



## CHILD PARTICIPATION IN JUVENILE JUSTICE IN UKRAINE

### National Report for AIMJF's Comparative and Collaborative Research.

*La participación de los niños en la justicia juvenil en Ucrania.*

*Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants à la justice juvénile en Ukraine.*

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

**Pavlo Parkhomenko<sup>1</sup>**

**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 Ukraine.

**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 Ucrania.

**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 Ukraine.

### 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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<sup>1</sup> judge of the Bakhmatsky district court of Chernihiv region, Ukraine. PhD, teacher of the Higher School of Advocacy of Ukraine, the National School of Judges of Ukraine, National expert of the Council of Europe



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 in juvenile justice is organized worldwide.

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

## Questionnaire

### JUVENILE JUSTICE IN UKRAINE<sup>2</sup>

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#### I. Introduction

Based on the content of international standards in the field of protection of children's rights, juvenile justice should have its own characteristics, different from the approaches used in relation to adults who fall into the scope of justice.

The trial should take place in a child-friendly atmosphere and meet the child's best interests, regardless of their status.

For the functioning of juvenile justice, the specialization of specialists, the organization of space, a special legislative base, the presence of special approaches in communicating with a child and the measures applied to it, etc., are important .

Also, the war that started in Ukraine affected the state of juvenile justice, bringing new categories of cases, difficulties in access to justice and changing the general state vector of policy in the field of juvenile justice.

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<sup>2</sup>In this study, we will consider the system of juvenile justice in Ukraine in the context of a child falling into conflict with the law.

**The author is a supporter of the term "Child Friendly Justice".**

The Chronicle – AIMJF's Journal on Justice and Children's Rights 1/2023

ISSN 2414-6153

In Ukraine, due to various reasons, the system of specialized courts for minors is not clearly defined, but certain features of **specialization** can be traced from the existing legislative framework and practice. At the same time, criminal proceedings against minors have their own peculiarities in comparison with cases against adults, which we will pay attention to below.

## **II. General principles of juvenile justice**

### **2.1. The judicial system in Ukraine**

In accordance with the Law of Ukraine "On the Judiciary and the Status of Judges" dated June 2, 2016 No. 1402-VIII,<sup>3</sup> the judicial system in Ukraine is built on the principles of territoriality, specialization and instantiation.

The court system consists of regional courts that operate on the territory of a certain region and belong to the courts of first instance.

**Regional courts** are divided into **general courts**, which consider civil and criminal cases, cases of administrative offenses and some administrative cases; **commercial courts**, which consider economic (commercial) cases; **administrative courts**, which consider administrative cases, disputes with authorities.

**The second instance is the appellate courts**, which can be general, commercial and administrative, they review the court decisions of the courts of the first instance.

The highest, **cassational** (third) instance is **the Supreme Court**. It consists of the Civil Court of Cassation, the Criminal Court of Cassation, the Commercial Court of Cassation and the Administrative Court of Cassation, which review the relevant types of cases.

The Supreme Anti-Corruption Court and the Constitutional Court of Ukraine have been established in the judicial system of Ukraine.

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<sup>3</sup>Law of Ukraine "On the Judiciary and the Status of Judges" dated June 2, 2016 No. 1402-VIII  
// <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

## **2.2. Specialization of judges authorized to consider criminal proceedings against minors**

**There are no separate family or children's courts in Ukraine**, but today the issue of introducing a system of family courts has gained a new lease of life within the framework of the work group "Protection of children's rights and the return of children temporarily displaced abroad" of the National Council for the Recovery of Ukraine from the Consequences of War, respectively, which functions in accordance with the Decree of the President of Ukraine dated April 21, 2022 No. 266/2022.

The working group proposes to implement the project "Establishment of family (children's) courts" at the national level, the purpose of which is to establish family (children's) courts that will specialize in family and child-related cases. It is planned that the introduction of consideration of family cases exclusively by family courts will take place by December 2032.

Currently, children who are accused of committing crimes will fall under the jurisdiction of **general courts**, which are created according to the principle of territoriality and consider criminal, civil cases, cases of administrative offenses and some administrative cases.

Criminal proceedings against children are different from criminal proceedings against adults. There are special sections on the specifics of criminal proceedings involving children in **the Criminal Code of Ukraine<sup>4</sup>** and **the Criminal Procedural Code of Ukraine<sup>5</sup>**.

