



## CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN CROATIA

National Report for AIMJF's Comparative and Collaborative Research.

*La participación de niños como víctimas o testigos en causas penales en Croacia*

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

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Croatie*

*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 as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Croatia.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Croacia

**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 en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice en Croatie

### 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

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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 as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## **Questionnaire**

### **1. Right to be heard**

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, the children are presumed to be capable witnesses.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

A child who, given his age and mental development, is not capable of understanding the meaning of the right not to testify cannot be examined as a witness, but information obtained from him through experts, relatives or other persons who have been in contact with him can be used as evidence.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Children are released from the obligation to testify if they are:

1. relatives of the defendant in the direct line, relatives in the collateral line up to the third degree inclusive and relatives by in-laws up to the second degree inclusive,

2. adopted son of the defendant

Children, as witnesses or victims, cannot withhold testimony if it is a criminal act of criminal protection of children.



If children decide not to testify, they cannot be punished, so they have the convention right to express their opinion, but they are not obliged to do so.

## **2. Broad perspective of the legal framework and procedure**

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes, Criminal procedure Code and Act for Juvenile Courts

Zakon o kaznenom postupku NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24

Zakon o sudovima za mladez NN 84/11, 143/12, 148/13, 56/15, 126/19

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

(1) A child as a victim of a criminal offense has, in addition to the rights that belong to the victim in accordance with this article and other provisions of this Act, also the right to:

- 1) plenipotentiary at the expense of budget funds,
- 2) secrecy of personal data,
- 3) exclusion of the public.

(2) The court, the state attorney's office, the investigator and the police are obliged to treat the child as a victim of a criminal act with special consideration, bearing in mind the age, personality and other circumstances in order to avoid harmful consequences for the upbringing and development of the child. When dealing with a child victim, the competent authorities will primarily be guided by the best interests of the child.

We have protocols and rulebooks:

1. Protocol on handling cases of domestic violence
2. Protocol on dealing with child abuse and neglect
3. Protocol on handling cases of domestic violence
4. Protocol on dealing with violence among children and young people
5. Protocol for the identification, assistance and protection of victims of human trafficking
6. Rulebook on the work of professional associates in the non-legal profession on delinquency matters youth and criminal protection of children in state attorney's offices and courts
7. Rulebook on the method of carrying out an individual assessment of the victim



2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

2.4. In which moment(s) can a child be heard in this procedure?

When the police find out that a crime has been committed against a child offense from Article 113, paragraph 3 of this Act, will notify immediately state attorney for youth. The competent state attorney for the youth shall, at the latest, within three days of the registration of the criminal report in the register of criminal reports for criminal offenses against sex freedoms, criminal acts against sexual abuse and child exploitation and crimes against marriage, family and children to put a proposal to the judge of the youth investigation to hold the evidentiary hearing, to examine the child as a witness.

(2) If a child injured by a criminal offense from of Article 113 of this Law, which was not completed at the time of the examination sixteen years, such examination shall always be carried by video conference in special room with expert and without present of the perpetrator. The children can interrogate as witness when they are 16- to 18-year-old in the same way if the judge allows. The person who has the trust of the child can attend the examination.

Children as witnesses harmed by the criminal offense instead of in court, be questioned in their home or other specially equipped space. When questioning witnesses, it will be done in the manner through audio-video devices by a professional assistant.

Unless otherwise prescribed by a special law, the examination of the child as a witness is conducted by the investigating judge. The examination will be conducted without the presence of the judge and the parties in the room where the child is, through audio-video devices operated by a professional assistant. The examination is carried out with the help of a psychologist, pedagogue or other professional person, and unless it is against the interests of the procedure or the child, the examination is attended by a parent or guardian. The parties may ask questions to the child-witness with the approval of the investigating judge through an expert. The examination will be recorded with an audio-video recording device, and the recording will be sealed and attached to the record. The child can only be re-examined exceptionally, and in the same way.

