

JUVENILE PERPETRATORS AND THEIR (IN)ABILITY TO BE AWARE OF THEIR OWN RESPONSIBILITY¹

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Purpose

After the commission of serious criminal acts by children, questions concerning the adequacy of preventive measures, the tightening of sanctions for their actions, and the lowering of the age of criminal responsibility are often considered. The above-mentioned issues became topical at the national level after the mass murder of nine students and security worker at a Belgrade elementary school in May 2023 by a minor perpetrator who was 13 years old at the time of the commission of the crime, and therefore cannot be held criminally responsible. Brutality of crimes committed by minors is increasingly present. Such a case was recorded in 2014 when children aged 10 and 11 in Belgrade beat an old man who died after their attack. Although minors could and had to be aware of the consequences of such a procedure at the time of undertaking the action, criminal sanctions could not be applied to them, bearing in mind the provisions of the national legislation. The same minors, even before committing the aforementioned crime, committed various crimes, among which the largest number of crimes against property. Although protective measures were applied to them by the competent center for social work, it did not produce the expected results. Not only did they continue to commit criminal acts, but their actions became more and more brutal over time (Đorđević, 2014). That is why the question of the effectiveness of the measures applied to children who commit a crime, as well as the fairness of juvenile criminal law towards the victims of their crimes often arises. In addition, it should be emphasized that such acts and the brutality of children when they are committed often greatly disturb the public. As an example, the case of the murder of two-year old James Bulger by two ten-year-old boys can be cited. That served as a justification for advocates of maintaining a very low age of criminal responsibility for minors in England (Bateman, 2012: 12). Criminal acts by minors are becoming more and more brutal, while the age of perpetrators of such acts is getting lower. In addition, minors today spend most of their time in a digital environment, but their actions in such an environment are increasingly brutal and it seems that they can cause various negative consequences in a real (physical) environment as well (Kostić, 2021).

Design/Methods/Approach

Although the possibility of lowering the age of criminal liability at the national level was considered during the transitional period, it seems that such a procedure would be met with numerous criticisms at the international level. Therefore, in this paper, we start from the assumption that it will not be possible without changing the approach at the international level, although we do not reject the position that the age of criminal responsibility of minors should be lower, but not below 12 years of age when

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it comes to some particularly serious crimes such as e.g. murder or grievous bodily harm. In the first part of the paper, we point out the solutions prescribed by the national legislation of the Republic of Serbia, with reference to the views of the relevant authors regarding the criminal (ir)responsibility of children. The second part contains a brief review of the treatment of juvenile offenders in different historical periods, as well as an analysis of international standards regarding the lower age of criminal responsibility. In the third part of the paper, solutions from comparative legislation are presented with reference to the recommendations of the UN Committee of the Rights of the Child, as well as the Manual for the Implementation of the United Nations Convention of the Rights of the Child, in which its provisions and the views of the said Committee are further explained. That is why three methods were used during the analysis: dogmatic-legal, comparative law and content analysis. The goal of our research was to consider the possibility of changing the criminal legislation in terms of lowering the age limit of criminal responsibility in relation to international standards and giving recommendations for the further development of standards in the area of juvenile delinquency prevention.

Age of Criminal Responsibility in Serbian Legislation

In the Republic of Serbia, in accordance with international standards, it is prescribed that criminal sanctions cannot be imposed on a person who at the time of the commission of a criminal offense has not reached the age of fourteen, while educational measures and other criminal sanctions can be imposed on a minor under the conditions prescribed by the Law on juvenile offenders and criminal protection of minors (Article 4, paragraph 3 of the Criminal Code). According to the provisions of the second mentioned law, application of criminal sanctions and other measures against persons who were under the age of fourteen at the time of the commission of the criminal offense is excluded, and in that case other measures prescribed by the Law cannot be applied either (Article 2). Bearing in mind the above, the audience become quite concerned about the prevention of serious crimes committed by persons against whom sanctions or educational measures prescribed by law cannot be applied.

In comparative legislation, under the influence of international standards and the position of the United Nations Committee on the Rights of the Child, there is a trend of considering or raising the age of criminal responsibility. However, in most countries this age is still not at a satisfactory level. According to the adopted position, which is present in international standards and at the national level, the criminal responsibility of children does not exist due to their inability to understand the significance of the committed criminal act. Such an approach can be justified, but not in all cases, such as e.g. the crime of murder, grievous bodily harm or some other serious crime committed by children who, for example, turned 12 years old at the time of commission of the crime. According to the Criminal Code, there is no criminal offense if illegality or culpability is excluded, even though there are all the features of a criminal offense determined by law (Article 14, paragraph 2).

