



**CHILD PARTICIPATION IN JUVENILE JUSTICE IN BULGARIA**  
**National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de los niños en la justicia juvenil en Bulgaria.*  
*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants à la justice juvénile en Bulgarie*  
*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 Bulgaria.

**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 Bulgaria

**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 Bulgarie

## **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

There are no specialized courts (like Youth Courts) in Bulgaria to deal with wrongful acts committed by children. All 113 first instance courts in the country have jurisdiction for wrongful acts committed by children. First instance courts deal with all types of cases – civil and criminal cases. There are small first instance courts where judges deal with all types of cases. In bigger courts there is specialization between judges – some judges deal only with civil cases /property, torts, contracts, family, employment/, while others deal only with criminal cases. Judges dealing with criminal cases committed by adults also deal with wrongful acts committed by children<sup>2</sup>. There are no specialized judges for children. The judges are not required to have any special training. In cases of felony, the trial panel consists of one professional judge and two lay judges, who have to be teachers or educators.

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Since there is no specialized Youth court, the law does not foresee the judge to refer the case to the general criminal court in case the offender has reached the age of 18 years. Age does not matter – if the offence was committed before the age of 18, the offender is considered juvenile and the trial continues against a juvenile. But, in case the offender has committed the crime as juvenile but was charged after he reached the age of 18, then the trial will be held according to the general procedural rules applicable to adults. Furthermore, if the juvenile offender was charged with a crime committed together with an adult, the trial will be held following the procedural rules applicable for adults.

The minimum age of criminal responsibility is 14 years. Children under 14 years of age are not criminally liable. Even if they do violate the provisions of the Criminal Code by committing offenses, they are presumably criminally non-accountable and cannot be charged with and found guilty for the commitment of a crime. Children between the ages 8 – 14 can be subject to educative measures under the Juvenile Delinquency Act of 1958 in case they have

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<sup>2</sup> In few big courts there are judges who deal mainly with family cases, so called family judges, but there are no specialized juvenile judges in Bulgaria.

committed anti-social acts. Children from 0 to 8 in case of behavioral problems will be subject to the Child Protection Act.

Children from 14 to 18 years of age who enter in conflict with the law are assumed to be criminally liable only if they have the required maturity in that regard /usually established by the court through expert-witness - psychological expertise/. Their criminal liability is mitigated compared to the adults' criminal liability, as the degree of mitigation is higher in the age category 14 -16 and lower in the 16-18 age category.

Another particularity is that children who have reached 16 years of age can bear not only criminal responsibility, but also administrative responsibility under the Administrative Offences and Punishments Act, the Act on Protection of Public Order upon Conduct of Sports Events, and the Decree on Combating Minor Hooliganism.

Criminal Code also provides for the category of "Young Adults" (persons from 18 to 21) who are subject to special care while in prison.

The age of the child at the moment of commission of the offence is the criterion to determine the age category: underage child (0-14), minor (14-18), young adult (18-21). There are no exceptions in the legislation to this principle, even in cases of serious crimes or recidivism; this is to say that children under 18 years of age may not be prosecuted as adults in any circumstances (substantive law for juveniles will be applied).

The international principle of prohibition of retroactive effect of criminal provisions is adhered to. Underage and minor children cannot bear criminal or administrative liability for acts or omissions that were not declared illegal at the time of commitment of the crime.

The Criminal Code and the Criminal Procedural Code provide criminal substantive and procedural rules for both adults and "minors" (aged 14 to 18) – there is no special Criminal Code or Criminal Procedural Code applicable to juveniles. Chapter VI of the Criminal Code contains special rules for sanctioning children in conflict with the law. The main objective of interventions towards minor offenders is to re-educate them and to get them ready for socially useful labour. The possible penalties for minors are: deprivation of liberty, probation, public censure<sup>3</sup> and deprivation of the right to exercise certain vocation or activity. "Fine" and "Community service" are imposed only to adults<sup>4</sup>. Measures along with penalties cannot be imposed to minor offenders (0-14). When the perpetrator is aged 14 to 16 the most

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<sup>3</sup>. Art. 52 of the Criminal code defines public censure as follows: "The punishment public censure shall consist in a public reprobation of the delinquent which shall be announced before the respective team, through the media or in other suitable way according to the instructions of the verdict."

