

THE AGE RULES OF CRIMINAL DISCRETION IN HUNGARIAN AND INTERNATIONAL CRIMINAL PROCEDURE: ARGUMENTS AND COUNTERARGUMENTS IN FAVOR OF EVER- DECREASING AGE LIMITS

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INTRODUCTION

Throughout history, juveniles have held a significant position in the criminal justice system and various other aspects of life. This is not a coincidence, as this age group, which will eventually become full-fledged citizens, can shape the nation's progress through their lifestyle choices and the education they pass on to their children.

It is in society's best interest to guide juveniles towards a law-abiding lifestyle. Therefore, focusing on this age group is crucial, as a preventive approach can potentially reduce their future inclination toward criminal activities. This is where criminal law and criminal procedure law come into play.

Discernment should be assessed for child offenders aged 12-14. For certain offenses, if a child has the insight to recognize the consequences of the offense, it is not a disqualifying circumstance. In today's modern living conditions, the distinction between ages has become blurred, and the number of child offenders (12-14 years old) has increased within a few years (Lakner, 2023). There is an increasing need to test the capacity to discern in criminal proceedings.

The age of criminal responsibility has always been pivotal in the evolution of criminal law. Legislators have presented diverse perspectives on this matter. To formulate an optimal regulation that garners majority acceptance, it is crucial to thoroughly understand the criminological circumstances and aspects of the various age groups—these insights aid in comprehending different generations' characteristics and values and determining the most suitable criminal sanctions. The criminological analysis of the current situation of the age groups is particularly significant in the context of the young generation's role in the contemporary era.

Adolescence is a crucial period in life cycles and is the transition period between childhood and adulthood, characterized by biological and psychological changes. Children develop their own identities during this period of conflict and crisis, which starts at the age of 10-12 and lasts until around 18-20 (Csemáné, 2016). This period is also crucial for delinquency, as the link between age and delinquency can be demonstrated regardless of age or culture. Therefore, the analysis of juvenile delinquency is a constant feature of criminological research. It is not enough to examine the possible causes from a criminological point of view alone; the type of offenses they commit, their frequency, their geograph-

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ical distribution, and the age and gender distribution of the perpetrators must also be examined. This is a complex and multifaceted problem with many possible responses.

The science of criminology has developed several theories over time. Classical criminological theories can be grouped according to several aspects: whether they attribute the causes of crime to psychological or sociological causes and whether they are attributed to micro or macro-level processes (Balogh, 2020). The oldest theories, i.e., classical theories, can be grouped according to whether the causes of crime are sociological or psychological and whether macro or micro-level processes determine them. According to Robert K. Merton's theory, not everyone has the opportunity to achieve society's culturally determined goals, causing tensions that individuals resolve by implementing different adaptation strategies, depending on the legitimacy of the goals and the means chosen to achieve them (Merton, 1980).

Clifford Shaw and Henry McKay theorize that criminality is related to the area's economic, social, and cultural conditions. Their 1929 study examined nearly 60,000 juvenile males registered with the police and had court records for truancy or unlawful activity. Shaw and his colleagues found that crime was not related to ancestry but was due to poor social control (Shaw – McKay, 1942). They saw evidence for the thesis that crime is an acquired behaviour passed on through social relationships, passed from generation to generation, a phenomenon they termed cultural transmission. This ecological approach to criminology is known as the Chicago School.

The causes of juvenile delinquency can be attributed to subjective and objective factors, the correlations of which can offer a solution to this complex issue. Objective causes include the juvenile's social environment, personal relationships (mainly family and friends), economic, political, and living conditions in the country, and the impact of modern societal changes. Subjective reasons refer to the juvenile's personality, mental and physical state, and interests.

When it comes to international regulations, the criminological conditions are interpreted similarly. A survey by the European Council found that child poverty, increasing income disparities, rising divorce rates and family breakdowns, drug abuse, diminishing employment opportunities, escalating unemployment, and social and economic issues are significant causal factors contributing to child and juvenile crime (Ligeti, 2006, 25.). As a child's development in the early stages of life is influenced primarily by the family and later by the education system, the state should aim to create a legislative framework and institutional system that enables individuals who interact with the child at various developmental stages to understand the child's essential problems and risk factors and effectively manage them while ensuring the child's development in the right direction (Tóth, 2017.33.).

METHODOLOGY

Understanding the rules related to the criminalization of juveniles is challenging. Therefore, examining only Hungarian conditions is inadequate. Analysing and interpreting international provisions, rules, norms, guidelines, and statistics helps identify crucial legal policy or technical issues that must be addressed to advance criminal justice systems. For a study presenting the national legal framework, it is crucial to examine the background of the current legal regulation by conducting a legal analysis on the specific topic. This required analysing Hungarian criminal law regulations for juveniles and examining discretion methods regarding legal concepts, age limits, and sanctions nationally and internationally. Finally, we delved into the Serbian legal environment, focusing on current cases in Serbia. The research conclusions and findings were summarized based on the formulated hypotheses.