When questioning a child, especially if he has been harmed by a criminal act, care will be taken to ensure that the questioning does not adversely affect the child's mental state.



2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

No.

### 3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

<https://gov.hr/hr/prava-zrtava/1156?lang=en>

<https://www.unicef.org/croatia/media/6491/file>

<https://mpudt.gov.hr/nadleznost-ministarstva-pravosudja-i-uprave/iz-pravosudnog-sustava-6372/podrska-zrtvama-i-svjedocima/korisne-informacije-za-zrtve/dijete-zrtva/24944>

[https://e-justice.europa.eu/171/HR/victims\\_rights\\_by\\_country?CROATIA&member=1](https://e-justice.europa.eu/171/HR/victims_rights_by_country?CROATIA&member=1)

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

The brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with expert, a special professional , who will be with the child in a special room. The expert will orally explain in child-friendly language before interview/hearing.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?



In Criminal Code is : “Before questioning the victim, the body conducting the questioning shall, in cooperation with bodies, organizations or institutions for assistance and support to victims of criminal offences, carry out an individual assessment of the victim. The individual assessment of the victim includes determining whether there is a need to apply special protective measures in relation to the victim and, if so, what special protective measures should be applied (measures to protect the safety of the victim, a special way of examining the victim, the use of communication technologies to avoid visual contact with the perpetrator and other measures prescribed by law). When the victim of a criminal offense is a child, it will be assumed that there is a need for the application of special protection measures and it will be determined which special protection measures should be applied.”

The preparation of individual assessment is made by special professional .The expert associate is a special expert for children, an employee of the court in department for juvenile justice, who prepares the child and also assesses whether the child is capable of testifying and how.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

Yes, by social welfare. Social workers submit a report on the child who needs to be heard and that assessment they make by talking to the child, parents, school, extended family and collecting information from the school and doctor.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

Yes. In a preparation phase the child can see the court room and his room where he/she will be with the expert.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Legal from the lawyer at the expense of budget funds, and social help from social welfare and pedagogue support from expert on the court.

#### **4. Protection and Support**

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

Social welfare in Social centres with multidisciplinary team ( psychologist, lawyer, social worker and social pedagogue) . They can propose urgent measures to place the child or propose to the Family Court more permanent measures for the safety of the child under the Family Law.



4.2. In case of identification of risks, what kind of protective measures are available in your country?

In criminal procedure the protective measures are: to put the perpetrator in detention or prohibit the contact of the perpetrator with the child. According to family law, place child in another family or institution or deprive his parents of their parental rights.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

A person whom the child trusts provide support before and after the examination. His/her lawyer for the children provides legal assistance.

4.3. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?

In cases of domestic violence, the mother and children are usually placed in a safe house. At the same time, the perpetrator is in custody, and upon release he is prohibited from contacting his wife and children, and in case he violates these special orders, he will be returned to custody. We don't have specific measures in case of child abduction or child kidnapping, and this cases are rare.

## **5. Environment**

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

When the state attorney proposes to examine a child, the evidentiary hearing is held in court and the child is examined by an expert in the non-legal profession in a special area adapted to children.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non-child- specific building, but separate entrance for children; separate interview/hearing room for children)

In the Republic of Croatia, a house similar to Barnahus is the Child Protection Clinic of the City of Zagreb, where children can be examined in a multidisciplinary manner. The polyclinic has an area for children and cameras that can record the testimony, and other people can be in a special area, along with psychologists and psychiatrists who are specially trained to conduct conversations with the child, as a forensic interview but also as experts who help the judge in questioning the child. Good technical equipment, adapted space and experts who know how to talk to children are a guarantee that all the child's rights are respected, namely: the right to privacy



protection, the right to information about the procedure, the right to legally express their opinion, but not to force them to express it if he does not want to talk about the event.



5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

There is no special regulation that dictates what that room should look like, but every County Court in Croatia is equipped with cameras, microphones and equipment for recording recorded interrogations.





