



## **CHILD PARTICIPATION IN JUVENILE JUSTICE IN NORTH MACEDONIA**

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

*La participación de los niños en la justicia juvenil en Macedonia del Norte.  
Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants à la justice juvénile en Macédoine du Nord  
Rapport national pour la recherche comparative et collaborative de l'AIMJF*

Olja Ristova<sup>1</sup>

**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in North Macedonia.

**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 Macedonia del Norte

**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 Macédoine du Nord.

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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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<sup>1</sup> LLM, Criminal Court, Skopje, North Macedonia



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 competent courts are the basic courts with extended jurisdiction. There is a specialized court department for the criminality of children within the court, according to the law. Taking into the consideration that basic courts have jurisdiction for criminal and civil matters, (except the two basic courts in Skopje, which are the largest courts in North Macedonia and are divided to Basic Criminal Court Skopje and Basic Civil Court Skopje) there is a specialized court department for the criminality of children within the court. If the court is dealing with the small number of cases or has a small number of judges, the specialized court department will not be formed, and a judge for children will be appointed in this case.

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

The minimum age for criminal responsibility is 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 provisions of the Law on children are applied in the procedure against persons who committed action that is provided by law as a crime as children, and at the time of the initiation of the procedure i.e. the trial they did not turn 21 years old, as well as in the procedure against a child in risk over 14 years who has not reached 21 years of age (a younger adult) , if it is determined by the beginning of the main trial that that person can be imposed sanctions for children.

A younger adult is a person who at the time of adjudication turned 18 and did not turn 21.

There is no possibility a child under 18 to be treated 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, until 27 years old.

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

- Initiation of proceedings exclusively by the public prosecutor.
- Mediation procedure - not mandatory.
- Preparatory proceedings before a judge for children (investigation).
- Proceedings before the Children's Council ( Judge and two jurors)
- Decision on sanction or a judgment dismissing the charge.

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

The child must be interrogated in a preparatory procedure by the judge for children.

If proceedings are initiated, the child is heard before the children's council only if the council decides that it is necessary to hold a main hearing.

The child is also heard before the children's council if the sanction is imprisonment.

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

There are no specific criteria for acting according to age. All children from 14 to 18 years old are treated the same according to the Law on justice for children.

## 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?

If the council for children schedules a session of the council, the presence of the child is not mandatory.

If the council for children considers that the factual situation is disputed, it schedules a main hearing at which the presence of the child is mandatory.

The child is summoned for the 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?

The invitation/summon is made together with the invitation for the parent/representative.

The invitation/summon is the same as for adults, here is no specific child-friendly language.



**SUBPOENA/EXAMPLE**

Republic of North Macedonia

Courtroom no.\_\_\_\_

Basic Criminal Court Skopje

K.M. no \_\_/\_\_

Date\_\_\_\_\_

SKOPJE

**SUBPOENA**

**A.A. from Skopje, address..... is being summoned to the Basic Criminal Court in Skopje in Courtroom no..... on (date) at (hour) in relation to the criminal case K.M. no \_\_/\_\_ according to KOD no. \_\_/\_\_ (number of the Public Prosecution request) against the accused A.A., in the capacity of child in conflict with the law with the parent D.A.**

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**WARNING: If the child that has been duly summoned doesn't attend the trial, nor excuses the absence, will be compulsory brought and will bear the costs for their bringing.**

**NOTICE: Please bring a document for identification and the child should also bring a Birth Certificate.**

Court clerk,

\_\_\_\_\_

Legal advice and warning:

