guardians at the police station receive a copy of the charge sheet and a written notification with the details of the child's appearance at the court (time, date, location) and the consequences of not appearing. If no parents/guardians are present or the child's address is unknown, the member in charge must make sure the parents/guardians receive these documents.

There are no legal time limits to arrest a child. However, for minor offences, the police must issue a summons within six months of the date the offence. In all investigations relating to a child, members of the police must consider his/her rights, age, maturity, needs, dignity and vulnerability.

When a child over 12 in custody has requested the presence of a lawyer, the police must call the named lawyer as soon as possible or provide the child with the name(s) of lawyer(s) able to be present as soon as possible. When a lawyer cannot be reached or is unable to be present, the child can ask for another. The same apply when the request has been made by parents/guardians, adult named by child etc.

Interviewing of a child suspected of committing a crime should take place in a private room. He/she can be questioned or write a statement, only if parents/guardians or another nominated adult (not a member of the police) are/is present. The police may ask questions or take written statements in the absence of parents/guardians, if delaying the questioning means a serious risk to people, property or collection of evidence. However, there are no guidelines and it is at the discretion of the police to allow the adult named by the child to be present for the interview. If parents/guardians are part of the investigation in any way (e.g. victims, suspects, etc.) or if they are believed to obstruct the investigation, the police can exclude them from the interviewing procedure (or the writing of the statement) of/by the child. When the presence of a lawyer has been requested, the child may not make a statement without allowing reasonable time for the lawyer to appear. The lawyer is not required to sign the statement.

When a child is charged with an offence, he/she may remain in custody until the following morning, if the member in charge of the particular police station asks for the child to appear before the next Children Court. In such a case, the member in charge should make sure the child will not associate with any adult detainees and will only be kept in a cell, if other suitable accommodation cannot be found. However, there is no prohibition on separating children from adults in police custody. The Children Court can remand a child in custody, if the child is charged or found guilty of one or

more offences, if the case continues to trial or if the Court has postponed a decision. If the Court remands a child in custody, it should justify the reasons for its decision in language appropriate to the child's age and understanding in open court.

With regard to confidentiality for cases appearing before the Children Court there should be no mention of the name, address, school or any other information (including photographs and videos) that could lead to the identification of the child, if published or broadcasted. Such publication is a criminal offence punishable by fine and/or imprisonment. However, the Court may allow publication of such information if it believes there is a legitimate reason for doing so.

Garda Juvenile Diversion Programme aims to help any child who accepts responsibility for his/her behaviour abstain from further offending and further anti-social behavior. Each police district has a liaison office (member of the police specially trained to deal with children), responsible for administering the Programme. Any child engaging with the Programme will not be prosecuted for the offence which resulted in his/her engagement with it. However, acceptance of responsibility may be used when considering sentence for an offence committed after engaging with the Programme. The identity of any child engaging or potentially engaging should not be published.

A child's criminal record shall be cleared if: the offence committed was before the child turned 18, the offence is not to be tried by the Central Criminal Court, not less than three years have passed since the child was found guilty and he/she has not offended during that period. However, there are no provisions to ensure criminal records are not disclosed to the public when the child reaches maturity.

Evidence

The information presented was based on data collected and collated through policy and evaluation documents and academic literature on the criminal justice system, human rights and rights of the child in the Republic of Ireland. Further contacts have been made (Ministry of Justice and Equality, Garda) to collect relevant information, however, no information has been received so far.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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March 2016

Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – New Zealand

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This international profile presents information and evidence on the minimum age of criminal responsibility in New Zealand. It specifically focuses on policies and practices about investigating offences committed by children/young people.

