



CHILD PARTICIPATION IN JUVENILE JUSTICE IN SERBIA **National Report for AIMJF's Comparative and Collaborative Research**

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Serbie

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 Serbia.

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 Serbia

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 Serbie.

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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.

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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?

Child offenders were treated in legal system of Serbia and Yugoslavia under the rules of general Criminal Code even though there has always been a separate, milder system of punishment. In 2005 Serbian parliament adopted a new “Law on Juvenile Criminal Offenders and Criminal Protection of Minors” (“JJ Law”) which entered into force in 2006. The JJ Law regulates offences committed by children aged 14-18 and young adults aged 18-21, as well as child victims of certain criminal offences of any age, and introduces specialized child justice professionals. It represents *lex specialis* and provides for special benches at higher court level and specialized prosecutors. There are 26 higher courts and 4 courts of appeal as well as 26 higher and 4 appellate public prosecutor’s offices in Serbia and each of these entities has at least one specialized judge/prosecutor handling cases involving child offenders. Only Higher Court and Higher Public Prosecution Office in Belgrade have special departments dealing solely with cases concerning child offenders whereas in other courts/prosecution offices judges and prosecutors deal with adult offending cases as well.

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

MACR is set at 14.

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 JJ Law regulates offences committed by children aged 14-18 and young adults aged 18-21. It is not possible to treat a child under 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?

The JJ Law regulates offences committed by children aged 14-18 and young adults aged 18-21.

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

If the Child Justice Public Prosecutor (“prosecutor”) determines that a person against whom criminal charges have been filed or the injured party filed a motion for initiating proceedings, is under 14 years of age at the time of commission of the criminal act, the prosecutor shall **reject criminal charges** or the motion of the injured party, and shall deliver decision on rejection to the guardianship authority of the centre for social work (“CSW”) for further action within its jurisdiction.

If the Court determines during the proceeding that at the time of commission of the criminal offence the child was under 14 years of age, criminal proceedings shall be discontinued and relevant disposition delivered to the guardianship authority for further action.

Criminal proceedings against a child offender are instituted for all criminal offences only at the motion of the prosecutor with special qualifications in the field of the rights of the child and child offending.

For criminal offences punishable by **up to five years imprisonment or a fine**, the prosecutor **may decide not to press charges** although evidence exists giving rise to reasonable suspicion that the child had committed a criminal offence, if in his/her opinion it would not be appropriate to prosecute the child due to the nature of the criminal offence and circumstances under which it was committed, his/her previous living circumstances and personal characteristics.

The prosecutor files a motion to initiate **preparatory proceedings** with the child justice judge (“judge”) of the competent Court. If the judge disagrees with the motion, he/she shall request a relevant decision from the Court bench of a Court of higher instance.

A judge may delegate a law enforcement authority with enforcement of a search warrant for premises and temporary seizure of objects as provided under the Criminal Procedure Code. In addition to facts relating to the criminal offence, the Court shall particularly determine the age of the child, facts necessary for evaluation of his/her maturity, his/her living environment and circumstances, and other relevant facts relating to his/her character and behaviour.

The child’s parents/guardian and other persons who may offer relevant information will be questioned to determine these circumstances. The Court shall always obtain the opinion of the guardianship authority.

The judge alone decides on the manner of conducting particular actions, ensuring the rights of the accused to defence, the rights of the injured party and collecting of evidence required for deliberation.

After investigating all circumstances relating to commission of the criminal offence, maturity and other factors related to the personal and living circumstances of the child offender, the child justice judge shall deliver the case file to the competent prosecutor who may, within eight days, move to supplement the preparatory proceedings or file an explained recommendation to the Court bench to pronounce criminal sanction. On receiving the motion of the prosecutor to pronounce criminal sanction, the judge schedules a sitting of the bench or the **main hearing**. The judge shall schedule the main hearing or sitting of the bench within eight days of receiving the motion of the prosecutor. The judge is required within eight days from the day of publication of the decision concluding the proceedings, to draft the verdict and/or decision in writing.

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

Children actively participate in the proceedings, and their views are given due weight. A child offender may not be tried *in absentia*. When undertaking actions in presence of the child offender, and particularly during his/her questioning, participants in the proceeding are required to exercise due care having regard to maturity, other personal traits and protection of privacy of the child, so that the conducting of criminal proceedings would not have a detrimental effect to his/her development (art. 48 of the JJ Law).