During the research, we formulated the following working hypotheses:



- Is lowering the age of criminal responsibility an appropriate response to current crime trends and addressing juvenile crime?
- Does juvenile delinquency present an unprecedented challenge for individual societies, and do the national, international, and EU legislations adequately respond by developing comprehensive and unified regulatory doctrines?

DEVELOPMENT OF THE NUMBER OF JUVENILE OFFENDERS

All media and press organizations are vocal about the fact that the number of crimes committed by children is constantly increasing, creating the impression and scaring the public that criminals are already lurking in kindergartens. "Based on the available statistical data, the number of juvenile offenders increased significantly in one year." (Lakner, 2023)

Based on the registered data in the records of the Hungarian Central Statistical Office, it can be established that in 2022, compared to the data of one year earlier (2021), the number of juvenile offenders under 14 increased by 589. This represents an increase of approximately 33%, which primarily applies to 13-year-old offenders. This increase is considered significant compared to the previous years, from 2018 to 2021, when there was only an increase, or even a decrease, of the order of ten (Central Statistical Office (From now: CSO), 11.1.1.4.). The table below clearly shows the mentioned increase.

Table 1. *Own Elaboration (URL1)*

Designation	Requirements				
	2018. II. semester	2019	2020	2021	2022
Child offender (under 14)	300	1 826	1 734	1 763	2 352
Juvenile offender (14-17 years old)	3 697	7 863	8 064	7 666	7 942
Young adult offender (18-24 years old)	10 612	24 497	23 989	26 078	27 098
Adult offender (25 years old and older)	43 520	102 475	105 151	111 168	106 572
In total	58 130	136 669	138 950	138 950	143 979
Requirement per 100 thousand inhabitants aged 14 and over		1 618	1 648	1 747	1 719

However, if we examine the social proportion of juveniles, a decrease can still be observed. According to the latest surveys, the aging index is 140.2%.² So, what led to the increase in the number of juvenile offenders?

Before trying to find an answer to this question, it is worth mentioning that latency, the principle of remaining hidden, prevails, especially in the case of children.³ Adults forgive children many things; if they commit a minor crime or even a misdemeanour theft, in order to avoid later legal consequences, they forgo the opportunities provided by the criminal justice system. Only reprimands and scolding are used for the child's sake, so the act does not reach the authorities and, therefore, is not included in the statistical data.

² The population aged 65 and over as a percentage of the child population aged 14 and under. If it is greater than 100, the elderly population exceeds the child population. (Source: <https://www.ksh.hu/fiatalok-es-idosek>)

³ Formally, hidden crime can be described simply: the totality of those criminal behaviors that do not come to the attention of law enforcement agencies, so they do not appear in official statistics either (Schwind, 2016, 41.).



There are several possible causes behind the increase in juvenile offenders. “On the one hand, children’s biological development has accelerated; children are maturing earlier, and due to the information revolution, they are affected by social influences sooner.” (Ministerial Justification related to § 16 of Act C of 2012 on the Criminal Code.) As a result, the first crime is committed earlier and earlier (Balogh, 2006, 107.). These circumstances may make it necessary to rethink the age limits of criminal liability since the boundaries between age groups are beginning to blur, and the examination of the ability to judge becomes much more critical.

The information revolution, especially the proliferation of cameras, also affects the evolution of latency. For example, in shoplifting, nowadays, it is more difficult to “cover up” a theft committed by a child or juvenile since camera footage is available and can be used as evidence.

Table 2. Own Elaboration (URL2)

Designation	Offenders		
	2020	2021	2022
Child offender (under 14) - minor assault	128	126	172
Juvenile offender (14-17 years old) - minor assault	595	525	563
Child offender (under 14) - aggravated assault	87	70	92
Juvenile offender (14-17 years old) - aggravated assault	402	371	3 944
Child offender (under 14) - assault causing death	0	0	0
Juvenile offender (14-17 years old) - assault causing death	1	1	1

The news that the number of violent crimes among young people has also increased is spreading more and more in the media. This impact was highlighted mainly in connection with the events in Serbia, which will be discussed separately.

Trends in the number of violent crimes by age, type of crime

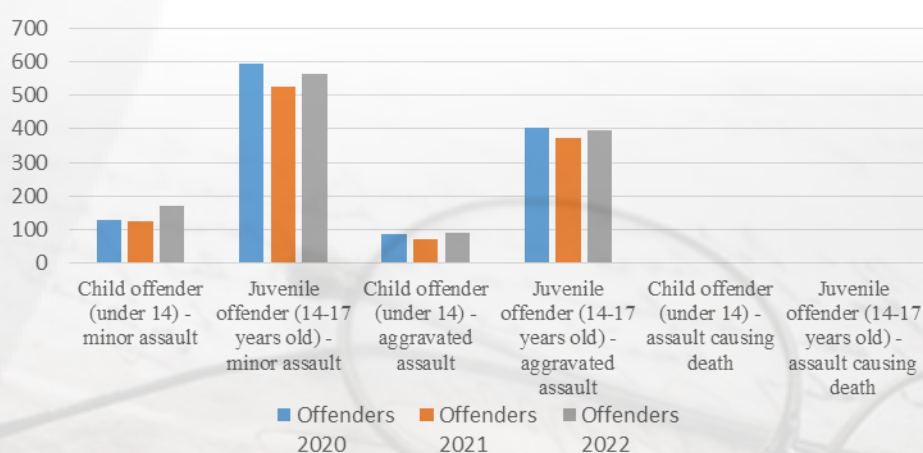


Figure 1. Own Elaboration (URL1)

