



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN SWEDEN

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales en Suecia

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Suède

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 as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Sweden

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Suecia

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 en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Suède

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.

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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 as victims and witnesses in criminal cases is organized worldwide.

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

Questionnaire

1. **Right to be heard**

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)? Yes, children are presumed to be capable witnesses. Still, the age of the child and how mature she/he is, must be considered when estimating the value of the child's testimony as evidence.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)? There are legally no restrictions in the right of a child to be heard. Still, referring to the written results from cases of the administrative courts dealing with e.g. compulsory care, the opinion of the child may be neglected/not referred to or used to support the conclusion of the court. Compulsory care may be enforced if the child has committed crimes and need care or due to the situation at home as for example the parents are assaulting the child. In criminal cases the child may as a witness or as a victim during the criminal investigation be interrogated by police who is educated in interrogating children. The interrogation is recorded. If the child is under the age of 12, she/he is not under obligation to attend the trial where he or she is a witness as it is considered to harm



the child according to practice. The recording of the interrogation with the child will then be used at the trial instead.

1.3. Are children allowed to refuse to make a statement? If so, in which cases? Yes, there are no sanctions in general. If the child is under obligation to attend a trial as a witness, certain sanctions can be enforced as to ask the police to bring the child to the court, even if the child is under 15 years of age. or to remand her/he in custody, The Code of Procedure chapter 36 section 20. If the child is over 15 years of age a penalty consisting of a certain amount of money that she/he has to pay if she/he does not attend the trial, The Code of Procedure chapter 36 section 21. She/he can also be remanded in custody up until 3 months, The Code of Procedure chapter 36 section 21. She/he can also be responsible to pay a certain part of the cost of the trial, The Code of Procedure chapter 36 section 23. Those means of compulsion including to pay a fine and to pay for the trial is never enforced for children although they exist. Still she/he can also be held criminal responsible if she/he as a witness by not telling the truth causes that a person is wrongly held responsible of a crime, The Criminal Code chapter 15 section 1.

2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)? No. There is only in general stated in the Constitution and in special legislations such as the Social Service Law that the best interest of the child must be considered. In legislations dealing with the procedure as e.g. the Code of Procedure you may not find such statements. On the other hand, during criminal investigations where there is a child involved as a victim/witnesses the police who is interrogating the child should be specially trained for such situations according to the Förundersökningskungörelsen (1947:948) Section 18. The interrogation of the child must be well planned and carried out in order not to risk harming the child, and particularly when the crime of suspicion relate to sexual issues special caution must be taken. Furthermore, the interrogation should take place without to stir up attention, not to be more detailed than necessary, and not at more occasions than necessary regarding the nature of the preliminary investigation and the best interest of the child,



Förundersökningskungörelsen (1947:948) Section 19. If there is a Child House nearby, the interrogation should take place there instead at the police station. There are totally about 33 Child Houses in Sweden. Sweden has 290 municipalities and of which 247 have a collaboration agreement with a Child House. If the plaintiff is a child the preliminary investigation must be conducted particularly quickly if the crime is aimed at the plaintiff's life, health, freedom or peace and the crime is punishable by imprisonment for more than six months, Förundersökningskungörelsen (1947:948) Section 2a.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it? Yes, we have in several municipalities so called Child Houses, established in 2005, and inspired by the model used in Iceland. This Child House is in most cases organized by and under the authority of the social authority within a municipality. When a child is being suspect of being a victim/witness of a crime she/he can be brought to this Child House e.g. by, a parent or a teacher at the school for interrogation. The Child House is furnished in a child friendly way including the room in which the child will be interrogated. The child will be interrogated by a police officer who is specially trained for those situations. The interview is monitored, at the same time by representative by the social service, a prosecutor, a special lawyer, appointed by the court if the parent of the child is under suspicion of having committed a crime against the child of one of the parents and the other parent is considered not being able to look after the rights of the child. In some of the Child Houses there are also medical equipment's to have the child examined by a doctor. Otherwise, the child will be brought to a hospital for medical examinations. Before a child is brought to this Child House, the representatives may also meet to discuss a case, and where the identity of the child is not involved, to decide what to do is this special situation. Those Child Houses were implemented with the ambition to increase the number of cases that was brought to trial and where a child was involved as a victim/witness but also to reduce the number of interrogating the child and that the interrogation should take place in a child friendly surrounding.



2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

1. Anyone who works with or meet children, at e.g. school, medical or dental care, the police, must according to law report to the social service if she/he suspects that a child is a victim of a crime. Ordinary people, anyone, should also report to the social authority if she/he suspects that a child is a victim of a crime. See for example The Law of Social Service (2001:453) chapter 14 Section 1 and Section 1c.

