



## **CHILD PARTICIPATION IN JUVENILE JUSTICE IN SWEDEN**

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

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

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

*La participation des enfants à la justice juvénile en Suède*

*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 Sweden.

**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 Suecia

**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 Suède

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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.

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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. 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?

*The General Courts (the Districts Courts, the Court of Appeal, the Supreme Court)*

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Does the name vary among different regions of your Country?

*No*

Does this Court also have jurisdiction for other matters?

*Yes*

Which one?

*Criminal and civil cases*

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

*15*

##### 1.3. Until which age is a child subjected to the jurisdiction of the Youth Court?

*We do not have a Youth Court.*

Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult?

*No (in certain cases e.g. relating to the Social Law and the enforcement of care the consent of a child in the age of 15-18 is required together with the parents at the use of voluntary care. Those decisions are taken by the social service board and not by an administrative court. Only compulsory care is handled by an administrative court. In those cases the child from the age of 15 is autonomy in the sense that she/he has the right to act by her/his own in this kind of judicial proceedings.*

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 (the general court)*

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

*The police take care of the investigation, but the head of the investigation should be a police officer or a prosecutor who are specially trained to deal with investigations where the suspect is under the age of 18. A public defense lawyer should be appointed by the court it is not obvious that she/he does not need a defense lawyer. If the child is seized and arrested, she/he should only be put in an arrest if it is necessary. The child might be arrested and remanded in custody but only if there are special reasons. If possible, the child should not be placed in an arrest or in a remand center but be taken care of by the social service and their possibilities to put the child in a looked institution. The preliminary investigation should be handled with special speediness when the child is suspect of having committed a crime for which the penalty is imprisonment. It means that the decision to prosecute or not has to be taken as soon as possible but not later than six weeks after the child has been noticed of the suspicion. This time limit can be extended if the child takes part in mediation or there a special circumstance. If the child is remanded in custody, she/he should be prosecuted within two weeks after the decision but not later than within three months unless there are special circumstances. A parent or other adult close to the child must immediately be informed of time and place for the interrogation of the child by the police officer and is also allowed to participate unless it is against the best interest of the child or there are other reasons. This includes a representative of the social service to have information and a right to be present at the interrogation of the child. Before the prosecutor decides to prosecute or not the prosecutor should ask the social service to submit a rapport on the child including information if the child is known by the social service and if they have enforced any kind of care or other measures earlier and also state their opinion if the child is in need of care and what kind of care they are able to offer, voluntary or compulsory. If the child needs care the social service can during the preliminary investigation take a decision to enforce care. If there is a need for compulsory care the social service must apply for such care at the court of administration. If the prosecutor decides to prosecute the child the parents and the social service should by the court be informed of the place, the date and time. The trial should take place as soon as possible after the prosecution has been*

*handed over to the district court. If the suspect is remanded in custody the trial should take place within two weeks but also if the sanction for the crime is more than six months imprisonment. This time limit can be prolonged. The court should then offer the suspect and remanded child a remand hearing every two weeks. The judges at the district court (normally one judge is legally trained and the other three judges are appointed citizens. All four have one vote each) should if possible be specially appointed by the court for cases where a juvenile stands the trial unless the sanction will be fines. If there is a huge public interest in the trial the chairman of the judges, the legally trained judge, can take the decision that the trial should take place behind closed doors. If possible, the judgment should be delivered orally at the court otherwise within two weeks.*

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

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

*See the above answer; speediness and limitation concerning arrest and remand in custody and special skills by the police officers, prosecutors and the judges in those case and the involvement of parents and other adults close to the child and the social service.*

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2. Judicial hearing

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

*Mandatory*

Is the child invited or summoned for the hearing?

*Summoned*

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 child receives a separate summon.*

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?

*No*

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?

No

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.)?

*The stay in a room.*

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 the court room.*

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?

*At special circumstances such as a witness feel uncomfortable to speak in the same room as the accused the hearing can take place in another room form which the accused and the judges and other people in the courtroom can see and hear the witness.*

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?

Yes

Does such option exist?

