

## **CHILD PARTICIPATION IN FAMILY AND CHILD PROTECTION MATTERS IN THE NETHERLANDS**

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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 Netherlands

**Key words:** child participation; family law; child protection; children's rights; justice system; Netherlands

By defining that such a 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?

In family and child protection proceedings children are not a party to the proceedings, with only one exception: for secure treatment placements via a child protection order (deprivation of liberty). Children are represented by their parents or guardians. In some family law matters Dutch law provides children aged 12 or older with the possibility of approaching the court informally and asking for a specific decision (regarding parental responsibilities after divorce and separation, and care and contact arrangements between a child and a parent).

Children do not have the right to legal representation in family and child protection proceedings (only exception: secure treatment placements). In juvenile justice proceedings children are represented by a lawyer. In the event of a potential conflict of interests between the child and the parents a guardian ad litem can be appointed by the family court for matters relating to the care and upbringing of the child or the child's property and in proceedings regarding legal parentage.

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?

Children aged 12 and older have the right to be heard by the court. Children are given the opportunity to be heard in family and child protection cases (only for child maintenance a higher age of 16 years is applicable). In Dutch law, participation forms and methods of communication are not regulated. The four Courts of Appeal have developed a professional standard on 'child conversations'. District courts do not have such guidelines.

There are 2 exceptions: the District Court of Amsterdam invites children from the age of 8 to be heard in family and child protection cases. The District Court of The Hague who is responsible for all Dutch international child abduction cases hears children from the age of 6.

Children are heard in court directly (without representation), often in a separate child-friendly room, but sometimes in chambers or in the courtroom (without the other parties). One judge interviews the child (with a clerk who makes minutes).

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?

Participation is voluntary: children are invited in court via an invitational letter but are not obliged to be heard.

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?

Alternatives to direct hearing: a child can write a letter to the judge in response to a court invitation to be heard. In family and child protection cases

children are also heard by the Child Protection Agency that has an expert role and advises the Court; a social worker of the Agency talks with all children and include their voice in their reports.

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 child is often heard on another day than the parents, before the court session takes place. There is no limit. Recent research findings (Bruning et al) showed that a child hearing takes place in 5-15 minutes.

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 judges often hear the child without a gown, but this differs between judges. Its location varies; child-friendly room, courtroom or council chamber.

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?

No, but there is judicial training available.

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?

The judge asks the questions; no other parties are present. Children are not heard as witnesses in family and child protection proceedings.

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

Sometimes the decision is taken in front of the child for simple child protection proceedings. In Family law proceedings the written decision only is made two weeks after the court hearing. Sometimes 'child friendly decisions' are prepared for the child in plain language.

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?

No. it is not known how weight is given to the child's opinion. There are no criteria.

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?

Sometimes with a child friendly decision in plain language. Often the parent's lawyer or the parents are asked by the judge to communicate the decision to the child.

Does the child have the right to appeal the decision?

Not independently, only via parents/ guardian or guardian ad litem. One exception: secure treatment placements.

## **SUPPLEMENTARY MATERIAL**

## **Goal-oriented matrix: Listening to children/ young people**

**(freely adapted from Kouwenhoven's coaching matrix)**

### I. Introduction

- how do you ensure that you yourself are at ease?
- how do you ensure that the child is at ease (think of contact and contract)?
  - explain your own role (if need be, refer to the invitation letter) and ask about the expectations of the child
  - make the framework clear

### II. Facts/ experience (focusing on the past)

#### *THINKING*

- what led to you being here; what happened?
- how do you see your situation?

### III. Conviction/ interpretation/ significance (focusing on the present)

#### *FEELING*

- what is your problem now?
- how do you feel about it; what does this mean for you?

### IV. Decision/ goal (focusing on the future – needs/ 'dream')

#### *WANTING*

- what is needed to solve your problem?
- what would you want/ desire?

V. Reaction/ behaviour (focusing on the future – action (short-term)/expectation (long term))

#### *DOING*

- what do you intend to do?
- what do you think will happen?

## VI. Rounding off

- what has been said – summarise?
- what are you going to do with it/ what are you going to write down/ what are you going to decide about it?
- make the transition with the child/ young person to the present moment – bring the conversation to a close

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## **RESOURCES**

Mariëlle Bruning and Jiska Peper, "Giving Children a Voice in Court?",  
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## **INFORMATIVE VIDEO FOR CHILDREN**

<https://www.youtube.com/watch?v=3h-iDI5BRT4>

## **PHOTO GALLERY**

## The Netherlands