Key Findings:

- MACR is 10
- Age is a mitigating factor
- Restorative justice principles run throughout the youth justice system
- The views, welfare and best interests of the child are fundamental principles of youth justice
- Focus on including the family of the child in all processes and decisions
- Corrections and probation officers are trained according to the principles of the Convention on the Rights of the Child (CRC)
- Developing new core competencies training for everyone working with children

Background

The New Zealand system stresses diversion from custody. It promotes structures that support the rehabilitation and reintegration of young people and the participation of their families in all processes, while at the same time holds them accountable and considers the needs of the victims and the public interest. Every decision has a clear focus on strengthening family bonds, helping the family deal with the offending behaviour and supporting the child, and promoting the child's development while keeping it in the community.

Even though there has been progress in aligning the definition of a child to the demands of CRC, several definitions exist in New Zealand legislation to satisfy different policy considerations. According to Children, Young Persons and Their Families Act 1989, everyone under 14 is considered to be a child and everyone between 14 and 17 is considered to be a young person; for both groups special protection applies which can be extended to 20. However, according to Part 1 of the Vulnerable Children Act 2014, everyone under 18 is considered to be a child.

The minimum age of criminal responsibility in New Zealand is 10. Any child under 10 cannot be prosecuted and any child 11 or 12 can only be prosecuted for murder or manslaughter. Any child 12 or 13 can be prosecuted for certain serious offences, if they have previously committed an offence punishable by 10 or more years (as applicable to adults) or have been previously declared in need due to offending behaviour, and have now committed an offence for which the maximum penalty includes imprisonment of 10 or more years (however, children 10-13 cannot be held responsible for an offence unless it is proven they knew the act committed was wrongful).

Any person above 17 is treated as an adult and his/her case is tried at the District or High Court, depending on the offence, unless the crime was committed when he/she was 16 or younger (however, the Minister of Justice has requested officials to provide evidence about whether directing young people aged 17 to the Youth Court will lower re-offending rates and provide a long-term solution). The Police may have any child sent back to them by the Youth Court, if charged according to the above, to consider whether there are other more appropriate methods of handling the case. Most of the cases are dealt with alternatives to custody which are under the control of the Police.

Most cases involving children are dealt in Family Court and Youth Court. Guided by the Youth Courts Jurisdiction and Orders Amendment Act 2010, the Police can start proceedings in the Family or Youth Court (where welfare is emphasized), rather than Criminal Court (where accountability is emphasized). Of all the children and young people going through the courts, children 10-13 are less than 1% until 2014-2015 when there was an increase:

Outcome	Total Outcomes (ages 12-16)	Total Outcomes (ages 12-13)
Fiscal Year		
2010/11	3657	6
2011/12	3345	15
2012/13	2739	21
2013/14	2253	15
2014/15	1959	24

Alternatives to criminal justice and not criminal processes are not used for the child's welfare, unless the public interest demands otherwise. Youth Court will refer matters to a Family Group Conference (FGC) before making a decision on a case. FGC ensures accountability and repairs harm by allowing those involved in the life of the young person as well as the victim(s) to participate in decisions regarding the young person. Both Police and the courts have a proactive approach to youth offending.

Findings

Police are to adopt low key responses to young people who offend, unless more severe measures are required for public protection. Young people cannot be arrested unless certain conditions are met, most important being it is necessary for the young person to appear in court, to prevent further offending, or to prevent the loss/destruction of evidence or interference with witnesses.

If a young person commits an offence, the Police can issue a warning not to reoffend, arrange informal diversionary measures after consulting victims, families and the young person, make referral to Child, Youth and Family Services for a FGC (if there is the intention to charge), or arrest and charge.

Young people are usually bailed or held in Police custody until they appear in court. Young people up to 16 must be kept separate from older people. They should not be held for more than 24 hours; this can happen only in specific situations and the Commissioner of Police must be informed in writing.

Minor and first offenders are to be diverted from prosecution by an immediate warning on the street. If further action is necessary, the Police can refer young people to the Police Youth Aid (specialist unit) for a follow-up or require an additional sanction.

There are certain legal rights the Police should abide by when arresting, detaining or charging a person. When dealing with young people over the age of criminal responsibility, there are additional rights the Police must abide by. They reflect the young people's vulnerabilities and must be explained in an appropriate way according to their age and level of understanding.