As the authors state, the aforementioned Code does not prescribe the age of the perpetrator as a basis that would prevent him from understanding the significance of his act or directing his actions, nor could it be subsumed under the concept of "other serious mental disorders" and therefore it cannot be considered that the fault lies with children excluded on that basis. According to the same author, if the opposite is adopted, in that case the upper age of criminal liability could be introduced, given that the psycho-physical abilities of an individual decline after certain years, and because of this, even elderly people cannot understand the significance of their actions and manage by their actions (Bajović, 2017: 222). Bajović rightly points out that the grounds for excluding children from guilt cannot be found in the existing grounds that apply to adult offenders, so there is an irrefutable presumption of criminal



irresponsibility of a child up to a certain age, which primarily depends on the attitude of the legislator. This author refers to the fact that the limit of criminal responsibility is set differently in different countries, as well as that there were proposals for its abolition, i.e. the adoption of a system according to which the child's (in)ability to understand the significance of his/her actions would be assessed in each individual case, so it is difficult to justify years of irresponsibility with findings from child psychology, because they depend solely on the will of the legislator (Bajović, 2017: 223). In this regard, we can agree with the author's position, bearing in mind that there are really different solutions at the national level. In some countries, the lower age of criminal responsibility for minors is 16, in some 14, in some 12, and in some 10 years of age. In North Carolina, until the 2021 amendments to the law, criminal liability was excluded only for children who were under 6 years of age at the time of the crime.

Bearing in mind the increasing brutality of children and their ever-younger age when committing criminal acts, the question arises whether the lower limit of age responsibility in international standards should be considered in the future. The authors believe that such an approach would be justified not only by individual cases that occasionally intrigue the public, but also by the fact that this limit was set at a different time when minors had a different way of life and growing up conditions. However, the authors believe that the criminal law reaction should be adapted to the severity, i.e. the gravity of the act and the seriousness of the perpetrator (Ignjatović, 2015: 30). Therefore, the legislation should have a different approach if a child of a certain age, who could be younger than 14, has committed the crime, which can often be committed under the influence of older minors or even adults. However, although the authors also believe that the maturity of a child is individual, so the fairest solution would be to assess the maturity of a child who is between 10 and 14 years old in each specific case, such a solution would be unacceptable. The first objection that could be made is the possibility of abuses, and the second obstacle would be from the aspect of international standards, i.e. request from the Convention on the Rights of the Child regarding the exact determination of the minimum age of criminal responsibility at the national legislation (Živković, 2020: 161).

International Standards

The Convention on the Rights of the Child considers any person under the age of 18 to be a child, unless the applicable national legislation stipulates otherwise, in which case majority would be attained earlier (e.g. emancipation) (Article 1 of the Convention; Kostić, 2017: 416). According to the mentioned Convention, the contracting states should provide by the national legislation to every child who is found to have been accused or violated the criminal law the right to a procedure compatible with the promotion of the child's sense of dignity and worth, which encourages him to respect the human rights and fundamental freedoms of others and which takes into account the child's age and the fact that it's desirable to advocate for his/her reintegration and assuming a constructive role in society (Article 40 of the Convention on the Rights of the Child). In addition, the Convention stipulates that the contracting parties should adopt special laws, establish special procedures, establish special bodies and institutions that would relate to children and deal with children who are found to have been accused or found to have violated the criminal law. The Convention imposes the obligation to determine the minimum age limit below which children cannot be considered capable of violating the criminal law, as well as adopting measures when possible and desirable for dealing with such children, without resorting to court proceedings, with full respect for human rights and providing legal protection. It is therefore recommended that countries implement a wide range of measures, such as care, guidance, supervision, legal aid, probation, reception, education and vocational training programs and other alternatives to institutional care to ensure that children are treated in a way that correspond to their



well-being and that this is proportionate both to the circumstances and to the act committed (Article 40, paragraph 3). However, excessive protectionism today still requires reconsideration. The authors justifiably believe that in children of a certain age, certain moral norms and experience make it possible to distinguish good from bad and forbidden from permitted. Bearing in mind that the exclusion of guilt in children could first be ruled out by referring to a legal error, i.e. the lack of awareness of the prohibition of the act, it is unlikely that school-age children do not know about the existence of some criminal acts that are in themselves minor, such as murder, robbery, serious bodily injury, so criminal liability should be excluded in the case of very young children, while this would be incomprehensible when it comes to school-age children (Bajović, 222). However, according to our opinion, it would be enough to lower the lower age of criminal responsibility for certain criminal acts, such as, for example, murder, grievous bodily harm, rape, etc., but it should not be less than 12 years of age. International standards could be an obstacle to that, so their content should be taken into account.