2. The social authority has the main responsibility to call for a meeting with representatives from the polis, prosecutor, medical representatives to discuss what to do, without revealing the identity of the child. In this situation the child can be questioned by the social authority without to ask for a permission from the parents of the child. If it is decided that it should be treated not only as a case for the social authority but also as a criminal case the identity of the child can be released to involved authorities. Now the parent of the child must be informed that a preliminary investigation has been initiated and that the child as the victim of the crime will be questioned, and the parent can participate. In order to get the best interrogation with the child in the view of evidence material it can be preferable that the child in questioned by a specially trained police officer for this situation and the parent waiting in another room. If one of the parents is suspect of committing a crime against the child, he/she must not be present. If the other parent is considered not being able to handle the rights of the child a special public lawyer will be appointed by the court to handle the rights of the child relevant during the criminal procedure.

3) If the parent is suspected of having committed the social service can take care of the child and put her/him in another family, home for care and if necessary, in a place which will not be known to the parent. In those cases, the parent does not agree that the child is taken care of. If the child has reached the age of 15 the child has also to agree to voluntary care. The decision by the social service authority to take of the child and it is compulsory the decision must be tried by the administrative court within 14 days.

4) When it comes to the trial and the child is a victim/witness child under the age of 12 is not obliged to appear at the trial as it is considered that it will harm the child. Instead, will the recorded interrogation with the child be presented for the court at the trial. If the child is older and appear at the trial but feel uncomfortable to speak in the presence of the



defendant, the defendant may then be placed in another room from where he/she can see and hear the child when giving her/his view/witness statement of the committed crime.

2.4. In which moment(s) can a child be heard in this procedure? During the preliminary investigation and at the trial if the child is 12 and older.

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases? A child can always contact the police to initiate a crime but under the age of 18 the parent must give their consent to such initiative if not the parent is under suspicion of having committed the crime. In those cases, the court will appoint a legal adviser to handle the rights of the child in relation to the criminal investigation and the trial. If a preliminary investigation is taken place, which is the police or the prosecutor responsibility, it can only be terminated by them.

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them? **No?**

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen? **There are no such materials**

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced? **No**



3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

No

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing? No

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)? No

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please? At any report of crime to the police there should be an initial estimation of risk of treat and/or violence for a victim/witness. Then it is a special unit within the police authority who is responsible as soon as possible to estimate a witness or other threatened persons need of special protective measures during the preliminary investigation and the trial, The Police Act (1948:387) Section 2a. At the assessment special consideration must be given to the seriousness of the crime and the plaintiff's personal circumstances. If she/he is a child, she/he must always be considered to have special need for protection, Förundersökningskungörelsen (1947:948) Section 13f. The police have four structured risk assessments; SARA:SV (violence in close relationship), SAM (stalking), PATRIARK (honor-related violence) och Check-15 (general threat picture). They consist om checklists developed on a scientific basis. The structured risk assessments should be written and documented in the police case management system which is unfortunately not always done and has resulted in that measures of protection has not been implemented. The purpose is to protect people who are exposed to tangible risks of serious crime being directed at their lives, health, freedom or peace, or that of their relatives.

4.2. In case of identification of risks, what kind of protective measures are available in your country? Protected personal data, relocation, sheltered accommodation, alarm devices of various kinds and help with various authority contact. In very serious cases, a new identity and to live abroad can also be applied. Furthermore, for a child who is a



plaintiff, she/he can have a counsel appointed by the court, or the suspect will by the prosecutor forbidden to contact the child. The police also work with offensive conversations which is a collective term for conversations with the aim of influencing someone threat actor to interrupt a criminal behavior. To be able to influence another person is required a voluntary cooperation based on trust rather than sense of compulsion. A special representative for the child can also be appointed by the court if the parents are involved in the crime against the child or is not able to look after the rights of the child during the preliminary investigation and the trial. The Istanbul convention is implemented as law in Sweden and includes girls under the age of 18. The police are also under obligation to issue a report of concern to the social authority at suspicion that the child is or might be hurt.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process) See previous answers.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping? See previous answers.

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase? In a Child House, if it is available, which is furnished in a child friendly way. Otherwise at the police station as it has to be recorded.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children) See previous answer.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?



This is the room where the child will be interviewed. It should not have this that may distract the child but still be child friendly.





These are 2 examples of a room where the child is waiting.

5.4. Is there a specific waiting area for the child? Yes I Child Houses. See above.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc) At the court there a special rooms for witnesses and also if the she/he is a victim.

