



CHILD PARTICIPATION IN JUVENILE JUSTICE IN TURKEY

National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en Turquía.

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Turquie

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

Seda Akço¹

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 Turkey.

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 Turquía

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 Turquie

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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.

¹ Lawyer and children's rights advocate in Turkey



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

1. General description of the procedure and the system
 - 1.1. What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?

The juvenile court and the juvenile criminal assize court.

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These courts hear cases about children's need of protection in addition to cases regarding criminal acts committed by children.

Not every province has a juvenile court. In provinces where there is no juvenile court, general criminal courts hear cases of illegal acts committed by children. Recently, in each district one specific general court (court of first instance) is assigned as the child court in order to prevent rotation and to ensure some level of specialization.

- 1.2. What is the minimum age of criminal responsibility (MACR)?

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- 1.3. Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?

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The legislation does not stipulate treating a child under the age of 18 as an adult.

1.4. Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?

Yes.

1.5. Can you describe the general steps of the procedure?

Investigations in the proceedings regarding the crimes committed by children are carried out by the juvenile bureau prosecutors. Law enforcement operations are also carried out by non-commissioned officers assigned to work with children in the child police or gendarmerie district. After the arrest and identification procedures are done in these places, the child is taken to the courthouse to the juvenile bureau prosecutor's office to take a statement.

A lawyer should be requested from the Bar Association for the child before the statement is taken. In addition, it may be requested to accompany a judicial support officer assigned within the body of the victim support services directorate in the courthouse.

The statement is taken in the Office of the Public Prosecutor or in the Judicial Interview Rooms established for this purpose.

If pre-trial detention is requested, the application is made not to the child court but to the on-duty criminal court of peace.

If he is to be tried without detention, the child should be released after the testimony and other necessary transactions.

If it is determined that the child is under the age of 12, no prosecution can be made against him, but the Public Prosecutor may request the application of child-specific security measures from the child court. In this case, the court may conduct the examination with a hearing or over the file.

If the child has completed the age of 12 and has not completed the age of 15, it is investigated whether there is a criminal responsibility. Mental development and mental health assessment is performed by a physician. A social inquiry is also carried out by a

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judicial support officer. Based on these two examinations and other information in the file, the judge decides whether the child has criminal responsibility.

Children over the age of 15 are considered to have criminal responsibility.

1.6. What are the opportunities for the child hearing in the whole proceeding?

Legal aid is provided for free.

Every child is entitled to ask for an adult to accompany him/her.

A judicial assistance officer may also accompany him/her.

Every child is entitled to file an appeal against precautionary rulings about him/her and seek legal remedies against final judgements.

1.7. Are there differences on how to proceed according to the age or other criteria? Please specify.

There is no difference based on age or any other criterion about how the process goes.

2. Judicial hearing

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2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

Any child who has allegedly committed a crime is summoned to a hearing. He/she may be forced to be present if he/she does not show up. He/she may also be excluded from hearings, with the decision of the judge.

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

The summon is not specific to children. Adults are summoned just like children are.

Parents or guardians are individually summoned through a separate invitation.

2.3. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?

It is not always possible to use a room with two separate entrances.

In some courthouses, judicial interview rooms have separate entrances.

Moreover, in the model 'child justice center' which is piloted in Erzurum as a separate center where all the child related judicial bodies are compiled in a separate courthouse, there are several entrances.

2.4. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any? ,

None, only exceptionally in some of the judicial interview rooms – which is primarily designed for child victims & witnesses.

2.5. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?

In principle, they must be brought individually. However, adults and children may be placed in the same vehicle for referral purposes when the vehicles are insufficient.

Children are placed in a detention room of law enforcement at the time of detention. They are kept away from adults in this case. They are usually placed in a different department or building.

2.6. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?

No.

2.7. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?

In a courtroom

2.8. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?

No. Except the piloted modality of the ‘child justice centers’ please see below.

2.9. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?

No.

2.10. Are hearings sound or video recorded? Does such option exist?

Yes, but not automatically. This should be decided by the judge.

2.11. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

The child who has acted against the law, his/her parent (he/she may not be present if the best interest of the child requires so), a judicial support officer, his/her lawyer, victim, victim’s attorney, bailiff, court clerk, judge, judicial intern, and prosecutors may be present in the courtroom.

In principle, cases of child offenders are closed to the public audience, unless person on trial has reached over 18.

Public prosecutors attend criminal assize court hearings only. They do not attend child court hearings.

2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)



The standard courtroom setting is also applicable to the child courts.

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This is the new design for the child court hearing room, piloted in Erzurum Child Justice Center.

2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

No.