<sup>4</sup> Community service is provided as an educational measure for children (8-14) in the Juvenile Delinquency Act

serious penalty is deprivation of liberty for up to 10 years, and when the perpetrator is aged 16 to 18 the most serious penalty is deprivation of liberty for up to 12 years.

Diversion is possible in Bulgaria but not fully developed in accordance to the international standards. Only judges and prosecutors may divert the child (14-18) when the criminal proceedings have already started. Art.61 of the Criminal Procedural Code stipulates that: “In relation to a minor who committed a crime due to infatuation or recklessness that does not pose a great public danger, the public prosecutor may decide not to institute or terminate the instituted pre-trial proceedings, and the court may decide not to bring him to trial or not to be convicted, if educational measures can be successfully applied to him under the Juvenile Delinquency Act”.

The criminal court has jurisdiction to impose educative measures or the court may decide to refer the case to the Local Commission Combating Juvenile Delinquency<sup>5</sup> that can also impose educational measures. The Prosecutor has no power to impose such measures. Actually art.61 allows diversion only when the offender is still under the age of 18 during the trial. If the offender has reached the age of 18 during the trial, diversion is not allowed. The juvenile does not give consent to the diversion.

The Criminal Code does not envisage mediation as a specific answer to a conflict between a child offender and a victim. This is a substantial gap in the law. The Juvenile

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<sup>5</sup> Local Commissions Combating Juvenile Delinquency have jurisdiction to impose educative measures under the Juvenile Delinquency Act of 1958 to children 8-14 years old and to children 14-18 years old when the case was referred by the prosecutor or by the court. These commissions are established in each municipality. They are chaired by the mayor and the members are municipal employees responsible for education and healthcare, representatives of social services, police, psychologists, teachers, jurists, medical doctors, public figures, etc., as well as a prosecutor. The Commissions may impose one or more of the following educative measures:

1. warning;
2. obligation to apologize to the victim;
3. obligation to participate in consultations, trainings and programs to overcome behavioral deviations;
4. placement under the educational supervision of the parents or the caregiver, with an obligation to provide enhanced care;
5. placement under the educational supervision of a public educator;
6. prohibition to visit certain places and establishments;
7. prohibition to meet and establish contacts with certain persons;
8. prohibition to leave his/her current address;
9. obliging to remove the damage caused, if this is within the capabilities of the child;
10. obligation to perform certain work for the benefit of the society;
11. placement in a socio-pedagogical boarding school;
12. warning for placement in an educational boarding school with a probationary period of up to 6 months;
13. placement in an educational boarding school.

The commissions held hearings (at the premises they are allocated not in the courts) with the participation of the child and his/her parent/caregiver/ defense council. Hearings are held in informal manner. The child through his defense lawyer or caregiver may appeal the decisions of the commissions to the court.

Delinquency Law recognizes compensation of the victim and the apology to the victim as educational measures that are imposed to the children.

## 2. *Judicial hearing*

The general rule is that it is mandatory for the child to participate in the court hearing. Theoretically, it is possible to have a trial *in absentia* if the offence is not serious and the child is not allocated, but in practice such situation may happen very rarely. The child is always summoned for the hearing. A parent or a caregiver is also summoned. Two separate summonses are sent – one for the child and one for the parent/ caregiver. There is no difference in the text of the two summonses – no child friendly language is used. The text in the notice for adult offenders and children offenders is the same. There are no separate entrances to the court room or separate waiting rooms. Same courtrooms are used for adults and for children.

According to the rules of the MoJ, children are transported separately from adults if they are brought to the court from places of detention. They shall be separated by adults also in the cells while waiting to be brought before the judge. Cells are not appropriate for children, very often there is no natural light in the sells, the place is tiny, and the access to WC is not easy. Children are kept in group sells with other children. It is possible to provide space in this waiting area for a confidential meeting between the child and his/ her lawyer or the child and the parent/ caregiver upon request. Once the child is in the court room he/ she may also have a confidential conversation – the judge has to be informed and since there are no rooms near the court rooms provided for confidential meetings, in such cases the judge orders the participants to vacate the court room and provides the court room as a space for a confidential meeting. But this is done usually for a limited time. Trials against children/ juvenile offenders are always held in the courtrooms. The courtrooms are the conventional ones, used for adults. If the child is a victim or a witness he/ she will be heard in a special place - “friendly” room, usually called “Blue room”. In order to ensure a protected setting for the child, the participants in the trial (defendant, lawyer, prosecutor, judge) watch the witness/ victim from a neighboring room equipped with audio- and video-recording equipment and separated by a glass of a Venetian mirror type from the hearing room. The interrogation is conducted by the judge through a social worker by using headphones. Video-recording of the interrogation is provided. These protected conditions are not provided when hearing a child offender. The child stands in front of the judge in the courtroom same as adult offender. In comparison to adult trials, the hearings in juvenile trials are closed (not open to public). Defense council shall always represent the juvenile who cannot wave the right for defense. A parent or a caregiver shall be also present during the hearing (if no one appears to the court, still the judge may decide to hold the hearing in their absence). The parent/ caregiver may participate in the collection of evidence. The presence of the prosecutor is mandatory. The

