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Hearing children in family proceedings: Netherlands

1. General Obligation to hear children

There is no specific right of the child to be heard (CEFL, 2005, p. 34). Arguably, Art. 12 CRC is directly applicable in Dutch law. Children have a right to express their views in family law cases (Ballesteros et al., 2013).

2. Minimum age

12 years (EC, 2015, p. 12). The Court has an obligation to invite children who are 12 years or older to be heard in relation to matters affecting them, unless it decides it as a matter of minor importance or an urgent situation (Art. 809§1 of the Dutch Code of Civil Procedure). The Court has a discretionary power to hear children below age 12, if they are considered to have reasonable appraisal of their interests (CRIN, 2015, p. 5; CEFL, 2005, p. 35). In practice, children are not heard very often (CEFL, 2005, p. 7). Only in Hague return proceedings, where jurisdiction is concentrated in The Hague, are children of 6 and over routinely heard (Beaumont et al., 2016, p. 14).

3. Who hears the child?

The child will be heard directly by the competent authority. The judge will decide the manner in which the child is heard (Art. 809 §1 of the Dutch Code of Civil Procedure).

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

- Concentrated jurisdiction in the Hague Court of First Instance; Hague Court of Appeal; Supreme Court.
- In child abduction cases, the child will be heard alone. If a child strongly objects to an oral statement, a written statement can be provided (Dutch Ministry of Security and Justice, 2010, p. 11).
- With respect to the final decision on the petition for return; current practice is that if a child of twelve years and older does not want to return and puts forward reasonable grounds, its opinion will lead to a refusal of the return. In general, siblings are not separated. So when the return of the older brother or sister is dismissed on the present exception, the younger children are allowed to remain in the Netherlands as well (Dutch Ministry of Security and Justice, 2010, p. 11).



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- Factors which have been taken into account in relation to the maturity of a child are the capability of the child of expressing its feelings, the consistency and sincerity of the statement of the child, the capability of the child of overlooking the consequences of its statement and its objection to being returned. In relation to the objection of the child the firmness and consistency of the child's objection have been taken into account and courts have examined if the child's objection to being returned exceeds the ordinary wish to stay with the parent who has removed the child (Dutch Ministry of Security and Justice, 2010, p. 11).
- If there is a conflict between the child's interests and the interests of the holder(s) of parental responsibilities on a matter that concerns parental responsibilities, the child has the right to have a guardian ad litem appointed (Art. 1:250 Dutch Civil Code).

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

In its concluding observations of 2015, the UNCRC is concerned about the limited opportunity for children to participate in decisions that affect them. The appointment of a guardian ad litem in court proceedings is considered a positive element (p. 7).

7. Legal sources on hearing the child

- Civil Code, Art. 1:250
- Code of Civil Procedure, Art. 809§1

8. Sources in literature

- [Ballesteros et al.](#), 2013, pp. 181-192
- [CEFL](#), 2005
- [CRIN](#), 2015
- [Dutch Ministry of Security and Justice](#), 2010
- [European Commission](#), 2015
- [UNCRC Concluding Observations](#), 2015



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