#### 5.4. Is there a specific waiting area for the child?

Children are welcomed by professional cooperation already at the entrance to the court. If there are more children, those who are waiting have a space in the victim support room, which experts have separated for adult victims, but also provide assistance to children who come to court.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? ( e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

Examination of children should be carried out in such a way that, when conducting procedural actions, children are treated with particular care and bearing in mind their age, personality traits, education and circumstances in which they live, in order to avoid possible harmful consequences for their upbringing and health.(Act of Criminal procedure)

The victim's children are questioned in a special area, they do not come into contact with the presumed perpetrator. The courtroom is connected by video link and the defendant and his defence attorney can ask the victim questions with the approval of the judge, through the headphones of the expert who is talking to the child.

5.6. In case identification of the offender is needed, how is this conducted, and where?



Identification of the perpetrator is carried out in the police station with police officers who are trained to work with children. Identification is through glass and the alleged perpetrator does not see the child.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

If the child lives far from the court, the expert associate will prepare the child in such a way as to come to him at home. The expert associate, by order of the judge, will contact the competent center for social welfare if it is necessary to bring the child to the evidentiary hearing, because the parents cannot do so.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

Child victims are always questioned during the investigation phase in a special area and their testimony is recorded and reproduced in the hearing so that the child is not in the courtroom.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

The victim's children are not called to court in front of the perpetrator, but their testimony is always taken in a special room with an expert associate. The recording of the statement is proof and only an exceptional child can be re-examined, but only again via video link.

## **6. Specific legal guarantees for the child**

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

Our procedure envisages the right of a child victim of a criminal offense to an attorney at the expense of budget funds. For criminal offenses for which a prison sentence of five years or more is prescribed, as well as when the perpetrator of criminal offenses against sexual freedom and sexual moral order is a relative of the child in the direct line, a relative in the collateral line from the third degree, a relative by in-laws up to the second degree inclusive, the adoptive parent of a child victim of a criminal offense, if the child does not have an elected representative, the court will, ex officio, appoint a representative.

The child victim can hire a lawyer immediately after the crime has been committed, and the court appoints one at the earliest stage before the interrogation, and the lawyer is in charge of the child until the decision becomes final.



6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

Lawyers for children must have an aptitude for working with children and are on a special list in the Bar Association. They are in charge of talking with the child and parents and making proposals that protect the rights of the child, making a property claim and participating in the discussion, and making evidentiary proposals.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

The right to be accompanied by a trusted person refers to the right that the child is not a victim only during the proceedings, and that during the criminal proceedings he can be accompanied by a person he trusts, who gives him emotional and psychological security and provides him with support.

The victim himself can choose his trusted person. This can be a friend, a family member, but also a representative of the support service to which the victim turned for help (eg a representative of the Victim and Witness Support Department or a civil society organization).

6.3. What is the role of parents/legal representative?

Parents have the right to receive all information about the procedure. They are the ones who provide security for the child, but they may not answer for the child or suggest answers to him, but together with the lawyer, they give advice regarding the setting up of the property legal document and other proposals.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

Yes, the parent is excluded if is he the perpetrator, conflict of interests or so, but this is a decision of the judge. It can be the proposal of prosecutor or attorney of the child.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

If the parent is the perpetrator or will be heard as a witness, a special guardian is appointed for the child, a lawyer trained in the Ministry of Social Welfare and who is present at all procedural actions concerning the child.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

The child victim has the right to confidentiality of personal data and exclusion of the public from the hearing.

6.5. Is the child allowed to plea for cautionary measures?



The child victim can propose some special measures through his lawyer, but the court must make an individual assessment of the child with the help of its professional associate.

6.6. Does the child have the right to appeal any decision?

The child victim, like other victims, has the right to appeal if he has taken over the prosecution from the prosecutor, and if the prosecutor is the one representing the prosecution, then he can only appeal the costs of the procedure.

