



CHILD PARTICIPATION IN JUVENILE JUSTICE IN SWITZERLAND

National Report for AIMJF's Comparative and Collaborative Research.

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Suisse

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

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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 juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Switzerland.

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 Suiza

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 Suisse.

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.



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

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?

In Switzerland, the (26) cantons are responsible for the organization of their courts, which comes along with considerable variety. With regard to the administration of juvenile justice, the cantons can choose between two models: the so called ‘Jugendanwalts-Modell’/model procureur des mineurs/magistratura dei minorenni/child prosecutor model, which is found in the German and Italian speaking cantons, and the so called ‘Jugendrichter-Modell’/model de tribunal pour enfant/child court model, which is found in the French speaking cantons.²

In the *child prosecutor model*, the key role player is a specialized magistrate called ‘*Jugendanwalt*’ who a) leads the investigation, b) decides in a special decree on the outcome of cases that fall under his/her competence (which is the wide majority of all cases of youth offending) and c) implements all sanctions and measures that have been imposed on children. A so called ‘Youth Court’ composed of three judges acts in cases which exceed the competence of the specialized magistrate (who in such cases acts as

¹ The author of this text would like to thank the following experts for their inputs: Raffaella Biaggi, President Youth Court Canton Basel-City; Olivier Boillat, Président du Tribunal des Mineurs, Canton Geneva; Beatriz Gil, Head Jugendanwaltschaft Canton Argau; Andreas Haltinner, President Youth Court/First Instance Court in Wil, Canton St. Gallen; Anne-Catherine Hatt, Jugendanwältin Canton Zuerich; Gian Carlo Pellizzari, Head Jugendanwaltschaft Canton St. Gallen; Prof. Ineke Pruin, University of Bern; and Prof. Christoph Riedo, University of Fribourg.

² Practices between cantons that follow the same model also differ quite a bit. This report does not present all practices but provides a simplified overview.

prosecutor before the court), or if objections are raised against the decisions of the specialized magistrate.³

In the *child court model*, a specialized magistrate called ‘*Juge des Mineurs*’ performs basically the same duties as the ‘Jugendanwalt’ described above. However, in cases which exceed the competence of the single magistrate, he/she acts as the president of the ‘Youth Court’ (here called ‘Tribunal des Mineurs’), while another magistrate acts as juvenile prosecutor.⁴

In both models, the specialized magistrates (Jugendanwalt/Juge des Mineurs) handle exclusively cases of children in conflict with the law. The same applies for the ‘Tribunal des Mineurs’ in the francophone areas. In the non-francophone areas, it is usually an ordinary first instance court that acts as ‘Youth Court’, which comes along with a much wider jurisdiction, but also a lower degree of specialization in juvenile justice (apart from the canton Basel-Stadt).

Both models are marked by a wide accumulation of functions and powers in the hand of one single magistrate. This is the reason why Switzerland signed the CRC with a reservation to Art. 40(2)(b)(iii) on the right to an independent and impartial authority. The main legal safeguard provided for by Swiss law in this matter is the right of the child/legal representative to raise objections against the decree of the single magistrate, and the right to recuse the judge who led the investigation under the child court model.⁵ With regard to child participation in juvenile justice proceedings, the Swiss system as described above implies that most children in conflict with the law are not heard in a formal court setting, but in a rather informal and child-specific setting; and almost all children in conflict with the law are heard by magistrates/judges who work exclusively with this group of children.

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

³ See Art 6, 32 and 34 Juvenile Procedural Code (JStPO). The Youth Court is competent for: placements, imprisonment of more than 3 months, or fines of more than 1000 Swiss Francs.

⁴ See Art 21 JStPO.

⁵ Art 9 JStPO. Other safeguards include strengthened defence provisions. Interestingly, the CROC did not reject the Swiss approach, but only observed that Switzerland should “reconsider the reservation made with regard to the possibility of having the same juvenile judge as an investigating and a sentencing judge since the requirement of an independent and impartial authority or judicial body [article 40(2)(b)(iii)] does not necessarily and under all circumstances mean that investigating and sentencing juvenile judges cannot be the same person (CRC/C/15/Add.182 p 7e and CRC/C/CHE/CO/2-4 p 7). Thus far Switzerland has retained both the mixed functions approach and the reservation to the CRC. It defends this approach with the argument that continuity of relationship between magistrate and child throughout the procedure can further the educational aim of juvenile justice.

