

CHILD PARTICIPATION IN FAMILY AND CHILD PROTECTION MATTERS IN THE REPUBLIC OF NORTH MACEDONIA

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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 family and protection matters. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in the Republic of North Macedonia.

Key words: child participation; family law; child protection; children´s rights; justice system; North Macedonia

By defining that a specific situation concerns the child, does he/she become a party to the proceedings? Does he/she have the right to legal representation by a lawyer? Are there limits to the intervention of this lawyer in comparison with the other parties? The lawyer has an ethical duty to represent only the child's opinion, including cases where he/she does not consider the child's opinion in accordance with his or her best interests?

The law provided for two different situations: for a child under 14 and for a child who has reached 14 years of age.

1. For a child up to 14.

Procedure for crimes (criminal procedure), according to the provisions of the Law on Justice for Children can be initiated only against a child who has reached 14 years of age.

If the child is under 14 years of age, the Ministry of Interior shall notify the competent Centre for Social Affairs and the competent public prosecutor in writing. The Centre for Social Affairs calls the child, his / her parent / guardian for a period not longer than 36 hours and initiates a confidential procedure. The conversation is led by an expert team consisting of a pedagogue, a social worker,

a psychologist and a lawyer. Only in cases when the action of a child at risk up to 14 years of age is considered a criminal offense punishable by imprisonment of at least five years or when there is a threat to the person, rights and interests of the child, an attorney who protects the rights and interests of the child is mandatory.

The lawyer is chosen by the parents / guardians, but if they do not call a lawyer, the Centre for Social Affairs appoints a lawyer ex officio from the list compiled by the Bar Association of the Republic of North Macedonia. Only lawyers who have undergone appropriate training for representing children in criminal proceedings may represent them in proceedings against children. The costs for representing the lawyer are paid by the parents, guardians, and if they are not able, i.e. according to the law, if they "earn total monthly income less than the average net monthly salary in the Republic of North Macedonia paid in the previous month", the costs fall to the Budget of the Republic of North Macedonia.

The lawyer is obliged to give a legal opinion on the case in writing within seven days of the conversation with the expert team. The legal opinion should contain in particular the description of the action envisaged as a crime, the factual and legal elements of the case. In the practice from the practical experience so far, from the beginning of the application of the law on December 1, 2013, lawyers are not called, several cases have been registered when a lawyer is called by the parents, but written legal opinions are not given because the law is unclear. The Centre for Social Affairs and the lawyers explain that this legal solution is unclear in terms of how the legal opinion would help the child. We can conclude that for children up to 14 years lawyers are called only if the parent decides to hire a lawyer.

The Centre usually prepares a plan of activities for assistance and protection of the child.

2. For a child who has reached 14.

Proceedings against a child over 14 years of age for an action provided by law as a criminal offense are initiated only at the request of the public prosecutor.

The defence of the child at all stages of the court proceedings is mandatory.

The lawyer is appointed by the court ex officio, if the child or his / her legal representative does not provide a lawyer.

The child may also be assigned a lawyer ex officio from the ranks of lawyers in a misdemeanour procedure and if the juvenile judge decides that it is necessary.

The child can be examined only in the presence of his lawyer.

There are no restrictions on the intervention of the child's lawyer in relation to the other parties in the procedure. The defence counsel is obliged to represent the best interests of the child during the court proceedings. The lawyer is obliged to respect the opinion of the child, but he is also obliged to explain to the child if he makes statements or acts against his interests. However, at the end of the court procedure, the last word, i.e. the final decision is made by the judge who is obliged to act according to the best interest of the child.

How does the child participate in Court proceedings? Directly, in front of the judge, or through an intermediary, either the lawyer or another professional? If it is another professional, can you identify it and specify its responsibilities, please?

According to the Law on Justice for Children, one judge is in charge for the criminal procedure from the moment of submitting a request for initiating a preparatory procedure until the final completion of the procedure.

There are two stages of the procedure, the preparatory procedure and the procedure in front of the children's council.

Preparatory procedure (investigation like phase)

The request for initiating a preparatory procedure is taken into consideration by a child judge who directly examines the child. The child is examined with the mandatory presence of a defence lawyer and a parent / guardian. The public prosecutor may be present but is not mandatory. At the discretion decision of the hearing judge, a pedagogue, psychologist or other professional may be present. The data on the personality of the child are previously obtained from the Centre for Social Work in the form of a written report. (This is a picture from the office, there is a child being examined in a preliminary procedure.)



The Public Prosecutor may drop the prosecution after completing a preparatory procedure or submit a proposal for the application of a sanction (this is similar to the indictment act for adults). The children's council acts on the proposal.

Procedure before the children's council.

A children's council is composed of a judge and two jurors.

When the factual situation is indisputable, a session of the children's council is scheduled. In practice, the child is not invited to this session. This session is attended by the Public Prosecutor (optional, but in practice it is always present) and the child's lawyer. The Council, after presenting all the evidence, makes a decision on the sanction. The decision is submitted in writing to all participants (subjects) in the procedure.

When it is necessary to establish the factual situation or when it is a more serious type of crime and a sentence or institutional measure should be imposed, a main hearing is held to which the child is always called and examined. The public prosecutor, the child, the defence counsel, a parent / guardian, a representative of the Centre for Social Affairs, witnesses, experts are called and present at the trial.

If the participation is direct, is it voluntary? In this case, who consults the child if and how he/she wants to participate? Are there any institutional

protocols on how to do that? Are there any informative materials specially prepared for children about its participation? Can you share it with our members?