A positive step in the field of child-friendly justice was the legislative<sup>6</sup> introduction of **the specialization of judges authorized to consider criminal proceedings against minors**, who are elected by the assembly of judges of a particular court.

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<sup>4</sup>Criminal Code of Ukraine // <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

<sup>5</sup>Criminal Procedure Code of Ukraine // <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

<sup>6</sup>Article 18 of the Law of Ukraine " On the Judiciary and the Status of Judges" dated June 2, 2016 No. 1402-VIII // <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> ; Article 31 of the Criminal Procedure Code of Ukraine // <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

A judge with at least ten years of experience as a judge, experience in conducting criminal proceedings in court and high moral, business and professional qualities may be elected as a judge authorized to conduct criminal proceedings against minors. If there are no judges with the required length of service in the court, the judge authorized to conduct criminal proceedings against minors is chosen from among the judges who have the longest length of service as a judge.

Judges authorized to conduct criminal proceedings against minors are not released from the duties of a judge of the relevant instance, however, their exercise of such powers is taken into account in the distribution of court cases and has priority.

### **2.3. Age of criminal responsibility**

According to general legislation, a child in Ukraine is a person who has not reached **the age of 18**.

According to Article 22 of the Criminal Code of Ukraine, criminal responsibility begins at the **age of 16** , and for certain types of crimes **from the age of 14** (for example, intentional murder, intentional grievous bodily harm, sexual violence, theft, robbery, etc.).

Distribution of special guarantees during criminal proceedings against minors takes place until the person reaches 18 years of age, and **such persons cannot be treated as adults until the specified age**.

If a person committed a crime under the age of 18, this is a **mitigating circumstance**, regardless of whether the person has already reached the age of majority at the time of the trial.

Also, regardless of whether the child has reached the age of majority, such persons are punished according to the rules for minors, which the Supreme Court drew attention to in its practice <sup>7</sup>.

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<sup>7</sup> Quote from the decision of the Supreme Court dated April 9, 2019, case No. 400/1/18 (proceedings No. 51-18 9795 км):

"the fact that a person **has reached the age of majority during the proceedings** does not exclude the application to him of the features that apply to minors, since such a status is acquired by a person exclusively at the time of committing a crime."

## **2.4. General stages of proceedings**

In general, criminal proceedings against minors begin with an investigation carried out by **specialized investigators**, and procedural management is carried out by **juvenile prosecutors**. In such proceedings, **the participation of a lawyer is mandatory**, and if the child or his family does not have money, **the state can ensure his participation free of charge**.

A legal representative from among parents or other persons or representatives of state bodies must be involved.

The specifics of proceedings against minors consist in the specifics of establishing the procedure for questioning children, involving other persons (lawyers, psychologists, teachers, etc.) in comparison with adults, researching living conditions and upbringing of the child, applying special punishments and educational measures.

During criminal proceedings against a minor, including during proceedings regarding the application of coercive measures of an educational nature, the persons participating in it are obliged to carry out procedural actions in an order that least disturbs the usual way of life of the minor and corresponds to his age and psychological peculiarities, explain the essence of procedural actions, decisions and their meaning, listen to his arguments when making procedural decisions and take all other measures aimed at avoiding a negative impact on the minor.

Coercive measures of an educational nature, which are not criminal in nature, may be applied to a person who, after reaching the age of eleven and before reaching the age from which criminal responsibility may arise, has committed a socially dangerous act that falls under the characteristics of an act provided for by the law of Ukraine on criminal responsibility punishment

## **III. Peculiarities of court proceedings with the participation of children**

### **3.1. Participation of children in court proceedings**

The participation of a child accused of committing a crime in the trial **is mandatory**.

With the consent of the accused, his participation can take place in video conference mode, and in the conditions of martial law (which is currently introduced in Ukraine), the court can make a decision on the participation of the accused remotely and without his consent. This is a general rule for all defendants (not just children), but it may be applicable in cases involving children, given their age.

In accordance with Article 489 of the Criminal Procedure Code of Ukraine, a minor suspect or accused person **is reported or summoned** by an investigator, investigator, prosecutor, investigating judge or court **through his parents or other legal representatives**. A different procedure is allowed only if it is determined by the circumstances established during the criminal proceedings.

Unfortunately, a special form of summoning a child has not been developed at this time.

### 3.2. Listening environment

In Ukraine, there is no legislation that would establish the creation of special premises for children in courts, such as special rooms or courtrooms.