However, if we observe Figure 1, we can conclude that the increase is only noticeable compared to the previous year’s decrease, but no significant increase can be detected in the last three years. The more



significant, although slight increase can be explained by the development of latency and the increase in juvenile offenders, measured in general, as mentioned above.

We can conclude that in most cases juveniles continue to commit crimes against property. Therefore, the objective effect of deteriorating living conditions, unemployment, and poverty on young people is increasingly felt and can be demonstrated by statistical data.

INTERNATIONAL LEGAL REGULATIONS REGARDING THE AGE OF CRIMINAL LIABILITY

It is also necessary to examine international conditions to get a complete picture of the circumstances surrounding the correct establishment of the Hungarian criminal age limit and capacity for judgment. Looking at this issue from a different perspective, we can answer whether the Hungarian regulation is appropriate, that is, whether it meets international expectations regarding its purpose and values.

Presentation of the Two Trends

The European Union and other international organizations also establish main guidelines and goals, which the member states must apply as widely as possible. However, these principles are only partially binding, and it is up to the member states to develop specific regulations.

Thus, two trends may have emerged in Europe regarding the participation of juveniles in criminal proceedings: the education model and the justice model.

The educational model focuses on the child's personality and subjective circumstances. So, the main criterion is not the weight of the committed act but the perpetrator's person. Thus, sentencing aims to educate, improve, and rehabilitate the juvenile. The examination of insight is also given great emphasis. Sanctions are significantly lighter than those for adults and are usually imposed by a special juvenile court. In the case of such countries, separate juvenile codes are also typical. Today, only some countries follow this principle, as problems have arisen due to its cost, arbitrariness, and being a less efficient way. However, Greece and Belgium still follow this approach (Gyurkó, 2008, 78.).

The justice model, on the other hand, does not consider the perpetrator's personality; it focuses on the crime committed and its gravity. The purpose of sentencing is not to educate but to reintegrate the juvenile into society, thus preventing future crimes. The sanctions are proportional to the seriousness of the act, but they are different from those for adults. This model is followed, for example, by England, Wales and the Netherlands.

Nowadays, however, the boundaries of these principles have become blurred in more and more countries, and approaches are mixed. "We find a mixture of different trends, schools, and models with restorative, social, and therapeutic ideas, which points in the direction of a kind of 'balanced justice' model." For example, these mixtures can be observed in Hungary's current regulations (Csemáné, 2010, 10.).

As a result of the recently started modernization, juveniles and the crimes they commit are increasingly coming to the fore. With the guidance of EU directives, countries are developing their legal systems in a preventive approach, taking into account the personal characteristics of the offenders. It is, therefore, worth examining the evolution of the age of criminal liability and the ability to judge in different countries since these changes in attitude greatly influenced the necessity of their change.



Lowering the age limit plays a significant role in which of the two trends described above the given country prefers. The fact that several countries have decided to lower the age limit shows that the judicial model is increasingly coming to the fore. Just as in our country, the influence of the increasingly powerful media in highlighting the crimes committed by juveniles can be observed at the international level, thereby putting society's pressure on penal policy. Therefore, a lower age limit than the Hungarian regulation can be observed, especially among the followers of the judicial system.

Table 3. *Age Limits in Europe for Civil Legal Majority, Criminal Prosecution, and Application of Criminal Law Rules for Adults, (Deák, 2015)*

Countries	Age of criminal responsibility	Age from which adult criminal law applies	Civil law age of majority
England/Wales	10/12/15	18/21	18
Austria	14	18	18
Belgium	16/18	16/18	18
Bulgaria	14	18	18
Cyprus	10/14	16	16/18
Czech Republic	15	18	18
Denmark	15	15/18/21	18
Estonia	14	18	18
Northern Ireland	10	17/18	18
Finland	15	15/18	18
France	10/13	18	18
Greece	8/13	18/21	18
Croatia	14/16	18/21	18
Netherlands	12	16/18/21	18
Ireland	7/15	18	18
Latvia	14	18	18
Lithuania	14/16	14/16/18/21	18
Poland	13	15/17/18	18
Hungary	12/14	18	18
Montenegro	14/16	18/21	18
Germany	12/14	18/21	18
Norway	15	18	18
Italy	14	18/21	18
Russia	14/16	14/16	18
Portugal	12/16	16/21	18
Romania	14/16	18	18
Sweden	15	15/18/21	18
Switzerland	10/15	18	18
Scotland	8/16	16/21	18
Spain	14	18/21	18
Slovakia	15	18	18
Slovenia	14/16	18	18
Serbia	14/16	18/21	18
Turkey	12	18	18



When examining Table 3, it can be concluded that most European countries agree on the definition of the civil legal age for the majority. However, this does not mean that all countries apply the provisions concerning minors only up to this age. In many cases, for example, in England, Denmark, or even Spain, some juvenile provisions apply up to the age of twenty-one.