The MACR is set at age 10. The Committee on the Rights of the Child expressed repetitively concerns about this low age limit.⁶ They are, however, somewhat mitigated by a separate age-limit (15) for the imposition of imprisonment, by an even higher age limit (16) for the imposition of imprisonment of more than one year,⁷ and by an overall strongly welfare oriented and little punitive juvenile justice system.

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?

The upper age limit for the application of juvenile justice norms is age 18. Offenders below 18 are never treated as adult criminals. On the other hand, current Swiss law allows juvenile justice norms to be applied for persons above the age of 18 under certain circumstances (but see below 1.4.), and the criminal code provides some special measures for young adults between 18 and 25 years of age.⁸

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?

Relevant for the applicability of the juvenile justice rules is the age at the moment of the alleged commission of an offence. This also applies if the child becomes an adult in the course of the procedure. On the other side, if a person committed an offence before and after age 18, and if the cases are treated in the same file, the child specific rules remain applicable to some degree. However, this rule is about to be abolished.⁹

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

Cases concerning children in conflict with the law are dealt with by the *specialized juvenile justice authorities* described under 1.1. above.

Usually, cases of child offending start before the police who investigates under and reports to the specialized juvenile justice authorities. The specialized magistrate (Jugendanwalt / Juge des Mineurs) further *investigates the case*, which may include

⁶ See Concluding Observations 2002 and 2015, CRC/C/15/Add.182 p 58a and CRC/C/CHE/CO/2-4 p 72.

⁷ See Art 25 Juvenile Justice Code (JStG). In addition, fine can only be imposed on above 15 years old, and the maximum sentence for community work/courses is lower for those below 15 years of age, see Art 23 JStG.

⁸ Art 61 Criminal Code available in English under https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en.

⁹ See Art 3 JStG and <https://www.fedlex.admin.ch/eli/fga/2022/1560/fr>.

ordering search, confiscation and pre-trial detention,¹⁰ hearing alleged perpetrators and witnesses, etc.

At the same time, the *personal situation* of the child is examined if this seems required to make a decision on sentence/measure.¹¹ This ‘personality assessment’ is completed by the social work service attached to the specialized juvenile justice authority, possibly supported by additional external experts (psychologist, psychiatrist, specialized institutions). This may lead to precautionary protection measures being ordered by the specialized magistrate pending the investigation, if such immediate intervention seems required.

Once the investigation is complete, and as described under 1.1, the specialized magistrate *decides* in the majority of cases on the outcome of the case. If a case exceeds his/her competence, it is referred to the Youth Court. The specialized magistrate is (in all cases) responsible for the *implementation of sentences/asures*. Here, he/she will (again) be supported by the social work service that is attached to his/her office.

In addition, the following peculiarities apply for juvenile justice proceedings, in particular:

- If the specialized juvenile justice authorities establish that the alleged offender is *below the MACR* and if there are indications for protection needs, they must inform the civil law authorities.¹²
- The judicial process can be stopped, at any time, in certain less serious cases, when the conflict has been *settled* between the two parties (‘Vergleich’); or when the child in conflict with the law made *reparations* (‘Wiedergutmachung’).¹³ This is a form of diversion (although the term diversion is not used as such in the Swiss legislation).
- The judicial process can be suspended and referred to a *mediation* at any time and in all cases, unless protection measures seem required, or when a case could be concluded without any sanction.¹⁴ This is another form of diversion.

¹⁰ Up to 7 days. If prolongation is required, it must be ordered by a special court, Art 27 JStPO.

¹¹ Art 9 JStG.

¹² Art 4 JStPO.

¹³ Art 16 JStG.

¹⁴ See Art 17 JStPO and Art 21 JStG.

