



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN MALTA

National Report for AIMJF's Comparative and Collaborative Research.

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

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 à Malte

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

Judiciary of Malta

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 Malta.

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 Malta

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 à Malte

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 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)?

Children are presumed to be capable witnesses if they are capable of conveying a message. Needless to say, it all depends on the age and mental capacity of the same child but there is a concerted effort to hear children especially if they are also the alleged victims. All the appropriate measures are taken – the witness is heard either from the children’s home in the presence of a social worker with whom the child already has a professional relationship in order to make him/her feel more at ease, the sitting takes place virtually so that the same child is not in the same Court room as the alleged aggressor / accused, the camera is not placed on the alleged aggressor/ accused and the questions are put forward by the Magistrate in a soft and simple way. Children are also allowed to play with toys during their testimony to allow them to be at ease and perhaps give more information to the Court.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

The right to be heard is not restricted per law. However as stated above, children need to be capable of conveying a message through speech in order to be able to testify. In proceedings were children are the ‘merits’ of the case such as Care Order



Proceedings (where the State intervenes to ensure that the child is protected in some way or another) the Court appoints a Child Advocate who has the role and obligation to represent the same child, bring forward to the Court any matter that she/he may feel is important, inform the Court as to the child's wishes and act in the child's best interests to ensure that the same child is heard and that the Court is aware of the same child's stand/wishes.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Children are allowed to refuse to make a statement if through that testimony they will have to testify against one of the parents (or both) or against any family member (in Civil matters). In criminal matters where the child is the alleged victim, then their testimony becomes vital and most often then not, becomes the *sine qua non* evidence. Where criminal proceedings are instituted and the same proceedings can be prosecuted *ex officio* then the prosecution will insist on their testimony. In domestic violence cases where children are required to testify, although proceedings are *ex officio* the alleged victim still has the right to request the Court at any point of the proceedings to withdraw the case. It is then in the Court's discretion to accept that request or not which request is decided on a case to case basis taking into consideration the greater good, the particular circumstances of the case and the voluntariness of the same request. In such a scenario, the request on behalf of a child is ALWAYS done through an adult representing the same child.

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)?

Yes. As stated above, children who testify in court proceedings need to be accompanied by an adult and are given the opportunity to testify virtually in a calm and serene environment which is child friendly. The camera is not placed on the

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alleged aggressor/accused – however it is vital for the child to identify the aggressor/accused ONCE. To avoid double-victimisation the child witness (who also happens to be the alleged victim) will only testify ONCE and cross-examination of the same testimony is conducted on the same day so as to ensure that the same child does not have to relive the merits of the case more than once.

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?

Through their investigation the police may speak to the alleged victim (who happens to be a child) and that version will have to be repeated in Court and in the presence of the accused (although as stated above, the child will be able to testify virtually and would not have to face the aggressor/accused during the same testimony). There is a concerted effort to avoid multiple interviews and this is why Court proceedings are recorded so that should the case proceed before a Court of Appeal, at least the witness will not have to testify all over again.

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?

Most of the times, when children are victims, the first point of contact is a teacher, school professional or someone that the child trusts (like parents and relatives when the latter are not the alleged aggressors/ accused). The case is then referred to the police, to the Directorate for Child Protection and possibly to a medical team (depending on the charge and merits of the case) who compile reports and further investigate leading to a formal charge in Court.

2.4. In which moment(s) can a child be heard in this procedure?



This will depend on the nature of the case, whether the case is of a Civil or Criminal nature and whether the child's testimony or wishes can be done through the Child Advocate or not. It needs to be pointed out that in Criminal proceedings the Child cannot testify through the Child Advocate and Cannot convey any message to Court through the same Child Advocate. That is only permissible in Civil cases.

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?

As stated above the child may request to withdraw proceedings in relation to domestic violence matters (through an adult representing him/her). The law distinguishes between *ex officio* offences which are prosecutable by the Police on their own accord and do not necessitate a formal complaint by the alleged victim and crimes such as defilement of minors (except when this take place by their parent/tutor) which due to their nature necessitate a formal complaint. However it needs to be pointed out that where the alleged aggressor/accused is a parent or is entrusted with the care of the child or is his/her tutor, then proceedings become prosecutable *ex officio*.