The Beijing Rules regarding the criminal responsibility of minors contain a recommendation according to which in legal systems that accept the concept of criminal responsibility of minors, the lower limit of responsibility should not be too low, taking into account the level of their emotional, mental and intellectual maturity. That limit depended mainly on historical and cultural circumstances. However, according to the modern approach, it should also be taken into account whether the child can fulfil the moral and psychological components of criminal responsibility, that is whether the child can be held responsible for antisocial behaviour based on his own ability of individual reasoning and understanding. If the age limit of criminal responsibility were set too low or if it did not exist at all, the very concept of responsibility would be meaningless. Therefore, it is considered that there is a close connection between the concept of responsibility for delinquent or criminal behaviour and other social rights and responsibilities, such as marital status, civil majority, etc. Therefore, the minimum age limit applied at the international level should be determined when it comes to juvenile offenders (point 4.1. of the Beijing Rules).

According to the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the emphasis should be on the policy of prevention in order to enable the successful socialization and integration of children and young people, especially through family, community, peer groups, school, professional training, work, as well as through voluntary organizations. Therefore, special attention should be paid to the proper personal development of children and young people, who should be accepted as participants in the process of their own socialization and integration (paragraph 10). At the national level, it is necessary to pass and implement laws that prevent victimization, abuse, exploitation, and the use of children and young people for criminal activities (paragraph 53), while for the purpose of prevention, it is necessary to work on the adoption and implementation of regulations aimed at limiting and controlling the availability of weapons for all species to children and young people (paragraph 55). Exploiting children to commit criminal activity could be an argument that could justify lowering the limits of criminal responsibility to some extent, but it could also be an argument that would be an obstacle to considering such a possibility. Adults can use criminally irresponsible minors to commit crimes (most often property crimes) in order to avoid criminal sanctions. If the limit of criminal responsibility were to be lowered, it is possible that a certain number of minors would refrain from such activities. However, this could also increase the possibility of using even younger people to commit certain criminal acts at the expense of older people (primarily of a property nature) while taking advantage of their poor family, material and social situation. Despite this, for more serious crimes committed by minors, consideration of the possibility of lowering the limit of criminal responsibility could still come into consideration.



Bearing in mind that international standards in the field of juvenile delinquency prevention were adopted based on the results of research conducted in a certain period of time, it should be borne in mind that it may be necessary to revise some of them, and based on the results of some new research in the field of juvenile delinquency prevention conducted by experts from various fields (psychologists, pedagogues, sociologists, anthropologists, etc.). Paragraph 61 of the Riyadh guidelines emphasises the importance of the exchange of information, experiences and professional knowledge achieved through projects, programs, practices and initiatives related to youth crime, delinquency prevention and juvenile justice, at the national, regional and international levels, which includes both experts from theory and practice, as well as decision makers. Therefore, it seems that this guideline left room for possible changes and improvements in the prevention of juvenile delinquency. Paragraph 64 also points to that, and in which it is stated that a scientific study of effective modalities for the prevention of youth crime and juvenile delinquency is necessary, and the findings of which should be widely available for further evaluation. The Riyadh guidelines leave the room for further improvement in the prevention of juvenile delinquency, but other valid international standards must also be taken into account.

In its Recommendation R (86) 20, the Committee of Ministers of the Council of Europe, taking into account the fact that young people are developing, proposes that at the national level measures of an educational nature should be applied to juvenile delinquents, as well as that the punishment of prison for minors should be abolished to the greatest extent possible. Bearing in mind the above, it can be concluded that there is an attitude at the European level about the need to narrow the application of prison sentences for minors, so lowering the lower limit of criminal responsibility would not be supported by the European Community, which would be particularly negative for the process of European integration in the area of the rule of law.