- Procedures can be stopped / charges dropped and cases be *concluded without any sanction* in a variety of situations as listed in the law.¹⁵ This is another form of diversion.
- The legal threshold for ordering pre-trial detention is rather high (apart from the low age limit), and in practice, such detention is ordered in a minority of cases only.¹⁶
- The child has the right to be accompanied by a ‘*person of trust*’ of his/her choice. A *defence lawyer* is mandatory in some, but not all cases. The juvenile justice authorities are obliged by law to *cooperate* with other relevant role-players. In cases where a child commits an offence together with an adult, they are *tried separately* (exception possible). The *public is excluded* in juvenile justice cases (exception possible).¹⁷
- The *sanctioning system* offers a range of non-custodial sanctions and educative/protective measures, enabling and promoting a restrictive use of deprivation of liberty.

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

The child is usually heard (by the police and) by the specialized magistrate and – if the case goes to the Youth Court – by the court. For cases that can be finalized by the specialized magistrate (Jugendanwalt/Juge des Mineurs), the law leaves some unspecified room for not hearing a child (‘the child *may* be heard’).¹⁸ This rule can be helpful to de-load the magistrates in minor cases where there is sufficient evidence (e.g. a first offender who admits having committed a petty traffic offence might not be heard by the magistrate), although the rule should be (is) applied with reluctance, in order to promote early intervention and effective participation.

If the case goes to the Youth Court, a trial *in absentia* is possible under certain circumstances as defined by the law (child was heard by the specialized magistrate; did not appear in court despite having been invited twice; the evidence allows for a decision *in absentia*; only a sentence, not a measure, comes into consideration).¹⁹ But again, this

¹⁵ Including: Minor guilt and effect of deed; child put things right on own initiative in minor cases of little public interest; child is hit hard by the offence his/herself; child has already been punished sufficiently by others; considerable amount of time elapsed since the deed and the child behaved well/little public interest in prosecution; a successful mediation process was conducted; protection measures are not required or have already been ordered by the civil law authorities. See Art 5 JJC and Art 21 JJC.

¹⁶ See Art 27 JStPO. According to an earlier study, pre-trial detention was ordered in about 2.4% of all cases between 1999-2010, see Urwyler, Christoph und Jachen C. Nett, Evaluation der Wirksamkeit des Jugendstrafgesetzes, Schlussbericht, Berner Fachhochschule Soziale Arbeit, 2012, 132.

¹⁷ Art 13 (person of trust), Art 24 (mandatory defence lawyer), Art 31 (inter-sectoral cooperation), Art 11 (separate trials), Art 14 (privacy) JStPO.

¹⁸ Art 32 JStPO.

¹⁹ Art 36 JStPO.

should be (is) practiced with great reluctance, as the presence of the child in the hearing is crucial.

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

No age-related differences are made with regard to whether or how to hear children in conflict with the law. However, the law provides that children with discernment can exercise their rights on their own.²⁰ In line with this, correspondence (summon, verdict) is in some cantons delivered to elder children directly, and not via parents/legal representatives (who receive their own copies).

In addition, sanctioning differs according to the age of the child. In particular, imprisonment and fine may be imposed only on youth above 15 years of age, and imprisonment of more than 1 year (to a maximum of 4 years) is allowed only for above 16 years old who committed certain grave offences; and the maximum duration for community work/participation in courses differs for those below and above 15 years of age.²¹ In addition, there are different types of institutions for different age groups where placement measures are implemented, and the law allows to place above 17 year old juveniles in institutions for young adults.²²

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2. Judicial hearing

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?

See above 1.6. The child is summoned for a hearing.

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?

Depending on local practice. Some authorities send the child a separate letter (see above 1.7), which is sometimes written in an adapted (child-friendly) language.

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?

²⁰ Art 19 JStPO.