The Police can stop a young person, if they believe he/she has offended or is at risk. The Police will arrest the young person as a last resort, but if they do, the young

person should give his/her name, address and date of birth. In the case of a young person at risk, he/she has no legal obligation to provide the Police with personal information.

A child over the age of criminal responsibility can be arrested without a warrant if: the Police believe the arrest to be necessary, to ensure the child attends court, to prevent further offending, to prevent evidence being lost /destroyed or interfering with witnesses, the offence is of a very serious nature, the Police believe it is for the public interest, or it is a drink-driving or immigration offence. Every Police officer arresting a child without warrant must write a report about the arrest in three days and explain the reasons.

The rights the Police must explain to a child over the age of criminal responsibility are: the child can be arrested without warrant if he/she cannot be served a summons when refusing to state name and address (does not apply if already arrested), the child does not have to go for questioning, but he/she can leave at any time if he/she chooses to do so (does not apply if already arrested), the child does not have to give a statement, but if he/she chooses to do so can change his/her mind at any time, any statement the child makes can be used against him/her and the child can consult with a parent/guardian/lawyer.

These rights must be explained: before the Police question a child suspected of offending or with the intention to admit an offence, if they decide to charge a child who they have been questioning but is not under arrest, if they arrest the child and if the child asks about his/her rights before or during the questioning. If the Police question a child and obtain information that would lead them to suspect him/her of offending, the Police must stop questioning and explain to the child his/her rights. Any person arrested can get free legal advice while under arrest, detention or interviewing by the Police, through the Police Detention Legal Assistance Scheme.

If a child over the age of criminal responsibility is at the Police station for questioning, the Police must inform the parents/guardians that the child is there. Any person required to be informed by the Police can visit the child and have his/her rights explained to them in an appropriate language and consult with the child. However, if the child has been arrested, the parent/guardian cannot consult with the child without a Police officer guarding him/her; the consultation will be subject to reasonable conditions that may be necessary for his//her safety. Evidence of any communication between a child at the Police station and a parent/guardian is not admissible as evidence against the child.

For a child's statement to be admissible as evidence against him/her, the child must have his/her rights explained to them by a Police officer in language he/she understands before the statement is made. Before or during a statement the Police must give the child the opportunity to consult with a parent/guardian/lawyer if he/she chooses to do so, and any statement must be made in front of the parent/guardian/lawyer. Nevertheless, if a child makes an impulsive (oral) statement in the presence of a Police officer who could not comply with the above mentioned requirements, the statement may still be admissible.

Any child arrested and charged with an offence should be released, released on bail, placed in the custody of a parent/guardian with his/her agreement, placed in the custody of any social services or person approved by the Police. However, the Police can place a child in the custody of Child, Youth and Family if they believe the child: is not likely to appear before the court, may offend further, cause evidence to be

lost/destroyed or interfere with the witnesses. The Police must make the placement as soon as possible, and no later than 24 hours, after the arrest. However, the Police can hold a child longer than 24 hours if the Police and a senior social worker believe the child is likely to run away or be violent, and there are no suitable Child, Youth and Family facilities. If this happens, the child will remain in a Police cell until appearing before the court (any child must appear before the court in a closed hearing as soon as possible). The Police and the said senior social worker should provide the Commissioner of Police a report on the decision to detain the child within five days.

The Privacy Act 1993 regulates what can be done with information about individuals, including both adults and children. The New Privacy Act 2014 creates stronger incentives for agencies to address privacy risks and gives the Privacy Commissioner enhanced powers. Key recommendations relating to children and young people either have been accepted for inclusion in the new Privacy Act or have been progressed in the Harmful Digital Communications Bill.

Evidence

The information presented is based on data collected and collated through policy, evaluation and academic sources on the criminal justice system, human rights and rights of the child in New Zealand. Limited information were received by further contacts (New Zealand Ministry of Justice).

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Portugal

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This international profile presents information and evidence on the minimum age of criminal responsibility in Portugal. It specifically focuses on policies and practices about investigating offences committed by children/young people.

