

# A Comprehensible Criminal Trial for Young People

Office of the Children's Ombudsman in Sweden

Translated extract from "Förklara vad som händer" (2007)

## **Young people in court**

A criminal trial is primarily designed by and for adults. This applies, for example, to the environment in which it takes place, the language that is used, and the procedures that are followed. Since children and young people who take part in criminal proceedings as aggrieved parties, defendants, or witnesses are largely obliged to use or be subjected to the same type of proceedings as adults, the form of the criminal trial must be adapted to young people's needs and capabilities. This may seem obvious but the studies that have been made indicate that young people have difficulty in understanding what happens during the course of a trial.

The Office of the Children's Ombudsman has prepared these pages in order to provide some pointers and advice, on the basis young people's own experience, as to how a criminal trial can be adapted better to young people's prerequisites and thereby serve as a pedagogical tool to ensure that young people are given a fair trial. Our starting point was the National Council for Crime Prevention's report *Seven young people talk about their trials*, that is based on interviews with young defendants. To further complement the picture with other young people who may take part in criminal proceedings, the Office of the Children's Ombudsman conducted interviews with three young plaintiffs to hear what they had to say about their experiences during the trials.

## **Advice for more comprehensible criminal trials**

In this section we give some concrete advice for the adult legal professionals in the courtroom about how each of them can contribute to increase the young people perspective.

### **Greater awareness can mean a great deal**

The young people who were interviewed by the National Council for Crime Prevention said that it was difficult for them to understand the roles of the various adults during the trial. It is therefore important that all adults take responsibility for explaining the trial's procedure, from the point of view of the roles they have. This can be done by each one introducing himself or herself and describing what his or her particular task is. Young people also say that it is difficult to understand the legal language that is used in the courtroom. All the actors in the courtroom should think about the language they use. Many of the terms and expressions that lawyers use every day are incomprehensible to young people. It may also be so that terms and expressions used by both adults and young people have different meanings or significance, for example the word 'respect'. Every adult can instead find alternative, and more easily understood, ways of expressing some words based on their own professional role.

It is important to remember that the young people are in a stressful and exposed situation, even if they do not always give this impression. The stress they are under may make it especially difficult for a young person to take in information. It is therefore especially important to remember to express oneself extremely clearly and repeat information several times during the trial. It is also important that an adult professional in the courtroom does not try to be youthful, but instead represent the adult world to which he or she belongs.

The young people who were interviewed by the National Council for Crime Prevention also felt that it was difficult for them to be allowed to express their views. This would seem to indicate that adults should give the young people a little more time to give as detailed accounts as possible and also show that they are listening attentively to the answers the young people are giving. No great changes are needed. Some simple changes in adults' behaviour might, for example, be to consciously give the young person ten seconds extra to reflect or explain in advance what is going to take place. Eye contact or nodding encouragingly when someone is speaking can mean a great deal as regards how far that person will be willing and able to express himself or herself. It is the joint responsibility of all adults to ensure that young people understand what the judgment, the sentence, and any compensation involved.

### **The presiding judge's preparations**

The role of the presiding judge is especially important, since he or she is the person who has the greatest influence on the procedure of the trial. The presiding judge is able to inform those present and ensure that courtroom rules are observed. He or she also has some influence of the tone of the proceedings. It is important the proceedings take place in as open an atmosphere as possible so young people are not shown in a bad light. He or she can suggest a recess or make special allowances, for example for shy, taciturn, or insecure speakers, so that they too can be heard. There are some practical details that can be borne in mind when criminal cases involving young people come to trial. It is important to allow plenty of time. It may take a little longer to adapt the proceedings to better suit young people.

Young people may feel that it is easier to participate and speak if those present sit a little closer to each other. A smaller courtroom might therefore be preferable. If there is an aggrieved party present, a larger courtroom might be more appropriate so that the aggrieved party and the defendant do not sit so close to each other. The officers of the court need to be prepared for a case involving young people and be told how the presiding judge will be adapting the proceedings. Put out desk name plates if there are several young aggrieved parties and defendants in the case.

A trial is in most cases open to the public. Gangs may therefore appear at the trial. People who wish to support one of their members in various ways are allowed to be present during the trial. It can be difficult for adults to see and understand what goes on in the public area. It is therefore a good idea to find out if there is reason to have security guards or other court staff present both inside and outside the courtroom. It may be an advantage if a representative from the social services is present at the proceedings if a possible sentence for a defendant who is found guilty is for him or her to be placed in the care of the social services. This gives such care a better chance of being successful. It may also strengthen the young person's motivation and make him or her feel more secure. It is an advantage if the court encourages the social services to be present at the proceedings.

### **A study visit to the courtroom before the main hearing**

It may also make it easier for young people to participate in the trial if they are given the opportunity to acquaint themselves with the courtroom beforehand. For this reason, it is positive if the courtroom opens a short while before the trial begins and the officers of the court have taken their seats. This gives the prosecutor, the defence counsel, the defendant, the aggrieved party counsel, the aggrieved party, and any witnesses the opportunity to greet each other, and the young people also have the opportunity to hear how they sound

in the courtroom and a chance to be told who the other people in the courtroom are and where they sit.