Review of the Criminal (Ir)Responsibility of Minors Through History and Comparative Legislation

A different treatment of minors was also present in the Law of the XII Tables. For certain property offences for which the death penalty could be imposed on adults, minors were punished by flogging or compensation in double amount (Radulović, 2010: 35; cited according to Avdić, 2017: 51) by the decision of the praetor.

During the period of the Roman Empire, there was a classification of minors into three categories, considering the degree of their criminal responsibility. The first category consisted of minors aged up to seven years – children (*infants*) and they were completely irresponsible, the second category consisted of minors aged seven to ten years (*infanti proximi*) who were extremely criminally responsible provided they could understand the meaning and significance of the committed criminal act, and the third minors between the age of ten and fourteen (*punertati proximi*) who were responsible for the committed act, but their younger age was a circumstance for mitigating the punishment (Radulović, 1999: 177).

These authors state that Aristotle also believed that children can voluntarily commit a certain criminal act, but that they are not capable of planning their behaviour in advance, so like unaccountable persons and animals, they cannot be morally responsible, while responsibility is based more on the knowledge that something we do is negative, but on a voluntary basis (Živković, 2020: 152).

With the development of society and the formation of a modern state, the first attempts by the state to protect children appear (Čović, 2017: 9). The literature mentions the Youthful Offenders Act, which was passed in 1854 in England, as a positive development in the regulation governing the position



of juvenile offenders. He affirmed a preventive instead of a repressive system of responding to the antisocial behaviour of children aged seven to fourteen through educational measures, establishing industrial and similar schools (Radulović, 1999: 175).

In Italy, a significant step towards the development of juvenile criminal law was the enactment of the Codice Zandarelli from 1890, which stipulated that the criminal sanction would not be applied to a minor who has reached the age of fourteen, and who acted recklessly, when committing a criminal act. Otherwise, the minor was criminally responsible. However, no clear criteria were prescribed for its determination. If it were determined that a person who has reached the age of fourteen did not act with discretion, he could be punished by his parents or by doing work in the public interest. Persons under the age of nine were not criminally responsible, but it was stipulated that education and upbringing measures could be applied to them. Minors between the ages of nine and fourteen could only be punished if they acted with discretion when committing the crime. Juveniles who have reached the age of fourteen, but have not yet reached the age of eighteen, could be punished if it was established that they were guilty at the time of committing the crime. Persons who at that time had turned eighteen, but had not yet turned twenty-one (minors) were punished like other adult perpetrators of criminal offenses (Compendio di diritto minorile, 2008: 8-9). With the adoption of the new Penal code in 1930, the age limit for criminal responsibility of minors was raised from nine to fourteen. Therefore, minors between the ages of fourteen and eighteen could be criminally responsible if they had the knowledge and will to commit a criminal offense, but they could be sentenced to a sentence that was lighter than the sentence for adults, and the term discretion was replaced by the term accountability (*Ibid.*).

Modern juvenile criminal legislation was influenced by criminological, social-psychological and anthropological teachings on biological, psychological and social development of the personality, so the aim was to gradually raise the age limit of criminal responsibility (Škulić, 2010: 206).

The authors state that the criteria for determining the limits of minors used by criminal legislation today are different. Most often, it is a formal criterion – calendar age, which is manifested in the number of years reached, as well as the achieved biopsychological development and social maturity. One group of legislations provides for a fixed lower or upper age limit, so that minors below that limit are not criminally responsible, and those above that limit are criminally responsible. Some legislations determine the criminal liability of minors depending on their level of maturity (e.g. Yemen and Saudi Arabia). There are criminal legislations that foresee three categories of juvenile offenders: criminally irresponsible, limitedly criminally responsible and fully criminally responsible juveniles (Konstantinović Vilić, Nikolić Ristanović and Kostić, 2012: 221).

The Italian criminal legislation prescribes the limit of criminal responsibility in the same way as the criminal legislation of the Republic of Serbia. According to Article 97 of the Italian Criminal Code, persons who were under the age of fourteen at the time of the commission of the crime are not criminally responsible. Article 98 of the Code stipulates that criminally responsible persons (*imputabili*) are persons who have reached the age of fourteen at the time of the commission of the act, but have not yet reached the age of eighteen, provided that at the time of the commission they were sane and capable of understanding the meaning and significance of their actions and to manage their actions (Codice penale 2023, Testo aggrado al DL 10 agosto 2023, n. 105).³

In England and Wales, the minimum criminal liability is 10 years. Children under the age of sixteen cannot be arrested or charged with crimes, but criminal sanctions can be imposed on them if they

³ Text of Italian Penal Code in Italian language is available at: <https://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>, 30.8.2023.



break the law. Such offenders are sent to special centers for young people, not to prisons for adults.⁴ The authors believe that taking into account the lower limit of criminal responsibility in England and Wales, the physiological and psychological development of children is not taken into account in order to make the division between childhood and adulthood. Such determination is acting contrary to the results of research on the capacities of young people, bearing in mind that they are still in the maturation phase at that age and cannot understand the consequences of their own mistakes. Exactly what the authors call “cognitive difficulties” reflect on the ability of young people to be criminally responsible and accused in criminal proceedings (Arthur, 2016: 269).