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?



N/a

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?

As stated above, children who are capable of speaking their mind or at least convey a message (even in the simplest of forms) can be called upon to give their testimony. If a professional is on board (for example a social worker following the case) the same social worker would have prepared the child as to what is expected of her/him and what the truth is. There are instances when it is doubtful as to whether the child has the mental capacity to testify and understand the implications of saying the truth in which instances the Court will appoint a Psychiatrist to ascertain the child's mental capacity. There are also instances where professionals in the child's life inform the Court that giving evidence might actually be prejudicial to their mental health (in very particular circumstances) and consequently the Court would need to balance the information at hand and decide as to whether it should hear the child or not or perhaps postpone the same testimony for a later stage.

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

Parents and legal guardians of children about to testify are always allowed in the Court room. Children need to be accompanied by an adult even if they avail themselves of the possibility of testifying virtually.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

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This will depend on the timing and the urgency of the case. If a child will testify virtually from the Children’s House then the possibility exists and social workers often invite the children to the same facility to make them feel at ease. However if the child will testify via video-conference from the Magistrate’s Chamber or from a different room inside the Court room, then more often than not the child will only visit the premises on the same day of his/her testimony.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Yes as stated before no child is alone during the testimony and is always accompanied by an adult.

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?

In Domestic Violence Cases a risk assessment is conducted by risk assessors who are engaged to conduct these interviews by Agency Appogg through cooperation by the Police assigned to Domestic Cases. The risk-assessment standard form is hereby attached for your perusal.

4.2. In case of identification of risks, what kind of protective measures are available in your country?

Protection Orders are issued in favour of alleged victims whilst Restraining Orders are issued upon judgement. Alleged victims are always offered additional support through professionals such as social workers, legal aid lawyers (if they can’t afford private legal representation) and there are also shelters which give them a breathe



of fresh air. During their stay at a shelter, alleged victims (who accept the help) are given the right tools to find stable employment, alternative residence, a care plan and long-term plan to ensure that the vicious cycle is broken once and for all.

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

Social workers are usually the first professionals involved. However if the same social workers or other professional on the case deem it appropriate, a referral to any other professional is issued to ensure that the child is given the best care available.

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?

Malta has ratified the Hague Convention. The law also allows for warrants of prohibitory injunctions to be issued against children where there is risk of flight. It is then up to the party filing that injunction to prove that the risk exists and that the injunction is truly required to ensure the child's safety. As stated above, through the legal representatives, the Courts may be requested to evict the alleged aggressor/accused from the same residence of the alleged victim whilst temporary protection orders are also issued to ensure the child's safety.

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

This much depends on the nature of the case and who is conducting the interview. However there is a concerted effort to conduct interviews with children in rooms



where there are toys and things which children are usually attracted to. Police officers who conduct investigations do endeavour as well to speak to children in their own residence to ensure that the same child feels at ease and they try to avoid taking interviews at the police stations (though this is not ruled out and there have been instances where children were spoken to and asked questions at the police station or in a police officer's own office).

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 above.

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?

N/a

5.4. Is there a specific waiting area for the child?

N/a

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)

As stated above the child and the alleged aggressor do not meet and the testimony is conducted either virtually (the child testifies from the Children's Home or from any other place) or through video-conferencing (from the Magistrate's Chamber or a separate room in the Court room). The camera is not placed to show the alleged aggressor/ accused however the child would have to identify the same alleged aggressor/accused. This basically means that the child would only need to look at the alleged aggressor/accused for a split second in order to identify him/her.

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

See above.

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?

Virtual testimonies have become common and links are sent to witnesses on a daily basis for a multitude of reasons including the safety of the same alleged victim in order to protect their whereabouts.