judge may decide to invite to the hearing a representative of the school where the child is enrolled and a representative of the Child pedagogical offices<sup>6</sup>.

Hearings are sound recorded but written minutes are always prepared. In case the parties do not have objections to the written minutes, the recording is not attached to the case file and is in practice deleted. Court rooms in Bulgaria are conventional and do not differ from the court rooms in any other country (a picture of a court room follows in the next page).

No specific informative material as to the information who will attend the hearing and how the hearing will be held is provided to the child. He/ she receives a summon for the hearing in a language used also for adults – the text is plain and explains the date and time the child has to appear in the court, the number of the case and the consequences if the child does not appear. The websites of the courts do not contain informative material or video recording that provides information as to where and how the trial will go on.

The judge hears the child in the juvenile justice proceedings. The judge can be assisted by a teacher or a psychologist who can ask questions instead of the judge /usually in cases when the child does not understand the question of the judge and there is a need for more child-friendly language/. This happens in the court room in the presence of the judge and the other participants.

There are no guidelines or protocols on how to interact with the child. There is no requirement for mandatory training on judges, prosecutors and lawyers on how to interact with children – offenders, victims, witnesses. Some training is provided by NGOs and practitioners attend them on voluntarily basis.

The judge wears a gown during the hearing (black color). There is no difference if the hearing is in adult criminal court or in family case. If the judge is in the court room he/she always wears a gown. In family cases it is considered a good practice to hear the child in a “Blue room” where the judge does not wear a gown. Still this practice is not followed by all judges.

The prosecutor also wears gown (red color). The lawyers may wear a black gown but most of the time for practical reasons they usually wear suits. Apart from the judge and the

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<sup>6</sup> Child pedagogical offices are created in the municipalities and coordinated by Inspectors appointed by the Ministry of Interior in the 28 Regional police departments in the country (at least one Inspector per 30'000 inhabitants). The Inspectors are police officers and are required to have pedagogical education. Their work is managed and controlled by the National Police. Additionally, they are also supervised by the Prosecutor's Office. They have a broad scope of powers: they identify children involved in crime or anti-social behavior, supervise some educational measures, and identify child victims of crime and report violations of the rights of children by parents or guardians. They also do prevention work (in schools, for example) and monitor the situation of children at risk, "uncontrolled children" or children who have been sentenced by the courts.

prosecutor, the other participants wear their casual clothes. There is no requirement how to dress for the hearing but it is a common understanding that the clothes shall be decent.

The child, even deprived of liberty, wears his/ her regular clothes. No uniforms are required in jails or prisons (same for adults). There are no cells in the courtrooms. The offender (no matter of the age – juvenile or adult) stands in front of the judge. There are usually two court police officers standing near and behind the child (same as adult) for security reasons. It is allowed the child to be brought to the courtroom with handcuffs but the judge has to decide at the beginning of the hearing if to be taken off. Practically children are detained very rarely as detention on remand in a last resort security measure. For the attendee will be visible that the child is deprived of liberty not because of the clothes of the child but because of the presence of the court police officers. They bring the child from the detention centers, secure his/ her presence and behavior in the court building and bring him/ her back to the detention center. If the child offender is not detained, s/he comes to the courtroom free and no court police officers are present in the court room.

The judge shall enter in the court room when everyone is already in, including the child. Everyone in the courtroom stands up, including the child. There is no chair provided for defendants, including children. They remain standing during the whole hearing. The same applies for the prosecutor and the defense lawyers. Other attendees - parents/ caregivers, teachers, psychologies, child pedagogical officers or other experts may sit behind, in the public.