If the defendant is duly summoned, and does not come to the trial nor justify his absence, he will be forcibly brought, and detention may be ordered against him to ensure the presence of the trial and will bear the costs of his arrival, for postponement of the search

and other expenses he caused through his own fault, as well as an appropriate day of the lump sum, and in a shortened procedure he will be tried in his absence. The defendant is obliged to immediately inform the court about the change of address and the intention to change the place of residence. When the defense is not obligatory, the defendant has the right to hire a defense counsel, but the trial does not have to be postponed because the defense attorney did not come to the main trial or because the defendant hired a defense attorney even during the trial. If the defendant revokes the power of attorney of his defense counsel, he immediately informs the court, and no later than within 3 days, and if he does not do so, when it comes to mandatory defense, the court will appoint a defense attorney ex officio. If the defense counsel revokes the power of attorney of the defendant, the defendant is obliged to immediately inform the court, and no later than 3 days and if he does not appoint a new defense counsel, the court will appoint an ex-officio defense counsel within 3 days. The defendant may request that new witnesses or experts be called at the hearing or that other new evidence be obtained, that he or she may come to the main trial with evidence in his or her defense, or present the evidence to the court in time so that it can be obtain for the trial, and all this in accordance with Article 63, Art. 66, art.71, art.157, art.186 paragraph 4, art.317, art. 341 of the LCP.

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The defense of the juvenile in all stages of the court procedure is mandatory. If the juvenile or his / her legal representative does not provide a defense counsel, he / she is appointed by the court ex officio from among the lawyers, and in cases when the juvenile and his / her family submit proof that they cannot pay the defense counsel, the defense costs are borne by the court budget, in accordance with Article 82-a and Article 83, Art. 84, Art. 85 and Article 86 of the Law on Juvenile Justice.

If the injured party does not come to the search, the search will be held without him, and his statement on property claim will be read, and if the public prosecutor abandons the prosecution at the search, it will be considered that the injured party does not want to continue with it, according to Art. 57 of the LCP.

If the injured party as a plaintiff and the private plaintiff do not come to the hearing, nor send a proxy, it will be considered that they have dropped the accusation, in accordance with Article 63 of the LCP.

If the witness and the expert are unjustifiably absent despite the orderly summons, the court will immediately order them to be forcibly brought and will be fined, and they will bear the costs for their bringing, for postponement of the search, according to Article 88, paragraph 1, Art.157, Art.224 and Art. 237 of the LCP.

Form SD 43 (Article 202 of the Rules of Procedure)

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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?

In the courts in North Macedonia there no separate entrances and accesses for the child and other persons (professionals, victims and witnesses).

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?

There is no specific room assigned to the child, separated from other people.

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 children are always brought separately from adults. They never wait in cells.

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 preparatory procedure phase, the child is heard in the judge's office.

During the main hearing phase, the child is heard in a courtroom.

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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?

There are no differences.

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

There are no differences.



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

The hearings usually are not sound or video recorded although it is provided in the Law on criminal procedure according to which the trials are conducted.

The courts have technical possibility to audio record the hearings any time, but it is not used by the judges.

If there is a special request from the parties that the trial be audio and video recorded, in that case the judge can request for equipment and record the main hearing.

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

If an indisputable factual situation is established, the president of the children's council schedules a public session.

The public prosecutor, the defense attorney and the representative of the center (Centre for Social Work) is notified of the council session and can attend it, if necessary and the child with their parents, i.e., guardians are informed.

In practice, although it is not mandatory, the public prosecutor and the child's defense attorney are always present.

If it is necessary to establish the factual situation, the council for children can decide to hold a main hearing.

The public prosecutor, the injured party, the child and his defense attorney, his/her parents, i.e. guardians and representative of the center will be summoned to the main hearing.

The non-presence of the parents, or the guardians or the representative of the center does not prevent the court from holding the main hearing.

In case of absence of the parents, i.e. the guardians, the court will oblige the defense attorney to represent them and their interests.

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)

Photos of the office and courtroom are below.

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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?

I am not aware of existence of such informative material.

- 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 always heard by the judge.

- 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 guidelines or protocol for how to communicate with the child. The only guidelines on how to deal with the child during the procedure are provided in the basic principles of the law of justice for children. However, these are not guidelines for interacting with the child.

Judges for children are trained in communication with the child if such training is conducted by the Academy for Judges and Public Prosecutors. Judges apply voluntarily, training is not mandatory.

- 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?

Judges for children never wear gown during the hearings.

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

No, they don't.

#### 2.16.3. Who else is allowed to attend the hearings?

In addition to the public prosecutor, the injured party, the child and his defense attorney, his/her parents, i.e. guardians and representative of the center, experts and witnesses can also attend the trials.