2.14. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?

In principle, the judge/prosecutor (in the investigation phase) hears the child directly. The only exception to this is an interview in the judicial interview room, where in exceptional circumstances (such as protection of the child, or in case this is for the best interest of the child) the judicial support officer (forensic interviewer) can hear the child on their behalf. Even in this case the judge/prosecutor should follow the testimony and ask real-time questions to the judicial support officer through the audio system.

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2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this? There is no official guideline or protocol. Training courses are provided. However, there is no way to guarantee that everyone involved in this process has been trained.

The MoJ and MoH have been working on the development of protocols, particularly for judicial interview rooms and child monitoring centres – where primarily child victims testify in a specially designed room.

2.16. Can you please describe the ritual? (Some guiding questions are below)

2.16.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?

It is all the same in all courts. Judges wear a robe but do not wear a wig.

2.16.2. Does the prosecutor and the defense attorney have to wear a gown or to use special clothes?

Yes. Both.

2.16.3. Who else is allowed to attend the hearings?

None except those mentioned above.

2.16.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

No.

2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

There is no regulation whatsoever on the clothing.

By law, the child cannot be handcuffed neither inside or outside of the court.

Child Protection Law

Transfer of the Juvenile Article 18-

Chains, handcuffs and similar tools cannot be put on children. However, when necessary, the law enforcement may take necessary measures to prevent the juvenile from escaping, or to prevent dangers that may arise with regard to the life and physical integrity of the juvenile or others

Criminal Procedure Law

Beginning of the main hearing Article 191 –

(...) The accused shall not be handcuffed at the main hearing. (...)



However, they can see a child outside the courtroom as he/she is brought to the room if it does not have a separate entrance.

2.16.6. Is the judge/decision maker in the hearing room when the child enters?

Yes.

2.16.7. Does the child have to stand up?

Yes.

2.16.8. Does someone have to allow the child (or others attendees) to sit down?

Yes. The judge.

2.16.9. Does the child have to remain standing during the hearing?

When he/she needs to give a statement and if there is no seat made available for the defendant.

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2.16.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

Yes.

By law, the judge should explain the reason why he/she is in the courtroom and his/her rights. However, in practice sometimes this process is being skipped for the sake of the time.

2.16.11. Does the child have to make any kind of commitment or swear an oath before speaking?

No.

2.16.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

The judge asks the questions. The child answers them himself/herself.

- 2.16.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

He/she can be allowed but that's not always the case. In the normal courtroom setting, they are not seated next to each other.

- 2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

The judge.

During cross examinations, the public prosecutor, the victim, and the attorney can ask questions but cross examination procedures are not implemented. All questions are asked by the judge.

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- 2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

Informing the child about the legal process, making sure that he/she understands the questions, and expresses himself/herself freely. However, they are allowed to talk to the child ahead of hearings and yet they are not allowed to speak during hearings.

- 2.16.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

They are entitled to do so. However, all the parties may ask for the judge permission to speak and speak if the judge allows.

- 2.17. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

It is very formal by the regulation.

2.17.1. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child's behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

Once he/she gives his/her statement, he/she is asked through an open-ended question to tell about what happened. Then he/she is asked only to answer the questions. No contextualization happens or no dialogue is encouraged.

2.17.2. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

Save for exceptional cases where the judge makes a personal effort to do so, no feedback is given or no less formal interaction occurs.

2.17.3. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

The judge may offer recommendations.

2.18. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

He/she does.

2.19. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults?

The only difference in procedural terms is the exception to being public. Hearings may be held in a closed session when it comes to cases concerning children.

3. Generic questions concerning the improvement of Youth Courts

3.1. In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children's rights in juvenile justice and specifically on child hearing in this setting?

Yes. But it is not mandatory.

Training courses are not organizational and they are not reviewed and repeated in a regular manner.

3.2. Anything else you would like to add on this topic?

The main challenge regarding the child justice system in Turkey is that the child protection system is not strong enough. This has taught us that a well-functioning child justice system can only be built on a robust and strong protection system. That is why efforts to improve the child justice should cover inquiries into the child protection system, too.

3.3. Any reform proposals in progress on any of the above issues?

There are some strategic objectives to enhance child-friendly procedures in the Judicial Reform Strategy and the recently adopted Child Rights Strategy. However, no specific draft bill pending on the parliament.

3.4. Any suggestions for improvement from your side?

Where there is no service to rectify illegal actions, even the best child justice reform does not create the motivation for judicial officers to adopt it and carefully implement child-specific procedures. That is why the focus should be on improving, strengthening, and mainstreaming the organizations and services that implement precautionary rulings about children.