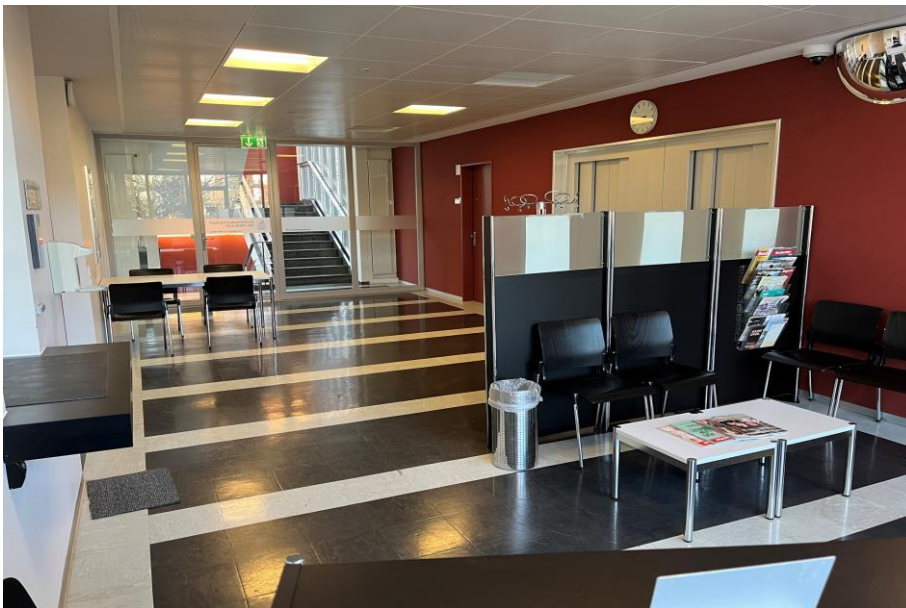
²¹ Art 23-25 JStG.

²² Art 16/b JJC, which conflicts with the principle of separating children from adults (Art 37 CRC), but might make sense and be in the interest of the juvenile in exceptional cases, and in the interest of younger children.

This differs locally, but overall it can be held that most cases are concluded in child-specific, separate environments, which usually grants separation from adults automatically; while separate entrances for other participants are not always (probably usually not) granted.

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?

This differs locally, but as many cases are concluded in child-specific, separate environments, separation from adults is usually granted. Separation from victims/witnesses, if required, will usually be ensured by organizational measures (e.g. by adapted timing of invites; informing the reception on need to separate; one party waiting in the hearing room, the other in the waiting area); sometimes by two separate waiting areas.



Example of a waiting area in a child-specific environment of a 'Jugendanwaltschaft'.

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.)?

As mentioned, the majority of cases is concluded in child-specific environments, which usually grants separation from adults automatically. In addition, the number of children

in pre-trial detention is comparatively low,²³ which means that comparatively few children are brought by the police to the hearing. If they are brought by the police, they are transported separately. In some areas, the child is brought straight to the specialized magistrate, without any waiting time; and children who are transported to the Youth Court will wait in the hearing room rather than in a cell. The author is not aware of any mixed cells or group cells.

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

As the number of children in pre-trial detention is generally rather low, most children have the opportunity to meet their support persons wherever and whenever they want before and after a hearing. For those who are detained, the situation differs locally: sometimes, separate rooms are available, sometimes not. However, confidential meetings with the lawyer prior to the hearing are possible in either case.

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?

Cases that are in the competence of the single magistrate – which are the wide majority of the cases - are mostly dealt with in the *office* of the specialized magistrate (Jugendanwalt/Juge des Mineurs), or in a ‘*ordinary*’ *meeting room*.

The remaining cases are dealt with by 3 judges in a *court room*. This applies for cases where a more invasive response seems required, including placement in an institution, imprisonment of more than 3 months, or a fine of more than 1000 Swiss Francs.²⁴

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?

Mostly yes. In the French speaking cantons, child protection cases are heard in a court that differs from the Tribunal des Mineurs that handles juvenile justice cases. In most German speaking cantons and in the Italian speaking canton, child protection cases are heard by an administrative body, which means they will also be heard in a different environment than children in conflict with the law. Child victims and witnesses of crime

²³ See Footnote 16.

²⁴ Art 34 JStG.

are – if special protection seems required – usually not heard in court, but interviewed by specially trained investigative interviewers in special environments, with the recorded interviews being admitted as evidence in court.

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

Mostly yes, as the majority of children in conflict with the law are heard in specialized environments, as described above.