In a separate researched,<sup>8</sup> the author shared his experience of creating a special courtroom in which it is necessary to consider cases with the participation of children, an appropriate approach and factors that must be taken into account were developed.

Some courts, of which there are few, have independently created a territory adapted to children<sup>9</sup>, "Green Rooms" are functioning in law enforcement agencies, the introduction of the "Barnachus" model is being piloted.

In the court where the author works, first a suitable corner for the child was created, and then a special courtroom, relevant reminders about children's rights and responsibilities and explanatory materials. But this approach is isolated and does not have a clear legal regulation.

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<sup>8</sup> PARKHOMENKO P. Special courtroom as an element of child-friendly justice: organizational and legal aspect // – Slovo of the National School of Judges of Ukraine No. 2 (35) 2021. – P. 16-26 // [http://slovo.nsj.gov.ua/images/pdf/2021/2\\_35\\_2021/Parhomenko.pdf](http://slovo.nsj.gov.ua/images/pdf/2021/2_35_2021/Parhomenko.pdf)

<sup>9</sup> <https://court.gov.ua/press/news/421393/>; <https://bh.cn.court.gov.ua/sud2501/pres-centr/news/407107/>



## Children's corner in the court



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A child in custody cannot be kept together with adults and if brought to court, it must be done separately from adults.

The judge can give the child the opportunity to communicate confidentially with the persons who help him, but this requires the judge's understanding of the specifics of



juvenile proceedings, and the practice knows various examples, both positive and negative.

Refusal to grant the right to private and confidential communication with counsel without interference from the convoy may result in a violation of the right to a fair trial.

Court hearings take place in general courtrooms and the legislation does not provide for the creation of special rooms for children, and there is no legislation in Ukraine that regulates the creation of a special environment for children who come to court, relevant information materials. In connection with this, it is very rare to find differences in courtrooms for adults and children.

The author independently developed an approach to creating a courtroom for children and created it in the court where he works, the relevant photos are attached.

Methodology. The courtroom and the process of consideration of the case should be adapted to the fullest extent for the special needs of every child

1. Absence of a cabin for the accused person
2. Special light colors
3. Existence of special pictures and leaflets containing information on the rights and duties
4. The participants of the court hearing shall be at the same surface level (without high points) – in order to underline the equality of each of the participants.
5. The child's presence closely to the parents, legal representative.





### 3.3. Trial

All court sessions, regardless of the age of the accused, are recorded by technical means, audio and video recording of court sessions takes place.

According to the Criminal Procedure Code of Ukraine, a lawyer and a legal representative of the child must participate in a trial involving a child.

If the minor has not reached the age of sixteen or if the minor is recognized as mentally retarded, the participation of a legal representative, a teacher or a psychologist, and, if necessary, a doctor, is ensured during his interrogation by the decision of the investigator, prosecutor, investigating judge, court or at the request of the defense counsel.

Before the interrogation begins, a legal representative, teacher, psychologist or doctor is explained their right to ask questions of a minor suspect or accused. The investigator, inquirer, prosecutor has the right to withdraw the question, but the withdrawn question must be recorded in the protocol.

The court notifies the relevant service for children and the authorized division of the National Police about the time and place of the trial involving the minor accused. The court has the right to summon representatives of these institutions to the court session.

During the trial, the child is heard by the judge and the participants in the criminal proceedings (prosecution and defense) can ask questions of the child, who gives answers directly in court during the trial.

A psychologist, teacher or legal representative can express their comments on the questions asked and emphasize their negative impact on the child.

During the trial, the judge **must wear a robe**, other participants (prosecutors and lawyers) do not have special clothes. The law does not contain exceptions for holding a hearing by a judge without a robe when children participate in the case. But in practice, there are cases, and the author himself practiced it, that with the consent of the parties to the case, **the judge took off the robe and conducted the hearing without it**, because it had a positive effect on the adaptation of the child to the trial.

The law does not establish any restrictions on the clothing of a child, its parents, or other persons, and even when a child is in custody, it does not wear special clothes, and therefore, for those present, its clothing does not differ from a child who is at liberty.

Proceedings of criminal proceedings are conducted openly, but if the accused is a child, by the decision of the judge, such proceedings may be closed and other persons are not allowed except for the participants in the criminal proceedings, but this does not establish restrictions on participation (teacher, psychologist, legal representative and other persons who take part in the case with the participation of children).