Key Findings:

- MACR is 16
- Children's deprivation of liberty is a last resort
- Focus on the reintegration and rehabilitation of children
- Best interests of children should govern all processes and procedures
- Different procedures for different age groups
- Court has no legal obligation to consider the child's views to determine his/her best interests
- Lack of universal process and guidance in determining the child's best interests
- Lack of specialised training for those involved in youth justice

Background

The age of criminal responsibility is 16; however, there are special disciplinary measures applicable to children 16 to 21 who have offended. The Criminal Justice System (CJS) has different ways of dealing with a child who has offended and is considered in danger. This is because children under 12 are considered incapable of breaching the law, therefore they require protection, not punishment. The State will, also, intervene if the child is considered in danger due to absence of required educational care. This intervention takes place through the system of promotion and protection (PP). Moreover, the CJS has special procedures for the judgment of an offence committed by a child who is 12. This would take place through the Educational Guardianship system (EG) and the CJS. PP procedures are applicable to children under 12; EG procedures to children between 12 and 16, and CJ procedures to those 16 and above. However, as specialised courts are not available throughout Portugal, children might be dealt in adult courts.

Regarding PP, children under 12 are considered to be victims, not offenders, when committing an offence qualified by the penal law as crime. The measures applied aim to remove any risks, promote the child's safety, health and personal development, and guarantee his/her psychological recovery. They are divided in two groups: measures in normal living environment (implemented at the child's residence) and placement measures.

With regard to EG, if the child is between 12 and 16 when the offence is committed, he/she is considered an offender. The court will decide on the measure which should serve the social integration of the child, be educational and promote a sense of duty.

Regarding CJ penalties, the criminal laws that apply to adults, apply to children who have reached 16. The penalties are imprisonment and a fine, however ordinary penalties can be replaced by substitutive ones and imprisonment can be suspended. Moreover, until 21 the child is entitled to a more favourable legal regime. Under this regime the following measures are offered: reduced imprisonment when considered fitting for the child's integration, EG instead of criminal penalties for any child under 18 who committed an offence punishable by imprisonment of two years maximum, correctional measures instead of criminal penalties for any child between 16 and 21 (admonition, imposition of certain obligations, a fine and detention).

Despite the legal framework with regard to the application of a special detention measure, there are no detention centres for children. It should also be noted that the measures are not mandatory, but rely on the court's perception of applicability with regard to the rehabilitation of the child. The number of children in contact with the Police in 2010 was 3,200 (1.4% of all contacts with the Police). The number of convictions for the same year was 7,647.

Findings

There are no specific rules as to how the police should deal with children in CJ procedures. There are guidelines, but they are not legally binding. The guidelines stress the significance of a friendly environment and provide information on how

interviews and inquiries should be done, including details such as where the police officer should seat, presence of family members, and how to gain the child's trust.

The manual of the police provides information regarding how to interview children: good practice on conducting the interview (e.g. avoiding interruptions or repetition, use of supporting materials); interview techniques (explained and organised by age group); how to help children remember facts; criteria for not proceeding to interview (e.g. if the child suffers from the effects of the crime, the recommendation is that the child should not be interviewed until he/she is fully recovered). Emphasised in the manual is the protection of victims/witnesses from distress and their priority over the investigation, the avoidance of interviews if information can be acquired through other means, and the consideration of the child's testimony, provided that the child has enough memory and cognitive ability.

A child (and his/her parents/guardians/legal representatives) undergoing a PP procedure, ought to be informed of his/her rights and the procedural developments in a language appropriate to his/her age. During the measure, the child can access his/her files through his/her lawyer, however, the judge can authorise personal access after considering his/her level of maturity. With regard to EG, the children between 12 and 16 should be informed of their rights in general and of their right to remain silent regarding questions about their character in particular.