Considering the fact that young people are in the stage of cognitive and emotional development, they are often more impulsive than adults. Because of this, children who have committed criminal acts are less ready to take responsibility, so they mostly need the help and care of adults. According to some research regarding the mental abilities of pre-adolescents, it has been concluded that there are developmental differences in the biochemistry and anatomy of the brain that can limit the ability of adolescents to perceive risks, control impulses, understand consequences and control emotions (*Ibid.* 275-276).

Under section 41A of the Criminal Justice and Licensing Act, children under the age of 12 cannot be prosecuted for a criminal offence. Persons aged 12 or over cannot be prosecuted for offenses committed when they were under 12 according to the Criminal Justice and Licensing Act 2010 (Scotland).⁵

The results of a longitudinal study of pathways into and out of a cohort of approximately 4,300 young people who started secondary education in Edinburgh in 1998 indicated the need to raise the limits of criminal responsibility to international minimum standards and support diversionary policies that keep young people away from formal criminal justice measures and deprivation of liberty and encourage educational inclusion and social justice intervention models. The age of criminal responsibility of eight years that existed in Scotland was considered inconsistent with the results of empirical research.⁶ The authors advocate raising the limits of criminal responsibility, pointing out that children’s ability to reason develops over time and that such ability develops in children only in the period between 10 and 15 years of age. According to them, the more abstract reasoning capacity that enables adaptation to the expectations of society and other people in the child’s environment is reached only later. Research in the field of neurology shows that the neural circuits with a significant influence on behaviour continue to develop after puberty, while the parts of the brain responsible for emotional processing develop during early adolescence, so younger teenagers have a relatively limited capacity for empathy towards others (Bateman, 2012: 6-7). However, for the most serious crimes, it could still be an open question whether very brutal crimes committed by pre-adolescents could be justified by such conclusions.

In Australia, the legal minimum age of criminal responsibility in all jurisdictions is 10 years. However, there is an assumption that children between 10 and 14 years of age are considered incapable of committing a crime. However, the authors state that in the event that the prosecution can refute such an assumption with proof that the accused child was capable of adequately distinguishing between right and wrong at the time of the commission of the crime, a criminal verdict can be issued. In the period from 14 to 17 or 18 years (depending on the specific jurisdiction), perpetrators of criminal acts who have reached that age at the time of committing the criminal act can be considered fully responsible

4 See: <https://www.gov.uk/age-of-criminal-responsibility#:~:text=The%20age%20of%20criminal%20responsibility,or%20charged%20with%20a%20crime,30.8.2023>.

5 Text of the Criminal Justice and Licensing Act in English is available at: <https://www.legislation.gov.uk/asp/2010/13/section/52,30.8.2023>.

6 Raising the age of criminal responsibility in Scotland and reducing youth offending, The University of Edinburgh, Edinburgh Law School, <https://www.law.ed.ac.uk/research/impact-and-engagement/impact-stories/raising-the-age-of-criminal-responsibility,30.8.2023>.



for their acts, but different criminal penalties apply to them as sanctions in relation to adult perpetrators (Urbas, 2000: 1). It can be concluded that in Australia minors between the ages of 10 and 14 are not considered to be criminally responsible, but that different measures are applied in relation to persons who have reached the age of 14 at the time of the commission of the criminal offense and have less than 17 or 18 years of age.