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 see above

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

In criminal proceedings children need to be testify in Court. The child-friendly measures indicated above are applied in order to ensure that the same child feels safe and as at ease as possible.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? 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)



Yes children who are deemed to be victims have the right to be legally represented and if their parent/tutor or legal guardian cannot afford a private lawyer, a legal aid lawyer is appointed to assist that child. Such legal assistance would only be available for the child if he/she is the alleged victim or perpetrator (if over the age of 14 years which is the age of criminal responsibility in Malta). A child who is merely a witness in a case is not afforded free legal representation.

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 role of the legal assistant is to be the child's advocat, give advice and to convey the child's wishes and interests to the Court.

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?

As stated above, children are to be accompanied by an adult in all cases – whether the child is a witness, an alleged victim or the alleged perpetrator.

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

The legal representative's role is to ensure that the child is given the right tools to understand the whole judicial process and to ensure that the child's rights are adhered to and that the same child's interests are safeguarded at all times. Legal representatives are required to ensure that any decision relating to the same minors (even if on the lawyer's advice) is taken in the presence of the accompanying adult.

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

In Criminal Proceedings, if the parents are the perpetrators, they are still present in the Court room. However, as stated above there are child-friendly measures which

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allow the child to testify in a way that would allow them some breathing space and not be forced to be in the same room as the alleged aggressor. In Civil matters children do not need to be present in Court especially in those circumstances where a Child Advocate is representing their needs, wishes and interests and meetings with the same child are conducted elsewhere.

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

See above

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?)

Juvenile Court sittings are held in private in the sense that the general public is not allowed in the Court room as opposed to public cases. When children testify in the public cases, the Court has the power to order that the child testifies privately and the doors are simply closed off to the public. Reporters are simply not allowed in or ordered not to mention the child's name (and if needs be even the alleged aggressor's name) in order to protect the identity and privacy of the child and in order to ensure that intimate and private details do not become public.

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

If a child who has attained the age of criminal responsibility needs to testify and the Court is informed that there might be charges issued against the same child, then the Court cautions the witness, explains his/her rights and needless to say ensures that such testimony is taken only in the presence of a legal representative.

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



The right to appeal from judgements is available. Certain decisions may however be appealed only after judgement (by the Court of First Instance).

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?

At pre-trial stage the child might have to be heard by the professionals investigating the case or by the experts appointed by the Magistrate in the Criminal Inquiry. During Criminal Investigations police sometimes conduct Forensic Interviews with children who happen to be alleged victims and the same interviews are recorded and subsequently exhibited in Court as evidence.

Once the case reaches Court stage, then although the law does not limit the amount of times that a child is heard, as stated before, a child will testify only once. Cross-examination is conducted on the same day and the same testimony is recorded and transcribed so that should the case go before the Court of Appeal, no witness would have to testify again.

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

No.

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?

N/a

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?



A child who testifies during any proceedings needs to be accompanied by an adult. The alleged aggressor/ accused would be hearing the testimony but would be physically in another room (the Court room).

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? 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?

As stated above the testimony is conducted on the same day. Cross-examination is allowed however depending on the age and circumstances, questions to the witness may be put forward by the Magistrate in order to avoid any form of intimidation.

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?

Yes the interviewer is allowed to paraphrase in order to simplify the question and make it more comprehensible for the child.

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)?

They are audio-recorded and subsequently transcribed.

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)?

See above

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?



Currently if the recording fails there would be no other option but to repeat the testimony. However a back-up system will shortly be implemented to ensure that such a scenario is avoided.

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?

N/a

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?

See above.

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? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

No. however the alleged aggressor/accused has the right to be legally represented and to cross-examine the witness through the procedures explained above.

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?

See above.

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?



Every party to the proceeding will have the right to pose questions. Whether those questions are put forward to the child (witness) through the interviewer or not or through the child Advocate depends on the particular case and circumstances and whether the case is a Criminal or Civil one.

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

Courts are allowed to order that it's Decrees are communicated to the authorities for further investigation or annotations or further information.

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)?

No. Interviews are not shared.

10. Training

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

Yes

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

Yes

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?

N/a