



## CHILD PARTICIPATION IN JUVENILE JUSTICE IN CROATIA

### National Report for AIMJF's Comparative and Collaborative Research.

#### *La participación de los niños en la justicia juvenil en Croacia.*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

#### *La participation des enfants à la justice juvénile en Croatie*

*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 Croatia.

**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 Croacia.

**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 Croatie.

### 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.

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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?

According to the Law on Youth Courts (from 1998), youth councils consisting of a youth judge and two youth jurors in District Courts located on the territory of the County Court judge minors (persons aged 14 to 18) for criminal offenses up to 12 years in prison, while County Courts and youth councils judge juveniles for the most serious crimes. Court of Appeal: The High Criminal Court of the Republic of Croatia decides on appeals against the judgments of the County Court in the youth council of three youth judges. This Courts also have jurisdiction for other criminal matters.

2

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

Minimum age of criminal responsibility is 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?

A minor is a person who has reached the age of majority at the time of the act fourteen, and he/she has not reached the age of eighteen, and young adult is a person who has reached the age of majority at the time of the act eighteen, and he/she has not reached the age of twenty-one.

Legislation in Croatia has no possibility to treat a child under 18 as an adult.

The jurisdiction of the juvenile court ends when the offender reaches the age of twenty-three.

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 youth court retains jurisdiction until the offender is 23 years old, if he committed the crime between the ages of 14 and 18. The same panel can also judge as a panel of a criminal court for the person above 23.

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

Investigations of criminal offenses in proceedings against minors are carried out by youth police officers.

If the state attorney assesses that there is no basis for prosecution of criminal proceedings against a minor, will reject the criminal complaint and will inform the injured party about it, stating the reasons, and if the police filed a complaint, they will also notify that body.

For a criminal offense for which a term of imprisonment is prescribed up to five years or a fine, the state attorney can decide that there is no basis for conducting criminal proceedings even though it exists reasonable suspicion that a minor has committed a criminal offense, if considers that it would not be purposeful to conduct the procedure according to a minor with regard to the nature of the criminal offense and the circumstances in which the crime was committed, the minor's previous life and his personal characteristics.

State youth attorneys act in the proceedings against the minor and youth investigators.

The preparatory procedure (investigation) for the minor is carried out by the state youth lawyer.

In proceedings against a minor, with the facts relating to criminal offense, the data necessary for its evaluation will be obtained through psychological development and personal and family information occasions.

After the preparatory procedure is completed, the state attorney is obliged to submit a proposal for the pronouncement within eight days of juvenile sanctions, or will suspend the preparatory by decision procedure.

When the president of the council juvenile court receives the proposal for pronouncement of juvenile sanctions will proceed and examine the merits of the proposal for sentencing juvenile sanctions. If the president of the council finds that there is no basis for conducting the procedure or that it would not be expedient to conduct proceedings against a minor, shall be dismissed by decision proposal for the imposition of a juvenile sanction.

The child must be on hearing.

The minor and his parent must be informed about the rights:

2. that investigations of criminal offenses and proceedings against minors are secret
3. the right to be accompanied by parents or guardians
4. that in the proceedings against the minor, the data necessary for the evaluation of his psychophysical development and data on personal and family occasions
5. the right to a medical examination, including the right to medical assistance, if he is deprived of his liberty
6. that he may be given precautionary or temporary measures, and as a last resort pre-trial detention,
7. the right that he cannot be tried in absentia
8. the right to submit legal remedies.

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

The minor will be questioned at the hearing at the beginning of the evidentiary procedure except unless otherwise required. The president of the council will teach about it minor before interrogation. The president of the council first examines the minor. After that questions are asked by the defense attorney and then by the state attorney.

A minor must have a defense attorney from the first hearing. His statement is being recorded at the police and the state attorney's office.

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

A minor is examined in the manner provided for in the Juvenile Courts Act, regardless of age and the seriousness of the crime.

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?

The minor must be present at the hearing, but he can be present at the council session held in court because out-of-school educational measures are taken there and minor has not disputed the commission of a criminal offense. The 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?

Minors are invited through parents or legal guardians' representative, unless this is not possible due to urgent needs actions or other important circumstances.

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?

No.

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.

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.)?

5

The minor is brought without being bound by the police officers to in civilian clothes and in a vehicle without police markings, unless this is not possible due to circumstances. They will be in a separate cell for minors.

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

In the corridor of the court.

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?