In CJ procedures, there are no specific provisions for children; therefore children have no rights/duties, since they only acquire legal status as participants in the criminal procedure after becoming defendants formally. Then, they must be informed of all their rights and obligations, the procedure and the public defender (if one is needed). During the procedure, they should be informed of their rights and the aspects of the procedure (including during the investigation stage), unless it is confidential. In that case, they gain access to all the documentation (even those produced during the confidential stage), when it becomes public again. Also, before testifying, they should be informed of the facts the charge is based on.

A child under 12 who offended, but is also considered in danger in terms of PP, should be reported to the Commission for the Protection of Children and Juveniles (CPCJ). Any person aware of such a situation should report it to the authorities.

Regarding EG, a child over the age of criminal responsibility can be arrested by any authority (or anyone else, if authorities are not available), if caught in the act. However, if arrested by a civilian, he/she should be handed to the authorities as soon as possible. However, the child can only be arrested if the crime is punishable by imprisonment and the arrest is valid only if the offence is punishable by imprisonment of more than three years, or the child has committed two or more offences, also punishable by imprisonment of more than three years. If these do not apply, the child can only be identified. The identification should respect the criminal proceedings and, in case the child does not have any documents, the police should inform the parents/guardians/legal representatives and not keep the child in the police station more than three hours. The Public Security Police have specific procedural guidelines in place for police officers involved in cases with children.

Regarding CJ procedures, there are no specific rules that apply to children. When a child is suspected of a crime, the police may identify him/her, but must have good

grounds and inform the child of the identification procedure. If he/she is not able to provide identification, the police may take him/her to the police station to establish it, but not for more than six hours, and should allow the child to contact someone. Also, the police can question the child to obtain offence-related information; however, if during the questioning there is a suspicion that the child has offended, they should stop right away. If there is a suspicion that a child is carrying any object related to a crime, the authorities can search the child with a search warrant.

Finally, if a crime punishable by imprisonment is committed, any authority may detain the child and conduct him/her to the court within 48 hours while treating him/her all the time as a defendant; also, the parents/guardians/legal representative should be informed as soon as possible. The parents/guardians/legal representatives can attend the first judicial hearing, but cannot interfere.

When the child is in court, a trial may take place right away to decide whether a cautionary measure should be applied. Detention is possible by means of a detention warrant or by police decision (without a warrant) if: the child has committed a crime for which pre-trial detention applies, there is risk of fleeing and it is not possible for a judicial authority to intervene due to the urgency and danger of the situation. When the police detain a child they should inform the judicial authority; if the detention does not abide by the above mentioned rules, the child should be released right away.

Regarding PP, a child under 12 who is considered in danger, can only be placed before the CPCJ or the court in cases of urgency (e.g. danger to the health, security, life). The police transfer the child to an appropriate location and report to the Public Prosecutor who should require an urgent PP procedure.

With regard to EG, before detention, the judge appoints legal counsel for the child (if the child has not chosen one). The time spent in an EG centre during the procedure is deducted from the final sentence.

Regarding criminal procedures, there are no specific rules for pre-trial detention/custody of children, besides that it is not to exceed 48 hours. The pre-trial detention should only be used if: a child already has become defendant, it complies with the principles of necessity and proportionality, there is a risk of fleeing, there is a danger of tampering with evidence or further offending. Pre-trial detention (and home detention) should only be applicable when all other measures are considered inadequate, and there is a suspicion the child has committed crimes punishable by more than five years of imprisonment, terrorism offences, violent or highly organised offences punishable by more than three years of imprisonment, and the child has entered/remained illegally in national territory.

Regarding PP, for children below 12 protection is the main concern and the least invasive measure will be implemented. The support of the family is the measure of preference; however, children will be placed in institutions, if the available legal measures are not sufficient.

With regard to EG, for children over 12 an EG measure can apply which should be the least intrusive, and non-placement measures should be favoured. Placement measures in an educational centre should be used as a last resort, only when other available measures are not sufficient.

There are no specific rules in relation to children defendants in criminal proceedings, so general rules apply: the investigation is conducted according to the adversarial system; the child has the right to attend any procedural act that concerns him/her, be heard by the court and intervene in the investigation to give evidence and request necessary actions to be taken.