Yes

2.11. Who must, may, may not take part in the judicial hearing?

*Children under the age of 12 are expected to get bad experience by taking part as a witness. A suspect under the age of 15 cannot stand a trial.*

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)



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*In the court room the judges sit at one table, which stand a little bit higher than the other tables. The prosecutor, the aggrieved person (it such person exist) and the counsel of the aggrieved person (it such a person is appointed by the court) at one table and opposite of the them sits the defendant and her/his public defense lawyer. The witnesses wait outside the court room, in a special room if she/he likes, until she/he is called to give their testimony.*

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?

*During the trial the prosecutor and the defendant's defense lawyer. The judge, the chairman, who is the legally trained person, can ask questions but only if something is unclear. Questions to the defendant by the judge should be avoided in order the judge*

*stay objective in front of the parties.* 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?

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?

*Special courses for the professionals.*

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?

*No*

Would it be different in a family court?

*No*

And in a criminal court for adults? *No*

Can you please share a photo?

*The judges always wear civil cloths.*

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

*No, they always wear civil cloths.*

2.16.3. Who else is allowed to attend the hearings?

*The public if the chairman of the judges do not decide to have the trial behind closed doors. In such cases relatives may be permitted to stay.*

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

*Hats, caps should be avoided.*

2.16.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform?

*Regular cloths*

What kind of security measures/measures of restraint may be adopted?



*If she/he is remanded in custody the court can decide about restrictions such as: no visits except the defense lawyer, to phone calls, no newspapers, no television.*

Is their use regulated by law (if so, please share provision)?

*The Swedish Code of Judicial Procedure (SFS 1942:740) chapter 24 section 5a.*

Would it be visible for any attendee that the child is deprived of liberty?

*The court hearing where the prosecutor applies for remanding the child in custody is public as well as the decision.*

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

*Yes and they are sitting down*

2.16.7. Does the child have to stand up?

*No*

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

*No, everyone sits down when they enter the court room.*

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

*No, everyone is sitting all the time.*

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 chairman of the judges checks who is present of the parties and can then inform the child and the offended (if that person is present) as well as the public about the procedure of the trial and what is forbidden to do during the trial as e.g. to take photos.*

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

*Not as a defendant.*

2.16.12. Who poses the questions to the child: judge, psychologist, any other?



*The prosecutor and the defense counsel and the chairman of the judges, but very seldom there are questions by the judge.*

Does the child respond directly or via a third person, eg lawyer?

*Both by her/himself and the lawyer.*

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

*Only with the defense lawyer.*

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)?

*See the above answer.*

Is there an order of who interacts with the child?

*Yes*

2.16.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role?

*They should be present in order to hear the trial. They could also be addressed by the judge if something is unclear concerning suggestions by the social service about what care should be suitable for the child.*

Are they allowed to speak to the child?

*No*

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, but the report is presented in written and only presented by the prosecutor orally. She/he does not read it word by word. The defense lawyer can add comments to the report.*

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?

*Structured in a formal way.*

2.17.1. How would you characterize the tone of the dialogue and the general attitude of the hearing?

*It should be a positive interaction with the child, except by the prosecutor. Still, she/he must have a dialog with child that the child understands.*

Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened?

*First the child can speak freely about what happened Then the prosecutor and then the defense lawyer may ask the child specific questions.*

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?

*Yes, it is open but from different angles depending on if it is the prosecutor or the defense lawyer who is speaking.*

What promotes such dialogue, what hampers it, in your opinion?

*The court room itself is a very unfamiliar place for the child but very well known by the others who are present. There is no opportunity for the defendant and the offended to have a direct dialog, I mean the offended might have an interest to speak direct to the defendant and vice versus.*

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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?

*Yes, the defendant lawyer will have the last words before the trial ends. At that time the judge can offer the child a possibility to speak.*

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

*If the sanction will be delivered orally by the judge than the conditions of the sanction or the care can be stated.*

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

*Yes*

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??

*No special protections are available.*

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*

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

*The judges that are not legally trained are too often too old which might put the child at risk not to be understood in the right way.*

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

*The minister of justice has said that he will initiate an investigation to lower the MACR to be something between 12-15.*

3.4. Any suggestions for improvement from your side?

*The trial must be improved to be more child friendly and also implement the possibilities for the offended and the defendant to speak directly to each other during the trial. The number of children being detained as remanded in custody are too many and they also stay too long, which means more than three months with is the limit except where there are special circumstances.*