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This is a photo of a typical court room (this one is in Sofia City Court) where all type of cases are heard. As seen, no chairs for the parties are provided. The child stands in the middle, right to him is his/ her defense council and left to him is the prosecutor. The parent/ caregiver stay behind near the child and usually sit on the bench. There are three chairs for the

judges - the professional judge sits in the middle and the lay judges occupy the other two chairs. The secretary, who keeps the minutes, sits at a table near the judges.

The judge is obliged to inform the child about his rights. There is no requirement the information to be presented in child friendly manner.

The child shall make commitment to speak the truth as the judge is obliged to ask prior to that if the child understands what is truth or false. The child is not obliged to speak. He/she can keep silent.

The law stipulates that the judge asks the questions, so all the questions coming from the prosecutor and the defense council to the child go through the judge. In practice the prosecutor and the lawyer ask the questions directly but the judge may not allow certain questions. If the child feels confused, the judge can help the child understand the question or asks the psychologies to assist.

The child is allowed to consult the defense lawyer or the parent/ caregiver anytime he/she wants. The judge may order that everyone in the court room except the child and his lawyer/ parent/caregivers leaves the courtroom and vacate the place for private consultations.

By rule, only the judge addresses the child. Anyone else shall ask the judge for permission to address the child. When the child agrees to answer questions, it is his/her defense lawyer who first asks questions, then – the prosecutor and last – the judge. But the judge can anytime interrupt the others and ask a question.

The present professionals – like a teacher or a psychologist, are present to support the child during interrogation. The teacher and the child pedagogical officer can provide the judge with some additional information about the child. The parent/ caregiver is also there to support the child and has his/ her own right to ask the judge to submit certain evidence, like interrogation of witnesses or expert-witnesses or asking for additional information or social reports about the child.

The child has the right to interfere or make objections at any time when a professional presents a report. Usually the child speaks through the lawyer but theoretically may interfere personally.

The criminal courts trials are very formal in Bulgaria regardless the defendant is a child or an adult. The rules of Criminal Procedural Code are strictly followed. The child is invited by the judge to speak freely about what has happened and then will answer questions – of the defense lawyer, of the prosecutor and of the judge. The questions are focused to explain the wrongful act and to clarify why the child has committed it. Usually the information about the family condition, educational process, social environment and experience is provided by



the child pedagogical officer and that information concerns the decision of the judge what type of punishment to impose.

It depends on the personality of the judge to be formal and strictly following the procedural rules or to have less informal interaction with the child and to allow more private conversation about the behavior of the child. Both behaviors are allowed. There are judges who are trying to be more close to the child and to apply elements of restorative justice although restorative justice is still not part of our criminal justice system. There are some good examples of judges who meet the parents/ caregivers, teachers, social workers in informal meetings out of the trial and try to find solution for supporting the child – going back to school, engaging in different activities, changing the environment, etc. Before the verdict, the judge is authorized to divert the case to the Local Commission Combating Juvenile Delinquency that will impose educative measures and the child will not have criminal record. The proceedings at the Local Commissions Combating Juvenile Delinquency proceed informally and discussions can be carried out there. Plea-bargaining is usually reached out of the court room, between the persecutor and the defense lawyer and the judge has no possibility to be involved in the discussions. The judge only approves the plea-bargaining when it is reached by the participants. The judge may always discuss with the child and the parents/ caregivers how the child should behave but after issuing the verdict the judge has no tools to follow which is happening, the case is closed.

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During the hearing the child has the same legal and procedural guarantees and safeguards as an adult. In addition, parents/ caregivers are present to support the child. Right of defense can not be waved.

There are no special protections foreseen to prevent trauma to the child. The Criminal Procedural Code foresees that in situation when it is needed to clarify facts that can negatively affect the child, the judge may remove the child temporary from the courtroom after discussing this issue with the defense council, parents/caregivers, the prosecutor. The presence of somebody whom the child knows and trusts can help to survive stressful events in the court.