In general, no child under 16 is obliged to take the oath. His/her testimony in criminal proceedings is assessed according to his/her age and maturity by the judge; hearings involving children are open to the public, unless the court decides otherwise. Children must be deprived of liberty only as a last resort and placement measures must only be applicable as the final solution.

Preservation of image and protection of private life are fundamental guidelines in Portuguese law. Regarding PP, bodies such as schools, hospitals and day-cares are called to preserve the privacy of the children and the CPCJ and CJS should only be a final resort. Interventions to protect children in danger must be kept as unobtrusive as possible and the procedure should be confidential. Members of the CPCJ, parents/guardians/legal representatives and other interested parties, can be informed of the process, if permitted. The files can be accessed for research purposes, however, the identity of those involved in the case should not be revealed.

With regard to EG, the procedure is private until a date for the judicial hearing is set. After that, all disclosures should be made with respect to the child's privacy and his/her identity should be kept private, if possible. Any files should be destroyed when the child reaches 21.

Regarding CJ procedures disclosure, if the judicial authority decides during the investigation stage that the procedure is considered confidential, everyone involved should respect confidentiality; disclosure of information is considered a crime. Even if the procedure is public, any information that is not evidence should not be disclosed. The judicial authority can decide what data are confidential, however there is no state regulation of the media with regard to the privacy of children suspected of crime (the media impose self-regulatory measures).

There is no criminal record for children up to 12. However, EG measures are recorded in an EG measures registry which contains information on the identity of the child, revocation, revision and termination of the measures. The registry is aimed to provide information on the measures applied to children. The child does have access to the registry and can request amendments of the information recorded. The child's parents/guardians/legal representatives, judges and prosecutors involved in the case as well as social services and organisations authorised by the Minister of Justice (for research purposes) have access to the records. The information stored are deleted two years from the date of the termination of the EG measure and always when the child reaches 21. Children over 16 who have been sentenced to a criminal penalty, fall in the general rules of criminal records.

Evidence

The above presented information was based on data collected and collated through policy, evaluation and academic documents on criminal justice, human rights and rights of the child in Portugal. Further contacts were made (Ministry of Justice, Police) to collect pertinent information, however, no information has been made available to date.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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Minimum Age of Criminal Responsibility (MACR) – Comparative Analysis International Profile – Sweden

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This international profile presents information and evidence on the minimum age of criminal responsibility in Sweden. It specifically focuses on policies and practices about investigating offences committed by those under the age of criminal responsibility.

Key Findings:

- MACR is 15
- Imprisonment is rare for young people under 21
- There is special consideration of each particular case
- There are attempts to include children and young people in the processes and decisions
- The system is more lenient and protective when children are involved
- Major involvement of social services when children are suspected of crime
- All decisions are guided by the best interests of the child
- Specialised training is provided for every procedure involving children
- Emphasis on rehabilitation and support
- No child-specific rules on confidentiality

Background

In Sweden, promoting and protecting human rights (including the rights of the child), is an integral part of the national and foreign policies, and a child's perspective, according to the Convention on the Rights of the Child (CRC), will stand above all measures. The country aims to be an ideal environment for a child to grow up in and acknowledges the importance of CRC towards the successful fulfilment of that goal. Sweden plans to promote further awareness and knowledge on the rights of the child, building on the work done by the Ombudsman for Children. The Ombudsman monitors implementation of CRC in public authorities, municipalities and county councils, and promotes young people's knowledge and experience in order to inform decisions of professionals and decision-makers.

Swedish legislation in general complies well with CRC and since 2007 sanctions regarding young people became characterised by proportionality, predictability, consistency and adaptability to the specific needs of each child. However, decision makers are facing legislative and economic limitations and the challenge of making the voices of children and young people be heard in decisions that directly affect them. As a result, further improvements need to be made in terms of legislation and enforcement.