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

The JJ Law differentiates between younger and older child offender (art. 3). A younger child offender is a person who at the time of commission of the criminal offence has attained 14 and is under 16 years of age. An elder child offender is a person who at the time of commission of the criminal offence has attained 16 and is under 18 years of age. A young adult is a person who at the time of commission of the criminal offence has attained 18 but has not reached 21 years of age at the time of the trial.

Following the conclusion of preparatory proceedings and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder child offender may not exceed six months, and four months for a younger child offender (art. 67 of the JJ Law). Only educational measures may be pronounced to younger child offenders, whereas “juvenile” prison may be pronounced only to elder child offender (art. 9 of the JJ Law).

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?

A child offender may not be tried *in absentia*. According to art. 54 of the JJ Law, a child offender is summoned through his/her parents and/or legal guardian, unless this is unfeasible due to need for exigent action or other circumstances.

The child’s parents/guardian and guardianship authority shall be also summoned to the main hearing.

The order to bring a child offender in terms of art. 135 of the Criminal Procedure Code is exercised by law enforcement officer in civilian clothes, in an unobtrusive manner.

Orders and other submissions may not be delivered to the child offender by posting them on the Court notice board.

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?

A child offender is summoned through his/her parents and/or legal guardian, unless this is unfeasible due to need for exigent action or other circumstances. The Ministry of Interior Department in charge of prevention of child offending has developed a detailed explanation of the procedure in written form and in child-friendly language (the document is currently available in Serbian language only but it can be translated, if needed).

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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. Only Belgrade Higher Court has a separate office where the child is prepared for the hearing by a court psychologist specialized to deal with child offending.

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. Only Belgrade Higher Court has a separate office where the child is prepared for the hearing by a court psychologist specialized to deal with child offending which can also serve as a waiting room.

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 child is transported separately from adults. When in court waiting for the trial, the child is always separated from adults.

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

It is not explicitly regulated by the law but the practice varies from one court to another.

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?

The hearing occurs in the courtroom.

Hearing of the child offender, when appropriate, shall be conducted with the assistance of a psychologist, pedagogue or other professional. The judge may allow attendance of the guardianship authority representative in preparatory proceedings.

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?

Yes, child victims/witnesses can be heard via video link, in separate premises, without the presence of other participants in the proceedings.

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

It depends on the capacities of each court. There are courtrooms used only for purposes of child offending cases in certain bigger towns in Serbia.

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

No, the hearings are recorded by the court recorders. Sound or video recording is usually used only in organized crime and war crime cases.

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

According to art. 65 of the JJ Law, hearing of the child during preparatory proceedings must be attended by the prosecutor, child's defense counsel and parent/guardian. If necessary, these persons shall attend other actions during preparatory proceedings. The judge may order the child offender to retreat when particular actions are undertaken.

According to art. 74 of the JJ Law, attendance of the child offender, prosecutor, the child's defence counsel and guardianship authority representative is obligatory. If the prosecutor or defense counsel fail to justify their absence from the main hearing, the president of the bench shall accordingly inform directly superior Public Prosecutor and/or the relevant bar association.

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)



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?

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Only the police sector has developed child friendly informative material explaining the procedure to the child.

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 child is heard by a judge. However, when appropriate, the judge may seek the assistance of a psychologist, pedagogue or other professional.

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?

No guidelines/protocols exist, however, only certified and specialised professionals – judges, prosecutors, police officers and defense counsels can act in cases involving child offenders. The training is obligatory and is facilitated by the Judicial Academy.

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 judges do not wear gowns/wigs in any proceedings in Serbia, with the exception of the Constitutional court.

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

No.

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2.16.3. Who else is allowed to attend the hearings?

Prosecutor, defense counsel, guardianship authority, child's parents/guardians can attend the hearing.

The public is always excluded from child justice trials. However, the court bench may allow persons engaged in education and protection of child offenders or suppression of child offending to attend the main hearing.

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

There are no restrictions in this regard.

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?

The child wears regular clothes in all these situations.

According to art. 132 of the JJ Law, force and means of restraint may be applied to a child in a correctional facility only exceptionally and only when necessary to prevent physical attack on an official, other child or self-infliction of injury.