Under North Carolina law, a minor is anyone under the age of 18 who is not married, emancipated, or in active military service. A special court for juveniles is responsible exclusively for juveniles who are found to be delinquent or undisciplined.⁷ After the changes to the Law in 2021, the age that represents the limit of responsibility for all undisciplined behaviour is 10 years.⁸

According to the new decision, children between the ages of 6 and 7 are not criminally responsible for delinquency, while the procedure is slightly different when it comes to persons between the ages of 8 and 9. In these cases, children, parents and guardians receive a court counsellor for minors, while this category of minors is called “vulnerable minors” in the law (Article 7B-1501 (27b)). Such persons are not considered juvenile delinquents. In the case of a complaint against a person under the age of ten, the court counselor for minors will first assess whether that minor meets the condition for obtaining the status of a “vulnerable minor” according to the provisions of Session Law 2021-123-123 § 5. (c). In that case, the so-called process is approached consultation for minors. Consultations are defined by Law GS 7B-1706 and include screening, assessment and implementation of special programs for minors and their parents or guardians. It should be noted that otherwise court advisors conduct consultations with the minor, his parent or legal guardian outside of any court proceedings (Greene, 2021).⁹

Finland has a very different approach regarding the determination of the lower limit of criminal responsibility of minors compared to the legislation of other countries. In Finland, the Juvenile Offenders Act of 1940 defines that children under the age of fifteen (children) cannot be held criminally responsible, taking into account the level of their intellectual, emotional and social development at that age. In addition, there is also an attitude that a child can be considered mature enough to assume criminal responsibility when he/she completes his/her compulsory education and is capable of establishing a working relationship and can be considered mature enough to assume criminal responsibility. Any child who commits a crime under that age enters the social protection system. Therefore, the authors state that Finland perceives children as “victims” of their own social circumstances who need help, and not as criminals or immoral persons. In Finland, persons who commit crimes between the ages of 15 and 17 are considered young offenders. Such young people are subject to the care and application of the measures of the Finnish social protection system and the court system (Mhuirneacháin, 2020).¹⁰

Bearing in mind the above, it seems that in comparative legislation there is a trend of raising the lower limit of criminal responsibility and that there is an increasing tendency to apply protectionist measures towards minors. Such an approach was influenced by the recommendations of the Committee on the Rights of the Child, as well as the views contained in various reports and manuals.

According to the General Comment of the Committee on the Rights of the Child No. 7, under no circumstances should young children (persons under the age of 8) be included in any legal definitions concerning the minimum age of criminal responsibility. Young children who misbehave or break

7 Available at: <https://www.nccourts.gov/help-topics/family-and-children/juvenile-delinquency>, 30.8.2023.

8 A new age limit for undisciplined minors was established by passing the SL 2021-123 which entered into force on December 1, 2021.

9 Available at: <https://nccriminallaw.sog.unc.edu/from-6-to-10-new-minimum-age-for-juvenile-delinquency-and-undisciplined-jurisdiction/>, 30.8.2023.

10 Available at: <https://lawreview.elsa.org/the-young-offenders-a-comparison-of-the-criminal-justice-system-for-juveniles-under-finnish-and-irish-law>, 30.8.2023.



the law according to the above comment require compassion, help and understanding, in order to improve their capacities for personal control, social empathy and conflict resolution. Therefore, at the national level, adequate support and training for parents should be provided in order to fulfil their obligations, as well as for young children to have access to quality education and care in early childhood and, when necessary, to adequate therapy (paragraph 36, item i)). In its General Comment No. 10 on children's rights in juvenile justice, the Committee on the Rights of the Child appeals to states not to set too low a threshold for criminal responsibility and to raise the minimum threshold for criminal responsibility to an internationally acceptable level (paragraph 32).

Of great importance for the implementation of the Convention on the Rights of the Child is the Handbook on its implementation published by the United Nations Children's Fund in 2007, which is also supported by the Committee on the Rights of the Child. According to the views expressed in the aforementioned manual, the limit of criminal responsibility below 12 years of age is not acceptable at the international level, and therefore states are invited to increase this limit to the age of over 12 and not lower it. It is also pointed out that there should be no exceptions to the recommended minimum limit of criminal responsibility, even in the case of more serious crimes (Implementation Handbook for the Convention on the Rights of the Child, 2007: 605). In addition, no state that has ratified the Convention should reduce criminal responsibility to 12 years. According to the Handbook, states should not make exceptions in order to determine a lower age, and in addition, by acting in accordance with the provisions of the Convention on the Rights of the Child, the existence of exceptions in national legislation when determining the lower minimum limit of criminal responsibility in the case of committing serious crimes would be considered. Instead, the modern approach should consider whether the child can fulfil the moral and psychological components of criminal responsibility, that is, whether the child can be held responsible for antisocial behaviour based on his or her individual reasoning and understanding. The Handbook criticizes the solution that exists in England and Wales due to the very lower limit of criminal responsibility, and therefore recommends raising it (*Ibid.* 617).¹¹

Findings

Thanks to media reporting, one gets the impression that an increasing number of children are perpetrators of very serious crimes. Bearing in mind certain cases, certain social protection measures were taken against some of them, but they did not yield adequate results, given that minors continued to commit even more serious and brutal crimes.