In the case of lower age limit regulation, it can be observed that the age limit in Anglo-Saxon countries is lower than in continental legal systems (Deák, 2015, 16.). The so-called common law legal systems can more freely interpret the age restriction by applying case law. Thus, for example, according to the Children and Personal Act adopted in 1963, England's minimum age of criminality is currently ten years (Children and Young Persons Act. 1963). This data may seem low compared to Hungarian regulations, but we can find even lower ones. Based on the table, it can be analysed that while in the case of Scotland and Greece, it is eight years, in the case of Ireland, which is considered the lowest, only seven years is the lower limit of criminal liability (Criminal Justice Act of Ireland (2006) Part 12. 129-130).

However, in Anglo-Saxon countries with a low age limit, the principle of justice different from that of adults also applies. The juvenile court conducts proceedings related to children and juveniles. It is also typical that a particular procedure applies to juveniles, with the involvement of child protection institutions and the possibility of implementing alternative options and educational measures (Igaz-Keneze, 2015.11.). Of course, in the case of these countries, the examination of discretion is also considered. In Ireland, for example, the law recognizes a mediation institution (Conference), within which they try to uncover the reasons behind the child's behaviour and draw up an action plan accordingly.

Based on the table, it can be said that most European countries apply the age of fourteen as the minimum age of criminal liability. They try to comply with international expectations, and the ability to discern is generally valid even in the case of regulations under this age, and countries with a low age limit typically apply the provisions concerning juveniles separately within the framework of a special court or procedure.

United Nations Organization

The United Nations (UN) is an international organization founded in 1945 by 51 countries committed to maintaining international peace and security, developing friendly relations between nations, social development, and a better standard of living and human rights in addition to promoting rights (URL1). One of the main goals of the United Nations is to encourage respect for each other's rights and fundamental freedoms, especially for children.

The UN has issued several documents and guidelines on this topic, which is called "child-centered justice" (Vári – Magyar, 2015, 11). This means that child-centered justice covers not only the rights of child victims but also the rights of perpetrators. The issued documents contain uniform recommendations stipulating that the interests and personal circumstances of children and juveniles who come into contact with the justice system are the most important.

An example is UN General Assembly Resolution 40/33, the Beijing Rules (hereinafter: Beijing Rules). It was the first document to state that the primary goal in the case of juvenile offenders is prevention. The decision did not specify the age limit for criminality, which the member states should follow. On the contrary, it says that "*the lower age limit should not be set too low and emotional, mental and intellectual maturity should be taken into account.*" (Beijing Rules, Article 4.) So, this document can also emphasize the ever-increasing importance of discernment. It can be seen that already in the resolution of the General Assembly dated November 29, 1985, it was expressed that an essential task of the child



rights regulation is not the setting of the age of criminality, but the personal circumstances, one could say the subjective criminogenic circumstances. After all, it is known that childhood is characterized by emotional vulnerability, a desire to adapt to the person to whom the child is attached or wants to be attached. This desire to be connected and comply primarily determines the child's behaviour. Therefore, the child cannot be expected to act according to his discretion even if it is otherwise complete (Constitutional Court Decision 25/2022 (X.26)).

The Beijing decision also states that “the economic, social, political, cultural and legal features of the given member state must also be considered” when determining the age limit. Therefore, the objective criminogenic conditions and the living conditions surrounding the juvenile should also be investigated and considered based on this document. The Beijing Rules contain applicable guidelines for member states to gradually incorporate these principles into their legal systems.

The Beijing Rules were followed by the 1990 Havana Rules, which contain principles for the conduct of juvenile detention. The subsequent Riyadh Guidelines contain guidelines on juvenile crime prevention, and the Tokyo Rules contain guidelines on non-custodial sanctions (Deák, 2015. 22.).

Finally, the UN General Assembly adopted the Convention on the Rights of the Child (hereinafter: Convention) in 1989. This Convention is vital because Hungary has enshrined it in law, so it has binding force. Like the Beijing Rules, it contains the paramount rights of children, specifying that “States parties to the Convention shall make every effort to promote the adoption of special laws and procedures, the establishment of authorities and institutions for children suspected of, accused of or convicted of a crime and in particular, establish a minimum age below which the presumption of committing a crime against the child is excluded” (Article 40, point 3 of the Convention). In addition, it does not formulate specific criminal age limits. However, it defines the concept of childhood, according to which: “a child is a person who has not reached the age of 18” (Article 1 of the Convention).

