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Hearing children in family proceedings: Spain

1. General Obligation to hear children

- Spain has implemented a general statutory provision to fulfill the right of the child to be heard. 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 rights to be heard was guaranteed by LO 1/1996, which was consequently replaced by LO 8/2015. The right of the child to be heard, be listened to, be informed in a language he/she can understand, and take part in judicial procedures that concern him/her, is guaranteed by Arts. 2(5) and 9 of this law. Art. 9 also expressly states that children have the right to have their opinion taken seriously, in accordance with their age and maturity. The hearing must respect the child's dignity. The child can exercise this right independently, or through the legal representative of his/her choice. In legal proceedings, the final judgment must be communicated to the child and must explain in what way the child's opinion was considered, how it is related to the child's best interests and how it influenced the final decision. Possibilities for appeal must be mentioned as well (Art. 9§3).
- The child's right to be heard is also guaranteed by the Code of Civil Procedure (Arts. 770§4 and 777§5), the Civil Code (Arts. 92§2 and 92§6). Besides, the Law on Voluntary Jurisdiction incorporates the right to be heard in disputes between parents on matters of parental authority (Art. 18).

2. Minimum age

There is no minimum age. Every child has the right to be heard and listened to, without discrimination on the basis of age (LO 8/2015). Children aged 12 and above are considered sufficiently mature. For younger children, maturity is assessed by experts in each individual case, taking into account both the evolutionary development and the mental capacity of the child (LO 8/2015, Art. 9§2; Caso Señal, 2016). Social workers will interview children from 5 years on. It is common practice to hear children in civil procedures and minimum age is said to be flexible (FRA, 2015a, p. 49).

3. Who hears the child?



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- Certain cities have specialized family courts (FRA, 2015a, p. 39).
- Judges hear children from 12 years who have obtained sufficient maturity, social workers from 5 years (FRA, 2015a, p. 50).
- The judge dealing with the case assesses the child's maturity (Spanish Ministry of Justice, 2010, p. 18).
- The judge hears the child either directly, or indirectly through a report prepared by an independent expert (Country Profile, 2011) designed by the child (Caso Señal, 2016). When it is not possible or would not be in their interest to be heard directly or through the designated representative, the child's opinion can be obtained through their legal representative – on the condition that there are no competing interests. Otherwise, the child's opinion can be obtained through other people whose profession or special trust relationship with the child allows them to represent the child objectively (LO 8/2015, Art. 9§2; Caso Señal, 2016).

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

- The Law on International Child Abductions guarantees in Art. 778§8 that before taking any decision on the appropriateness or inappropriateness of the return of the child, the judge, at any time during the process and in the presence of the prosecutor, hears the child individually (i.e. not in the presence of parents and lawyers), unless the hearing is not considered appropriate according to age and maturity of the child. In that case, the reasons for not hearing the child must be stated in a reasoned decision. The child must be heard in ideal conditions to safeguard their interests, without interference from others. Judges may exceptionally seek the help of specialists when this is necessary. If necessary, the hearing can also take place using videoconference or a similar system.
- There is no concentrated jurisdiction for hearing child abduction cases (Spanish Ministry of Justice, 2010, p. 10).
- Children above 12 are always heard, children who are younger than twelve or who have a mental disability ('incapacitados') are heard only when they can sufficiently express their opinion (Country Profile, 2011).
- When a child objects return in light of Art. 13(2) of the Hague Convention, the judge takes account of this opinion when the child is sufficiently mature (Spanish Ministry of Justice, 2010, p. 18).
- The children's ombudsman of the public prosecution office always acts in processes involving children and can take up the role of guardian ad litem (Country Profile, 2011). Procedures involving a guardian ad litem are rare (Caso Señal, 2016)

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

Facilities for video-conferencing exist in Spain (Caso Señal, 2016).



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6. Other relevant matters

- 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).
- Screens, separate rooms and child-friendly facilities with technological equipment exist (FRA, 2015b, p. 6; Caso Señal, 2016). Children have the right to receive the necessary support to exercise their right to be heard independently. The law provides for assistance through interpreters, as well as for the option for children to express their opinion verbally or through non-verbal ways of communication (LO 8/2015, Art. 9§2).
- In its concluding observations of 2010, the Committee on the Rights of the Child welcomes the recognition in the State party's legislation of the child's right to be heard and other children's participation rights. It is concerned, however, that, in certain circumstances, recourse to higher courts is still necessary in order to obtain recognition for the right of a child to appear independently of his or her legal guardians in a court, in particular in judicial and administrative procedures affecting the child (p. 5-6).

7. Legal sources on hearing the child

- LO 1/1996, updated by LO 8/2015
- Civil Code Arts. 92§2 and 92§6
- Code of Civil Procedure Art. 770§4 & 777§5
- Law on International Child Abductions guarantees Art. 778§8

8. Sources in literature

- [Ballesteros et al.](#), 2013, pp. 181-192
- [CEFL](#), 2005
- [FRA](#), 2015a
- [FRA](#), 2015b
- [Spanish Ministry of Justice](#), 2010
- [UNCRC Concluding Observations](#), 2010
- [Hague Convention Country Profile](#) section 10.4 (published in 2011)



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