5.6. In case identification of the offender is needed, how is this conducted, and where? At the police station.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake? The child and if necessary the parent or a special appointed lawyer should take the child to the court and the cost is by the court.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted? Yes, but the interviewed child must go to a certain place as for example a police station, where the identity of the child is controlled and there is equipment for such an interview.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? See previous answer. If the child has to appear in court, which circumstances are determinant? The age of the child, to be older than 12.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? See previous answers. for free?

Yes. **Is this assistance specialized?** Yes, must be a lawyer, an assistant lawyer at a law firm or someone can be appointed by the court. Only those who, due to their knowledge and experience as well as personal characteristics, are particularly suitable for the assignment may be appointed. **At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)** When a preliminary investigation has started and the punishment of the crime is imprisonment, and furthermore, one of the parents a guardian may be suspected of the crime, or it may be feared that a guardian, because of her/his relationship with the person who may be suspected of the crime, will not take care of the child's rights. Act (1999:997) on special representatives for children Section 1.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

The special representative should take into account the child's rights during the preliminary investigation and in the subsequent trial as well as in measures relating to the enforcement of damages and applications for criminal damages. Section 3.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

This will be the special representative as described in the previous answer. If the parent is not suspect, she/he can accompany the child and a person from the social service. An other person that the child trust can also accompany the child to the interview.

6.3. What is the role of parents/legal representative?

The parents to support the child. The special representative take care of issues related to the pre-trial investigation and the trial.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

If the parent is suspect of the crime committed against the child.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

The special representative can be replaced by another one.



6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

Our legal system does not have anonymous witness or victim.

6.5. Is the child allowed to plea for cautionary measures?

That an issue for the police and the prosecutor.

6.6. Does the child have the right to appeal any decision?

Yes, at the age of 15.

7. Interviewing structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

Special trained police officers. The interviews should be as few as possible.

7.2. Is it mandatory that this professional has specific training for child interviews?

Yes.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

A research based method is used when interviewing a child called NICHHD-protokollet (National Institute of Child Health and Human Development).

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

The child should be alone with the interviewing police officer. But there if necessary be a special qualified interpreter, if such a person is available, present. Special qualified means to be an interpreter in court etc.

The prosecutor, social worker, the special representative, also representative from the health care, the defense lawyer, can see and hear the interview from another room.

7.5. Who is addressing the child victim/witness: only the interviewer? Yes. cross examination allowed? Yes, if the child appears in the court which means she/he is over 12 years of age. if only the interviewer, how can other participants ask questions?

How is the communication between those who follow the interview and the



interviewer? What kind of communication tool is used? Before the interview the police, prosecutor, the social worker, the special representative meets and discuss the case and which questions must be asked or what information do they want to have from the child if possible.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

The police, special trained, can rephrase the question after the police responsible for the interview agrees on that. This means that it can be several representatives from the police authority when the interview of the child is prepared.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)? Yes, and used as evidence in the court if the child is under 12 och even under 15 years of age.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)? We do not have anonymous witness or victims.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted? There are special requirement concerning the equipment.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?
It is mandatory.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? No

Is his/her defence attorney allowed to participate?

Yes, if the child is under 12 och even 15 the defence attorney will see and hear the interview from another room. She/he may also in advance ask that certain questions



should be addressed to the child. It is up to the responsible police officer of the interview to decide if the question may be asked. If the question is not admitted the defence attorney can complain to the court.

If the child is older than 15 the defence attorney can participate but may only ask questions after the leader of the interview has agreed.

In court only the defence attorney may ask questions to the witness/victim.

Is participation of either of the two mandatory?

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

Through the defence attorney.

9. Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview? At suspicion of a crime being committed the police and the prosecutor is responsible but cooperate with the social service. It may also include issue of protection of the child. Family issues are handled by the social service. But if they appear at the same time the different authorities cooperate.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

Through consultations between the authorities involved, anonymous if there is not sure that there has been a crime committed but when a case starts as a preliminary investigation or a case by the social authority the consultations is based on the identity of those involved and previous documentation if relevant.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

If the child appears in court the judges are allowed to ask the child questions.



10. Training

10.1. Are judges and magistrates trained to deal with child victims?

Yes, the judges but it is not obligatory.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

In terms of criminal policy, the issue of crime victims is of decisive importance for currently ongoing changes in the Swedish criminal law. An important change regarding child's victim rights was enforced in 2021, child protection offence, the Criminal Code Chapter 4 Section 3, when a child who witnessed violence, sexual abuse or threat from a close relative to another close relative changed status from witness to plaintiff.