Other documents protect children and juveniles in addition to the ones listed, which is of great importance because member states can use them to shape their legal systems and develop their provisions for the protection of children's rights. Although these rules generally do not contain exact age limit definitions, they try to emphasize that countries do not set the age of criminality too low. They also agree on the importance of examining the ability to discern since they emphasize examining the personal circumstances of the juvenile.

European Union

In addition to the United Nations, the European Union has issued guidelines and rules for minors. We would highlight an essential Directive 2016/800 of the European Parliament and Council (EU) on procedural safeguards for children suspected or accused during criminal proceedings (hereinafter: Directive). This Directive is significant because it contains a schedule that had to be implemented in the legal provisions of the Member States by June 11, 2019.

The directive aims to “establish procedural safeguards to ensure that during criminal proceedings, suspected or accused children, i.e., persons under the age of 18, can understand and follow such proceedings and to exercise their right to a fair trial, and that children's recidivism can be prevented and their social integration facilitated” (Directive, Article 1). The document, therefore, focuses on preserving children's emotional state, considering the interests of prevention.

The directive consists of 27 articles, providing for the scope and the right to information, according to which children must be informed immediately about their rights and the general aspects of the



procedures. Furthermore, the member states must ensure that their specific characteristics and needs related to protection, education, training, and social integration, i.e., criminogenic characteristics, are considered. Suspected or accused children must be assessed individually. The child's personality and maturity, family background, and, in some cases, family vulnerability must be considered.

To ensure special treatment, it states that *“Children shall in all cases receive treatment that protects their dignity and is appropriate to their age, maturity and intellectual level, and takes into account their specific needs, including possible communication difficulties.”* (Directive, Article 13.)

The directive contains a very detailed description of children's rights and examines their personal circumstances. It is, therefore, no coincidence that it was also included in the Hungarian legal system, and its provisions are widely applied.

STATISTICAL ANALYSIS (DATA OF EUROSTAT COUNTRIES)

After reviewing the international legal regulations, the available statistical data must be examined to determine the international situation of juvenile delinquency. By examining these data and the different criminal age regulations, we can answer the question of whether the individual regulations are proportionate to the social danger inherent in the increase in juvenile crime.

One of the most reliable sources of statistical data is Eurostat, which, as the directorate general of the European Commission, provides the member states of the European Union with information not only on crime but also on all areas of life.

Table 4. (URL3)

Suspects and offenders by age - number and rate for the relevant age group					
	2018	2019	2020	2021	Age of criminal liability
GEO (Labels)					
Germany	248 034	249 972	225 632	223 614	14
Ireland	13 865	14 283	11 744	-	10/12
Greece	6 680	6 577	5 575	5 460	13
Spain	20 293	21 777	20 765	23 431	14
Hungary	53 945	126 134	128 797	136 950	12/14
Austria	28 827	33 705	30 178	28 930	14
Romania	8 434	8 622	6 567	6 292	14
Norway	7 063	7 430	7 416	7 986	15
Serbia	3 614	3 918	3 136	2 800	14

Based on the examination of the values in Table 4, it can be concluded that, in general, no significant increase can be observed in the development of the number of offenders. A decrease or stagnation is typical in the examined countries.



For example, in Romania, between 2018 and 2021, excluding the increase in 2019, their number decreased by 2,142. Even in Germany, which has a high number of crimes, a decrease can be observed, with 24,420 fewer crimes committed by juveniles in 2021.

However, it cannot be said that only a decrease can be observed based on the table. Unlike the 2020 data in Spain, 2,666 more offenders were recorded in 2021. A slight increase can also be observed in Norway, while the most noticeable increase occurred in Hungary. In 2018, 53,945 offenders were recorded, which increased by leaps and bounds in 2019 and reached 136,950 in 2021. That is 83,005 more juvenile offenders, about a two-fold increase. This data is significant compared to the other countries examined.

It is also worth observing the increase and decrease in the age of criminal liability. Most countries drew the limit at the age of fourteen. An increase (e.g., Spain) and a decrease (e.g., Germany) can be observed at this value. In the case of countries that set a lower limit, such as Ireland (10/12 years), there is a smaller decrease between 2018 and 2020, while in the case of Hungary (14 years, 12 years if the age limit is lowered), a significant increase is observed. In Norway, where the age limit is slightly higher (15 years), there is relative stagnation.

Graph on the evolution of the number of offenders
(2018-2021)

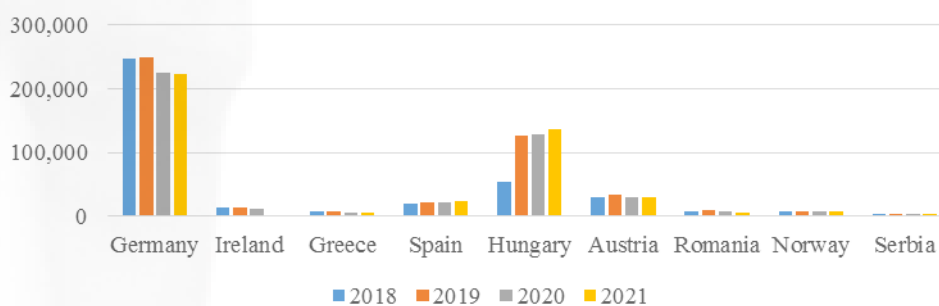


Figure 2. Own Elaboration (URLA)

The figure above clearly illustrates the differences between the examined countries and the increase or decrease within the countries. The exceptionally high number of juvenile offenders in Germany and Hungary is visible, followed by Austria and Spain, which are significantly behind.