In modern criminal law, the principle of individual subjective criminal responsibility has been adopted, according to which each person, with the absence of conditions for the exclusion of criminal responsibility, is solely responsible for his actions. Parents can be held responsible for the actions of their children only if it is established that there was neglect of the child. Otherwise, persons who were under the age of majority at the time of the commission of the crime will not be responsible for its commission.

Bearing in mind the brutality of criminal acts committed by children, the question of fairness is raised considering the fact that no one is held accountable for these criminal acts. Therefore, it is impossible to compensate the victims for the lack of a legal basis, i.e. of the lack of judgement establishing tort liability. Therefore, a certain number of authors advocate the position of the need to lower limit of criminal responsibility of minors. In order to have enough arguments to support such an idea, at least when it comes to serious crimes (e.g. murder or grievous bodily harm), we applied in this paper the

¹¹ The text of the Handbook in English is available at: <https://www.unicef.org/lac/media/22071/file/Implementation%20Handbook%20for%20the%20CRC.pdf>, 30.8.2023.



dogmatic-legal, comparative legal method and the method of content analysis. Nevertheless, we started from the assumption that international standards could represent an obstacle for lowering the criminal responsibility of minors in national legislation.

The national legislation of the Republic of Serbia regarding the limits of criminal responsibility of minors is fully harmonized with international standards. However, the mentioned borders are defined differently in different countries. The lowest limit of criminal responsibility exists in England and Wales (10 years), in Finland an approach was introduced according to which society is responsible for juvenile delinquency, as well as the attitude that children who attend primary school cannot yet be aware of the consequences of their actions, so, therefore, 15 years of age is prescribed as the lower limit of criminal responsibility.

Based on the conducted comparative legal analysis, the conclusion is reached that there is a tendency to raise the lower limit of criminal liability. In Scotland, after some research, it was concluded that the age limit of 10 years was too low, so it was increased to 12 years, while in North Carolina it was increased from 8 for 10 years of age. However, based on the analysis of the measures that can be applied to young minors in North Carolina, it can be concluded that these are mainly educational and non-judicial measures.

The Convention on the Rights of the Child does not provide for a fixed lower limit of criminal responsibility for minors. It is not defined by either the Beijing Rules or the Riyadh Guidelines. However, the Manual for the Implementation of the Convention on the Rights of the Child, whose publication is also supported by the Committee on the Rights of the Child, suggests that limit should not be below 12 years of age, and that the already established limit should not be subsequently lowered. In addition, the Manual states that a lower age than that already established in the national legislation should not be established even for juvenile perpetrators of some serious crimes. Bearing in mind the above, any lowering of the limits of criminal responsibility at the national level, even for serious crimes, could be considered a violation of the provisions of the Convention on the Rights of the Child. We believe that this could have a negative impact on the process of European integration, given that the European Commission's special focus is on the rule of law.

Originality/Value

Instead of lowering the limit of criminal responsibility, a number of preventive measures should be applied at the national level towards minors. Such an approach would require increased attention and continuous monitoring of children's antisocial behaviour both at the level of the family and at the level of the educational institution, and of course, in accordance with the needs, to intervene with adequate measures. However, it should be borne in mind that not all antisocial behaviour may point to the possibility of committing serious crimes by minors, so attention should be paid to any changes or deviations in their behaviour.

Lowering the limits of criminal responsibility for some particularly serious criminal acts committed by minors is not possible from the perspective of international standards. It is only possible to improve the existing international standards based on the results of scientific research.

Although we do not think that the author's position on the need to consider lowering the limits of criminal responsibility for serious crimes is unjustified and we completely agree that such an approach would be fairer to the victim of the crime, one could ask whether lowering the limits of criminal responsibility could achieve general preventive effect of criminal sanction. Bearing in mind the fact



that international standards in the field of juvenile delinquency prevention were really established in another era, we believe that multidisciplinary research should be encouraged at the international level, which could offer adequate solutions for combating modern forms of juvenile delinquency.

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