



CHILD PARTICIPATION IN JUVENILE JUSTICE IN DENMARK.

National Report for AIMJF's comparative and collaborative research.

La participación de los niños en la justicia juvenil en Dinamarca.

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Danemark

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

Anette Storgaard¹

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 Denmark.

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 Dinamarca.

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 Danemark.

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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.

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.

¹ Professor in criminology and penology at the University of Aarhus Denmark and professor in Law at Ilisimatusarfik, Greenland University. Have given lectures in criminal law, criminology, penology and mediations at the Law Department for decades and have mainly published about Restorative Justice, Juveniles in conflict with the law and Access to Justice for prisoners



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?

From age 15 an up all ordinary courts in the country handles all kinds of cases no matter criminal or civil case and no matter age of the parties (i.e. individual who is charged for a crime). Since January 1, 2019 a new “juvenile crime board” has been introduced. This is not a court, but has the power to impose duties on persons between 10 and 14 if they are suspect of an acto that might be charged and handled in court if they were older. The same board may also impose the same kind on duties on persons between 15 and 17 as a supplement to at sentence in court. The duties are of a character, which is mainly meant as social support, but still they cannot be refused. (examples: restorative if something was broken; report to social services on a regular basis, report to a (also new) juvenile probation office on regular basis, go to school everyday, stay home in the evening, accept treatment (cognitive, social training, drugs (if relevant))

1.2. What is the minimum age of criminal responsibility (MACR)?

15 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?

From age 15 ordinary courts are used and the legal procedural regulation is in principle the same as for adults – only sometimes shorter time limits, for instance regarding pre-trial imprisonment

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?

The age of the commitment is the relevant age concerning court or not (15 years birthday at midnight)

1.5. Can you describe the general steps of the procedure?

From age 15 onwards

Suspect

Interrogation the right to have a defense lawyer, and a parent or social worker aside, when needed

Investigative steps (more interrogation, investigative steps (phone tapping, supervision, collection of technical proof, interview of witnesses et al, pre-court report by the probations service, possibly pre-trial imprisonment – must as a main role take place in a secure social institution if under 18)

Court trial

1.6. What are the opportunities for the child hearing in the whole proceeding?

In this case children are persons below age 15. They can be taken to the juvenile crime board (see above) where a judge (from the courts) is the leader of the meeting and the police and the social services are represented. The Child brings the parents and possibly another support (psychologist or other relevant professional). There is no focus on evidence. The guilt is not tried. Duties (support-character) are imposed depending on what the board finds relevant.

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

See above

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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?

Mandatory both in juvenile crime board and in court. May be picked up by the police in case of absence

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?

I don't know

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?

A criminal case from age 15 onwards is arranged like any other court case

Juvenile crime board cases take place in court buildings but not in court-rooms. Separate entrances are used

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 separation if the age is 15 or more. No photos available

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.)?

I don't know

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

For suspects above 15 there is a right to talk with the defense lawyer. The children (under 15) who are brought before the juvenile crime board will normally come from home with parents

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?

See above

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?

Not sure I understand the question

2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)? **Not from age 15 onwards**

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

I think there is a kind of sound reporting for the writing of the summary in the court-book – that goes for all criminal cases

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

The suspect must take place in court sessions. Witnesses who are called in as well. Witnesses can stay after they have been heard.. In smaller cases and if the suspect does not turn up after several attempts. he/she may be convicted and sentenced in absentia court cases are open to the public unless other is decided. Young age (of victim or suspect) may be the reason to close the door, but is not always – and must be debated before start

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)



- 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?

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No access to that

- 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?

Normally the judge (plus the prosecutor and the defense lawyer)

- 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?

Cannot say for sure

- 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? **Not in city courts but in country courts and supreme court**

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

2.16.3. Who else is allowed to attend the hearings? the public if not otherwise decided by the court

2.16.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room? **The defense lawyer will probably give some advise.**

- 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? **There are never uniforms for inmates in institutions or prisoners**
- 2.16.6. Is the judge/decision maker in the hearing room when the child enters?
No the accused sits next to the defense lawyer. The judge enters as the last
- 2.16.7. Does the child have to stand up? **Yes (still from 15 and onwards)**
- 2.16.8. Does someone have to allow the child (or others attendees) to sit down? **The judge**
- 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?
preparation is done before hopefully with the defense lawyer. Everybody does their best to put their questions in a manner that can be understood by the accused child aged 15 upwards
- 2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?
Not when accused. But witnesses are informed that it is a crime to lie.
- 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 judge or the prosecutor or the defense lawyer. Direct dialogue
- 2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing? **Not sure but don't think so. Though the accused child sits next to the defense lawyer and the can whisper**
- 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? **Like in all cases**
- 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? **No. but if they are present they may be asked about something by the judge in the end of the hearing. They answer directly**

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

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? **Even a formal way in Denmark is – to my experience – not as formal as in many other countries. This means that all parties involved are normally open to adjust the language, give time to consider etc. this also goes for 15-17 years old accused**

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?

I think I have answered/touched upon that above. People are normally goal-directed. Nobody have any interest in convicting an innocent or stressing a child more than necessary. But there are individual differences.

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?

There are no formalized exceptions from standard court-hearing. But still pragmatic solutions. Which may depend on the temper and attitude of the judge.

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

The defense lawyer may give advice – like also social worker et al before the hearing

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

The same

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??

Nothing concerning the accused but child witnesses may be interrogated for a video in stead of meeting in court personally



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?
 - 3.2. Anything else you would like to add on this topic?
 - 3.3. Any reform proposals in progress on any of the above issues?
 - 3.4. Any suggestions for improvement from your side?

My advice would be to remove the juvenile crime boards and probations service and to keep children below 15 away from any criminalization. Use mediations as alternative to court trial for offenders between 15 and 17 – at least for the first time in not very serious cases. And use community service and electronic anklet (both are available in the law) for the main part of those under 18 who are not “done with” in mediation.