In Germany, the decrease occurred in two steps, while in Hungary, it increased by leaps and bounds after 2018, after which only a smaller increase can be observed. A lower number of offenses and more minor changes can be observed in other countries.

When examining this data series, the question may arise: is the precise definition of the age of criminality really that important? Based on the available data, this cannot be stated with absolute certainty.

The age of criminal liability is not affected by changes in the number of juvenile offenders in a country. This suggests that adjusting or lowering the age limit does not necessarily reduce the social threat posed by juvenile offenders. Instead, a professional assessment of their capacity to understand, as well as an examination of their circumstances and motivations, can help us understand changes in the statistical data. This understanding can be used to develop a prevention plan and crime prevention strategies tailored to juvenile offenders. It is equally important to establish a justice system for juveniles that focuses on education and development rather than punishment, as the latter is not just a matter

of intention but also poses financial challenges. However, it is crucial to create a system separate from that of adults, as forcing juveniles into the adult justice system, especially in resource-constrained countries, can be socially detrimental and ineffective in the long run.

AGE REGULATION IN HUNGARIAN CRIMINAL LAW (ACT C OF 2012 ON THE CRIMINAL CODE)

Different branches of law have different definitions of childhood. However, they agree that the various definitions are related to age. The first term is that of minors, defined by the Civil Code: “A *minor is someone who has not reached the age of eighteen. A minor becomes an adult upon marriage.*” (Civil Code, IV. Title, § 2:10. Minority, (1).) On the other hand, the Criminal Penal Code (hereinafter: Btk.) uses the designations juveniles and children. “A *minor is someone who has reached the age of twelve at the time of the crime, but not the eighteen*” (Btk., XI. Chapter, Basic provisions, § 105. (1)). The age of childhood is defined in the case of persons under the age of twelve. The age of criminal liability is set at fourteen: “A *person who has not reached the age of fourteen at the time of committing the punishable act cannot be punished, except for homicide [160. Section (1)-(2)], homicide committed in a violent act (Section 161), assault [Section 164 Section (8)], the act of terrorism [314. § (1)-(4)], robbery [365. § (1)-(4)] and the confiscation [366. Section (2)-(3)] of the perpetrator, if he was over the age of 12 when the crime was committed, and at the time of the crime he had the insight necessary to recognize the consequences of the crime.*” (Btk, §.16.)

At the beginning of youth (twelve and fourteen years of age) and at the age of eighteen, the day following the birthday is the determining factor in terms of criminal liability. “*The date of the commission of the crime must be understood as the realization of the last moment of the act of committing the crime.*” (Belovics et al. 2023). It does not matter if the juvenile becomes an adult during the criminal proceedings that are already underway.

When examining the concepts, it can be established that the definitions are based solely on the exact numerical definition of age. Personal circumstances and discretion only appear when lowering the age limit. In the history of criminal law, this is a generally accepted age definition that has undergone only minor changes over time (Szentmiklóssy-Szabó, 2015, 40.).

Why was the age limit lowered to twelve in the new Penal Code? According to the rationale, raising the age of criminal liability to fourteen is appropriate because that is when young people finish their primary school studies. On the other hand, lowering the age limit is necessary, according to the minister’s official position, because nowadays, children reach the level of development and maturity required for discernment earlier; that is, the development of young people has accelerated. Furthermore, the position also states that the number of crimes committed by children (especially from the age of twelve to fourteen) has increased, and violent crimes also occur in a higher proportion. “*Violent advocacy is becoming more and more widespread among children between the ages of twelve and fourteen, which is why it is necessary to amend the age limit of criminal liability, to make children who commit flagrantly aggressive crimes against life criminally responsible, and in the case of some serious crimes lowering the age of criminal liability to twelve years* (T/6958. draft law on the Criminal Code, to § 16, p. 212.). However, the statistical data shows the opposite.



Table 5. *Own Elaboration*

Year	2000	2005	2010	2011	2012	2013	2014
Number of offenders under 14 years of age	3964	3697	2607	2714	2604	2196	1488

Source: <https://ugyeszseg.hu/repository/mkudok6797.pdf>

As can be seen from the tables, the legislator did not change the age of criminal liability because of a significant increase in crime among young people. So, what was the main reason?

