



CHILD PARTICIPATION IN JUVENILE JUSTICE IN GERMANY
National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en Alemania

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Allemagne

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

AIMJF Germany

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 Germany.

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 Alemania

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 Allemagne.

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. 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?
Jugendgericht, no regional differences, matters with child victims (“Jugendschutzsachen”, § 26 GVG)

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

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?

No treatment of under 18 as adult

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

Yes

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

Investigation

- Suspicion of criminal act Police
- Passed on to Public Prosecutor's Office
- Final decision by prosecutor (public charge, diversion, termination etc.)

Main proceedings

- Court (hearing, decision)

Execution of sentence



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

Usually police hearing, court. Also at youth service which is involved from the beginning

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

Involvement of parents only when minor at the time of procedure.

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?

Mandatory. Summoned. Presence is conceived of as a right more than a duty.

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?

Parents are informed separately and have a right, not an obligation to appear unless they are witnesses. Child friendly language is not the rule.

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?

What is meant here? The court room is a normal court room, no separate entrance.

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?

If the child is accused it will not wait but have a right to be present the entire time. Some court have separate waiting rooms for vulnerable victims

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.)?

They are supposed to be separated, it may occur that this not always possible. Usually single cells,

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

Usually no special spaces



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?

Usually in the courtroom. Judges are free to choose alternative settings, e.g. their office, seems to be a rare exception.

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?

Not systematically

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

Not usually

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

Court hearings are not recorded. There is a debate about this issue in general, not specifically with regard to children.

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

In general “must”: Judge, prosecutor, clerk, accused, witnesses, specialized youth service. There are some exceptions to this rule.

In general “may”: parents, lawyer

In general “may not”: public

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)

See p. 16 for a drawing: <https://www.selm.de/rathaus-buergerthemen/flyer-broschueren-prospekte.html?file=files/Selm/media/RatVerwaltung/FlyerBroschuerenProspekte/Ratgeber%20fuer%20straffaellig%20gewordene%20junge%20Menschen.pdf> – 1 accused, 2 defense lawyer, 3 clerk, 4 judge, 5 prosecutor, 6 youth service. The latter can also be seated next to the accused. Some courts for severe crimes have more than one judge. The rooms are quite different in different courts, e.g. modern ones tend to be more like normal offices, older ones can be more impressive.



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?

https://www.bmj.de/SiteGlobals/Forms/Suche/Belehrungsformularesuche_Jugendliche_Formular.html?gtp=6697702_list%253D3

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 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? No formal guidelines, training is not mandatory/systematic but professionals can participate in trainings

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?

Usually gown is worn, no difference to family or adult court.

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

Gown

2.16.3. Who else is allowed to attend the hearings?

Parents

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?

Often there is a uniform, persons may be handcuffed, no detailed provision – proportionality, hearings are not public.

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

Usually yes



2.16.7. Does the child have to stand up?

Usually yes

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

The judge

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

No

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 information on the rights (e.g. to remain silent)

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?

Questions can be asked by different professionals, can respond directly or via lawyer

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?

Usually all are allowed. In Germany we wouldn't speak of the prosecutor as "party".

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?

A specialized youth service (Jugendgerichtshilfe/Jugendhilfe im Strafverfahren) is (with some exceptions) obliged to attend.

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?



Within the formal frame, there is room for more dialogical aspects, but in general: more formal.

- 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 is free to remain silent as the accused. If it speaks it can speak quite freely, contextualization is necessary to find an adequate response to the act, the court has to consider background etc. Real dialogue is promoted if judges and the other professionals involved are qualified for their jobs.

- 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?

Judges are quite free within the framework of formalities, the whole procedure is designed to respond more educational than penal.

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

What is meant here?

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

More rights for juveniles, e.g. regarding presence of parents, state-paid lawyer.

- 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?

Support by youth service, hearings not public.

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?



Not systematically although the respective legal provision (there is one only regarding judges and prosecutors) has been changed recently.

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

Police need special training, too!

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

Nothing concrete at the moment. There have been quite a few changes 2019 in the context of the EU-Guideline 2016/800

3.4. Any suggestions for improvement from your side?

We don't really need legal improvement. Most important in my view: specialization and money into the system of alternative sanctions.

For a thorough description see:

https://rsf.uni-greifswald.de/storages/uni-greifswald/fakultaet/rsf/lehrstuehle/ls-duenkel/Veroeffentlichungen/Duenkel_-_Youth_Justice_in_Germany_-_Oxford_Handbooks_Online.pdf