The police conduct interrogation of minors according to the provisions of this Act on Juvenile Courts and the Act regulating criminal procedure. If the juvenile was not questioned by the police or the juvenile judge when custody is proposed for him, the juvenile will be questioned by the state attorney. For criminal offenses under the jurisdiction of the county juvenile court must be examined by a state attorney or a youth judge. Examination of minors carried out by the police and the state lawyer is recorded with an audio-video device. A minor has the right to be accompanied by a parent or guardian during interrogation before the court and court proceedings.



Hearing is always in the courtroom. There are no differences.

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?

If a child injured by a criminal offense is examined as a witness, who at the time of the examination has not reached the age of sixteen, such an examination will always be conducted in a special room with an expert person without the presence of the parties and the judge who are in the courtroom and can ask questions through a microphone, and the testimony is recorded with an audio-visual device. The examination can be attended by a person whom the child trusts. At the main hearing, a recording of the child's statement is shown.

The minor perpetrator is present at the hearing, but the child victim of the crime is not, but his statement is shown.

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

No. But the minor does not stand up when answering or presenting his defense. The child should be treated with special care. He is seating with his parent.

6

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

By the police and state attorney the interrogation of the child must be recorded. We are not recording in the courtroom. In the future all hearing will be recorded.

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

The state attorney will be invited to the council session, minors, defenders, parents of minors, or guardians, victim and injured party, representative of the center for social welfare and expert associate of the court.

The council session can only be held if the state attorney and defense attorney are present.

At the hearing the minor, state attorney and defense lawyer for juveniles must be present. The Council may allow persons who deal with the protection and upbringing of minors or suppression juvenile delinquency and scientific workers. During the hearing, the council may order that, except for the state remove all or only some of the lawyers and defenders from the session persons. During the presentation of certain evidence or speeches of the parties the council can order that the minor be removed from the session, due to possible harmful influence on his upbringing. President of the council at an appropriate way will inform him about the content and progress of the procedure for the time of his absence.

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)



Judges sit on the raised platform: the president of the council, a youth judge and two youth jury judges who have to work with children in their work. To the right of the judge sits the state attorney and a representative of social welfare and an expert associate of the court. On the left sits the defense attorney for minors. A minor with his parents is sitting in front of the judges. The person speaking, the witness, the parent and the minor sit in the chair in the middle.

To the left of the judge is the scorer.

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?

<http://uszm.hr/prava-djece-u-sukobu-sa-zakonom/brosura-prava-djece-u-sukobu-sa-zakonom/>

The Association of Juvenile and Family Judges and Experts has created a leaflet on children's rights that should be delivered to minors with an invitation to an examination or hearing.

- 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?

The juvenile is examined by a juvenile judge. He is examined by the state attorney for youth in the preliminary procedure at the state attorney's office. Before the examination of the state attorney and the judge, the social pedagogue, expert associate of the court, talks with the minor and his parent.

- 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?

There is no protocol on the method of questioning minors. It is usual for juvenile judges to inform the juvenile about how they will be treated and what decisions can be made. The Judicial Academy annually organizes workshops for youth judges and state attorneys for youth.

- 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?

Judges do not wear gown or wigs. They are dressed the same in both family court and adult criminal court. There is not a dress code in court. The judge can also come dressed informally, but it is somehow customary to come to the department in a suit with a tie or a business jacket. It is the same for prosecutors and attorneys.

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

They are not having special clothes.

- 2.16.3. Who else is allowed to attend the hearings?

The proceedings against minors are not public. Judgments are not made public.

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

No. In the hearing room are minors, defender lawyer, parents of minors, or guardians, victim and injured party, representative of the center for social welfare and expert associate of the court.

- 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?

The child wear regular clothing. The minor is brought without being bound by the police officers to in civilian clothes and in a vehicle without police markings, unless it is due to circumstances is not possible. Exceptionally minors may be bound if it is dangerous for one's own or another's life or safety. Binding of minors is a measure that is applied as a last resort and only while the minor is dangerous. Children suspected of committing criminal offenses can only be handcuffed by the police if they are a danger to others or themselves, but only when brought to police or to the court. Juveniles cannot be handcuffed in the courtroom and are not in any special areas.

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

Yes, the judge is in the courtroom when the child enters.

2.16.7. Does the child have to stand up?

No. He/she is sitting near parent.

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

The president of the council- judge tells the minor where to sit.

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

No. The child sits.

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?

The judge will invite the minor to declare whether the state attorney's proposal is correct about the commission of the crime and whether he accepts the proposed educational measure. The judge will teach him that he doesn't have to defend himself and that he can defend himself as he wants.