In the answer to the previous question is stipulated when attendance of the child is mandatory (*When it is necessary to establish the factual situation or when it is a more serious type of crime and a sentence or institutional measure should be imposed, the court holds main hearing to which the child is always called and examined*). Otherwise, the child can attend when it is not obligatory if he/she is interested in it. In practice, there is no interest.

The child is advised by counsel most often.

There are no protocols, it is acted exclusively in accordance with the law.

There is no information material in the courts although there are many manuals, guidelines and brochures have been produced by UNICEF and other NGOs.

If the child does not want to participate directly, what alternatives are there in your country to ensure indirect participation? If there are doubts about what the child really wants or if his/her opinion is really expressed, what's the solution in your country?

If the child does not want to attend, and attendance is required by law, there is no other solution. The child will have to attend the hearing.

In cases of direct participation, in what procedural phase does it take place? Is there a quantitative limit on consultation with the child? The child participates in this delimitation? How? When the opportunity to participate in the child is offered, what is the extent of options available to the child? I mean, should the child be limited to the aspects considered important by the adults or can the child bring other questions and possibilities?

The stages are explained above (1st question).

There are no restrictions on consultation with the child.

When the child participates in the procedure, he/she has all the rights, the right to be heard, the right to consult a lawyer, the right to postponement in order to prepare his/her defense, the right to inspect the evidence, the right to ask questions of damaged party, witnesses, experts...

How is the courtroom where participation takes place? And the formalities of the child's participation in front of the judge? Is the

participation taking place in the regular courtroom or in the office? Who is present in the courtroom/cabinet? How are the people dressed? Can you present a photo of such an atmosphere?

The preparatory procedure takes place in the judge's office. The Judge, the typist, the child, the defence counsel and parent / guardian are present. - Here is a picture from the office.



A session of the council is held in the courtroom, this session is attended by the judge for children, two jurors, the Public Prosecutor (optional, but always present in practice) and the child's lawyer – defence counsel.

When the main trial (main hearing) is held, the judge for children, two jurors, the Public Prosecutor, the child, the defence counsel, the parent / guardian, the Centre for Social Affairs representative, witnesses, experts are present.

There is no formal attire, no togas, everyone is dressed informally - casual.
Photos from Court room.









Is there a protocol on how to address questions to the child in family and child protection issues? Who developed it? Can you share it with our members? If there is not, how do you do it?

There are no protocols for addressing questions to the child, according to the Law on Justice for Children and the Convention on the Rights of the Child, the child is always asked questions in a way that he/she can understand them, they are asked carefully so that the child does not feel guilty, or endangered, special attention is paid that the questions are not suggestive.

If the child is a victim, the provisions of the Law on dealing with a child victim are followed, if necessary, special procedural protection will be provided, with audio-video recording of the statement, in special rooms and questions are asked through experts (pedagogue, psychologist etc.) .

If no special procedural protection is required, child victims are treated with special care so that they are not re-victimized during the procedure.

Who is allowed to ask questions the child? Are the questions asked directly by the party or are they intermediated by the judge? What are the concerns adopted by the judge to avoid questions that may embarrass or violate the rights of the child? How does the debate unfold around the regularity of questions if the child is present in the atmosphere?

Questions to the child are addressed always through the judge for children. The judge, if necessary, will reformulate the question and put it in a way that is appropriate for the child. The judge has the right not to allow questions that he/she considers to be to the detriment of the best interests of the child.

The child is present during the debate on the issues/questions, unless the child is a victim and is in a separate hearing room.

Is the decision taken in front of the child? If the child wants to, can he/she stay in the room?

The final decision is made by the council for children after secret counselling and voting. After the counselling, the decision is communicated directly to the child, if there was main hearing (main trial) in place. The same decision is then made in writing and delivered to the child and the other parties in the procedure.

In all other situations, all other decisions shall be made in writing and communicated to the child and the other parties to the proceedings.

Are there any special rules about the consideration of the child's opinion in the context of the reasons for the decision? What's the weight given to the child's opinion? Is it the age a criteria? Which one? If the child's degree of maturity is taken into account, how is this maturity assessed? By whom? What are the criteria considered?

In criminal cases, the procedure is conducted for children over 14 years of age, i.e. children at risk and children in conflict with the law at the age of 14-18 years are heard. The judge for children always respects and takes into account the opinion of the child before making a final decision, in correlation with the other verbal and material evidence.

In the case of child victims, they are treated in accordance with the provisions for dealing with child victims; the judge for children assesses whether the child is mature enough in order to pay trust in its statement, i.e. the statement to be taken into account in the decision or requires presence to a pedagogue, psychologist or other professional. The child victims are always accompanied by a legal representative, they can voluntarily hire a proxy - a lawyer, or A lawyer shall be assigned by the state.

How is the decision communicated to the child? Are there any protocols for this communication? If the child has doubts or questions, is he/she allowed to speak with the judge? How do you do that?

After advising – counselling of the children's council, the decision is communicated directly to the child, this if a main hearing has taken place. The same decision is then made in writing and delivered to the child and the other parties in the procedure.

In all other situations (the indisputable situations when main hearing is not necessary), all other decisions shall be made in writing and communicated to the child and the other parties to the proceedings.

Does the child have the right to appeal the decision?

The child has the right to appeal the decisions in accordance with the legal provisions, i.e. has the right to use all regular and extraordinary legal remedies.

Waiting room – hall.