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

There is no legal obligation to audio/video record hearings of children in conflict with the law at federal level. However, the law allows for video conferences (leading to audio and video recording) when it is impossible or difficult for the interviewee to appear in person,²⁵ and audio recordings are partially practiced by juvenile magistrates at cantonal level. For child victims/witnesses, video and sound recording can be and are often applied to avoid direct contact with the alleged perpetrator and repetitive interviewing.²⁶

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

In the hearing before the specialized magistrate (Jugendanwalt/Juge des Mineurs) or the Youth Court, the following persons must usually participate: child (but see 1.6. above), parents/legal representative, child prosecutor/judge (as prosecutor or as decision maker, depending on the case) and defence council if appointed or required (always required in those cases that fall under the jurisdiction of the Youth Court, if the child prosecutor also participates).

The following may be present: person of trust of the child if the child wishes this, psycho-social professionals if required to inform the decision maker on the personal situation of the child, which is usually the case (like social worker from the service attached to the juvenile justice authorities or from the guardianship authority; psychologist/psychiatrist who evaluated the child; educator of an institution where the child has been placed).

²⁵ See Art 78 and 144 Criminal Procedural Code.

²⁶ Art 154 Criminal Procedural Code.

Victims/plaintiffs have a limited right to participate, and should be excluded when the personal situation of the child in conflict with the law is being looked at. The public is excluded, with some very limited exceptions.²⁷

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)

There is no uniform approach, see above. Two examples of hearing-settings are shown below:

Below: Office of specialized magistrate ('Jugendanwalt')



²⁷ Art 14 JStPO allows for a public hearing if the juvenile with discernment, the legal representative or public interest require this; and if this is not against the best interests of the child. For the participation of the plaintiff see Art 20 JStPO.

Below: Example of a Youth Court (BS)



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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 uniform practice. Various authorities provide information on their webpage, partially in ways adapted to children (see e.g. simple description of procedure and ‘FAQ’s’ under <https://www.sg.ch/recht/staatsanwaltschaft-jugendanwaltschaft/jugendanwaltschaft.html>, or <https://justice.ge.ch/fr/contenu/tribunal-des-mineurs>; or a short video describing process and possible outcomes under <https://www.zh.ch/de/sicherheit-justiz/jugendstrafrecht.html>).

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?

The specialized magistrate / judge conducts the hearing.

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 are no specific guidelines or mandatory trainings on this at federal level. However, some of the specialized magistrates undergo a Certificate of Advanced Studies on juvenile justice where they receive some training on interviewing children in conflict with the law; and some undergo special training in conducting forensic interviews with particular vulnerable victims and witnesses based on specific protocols (NICHD or a refined version), which provides skills that are also useful for hearing children in conflict with the law.

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?

The majority of children in conflict with the law are interviewed/heard in an ordinary office with no formal dress code. A similar practice is applied for hearing children in family law matters. For cases that are dealt with in court (regarding adults or minors), gowns and wigs are not used, but professionals and participants are often called to wear dark or ‘appropriate’ clothes.

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

See above 2.16.1

2.16.3. Who else is allowed to attend the hearings?

See above 2.11.

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?

In some cantons, children who are deprived of liberty wear their own cloths; in others, they wear a tracksuit provided by the prison.

The use of restraint measures during hearings is not regulated by law at the federal level (the author is also not aware of any cantonal rules on this matter). If the child poses an immediate threat to (him/herself or) others, the use of handcuffs and the presence of an officer during a hearing are probably the most common measures applied. It does not appear that such measures are ordered often.

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

If a child is heard in a court setting, the judge is usually already in the room when the child enters. If a child is heard in an office setting by the specialized magistrate, the child might be received and brought to the interview/hearing room by the specialized magistrate.

2.16.7. Does the child have to stand up?

No uniform rules/practices (e.g. in some cantons, they never have to stand; while in others, they have to stand up when the judgement is pronounced).

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

The participants who enter a room are usually informed by the specialized magistrate or the clerk where to sit and invited to take a seat.

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

The author is not aware of such practice, but see above 2.16.7.

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?

The child is informed on his/her rights (you will be interrogated / heard in matter x; you have the right to silence; you must not incriminate yourself or a family member; right to translation, etc); and usually/ideally also on the process/the role-players involved.