During court hearings, the child is in the courtroom and when the judge enters, all those present are standing, and those present also give explanations and answers while standing. Depending on the situation, **the judge can make a decision and allow the participants to be seated, which the author did in practice.**

The child, as the accused, does not give any oaths and oaths to the court and has the right to remain silent, his rights must be explained to him and the judge can explain to the child in a more comprehensible language than it is defined verbatim in the law.

The court, after hearing the opinion of the prosecutor, the defense attorney and the legal representative of the minor accused, has the right to remove him from the courtroom by its decision during the investigation of the circumstances that may negatively affect him.

Upon the return of the juvenile accused, the presiding judge acquaints him with the results of the investigation of the circumstances conducted in his absence and gives him the opportunity to ask questions to the persons who were questioned in his absence.

As a general rule, the questioning of the accused begins with the proposal of the presiding judge to provide testimony regarding the criminal proceedings, after which the accused is first questioned by the prosecutor, and then by the defense counsel. After that, the accused may be asked questions by the victim, other accused, the civil plaintiff, the civil defendant, a representative of the legal entity in respect of which the proceedings are being conducted, as well as the presiding judge and judges. In addition, the presiding judge has the right to ask him questions to clarify and supplement his answers during the entire interrogation of the accused <sup>10</sup>.

Interrogation of a minor suspect or accused is carried out **in the presence of a defense attorney**.

Before the interrogation begins, a legal representative, teacher, psychologist or doctor is explained their right **to ask questions of a minor suspect or accused** <sup>11</sup>.

During the trial, the child answers directly.

Depending on the circumstances of the case, the judge may give the child the opportunity to communicate confidentially with his defense attorney and legal representative.

The procedure for the interaction of the multidisciplinary team and between the participants who take part in criminal proceedings against a minor has not been developed at the legislative level in Ukraine.

Representatives of the Children's Affairs Service and the authorized division of the National Police have the right to make a request, ask questions to the minor accused, his legal representative, the victim, witnesses, experts and specialists, express their opinion about the most appropriate measures for the accused with the purpose of his re-education <sup>12</sup>.

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<sup>10</sup>Article 351 of the Criminal Procedure Code of Ukraine

<sup>11</sup>Article 491 of the Criminal Procedure Code of Ukraine

<sup>12</sup>Article 496 of the Criminal Procedure Code of Ukraine

The child can give any explanation regarding the evidence investigated in the case, the reports of the relevant authorities and the explanations of the participants in the criminal proceedings.

Currently, from my point of view, a formalized procedure prevails in Ukraine, which sometimes does not work in favor of a child who comes into conflict with the law.

We have various, both positive and negative, examples of the attitude of participants in criminal proceedings towards a child. Practice shows that the child can freely explain the relevant circumstances during the case, and also very often has to answer questions. In this case, the judge, as the main subject who manages the process, must create an atmosphere friendly to the child and direct the behavior of the participants in the process to ensure the best interests of the child.

The consideration of the case regarding the child is focused not only on establishing guilt in the act, but also requires clarification of:

full and comprehensive information about the person of the minor: his age (date, month, year of birth), state of health and level of development, other socio-psychological features of the person, which must be taken into account when individualizing responsibility or choosing an educational measure. If there is evidence of a minor's mental retardation not related to mental illness, it should also be determined whether he was able to fully understand the meaning of his actions and to what extent he could control them;

the minor's attitude towards the act committed by him;

conditions of life and upbringing of a minor;

the presence of adult instigators and other accomplices of the criminal offense

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When investigating the conditions of life and upbringing of a minor suspect or accused, it is necessary to find out:

the composition of the minor's family, the situation in it, the relationship between adult family members and adults and children, the parents' attitude to the upbringing of the minor, forms of control over his behavior, moral and living conditions of the family;

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<sup>13</sup>Article 485 of the Criminal Procedure Code of Ukraine

the situation in a school or other educational institution or in the workplace where a minor studies or works, his attitude to studies or work, relationships with educators, teachers, peers, the nature and effectiveness of educational measures that were previously applied to him;

connections and behavior of a minor outside the home, educational institution and work <sup>14</sup>.

Involved specialists have the right to express their opinion and give recommendations regarding the application of educational measures, the expediency or non-expediency of imposing a certain type of punishment, creating appropriate conditions for raising a child, etc.

Such a multidisciplinary dialogue is facilitated by a wide range of subjects who take part in criminal proceedings with the participation of a child, and the drawback is the legal limitation of measures that can be applied to a child.

