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# Hearing children in family proceedings: France

## 1. General Obligation to hear children

- France has implemented a general statutory provision to fulfill the right of the child to be heard in all procedures concerning the child. There is a legal obligation to ensure children are heard in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding (FRA, 2015b, p. 5).
- Children's right to be heard is guaranteed by a number of national laws; in particular the Civil Code (Art. 388(1)). This major legal act expressly states that children have the right to be heard in proceedings affecting them. A child capable to understand may be heard by the judge or the person appointed by the judge for that purpose when the interests of the child so require (Ballesteros et al., 2013).

## 2. Minimum age

- There is no minimum age to hear children. Any child capable to understand (*capable de discernement*) can be heard. This degree of maturity is defined by the judge on a case-by-case basis (FRA, 2015a, p. 40). In family affairs, the family judge may hear children from 7 or 8 onwards (FRA, 2015a, p. 40; French Central Authority, 2016).
- A child can make a request to be heard. A child capable to understand (*capable de discernement*) may request a judge to hear him/her in cases concerning him/her, even if one or both parents oppose to such hearing. This implies an obligation for the judge to make sure every child is properly informed of their right to be heard (French Central Authority, 2016).
- It is common practice that children are heard in civil procedures (FRA, 2015a, p. 49).

## 3. Who hears the child?

- The child is heard by the judge, or an independent expert appointed by the judge (French authorities, 2010, 7.3a; Country Profile, 2011).
- The child can be heard alone, or with the assistance of a lawyer or another person of his/her choice. If this choice goes against the child's best interests, the judge may appoint another person (CEFL, 2005; CRIN, 2015, p. 12).



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- The legal obligation to obtain a comprehensive understanding of the child and assess their legal, psychological, social, emotional, physical and cognitive situation via multidisciplinary cooperation is usually implemented (FRA, 2015b, p. 5).
- Specific family courts exist (FRA, 2015a, p. 39).
- The judge decides on the maturity of the child (French authorities, 2010, 7.3b).

#### 4. Specific rules for hearing children in child abduction cases?

- In cases concerning parental responsibility, the judge shall take account of the feelings expressed by the child during the proceedings (Civil Code Art. 373(2)(11)).
- According to the Country Profile (2011), children should always be heard in return proceedings. It is however unclear if this is always the case. The court hearing the child must give due consideration to the child's wishes, and must specify in its decision whether the feelings expressed by the child have been taken into account (CEFL, 2005, p. 38; Civil Code, Art. 373(2)(11)). This does not mean the court has to follow the child's opinion (e.g. a child should not be put in the position to choose between two parents) (CEFL, 2005, p. 38; French Central Authority, 2016).
- When a child objects to return under Art. 13(2) of the Hague Convention, the return could be refused particularly when the child is old enough, is integrated in his/her new environment or when non-return is the only way to preserve a relationship with a sibling (French authorities, 2010, 7.3c).
- It is possible to appoint a guardian ad litem when the interests of the child conflict with those of their legal representatives (Country Profile, 2011).

#### 5. Cross-border element (i.e. hearing a child who is abroad in second-chance procedure Brussels IIbis?)

No information available.

#### 6. Other relevant matters

- The hearing of the child does not confer on him/her the status of party to the proceedings (Art. 338(1)(3) Civil Code).
- It is rare that the judge's decision is explained in a child-friendly manner to a child who has been heard (CRIN, 2015, p. 13). However, such explanations may be given during the hearing. Alternatively, the child's lawyer or administrator ad hoc may also debrief the child after the proceedings (French Central Authority, 2016).



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- Training is provided to professionals having direct contact with children in communicating with them at all ages and stages of development, as well as with children in situations of particular vulnerability. The legal obligation to provide such training is implemented (FRA, 2015b, p. 5).
- France has implemented procedures to provide support to a child before, during and after civil proceedings. Screens, separate rooms and child-friendly facilities with technological equipment exist (FRA, 2015b, p. 6).
- The legal obligation to ensure that children are informed in the most appropriate way, having regard to their age, maturity and level of understanding and any communication difficulties they may have, including provisions for specifying the responsible authority, person, time, consent and format of the information provided is implemented (FRA, 2015b, p. 7).

## 7. Legal sources on hearing the child

French Civil Code Art. 373(2)(11) & Art. 388(1)

## 8. Sources in literature

- [Ballesteros et al.](#), 2013, pp. 181-192
- [CEFL](#), 2005
- [CRIN](#), 2015
- [FRA](#), 2015a
- [FRA](#), 2015b
- [French authorities](#), 2010
- [Hague Convention Country Profile](#) section 10.4 (published 2011)
- Contact person for France: Sophie Rodrigues (Central Authority, 2016)