## **7. Interviewing structure and procedure**

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

The child victim is heard only once via video link and, exceptionally, one more time in the same way, if these are particularly important circumstances that are decided by the court.

7.2. Is it mandatory that this professional has specific training for child interviews?

Professional associates have been trained on a couple of occasions, and now the Judicial Academy is requested to repeat the training.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

It is not in act but the professional associates have been trained by NICHD protocol.

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

There is a professional associate in the room with the child, and the child can also ask for a trusted person to be present. In the courtroom, separated from the room where the child is, sit the judge, the typist, the prosecutor, the defendant, the defense attorney, the child's lawyer.



- 7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

Only a professional associate trained in talking with the child asks questions. After talking with the expert in a special area, the judge from the courtroom in which the prosecutor, defendant and his defense attorney are present allows questions to be asked. The judge approves or disallows each question, and puts it through a microphone into the ear of a professional assistant who adjusts the question to the age of the child. The child does not hear the questions of the defendant, defense counsel, prosecutor or judge. The child hears only the professional associate.

- 7.6.1. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

Yes. The professional has duty to protect the child.

- 7.6. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

Yes, to use as evidence in the court. It must be recorded on the hearing.

- 7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

The film will be recorded in the court and the accused person can make remarks.

- 7.7. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

The recording is made on soft and hard disc, so, it is protected. If the recording is destroyed, the child can be examined exceptionally again in the same way, via video link.

- 7.8. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

The child cannot listen to his statement and correct it. It's like witness testimony in a courtroom. The videotape can be requested by the child's lawyer.

- 7.9. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right



to choose to be heard as any other victim or witness? Are there still adaptations in this case?

Each child victim must undergo an individual assessment and a professional associate should assist the investigating judge in assessing the best way for that child to be examined. So far, not a single child has refused to be examined through a video link and asked to be examined in a different way. However, the child has the right not to testify because it is his right to express his opinion, but it is not his duty, so there were children who did not want to testify and this was recognized as their right based on the Convention on the Rights of the Child.

## **8. Offender's right during or after the interview**

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

When examining a child in another area, in the courtroom, the prosecutor, the defendant and his defence attorneys and the child's lawyer should be present. If the defendant and his defence attorney are not present at the evidentiary action that is being recorded, they can request re-examination of the child because they could not ask him questions.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

It should always be possible for the accused and his defence attorney to ask questions, because a non-confrontational statement cannot be evidence in the proceedings.

## **9. Parallel proceedings – coordination**

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

The criminal procedure is not related to the procedure in the family court, but we get information about it from the centre for social welfare. Criminal proceedings are always preferred, although this is not expressly stated in the law.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

No.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?



No. We can not share the interview of the child. The Family Court will have the decision of Criminal Court and in child abuse cases the Criminal Court have to send the final decision.

## **10. Training**

10.1. Are judges and magistrates trained to deal with child victims?

In the Judicial Academy, the education of judges and prosecutors is held and the current educations are:

1. sexual abuse of children and their protection
2. examination of victims and special attention to especially vulnerable victims.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

Yes, it is interdisciplinary. Educators are judges, prosecutors, police officers and a psychologist.

On the training are participants: police, prosecutors', judges and professional experts on court.

## **11. Reforms in progress**

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

The Council of Europe in cooperation with the European Commission, the Directorate General for Structural Reform Support (DG REFORM) and the Ministry of Justice, Administration and Digital Transformation launched the project "Introducing the Barnahus Model in Croatia" in the Republic of Croatia. The goal of the project is to improve the quality of the justice system for children who are victims or witnesses of sexual violence in the Republic of Croatia, prevent unnecessary delays in the processing of such cases, and enable all children who are victims or witnesses of sexual violence to have access to child-friendly justice. Project from 2023 to 2026.

Barnahus (which literally means Children's House) is a child-friendly, interdisciplinary and multi-agency centre for child victims and witnesses where children could be interviewed and medically examined for forensic purposes, comprehensively assessed and receive all relevant therapeutic services from appropriate professionals.