



CHILD PARTICIPATION IN JUVENILE JUSTICE IN GEORGIA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en Georgia

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Georgie

Rapport national pour la recherche comparative et collaborative de l'AIMJF

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Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Georgia.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Georgia

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Georgie.

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Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

¹ Judge in Georgia



To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire:

1. General description of the procedure and the system
 - 1.1. What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?
In Georgia (Georgia is a small country in Eastern Europe) Regional and City Courts also have jurisdiction for wrongful acts committed by children. Courts in Georgia have jurisdiction for both criminal and administrative commitments by Children and adults.
 - 1.2. What is the minimum age of criminal responsibility (MACR)?
In Georgia it is from 14 years.
 - 1.3. Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?
In Georgia we do not have separately Juvenile Courts. The minimum age for criminal responsibility is 14, for administrative commitments 16.
 - 1.4. Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?
Yes, the court maintains the jurisdiction at this time.
 - 1.5. Can you describe the general steps of the procedure?
Crime, investigation, restorative justice issues, court hearing, if it is necessary and judgment.
 - 1.6. What are the opportunities for the child hearing in the whole proceeding?

Child hearing is the most important part of procedure according of legislation of Georgia.

1.7. Are there differences on how to proceed according to the age or other criteria? Please specify.

Yes, there are. The procedures are divided by ages from 14 to 16 and from 16 to 18, also from 18 to 21. Until 16th age, child get less punishment, also person from 18 to 21 can use restorative justice procedures as children.

2. Judicial hearing

2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

Children participation is optional in Georgia. Child is invited for the hearing.

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

Child does not receive a separate invitation. The child-friendly language is required in Georgia.

2.3. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?

In several courts there is special spaces for children.

2.4. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any?

No there is no specific waiting room for children in Georgia.

2.5. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?

Yes, they are transported separately. They do not have to wait in cells.

2.6. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?

In several courts there is special spaces for children.

2.7. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?

In several courts there is special spaces for children but generally hearing occurs in the courtrooms.

2.8. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?

No there is no difference.

2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?

No there is no difference.

2.10. Are hearings sound or video recorded? Does such option exist?

Yes, hearings are sound and video recorded.

2.11. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

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Child defendant, his/her lawyer, representative and prosecutor must take part in the judicial hearing.

2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)

Sorry, but I can't.

2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

Sorry, but I can't.

2.14. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?

Child have the right to be heard by the Judge.

2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

We are members of Child Right's Convention, so our protocol is based on Convention Principles. Also we interact with the child according Beijing Rules.

2.16. Can you please describe the ritual? (Some guiding questions are below)

2.16.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?

Judge does not wear a gown/wig during the hearing.

2.16.2. Does the prosecutor and the defense attorney have to wear a gown or to use special clothes?

No.

2.16.3. Who else is allowed to attend the hearings?

Child defendant's lawyer, representative and prosecutor must take part in the judicial hearing.

2.16.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

No.

2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

No.

2.16.6. Is the judge/decision maker in the hearing room when the child enters?

Yes

2.16.7. Does the child have to stand up?

As Usually No. It depends on Judge's decision.

2.16.8. Does someone have to allow the child (or others attendees) to sit down?

No.

2.16.9. Does the child have to remain standing during the hearing?

No.

2.16.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

Yes.

2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?

From age of 14, yes.

2.16.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

The questions are poses to the child by prosecutor and Lawyer, also judge with the help and participation of psychologist. The child responds directly after consultation of defense attorney or psychologist, which is necessary.

2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

Yes.

2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

Only Judge.

2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

Yes, if it is necessary.

2.16.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

Yes.

2.17. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

It is more open to a dialogical interaction with the child.

2.17.1. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has

happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child's behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

Child is allowed to freely speak about what has happened

2.17.2. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

Judge give the opportunity for each party to speak, according to the rules, in order to take a decision, or there is moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial.

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2.17.3. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

Yes, Judge can do this.

2.18. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

No. Participation of defense attorney and representative is required in Juvenile Justice.

2.19. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults?

In Juvenile Justice special protections are available. Judge can decide to hear Child victim without defendant.

3. Generic questions concerning the improvement of Youth Courts

3.1. In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children's rights in juvenile justice and specifically on child hearing in this setting?

Not always.



3.2. Anything else you would like to add on this topic?

Thank you for such an interesting question.

3.3. Any reform proposals in progress on any of the above issues?

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3.4. Any suggestions for improvement from your side?

We need some new projects to strengthen our knowledge on Child Rights.