Since the trials for children are not public, the presence of the public is not allowed during the trial.

#### 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 such restrictions.

#### 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?

When the child is deprived of liberty, he/she wears regular clothing. There are no uniforms in North Macedonia.

Since the child is brought with police assistance, it is visible that the child is deprived of liberty.

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

Yes, judge is in the hearing room.

2.16.7. Does the child have to stand up?

According to the law, everyone in the courtroom should stand up when the judge enters.

During the preliminary hearing in the judge's office, the child does not stand up.

During the hearing of the child at the main hearing in the courtroom, the child stands up.

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

The judge will allow the child to sit down.

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

Yes, the child stands while being questioned in the courtroom.

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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?

There is no solemn speech that will inform the child before he/she is given the opportunity to speak.

Usually, the judge for children explains to the child why he/she has been called, what he/she has been accused of, that he/she should tell the story of how it happened, or what happened, and that he has the right to a lawyer.

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 child's questions are asked by the children's judge. The child answers the questions directly to the judge.

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

The child has the right to consult his/her 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)? Is there an order of who interacts with the child?

The children's judge and the parties are allowed to address the child. Questions may be asked by the parties through the children's judge.

The order of hearing the child takes place in such a way that first the child is heard by the judge, then the public prosecutor and finally the defense attorney.

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?

During the trial, the social worker is not allowed to speak with the child. However, if there is a need to clarify something about the social worker's scope of the work, the judge will allow the social worker to provide that clarification to the child and if that clarification is in the best interest of the child.

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 is allowed to interfere or correct the information or conclusions, but these are very rare situations.

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 hearing is structured in a formal way, but often the hearing is open to a dialogical interaction with the child.

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?

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When interrogating the child, the judge tries to create a friendly atmosphere. If the child is scared, the judge will explain to him/her why he was called and will try to relax him/her for the further hearing. The judge will also explain to the parents how the procedure goes and what they can expect. In particular, the judge will emphasize that the procedure will be conducted in the best interest of the child.

At the beginning, the judge asks the child how old he/she is, where he/she lives, who he/she lives with, whether he/she goes to school, what kind of student he/she is and other social and economic aspects of his life. The judge tries to keep the conversation informal.

Then the judge starts with questions relating to the wrongful act. If the child wants to speak, the judge lets him tell everything that happened without interrupting him. As long as the child does not tell and waits for questions to be asked, then the judge slowly guides him with the questions, without leading him to specific answers. While the judge conducts the conversation, he simultaneously perceives the child's behavior.



I believe that this is a good way of dialogue with the child because it is easy to follow his behavior, body language. Through this type of dialogue, the judge can assess whether the child is telling the truth. According to my personal experience, children usually tell the truth and admit that they have done wrong.

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?

Usually, the judge gives each side a chance to speak to make a final decision.

Legal provisions regarding plea bargaining and restorative justice are almost never used.

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Under the Law on justice for children, mediation, plea bargaining and restorative justice provisions should apply before or at the beginning of court proceedings.

In practice, until now there have been several cases of mediation, restorative justice is used only for crimes in the field of traffic, while there are no settlements.

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

The judge is allowed to make recommendations on how the child should behave.

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

During the hearing, the child has the same legal and procedural guarantees and safeguards as an adult. There are no differences.

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??

There are no special protections available to prevent trauma to the child.

It is only the children's judge who tries to create a friendly atmosphere during the hearing and prevent the trauma to the child.

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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 benefit from these trainings, but this type of trainings is rare.

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

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

3.4. Any suggestions for improvement from your side?

- Increased training of judges, prosecutors and lawyers.
- Mandatory training for judges and prosecutors who work with children. For lawyers who represent children, training is mandatory and that practice lasts more than 15 years.



- To conduct trainings on the subject of hearing a child and to initiate the creation of hearing instructions that will be mandatory for all judges.
- To raise the awareness of public prosecutors, lawyers and judges about the application of the institutions of mediation, restorative justice and plea bargaining in order for the child to have a procedure only if it is absolutely necessary.
- To create recommendations for special waiting rooms for child perpetrators and child victims where they will wait before entering the judge, and separate entrances as well.