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

No. The child has not to make any kind of commitment or swear. When questioning minors and taking other actions which if a minor is present, care will be taken, so that, considering the psychological development and personal characteristics of minors, conducting criminal proceedings does not harm the development of his personality.

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

The minor will be questioned at the beginning of the evidentiary procedure except unless otherwise required. The president of the council will teach about it of minors before interrogation. The president of the council first examines the minor. After that questions are asked by the defense attorney and then by the state attorney.

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

A minor can request a consultation with his defense attorney at the hearing. The president of the youth council decides on this and, if necessary, approves consultations.

- 2.16.13. 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?

The president of the council first examines the minor. After that questions are asked by the defense attorney and then by the state attorney.

- 2.16.14. 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?

They talk to the child earlier, before the discussion. After the interview with the child and the parent, the court expert writes his opinion and, at the invitation of the court, explains the opinion and answers the questions of the parties and the court. At the discussion, I can ask a question to the child if the president of the council allows it.

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

The child, like his parent, has the right to object to the expert's opinion.

- 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?

The hearing is structured in more open to a dialog interaction with the child. When the court decides on the basis of the hearing, it will respond accordingly way to apply the provisions of the Criminal Procedure Act o preparations for the discussion, about the management of the discussion, on assumptions for holding the discussion, on postponement and interruption hearing, on the minutes and on the course of the hearing, but the court can deviate from of those rules if he considers that their application in a specific case it would not be purposeful.

- 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?

The child is allowed to freely speak about what has happened. On the beginning the child can speak about the wrongful act and then about his/her behavior, family condition, educational process, social experiences, and to express some aspects of his/her subjectivity.

- 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?

The session of the council for a minor who does not contest the commission of a criminal act, and the state attorney proposes extra-institutional educational measures, is an informal session. The judge will lead the session in such a way that everyone expresses their opinion and that the opinion of the child is heard. The hearing is more formal when the child does not admit to committing the crime and when the proposal is to sentence him to institutional educational measures or juvenile prison.

11

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

His lawyer makes a recommendation on how the child should behave on the court. The social welfare talks to the child about how he will behave in court.

- 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 as adults but some more. The right is of the parent or guardian to have the same instruction on rights that is served or delivered minor. The investigations of criminal offenses and proceedings against minors are secret. The child has the right to be accompanied by a parent, guardian or other appropriate adult person, chosen by a minor. In the proceedings against the minor necessary for the evaluation of his psychological development are data on personal and family occasions. The child has right to a medical examination, including the right to a medical help, if he is deprived of his freedom. That

precautionary or temporary measures may be imposed on him and as a final measure pretrial detention. The right that he/she cannot be sentenced in absentia.

Minors will always be spoken to in a way they understand teach about the meaning of rights. It is the duty of the body that undertakes it the act of making sure that the minor has understood the rights.

- 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?

When questioning minors and taking other actions which if a minor is present, care will be taken, so that, considering the psychological development and personal characteristics of minors, conducting criminal proceedings does not harm the development of his personality.

### 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?

Youth judges and state youth attorneys must have expressed preference for the education, needs and advancements of the youth and to rule basic knowledge in the field of criminology, social pedagogy, youth psychology and social work for young people.

Juvenile judges in District, County and the High Criminal Courts of the Republic of Croatia, taking into account the criteria set for a period of five years, from of the judges of those courts, the president of the Supreme Court of the Republic Croatian. State attorneys for youth, taking into account the criteria set for a period of five years, from of state attorneys or deputy state attorneys in the team state attorney's offices, the Chief State Attorney of the Republic Croatian.

After the expiration of five years, the judge, that is, the state attorney or Deputy State Attorney may be reappointed for youth judge, or state attorney for youth.

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

In addition to judges and state attorneys, the specialization of defense attorneys is important, as they must have knowledge of children's rights.

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

In Croatia, no special youth departments have been established (only youth councils) within District and County courts, with the exception of the Youth Department at the District Criminal Court in Zagreb and County Court of Zagreb and the number of courts that have jurisdiction over children is 15 District courts, 15 County courts and the High



criminal court of the Republic of Croatia, which is a large number, so there is no real specialization.

3.4. Any suggestions for improvement from your side?

The Republic of Croatia has less than 4 million inhabitants. Organizationally change jurisdiction from 15 courts to 4 youth courts in the entire territory of Croatia. This would enable real specialization of youth judges and state attorneys for youth.