In Sweden, the MACR is 15 and there is no juvenile court. However, there is legislation for young people under 21 involved in offending. In general, imprisonment is avoided under 21. Imprisonment for a young person between 18 and 21 is considered only for serious crimes and between 15 and 18 is extremely rare and only considered on special cases. A young person under 21 may be sentenced to youth service, if he/she consents and the sentence has to be proportional. Those who are under 18 are considered children and are subject to special measures, assistance or treatment. These special measures are in some cases extended to those who are under 21. A young person over 18 may be sentenced to youth service only, if there are reasonable grounds for it. A young person between 15 and 18 is not usually prosecuted. For all young people under 18, social services have to be notified.

Prosecution Authority requests the input of social services during the investigation and before the final decision (the information prosecution should be made aware of is already set). It may waive prosecution if public or private interest is not disregarded and in special circumstances. There are formal processes in place as well as established institutions to ensure consistency in the collaboration among agencies. Prosecution Authority has been offering specialised training courses for prosecutors dealing with young people. Children (being victims, suspects or witnesses) may face difficulties understanding the investigation and trial process, for this reason local prosecution offices have specially trained prosecutors to handle cases involving children and young people and make sure they are heard.

Authorities (social services, police and prosecution and other relevant services) are expected to co-operate when children are involved in criminal proceedings and to be guided at all times by the best interests of the child. However, there are no set criteria or guidelines at a legislative level to assess the best interests, as authorities need flexibility and discretion to decide what is in the best interests of the child according to each particular case. The number of children in contact with the Police

in 2010 was 16,664. The number of convictions for the same year was 28,963.

Findings

Children should not be harmed in any way during the interview process. The child's best interests should be considered throughout and he/she should have the chance to provide his/her own narrative in a safe environment. There should be a limited number of interviews which should be conducted as soon as possible and no later than two weeks after the prosecution decides to start an investigation. The law sets specific time limits on the length of the investigations which should be completed as quickly as possible (usually within six weeks).

Children and young people (as victims, witnesses or suspects) are to be interviewed by a person specially trained. Also, a social services representative needs to be present during the hearings for the preliminary investigation if the young person is under 18, if this does not impede with the investigation. Most of the police investigations involving children are handled by specialist investigators, for whom a national curriculum has been developed based on the best interests of the child. The training is repeated every three years and includes 15 weeks of training on subjects such as investigative methods and interview techniques.

Children under 15 should be interviewed with their parent/guardian present, if not harmful to the investigation. Guidelines on interviewing children recommend the interviewer to meet with the child in advance at a familiar to the child environment, so that the child is familiar with the person.

During the interview, the interviewer should use language appropriate to the age and mental capacity of the child, allow plenty of time to answer questions and inform the child of what is to follow. However, the police have no legal obligation to inform the child of his/her right to a lawyer.

Before interviewing a small child or a child with disabilities, both interviewer and prosecutor should understand the intellectual capacity, maturity, vocabulary and memory of the child. Hiring an expert to assist is possible, e.g. child psychiatrist/psychologist, however, the young person or his/her lawyer can comment on the selection made.

Young people under 15 cannot be arrested but can be detained up to three hours after a decision on release or after the conclusion of an interview. Young people under 18 are detained only if there are special reasons (law advises against depriving young people of their freedom). To make sure there will be no interfering with the investigation or re-offending, they are handed over to social services. The Swedish Police makes the necessary arrangements for Prosecution Authority to contact social and child protection services.

An investigation against a young person should be conducted by a specially trained police officer or prosecutor. If the child has been under investigation in the past, the same person should conduct the new investigation, if possible.

Children under 15 are subject to police investigation, if the sentence for the particular crime is imprisonment longer than one year or there is an attempt or conspiracy to

commit a crime, and to clarify whether someone 15 or over has participated in a crime (if necessary for finding stolen goods or if important for the public's or individual's interests). However, if the child is under 12, an investigation may only take place if there are extraordinary reasons to do so.