The previously mentioned legal policy debates also affected social policy. Social pressure was increasing, and they urged the lowering of the age limit more and more. However, this pressure had nothing to do with the children's real state of development. They were not even interested in examining the psychological state; they only argued based on objective facts. *"The narrative of the age limit of criminal liability has now built significant positions for itself in the battle of "conservative penal policy versus restorative justice"* (Gyurkó, 2008, 40.), leaving no doubt that those who argue in favor of lowering the age limit are only supporters of punitive criminal law. The question has become an honest religious debate, in which the opposing parties use the same data series and statistical tables to support their arguments, according to their convictions. Therefore, the legislators wanted to meet society's expectations, which is why they entered an area that is primarily psychological and professional.

However, if we approach the topic differently, it becomes clear why we restrict juvenile offenses to specific years. This issue is very complex and should not be defined only in numbers. However, the question of the age of criminal liability is correctly interpreted if we see it as a cornerstone of one of the institutions of a broad system of instruments under state control. Regulating it in a specific way is unsuitable for dealing with this complex social problem effectively in the long term. However, the criminal justice system protects the state and its citizens and, by definition, constitutionally provides the strictest public law instruments (which limit citizens' rights to the greatest extent) to embody its central question (Tóth, 2017, 33.).

The issue is not the age limit of criminal liability itself since the main goal in all cases is the child's upbringing in the right direction. Therefore, when a child commits a crime, it is necessary to investigate what should happen to them and what kind of punishment could be used to achieve this goal.

AGE REGULATION AND THE ISSUE OF DISCRETION IN SERBIA

To really understand the importance of age regulation and capacity testing, we need to look at what is happening in a specific country and how society responds. Serbia is geographically close to Hungary, and the regulations regarding minors are similar to those in Hungary. However, due to recent events, society, especially the media, exerts its most significant influence and urges a change in regulating youth criminality.



The Framework of the Criminal Law Regulation

The 2005 Criminal Code of the Republic of Serbia entered into force on January 1, 2006, and criminal judgments are still based on this regulation. Concepts according to the Code include:

“(8) *Child: a person under the age of fourteen.* (9) *Minor: a person who has reached the age of fourteen but has not reached the age of eighteen.* (10) *Minor: a person under the age of eighteen.*” (Criminal Code RS, Chapter 12.)

Section 4 of the first chapter (Basic Provisions) provides for the age of criminal liability, according to which: “(3) *A criminal sanction may not be imposed on a person who has not reached the age of 14 at the time of committing the act. Educational measures and other criminal sanctions may be imposed on juveniles under conditions prescribed by law.*” (Criminal Code RS, Chapter 1, Section 4, (3). Therefore, Serbia has an independent law on juveniles, which became law under the title *The law on juvenile criminal offenders and criminal protection of juveniles.*

The principle of “child-friendly justice”—the child-centered approach to justice — prevails in this country as well. A study published in the journal *Child Rights Center*⁴ describes the importance of this in detail, highlighting, for example, the institution of independent legal representation of children, which is a well-functioning method of protecting rights. The study emphasizes that international legal standards should take precedence in juvenile justice, particularly with the ministerial guidelines of the Council of Europe. This work is aimed at professionals in the justice system, particularly officials in this field. It provides detailed information on the legal institutions that contribute to ensuring comprehensive legal protection (Stevanovic, 2013). When considering the independent law on juveniles in conjunction with this work, it can be said that Serbia is making positive strides in regulating juveniles.

Juvenile Law

Article 3 of the law on juvenile criminal offenders and criminal protection of juveniles includes the definitions described above and the concept of a “young adult”. According to this provision, the court can impose any alternative sanctions for offenders under twenty-one if it is anticipated that educational measures will achieve the same goal as punishment, given the nature of the crime and the circumstances of its commission.⁵

Furthermore, the law lists special sanctions for minors and outlines their purpose. The purpose of criminal sanctions is to ensure the juvenile’s personal rights, development, and improvement through responsibility, education, appropriate personality development, protection, assistance, and resocialization into the community.⁶ Therefore, the prevention goal defined in international principles is also expressed in this law. The entire legislative text reflects the intention to protect children’s rights. One example of this is the diversion institution, the purpose of which is contained in Article 6: “*to avoid criminal proceedings or to suspend them by increasing personal responsibility to prevent future relapses. Additionally, when imposing individual sanctions and measures, the court considers the juvenile’s lifestyle, personal and living conditions, and the gravity and nature of the committed crime.*”⁷

4 Child Rights Center, Serbian civil association for the protection of children’s rights, founded in 1997

5 Official Gazette of the Republic of Serbia No. 85/05 (2005), Article 3 (Age of Offender).

6 Official Gazette of the Republic of Serbia No. 85/05 (2005), Part Two (Criminal provisions on juveniles), Article 10 (Purpose of Educational Measures and Juvenile Prison Sentence)

7 Official Gazette of the Republic of Serbia, No. 85/05 (2005), Part Two (Criminal provisions on juveniles), Article 6 (Purpose of Diversion Order)



The provisions of the Republic of Serbia concerning minors are focused on children, taking into account their circumstances and their ability to judge, similar to Hungarian laws. A separate law has been prepared to respect and protect their rights. However, due to recent events, there is public pressure for these laws to be revisited and revised.