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 specialized magistrate/judge poses the questions, and the child would usually respond directly.

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

Yes.

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?

No uniform practice. Usually only the specialized magistrate/judge(s) address the child, but the magistrate/presiding judge may allow other participants (attorney, prosecutor, social worker) to address the child directly, under his/her control.

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?

The role of psycho-social/educational professionals is normally to inform the decision maker on the personal situation, the assessed needs and the development of the child; and to make recommendations on the way forward (how to respond to the act committed/how to address the needs of the child). These professionals would usually not speak to the child directly (at least not in the more formal court setting), but if such direct questioning/conversation would seem useful, it could be allowed.

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

Yes.

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?

This will vary depending of the type of case, setting and professionals involved, but overall it is probably safe to say that while some sort of structure will usually be followed, there is no strict adherence to formal protocols, and that there is space for a dialogue with the child. It is, in any case, crucial that any interaction is accurately recorded.

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?

A hearing of a child in conflict with the law by the decision maker must cover both the alleged wrongful act(s) and the personal situation of the child, as both must be considered

to determine the outcome of a case. Tone and attitude/atmosphere will depend on case, setting and the professional(s) involved. At least those professionals who are experienced and/or trained in hearing children will usually apply adapted interviewing methods (including free narrative).

In the experience of the author, the following can promote the effective participation of the child: adequate information; language, hearing methodology and attitude of the interviewer; a non-intimidating waiting and hearing environment (calm, undisturbed, clean, well-aerated room of adequate size that grants privacy); hearing behind closed doors; presence of a person the child trusts; not too much formality.

- 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?

The Swiss juvenile justice system - where the majority of cases is not dealt with in a formal court setting - leaves much room for less formal interaction with the child, enables tailor-made responses which aim at the reintegration of the child, and provides a couple of restorative justice approaches which are applicable at various stages of the process, see above 1.5. Plea-bargaining is not provided for.

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

If this question refers to ‘pedagogical approach’ of judges: It is not forbidden and it may happen that judges make some such 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?

The child is in a weaker position than an adult in conflict with the law with regard to the independent judicial examination of a pre-trial detention order, which must take place only after 7 days, as opposed to 48 hours in the case of adults. Otherwise, children are granted the same safeguards as adults, or enjoy a higher protection (e.g. hearing behind closed doors, presence of a ‘person of trust’ of the child).

- 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?

It is the specialized child justice system as a whole that contributes to preventing harm being added by justice proceedings, including hearings. Important elements of this include professionals who are often committed, experienced and voluntarily in this position; environments that are often separate and adapted to children and youth; and proceedings that are relatively informal and flexible.

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?

There is no legal requirement for such training, but in practice, the specialized magistrates (Jugendanwalt/Juge des Mineurs) usually acquire a high level of specialization in the course of their professional career.

This is firstly promoted by a relatively low turnover of this professionals, probably based at least in part on the voluntary nature of assignment to this position and promoted by the lack of a rotation system; and often combined with a certain 'passion' of these professionals for their work.

Secondly, specialization is promoted by the holistic tasks of these professionals: they are involved in all phases of the procedure, and cooperate on a regular basis with all other justice professionals involved (they directly interact on a daily basis with police officers, social workers, psychologists, psychiatrists, lawyers, forensic doctors etc; and they visit children in prison, participate in case conferences in care institutions etc).

Thirdly, a university offers a Certificate of Advanced Studies (CAS) on Juvenile Justice which many professionals underwent in the last couple of years, and some magistrates undergo in addition special training on investigative interviewing.

And finally, periodical interdisciplinary conferences (including an annual conference of three days organized by the national association of juvenile justice authorities that is attended also by psycho-social professionals) ensures continued training and promotes effective cooperation of the various juvenile justice professionals.

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

No.

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

(See above 1.4)



3.4. Any suggestions for improvement from your side?

Professional specialization could be more systematic (e.g. legal norm requiring initial training of juvenile justice professionals and systematic refresher courses, including on interviewing/hearing). Introduction of minimum rules on the use of measures of restraint during interrogations/ hearings. Abolish the practice of ‘prison clothing’ that some cantons have introduced.