The young person should be informed when an investigation is discontinued or a prosecution is withdrawn. If under 18, his/her parents/guardians and social services should be informed and summoned to the interview, provided it does not harm the investigation. When a young person is suspected of a not serious crime, the police can question him/her right away, after notifying parents/guardians and social services, and giving them the opportunity to be present during the questioning. If the crime is serious, the parents and/or social services should be present during the interview, and if the crime is very serious, the young person can be arrested. In such cases, a legal representative is appointed.

Children between 15 and 18 may only be arrested if there are extraordinary reasons to do so. Children between 15 and 17 fall under the responsibility of social services and can, therefore, be handed over to them. Children under 15 should be interviewed after approval of the lead investigator is given and the interview should be video-recorded (for children above 15, it is possible if requested by the children). However, questions might be asked to clarify whether the child has offended. If interviewing should take place, social services should be informed about the time and place. In general, if a person (child or adult), does not appear for the interview or before the court, he/she may be brought in by the police.

Children under 15 cannot be held criminally liable. Children under 18 can be sentenced to jail, but only under special circumstances. The principal responsibility for children who offended lies with social services, who are considered best qualified to support young people.

In Sweden, there are no alternatives to judicial proceedings. However, children can be offered mediation between them and the victim, which is voluntary. If the child is under 12, mediation takes place only if there are special reasons.

There are no rules on confidentiality regarding children and the investigation is in the public domain as soon as it has been concluded, with the exception of the information included in the social services investigation. Court proceedings information is also publicly available, with exceptions provided in the Public Access and Secrecy Act (e.g. sexual abuse, child pornography, kidnapping). If it is believed releasing information will be harmful to the person to whom it relates to, secrecy is ensured. Hearings involving children suspects of crime are open to the public, unless a court decides otherwise.

There are particular sanctions that apply to young people between 15 and 21: care of young people, youth service, institutional care of young people. However, same sanctions as to adults can be applied to young people between 15 and 18: fine, imprisonment, conditional sentence, probation, community service, forensic psychiatric care. If the young person offends before reaching 21, special consideration is given to his/her age when determining the sanction, as the court may impose one less severe than the law dictates. The types of deprivation of liberty that may be imposed on a young person before reaching 21 are: imprisonment, forensic psychiatric care, institutional care of young people.

Young people under 18 may be sentenced to institutional care and, in exceptional cases, imprisoned; however, they are separated from prisoners over 18, unless in their best interest. Prisoners have the right to education, employment, and rehabilitation programmes (offending and substance misuse). When a young person is institutionalised, experts with the co-operation of social services and the consultation of the young person and the parents/guardians, develop a plan based on the young person's needs. Upon release, a transition plan is put in place as well as aftercare. Young people between 15 and 21 can be sentenced to care, if they have a special need for care or fall under the actions of social services; the type of care varies depending on the offender's needs.

There are special provisions in the Criminal Records Act regarding children. Generally, disclosure of information regarding a child is not prohibited, however judges can impose non-disclosure if it is to the best interests of the child. The time limits that apply for a young person's criminal record to be cleared are: three years where the prosecution decided not to prosecute; five years for probation, suspended sentence, care of young people, youth service, fines and 10 years for institutional care for young people. Criminal records can only be made available to the person concerned or certain authorities, e.g. Police, Tax Authority, Customs (crime prevention, discovery and investigation), Prosecution Authority (decision-making on investigation or prosecution), Court Service (sentence and its duration), Parliamentary Ombudsmen, Chancellor of Justice or Data Inspection (oversight activities), etc.

Evidence

The above presented information is based on data collected and collated through policy and evaluation documents and academic papers on the criminal justice system, human rights and rights of the child literature in Sweden. Further contacts were made (Ministry of Justice, Swedish Police) to collect relevant information, however, no information has been made available to date.

As a final note, given the limited time to collect the data, the limited sources available as well as the length of the expected output, we should be aware of the restricted outcome of the fieldwork and the data collected. Triangulation of the collected data took place where possible; where not possible, the most recent publication was taken into consideration.

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