Current Problems

Which events have changed the public attitude and emphasized the increasing social danger associated with juvenile delinquency in the media?

The first incident occurred on May 3, 2023, at an elementary school in Belgrade. A fourteen-year-old boy started shooting in the early hours of the morning with weapons kept at his home. Eight children and a security guard were killed in the shooting, and several students were injured. The perpetrator had been planning the attack for nine months and was found to have a list with the names of those he planned to shoot, as well as a blueprint of the school building (URL5). The reason for his crime is unclear. The ready availability of weapons in the Republic of Serbia after the Yugoslav wars of the 1990s, which reached the civilian population, also contributed to the crime. Many people keep guns at home, but school shootings have been rare in the country until now.

The second incident happened on May 5, 2023, when a twenty-one-year-old man shot several people with an assault rifle in Mladenovac, near Belgrade. Eight people lost their lives, and thirteen were wounded in this attack. The attack was not planned, and the perpetrator opened fire on young people in a schoolyard (URL6).

Since these two attacks, more than a hundred bomb threats have also been made at schools. These events shocked the public, and the media highlighted their brutality. Due to social pressure, Serbian President Aleksandar Vucic proposed lowering the age limit for criminal responsibility from fourteen to twelve. This could be implemented with either a partial reduction, similar to the current regulation, based on an assessment of the ability to discern or a complete lowering of the age limit. Another significant issue affecting juveniles, as an external, objective criminological factor, is the problem of excessive gun possession in the country. Serbia seems to be undergoing changes similar to those made by Hungary when it created its current legal code. There is a focus on making external and objective changes, such as modifying the rules for carrying weapons, which seems like a step in the right direction (URL7). However, the question remains whether simply lowering the age limit would effectively address the social issue of increasing school-related offenses. Drawing from the situation in Hungary, it is uncertain whether this alone would solve the problem.

SUMMARY FINDINGS

Key findings from the study include an analysis of the criminological causes of juvenile delinquency, a review of the historical development of legal perspectives, and an exploration of hypotheses supported by domestic and international statistics. A closer look at the situation in Serbia sheds light on changes made in Hungary to the age of criminal liability and its regulation.

One suggestion is that criminal policy considerations largely influenced Hungary's decision to reduce certain crimes' criminal age. Based on the study's evidence, this seems to be the case. While juvenile delinquency has increased in Hungary, it does not pose a significant threat to society. The decision to lower the age limit seems to have been driven more by media and public opinion than by the actual



danger posed by these cases. It is argued that more emphasis should be placed on personal circumstances when shaping regulations, possibly by creating a specialized Hungarian law code for juveniles.

In the context of the second hypothesis, it can be argued that international and EU standards clearly outline expectations but do not have binding force. Unfortunately, they do not fully resolve the dilemma of balancing the need to protect society from criminals while ensuring children's healthy physical and mental development. The Convention, in Article 40, point 3. a), sets a requirement for member states regarding the minimum age of criminal liability. It states that "*States parties to the Convention shall use all their efforts to promote the adoption of special laws and procedures, and the establishment of authorities and institutions for children suspected of committing a crime.*" The United Nations Committee on the Rights of the Child has recommended that the minimum age of criminal responsibility be set at 14 years or preferably higher. Hungary was invited to raise the minimum age of criminal liability from 12 to 14 for all crimes in March 2020. Criminal prosecution aims to protect society from behaviour that harms its interests and values, including acts committed by children. It is generally accepted that children may be held criminally responsible upon reaching a certain age despite the adverse effects on their moral and intellectual development. Many countries, like Hungary, set the minimum age of criminal liability at eighteen years, which aligns with international legal documents and requirements. State intervention leading to criminal liability may occur when the family's contribution to a child's development proves insufficient. Therefore, intervention in the case of juvenile delinquents not only protects society but also serves the child's interests (25/2022. (X. 26.) AB decision). Addressing the historical dimension, the study points out the perennial challenge of determining a suitable age for discernment in criminal cases. The international perspective reveals that while many countries have similar age limits, there are differences in both directions. It is noted that international regulations emphasize a child-centered, preventive approach, setting an example to be followed. Some countries have independent juvenile laws which have successfully prevented a significant increase in juvenile offenders. Therefore, the study advocates for a unified system accepted by multiple countries, integrating international regulations into legal systems, and a more thorough examination of juveniles' judgment and personal circumstances, along with addressing the objective problems specific to each country.

Lastly, the study acknowledges that while Hungary's criminal law and criminal procedure law regulations regarding the age limit and discernment are relatively modern and progressive, there is still room for improvement. Addressing the increase in juvenile offenders in Hungary would require comprehensive judicial reform beyond changing age regulations. This would involve institutionalizing educational and pedagogical tools involving civil and state actors to enforce unique prevention goals related to juveniles more effectively. It is suggested that by understanding and scientifically analysing the common causes of crimes, a more comprehensive solution to this complex problem could be developed.

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