During the trial, the judge has a certain discretion in the management of the judicial process and he can give the opportunity to each representative of the multidisciplinary team to speak about various aspects of the child's life and upbringing, his development and measures of influence on him.

Certain types of offenses can be dismissed without a conviction or can be settled at trial, which is consistent with the primary mission of juvenile justice.

The result of a case against a minor may be a guilty verdict and the imposition of a punishment, taking into account the peculiarities of the child's status, in some cases the proceedings may be closed (for example, reconciliation of the parties), and in some cases coercive measures of an educational nature may be applied (for example, transfer to the supervision of parents or educational institutions, restrictions on leisure time, etc.).

In accordance with Article 10 of the Criminal Procedure Code of Ukraine, minors enjoy additional guarantees during their participation in criminal proceedings.

First of all, these are specialized subjects (investigator, prosecutor, judge).

Additional participants who take part in the proceedings are a teacher, a psychologist, the mandatory participation of a lawyer, a legal representative, etc.

The law establishes the features of interrogation of a child, its duration, which are different from that of adults.

Judicial proceedings require the study of additional circumstances compared to adults, which is related to the conditions of upbringing and living of the child, family relations, the influence of adults on the child, etc.

Special educational measures and punishments assigned to children.

The purpose of punishing such a convict is his **correction, education and social rehabilitation**

#### **IV. Prospects for the development of juvenile justice**

##### **4.1. Reconciliation programs**

An important step in the improvement of juvenile justice in Ukraine was the implementation of the pilot project "Rehabilitation program for minors who are suspected of committing a crime", carried out by the Ministry of Justice of Ukraine, the General Prosecutor's Office of Ukraine on the basis of the system for providing free legal aid with the support of the United Nations Children's Fund Office (UNICEF) in Ukraine. According to the results of the rehabilitation program, if the minor compensates for the damage and reconciles with the victim, the criminal proceedings will be closed. So the child will not get the "brand" of a criminal. At the same time, the minor will undergo resocialization programs and return to society.

##### **4.2. Implementation of the "Barnachus" model**

The next positive example is the implementation of the "Barnachus" model with the support of the United Nations Children's Fund (UNICEF) Office in Ukraine and the Interagency Coordination Council on Juvenile Justice.

This is the creation of a methodology and environment for interviewing children who fall into the scope of criminal justice.

These projects are implemented through the application of international standards and piloting in individual regions and are gradually becoming part of state policy.



### **4.3. Training of specialists**

To date, the training of judges in Ukraine is carried out by the National School of Judges of Ukraine, which has developed some courses for the training of juvenile judges.

The training center for prosecutors has developed training courses for juvenile prosecutors.

The Higher School of Advocacy implements various educational courses on the protection of children's rights for lawyers who independently choose training programs.

A number of international projects conduct events in Ukraine to train specialists in the field of child rights protection, which includes juvenile justice.

The author conducts research in the field of child rights protection and participates in the work of the specified training institutions, judges, prosecutors and lawyers, and is also an expert of the Council of Europe at the national level, a developer of training courses in the field of child rights protection.

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### **4.4. Other studies**

The author is a supporter of the creation of a system of family courts in Ukraine, which was substantiated in a separate publication<sup>15</sup>.

The author is also a supporter of the introduction of a child-friendly environment and the wide introduction of special courtrooms in courts, which was emphasized in a separate researched<sup>16</sup> with examples and experience.

The child-friendly justice system is subject to constant attention and improvement with a combination of multidisciplinary approaches and ideas that also focus on the rights of child witnesses and victims, which can be the subject of further discussions.

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<sup>15</sup>Parkhomenko PI Finding ways to create a family court in Ukraine // [http://pravoisuspilstvo.org.ua/archive/2022/5\\_2022/26.pdf](http://pravoisuspilstvo.org.ua/archive/2022/5_2022/26.pdf)

<sup>16</sup> PARKHOMENKO P. Special courtroom as an element of child-friendly justice: organizational and legal aspect // – Slovo of the National School of Judges of Ukraine No. 2 (35) 2021. – P. 16-26 // [http://slovo.nsj.gov.ua/images/pdf/2021/2\\_35\\_2021/Parhomenko.pdf](http://slovo.nsj.gov.ua/images/pdf/2021/2_35_2021/Parhomenko.pdf)



An important aspect is the training of specialists who work with children, which allows, with the help of international standards in the field of child rights protection, to fill legislative gaps at the national level with positive judicial practice.