### 3. Generic questions concerning the improvement of the Youth courts

The law universities in Bulgaria still do not provide initial training on children rights in juvenile justice. Some NGOs with cooperation of the National school for magistrates organize such trainings but judges, prosecutors and lawyers are not obliged to attend them. During the years many seminars, conferences and trainings were organized on national level for educative purposes and for sharing and exchanging best practices with international partners. Still it is a common practice that a judge who is not trained in children's rights and specifically on child hearing holds criminal trials with child offenders. Same refers to

prosecutors and defense lawyers. The spirit of the current Juvenile Justice System framework is predominantly paternalistic and punitive. There is no coordination between the justice system and the child protection system. The educational measures are retributive with resort to deprivation of liberty more often than the principle of last resort would require and a little or no space at all is given to diversion and alternative measures such as mediation, community service orders and other restorative practices. There is a need for specialized judges and court units to deal with child offenders. There is a need for specific training for all professionals to deal with juvenile delinquency. The consideration of the best interests of the child and the determination of his/her personal situation is still not a clear mandatory step in the proceedings. There is a need to develop the system of penal responses providing educational measures along with penalties. There a need to open the Criminal Code and the Code of Criminal Procedure to restorative justice (mediation, community service orders, etc.), to put in place a diversion system which is in conformity with the international standards and in the hands of the police, the prosecutors and the judges. The respect for the right of the child to be informed about the charges and the way the pre-trial and the trial proceedings are conducted shall be not only on paper, but also in practice. We need to introduce all over the country child friendly spaces for hearing the child in conflict with the law.

We also need to amend the Code of Criminal Procedure to require that juvenile suspects or accused juveniles may not be detained for more than 24 hours without a court order. Article 64 para 2 authorizes the prosecutor to order detention on remand of any person, child or adult, for 72 hours without a court order. The Convention on the rights of the child does not provide any rule for the detention of a person, but the CRC Committee has indicated that *“Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours.”*. Furthermore, the International Covenant on Civil and Political Rights, article 9.3 states that: *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...”*. The Human Rights Committee considers that, where juveniles are concerned, the word ‘promptly’ should be interpreted to mean 24 hours.

Detention of children before and during the trial shall be limited to six months, unless special circumstances justify the extension of this period. The Code of Criminal Procedure provides that in pre-trial proceeding detention in custody may last from two months to two years, depending on the gravity of the crime. These time limits apply to children and adults alike. International standards<sup>7</sup> provide that any deprivation of liberty should be for the shortest

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<sup>7</sup> Para.16 of the Recommendation Rec (2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice – *“When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial.”*

appropriate or shortest possible period. This time limit is also linked to the principle of promptness that impose obligation to the authorities to deal with juvenile cases quickly. In practice, because of the heavy caseloads in the courts and prosecutor offices, the cases with child offenders do not enjoy priority. The Supreme Court has issued instructions<sup>8</sup> to speed up the proceedings with child offenders, but that have proven unsuccessful. The absence of specialized Youth courts or at least specialized units of trained juvenile judges within the general courts, the lack of specialization of prosecutors dealing with juvenile cases, the lack of specialized defense councils, social workers, and other professional working with children in conflict with the law prevents Bulgaria to provide modern juvenile justice system that applies the international standards and tools.

Educational institutions – the boarding schools, need to be reformed. We need to replace the existing punitive orientation of the Juvenile Delinquency Act with a new law that respects the international standards in the area of children's rights. Placement of children between 8 and 14 years old in boarding schools often exceeds reasonable time limits<sup>9</sup>, does not provide good quality of education, does not allow application of measures of the child protection system, leads to deprivation of liberty and does not provide procedural protection safeguards that children over 14 years old enjoy under the Code of Criminal Procedure.

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A draft on a new modern Law on diversion and imposing educative measures to children was prepared in 2016 in the MoJ with the active participation of representatives of governmental and non-governmental institutions, UNICEF, professionals. The draft was consulted with Council of Europe. Amendments in the Criminal Code and the Code of Criminal Procedure were also introduced in line with the reform, but both drafts could not pass in the Parliament. There is no clear political will to amend the existing legislation. During the last years seems that big part of society tends to support harsher attitude to child offenders and require through mass media and social media heavier punishments. Despite the numerous trainings during the years few judges show proactive role when dealing with juvenile cases and try to support the child and not only to impose punishment.

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The Committee on the Rights of the Child has not adopted any specific recommendation on the length of detention before and during trial, but it has indicated that the maximum length of proceedings against an accused children should be six months, whether the accused is detained or not.

<sup>8</sup> Decree No.6/1975 of the Plenum of the Supreme Court

<sup>9</sup> Some placements exceed 3 years and lead to lasting institutionalization. Some children are placed in boarding schools just for truancy or running away from home.