Firearms may be exceptionally used against a child offender only if by other means of force or restraint the life of a child or other person cannot be protected in the event of a direct attack.

Specific provisions on enforcement of the educational measure of remand to a correctional facility are contained in separate House Rules of the correctional facility.

No, it is by no means visible that the child is deprived of liberty.

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

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Yes.

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.

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

It is not obligatory but the child usually stands during the hearing.

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 judge explains the procedure to the child. The specific steps are also explained by the police officer, the guardianship authority and the defense counsel.

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 is leading the procedure and poses the questions, but he/she can ask a psychologist or other expert to help in this process.

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?

Only the judge.

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 judge leads the proceedings. The guardianship authority can make suggestions during proceedings and indicate facts and evidence of importance for appropriate disposition. The guardianship authority is not explicitly a party to the proceedings, but the JJ Law opens wide possibilities for influencing the trial, from the pre-trial proceedings to the post-penal care. For instance, the guardianship authority has the right to be informed about any proceedings by the prosecutor, the judge may remand the child to the supervision by the guardianship authority, it is entitled to put together proposals during the proceedings and to indicate facts and evidence, and it can also suggest to the judge the most appropriate measures to be applied. Furthermore, it is also entitled to carry out the post-penal care measures, in order to support the juvenile in his/her re-integration process.

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

The child actively participates in the proceedings and the judge shall always ask the child to respond/interfere.

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?

The proceeding are more flexible as opposed to the regular criminal proceedings. Its flow depends on the personality of the judge, the trial has its structure but it does not have to be strictly followed.

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?

The child can explain what has happened in his/her own words. The hearing is focused on the wrongful act and examination of the evidence presented but the child's background and contextualization of his/her life is examined in the preparatory phase of the proceedings by the prosecutor, judge, guardianship authority and other experts on children's rights and child offending.

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 judge can be flexible in interaction with the child, the proceedings does not have to be strict but it is formal and structured according to the JJ Law.

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

Yes, the judge can be flexible in making 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?

Yes. Serbia is a state party to all relevant international instruments offering special protection to children in child justice system, in particular to ICCPR and CRC. Hence, children are entitled to all fair trial guarantees stipulated by general human rights instruments as well as the child-specific ones, providing children with further special care and protection through child-specific rights related to a fair trial in all proceedings affecting the child.

The general fair trial rights provided by the Criminal Procedure Code, such as principle of legality and non-retroactivity, presumption of innocence, the rights to be tried “without delay” or “promptly” before a competent, independent and impartial authority or judicial body, not to incriminate oneself, to appeal against the decision, to legal representation and assistance, to free assistance of interpreter, to examine witnesses, all apply for children equally as for adults.

Child specific fair trial rights are regulated by the Criminal Procedure Code and JJ Law, as follows:

- the right to information in language that the child understands – child and his/her family are informed about the proceedings both orally and in written form;
- the right to legal or other appropriate assistance – the child always has a lawyer, either of his/her own choosing or free legal representative appointed by the relevant body, depending on the phase of the proceedings. The defending lawyer has to be a certified attorney specialised in child justice;
- the right to judicial decisions without delays, ensuring the duties of all bodies participating in the proceedings to act as expeditiously as possible;
- the right to involvement of caregivers, ensuring that parents or legal guardians are immediately notified of the offence and of the apprehension of the child, and are present during any further interrogation in all phases of the proceedings, including the main hearing. They can be excluded only at the request of the child or because this is not in the child’s best interests;

- the right to privacy, providing that the child's privacy shall be fully respected in all phases of the proceedings, from the moment he/she is apprehended. This implies that the public should be excluded in child justice cases and that the judgment should not be disclosed to the public.

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??

Hearing of the child offender, when appropriate, shall be conducted with the assistance of a psychologist, pedagogue or other professional.

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, they have to attend obligatory initial and continuous training and certification organized by the Judicial Academy.

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

n/a

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

Currently the Ministry of Justice is developing a project with support of EU aimed at strengthening child justice system in line with international standards. It is expected to start in 2024.

3.4. Any suggestions for improvement from your side?

It is necessary to amend legislation in order to align it with newly adopted international standards, improve application of diversionary measures and evidence-based early intervention services and programmes and alternatives to detention, cross-sectoral



cooperation, informing children about their rights in a child-friendly manner and put more focus on particularly vulnerable groups of children and their specific needs.