### **The main hearing begins**

Few young people have any knowledge of the actual trial procedure. They may perceive it as stressful and find it difficult to speak in the presence of adults and other people listening. The presiding judge should begin the trial by introducing everyone in the courtroom and explaining the trial procedure. He or she should inform the court of the witnesses who have been called and by whom. The presiding judge may also need to say how long the trial is estimated to take and also say whether there will be a recess. A young person can concentrate for approximately 40 minutes at a stretch, about the same as a lesson in school, and then a short recess is a good idea.

If the young person is allowed to introduce himself or herself and any relatives that are present, and speak to the whole courtroom during the attendance check at the beginning of the main hearing, this might serve to reduce any nervousness.

### **The main hearing**

Once the hearing has begun, it is desirable that the presiding judge informs the court about what is going to happen and who is going to do what each time a new stage begins. The presiding judge should make sure that the young person has understood what is going on and what is being said. He or she should ask whether the young person has any questions and suggest recesses. The presiding judge should avoid discussing questions with colleagues, the prosecutor, aggrieved party counsel or public defence counsel over the young person's head. Any discussion should be carried on with the young person directly before other actors are allowed to speak.

### **Young witnesses**

It is also one of the presiding judge's principal responsibilities to make sure that young witnesses are given sufficient basic information about the trial. The prosecutors and the public defence counsel have a corresponding responsibility to inform their witnesses. Below we list a number of points to bear in mind when giving information to witnesses.

When examining young defendants, aggrieved parties, and witnesses, it is desirable that defence counsel, prosecutors, and aggrieved party counsel also take pains to use a language that is easy to understand. They should also make sure that questions are understood correctly and the climate is such that the young person feels and understands that he or she dares and is able to say that he or she does not understand what is being asked for or what is being said.

Before a witness's examination begins, it is important that the presiding judge inform the young witness of the basic prerequisites of the trial in general and the examination in particular so that he or she feels secure and can give as correct a testimony as possible. The presiding judge should explain how the examination of the witness will proceed. It is important that the presiding judge says who has called the witness, who is to begin putting questions and counterquestions, and that supplementary questions will then be put. Explain also if the witness has the opportunity to testify via alternative means of communication. It is important that the presiding judge make sure that the young person has understood what is going on and what is being said.

It is a good idea to ask the young person if he or she has any questions and emphasise that it is important that the young witness says so if he or she does not understand a question. The witness can ask that the purpose of recording his or her testimony or entitlement to payment be explained. The young witness also needs to be told how he or she can find out about the outcome of the trial and obtain a copy of the judgment.

### **Before the main hearing ends**

It is important that the court pronounce judgment directly. If the judgment is not pronounced directly, the young defendant and the young aggrieved party should be given clear information about when and how he or she can be told the judgment and where he or she can ask questions about what the judgment means. Much of what takes place during a main hearing may take time to be fully appreciated by the young people who were present. It is therefore important in a criminal case involving young people to take special care when expressing and making clear the opinion of the court to make it easier for the young people involved to understand how the court has reasoned and decided on any sentence.

A young person may have difficulty in taking in the details of the outcome of the case. It is therefore important that the presiding judge takes special care to make sure that a young defendant, and also a young aggrieved party, understand what the judgment and any sentence handed down mean. It is not easy to understand the difference between a fine and compensation. It can also be difficult to understand what being placed in the care of the social services means, especially if the young person in question has already been the subject of action by the social services before the current judgment. Based on their own professional role, defence counsel, prosecutor, and aggrieved party counsel should tell the young person concerned what happens if he or she appeals and what it means that a judgment becomes final.

## Summary: some practical advice

### The presiding judge's preparations

Bear in mind the following:

- allow sufficient time for the action and activities described below.
- choose an appropriate courtroom for the case. Young people may feel that it is easier to participate and speak if those present sit a little closer to each other. A smaller courtroom might therefore be preferable. If there is an aggrieved party, a larger courtroom might be more appropriate so that the aggrieved party and the defendant do not sit so close to each other.
- create outer security and safety. Gangs may appear at trials where young people are involved. It is therefore a good idea to find out if there is reason to consider using live audio links, conducting the proceedings in camera, or having security guards or other court staff present both inside and outside the courtroom.
- encourage the social services to be present at the proceedings if a possible sentence for a defendant who is found guilty is for him or her to be placed in the care of the social services. This makes it more likely for the care to have a positive outcome and may also contribute to create motivation and a feeling of security.
- tell the officers of the court that the case involves young people and that the presiding judge will be adapting the proceedings accordingly.
- ensure that the young people are given name plates if there are several young aggrieved parties and defendants in the case.

The presiding judge should begin the hearing by:

- introducing everyone in the courtroom.
- explaining trial procedure.
- informing the court of the witnesses who have been called and by whom.
- informing the court of how long the trial is expected to take.
- saying whether there will be any recesses.

What the presiding judge should bear in mind during the main hearing:

- at the beginning of each new stage, explain what is going to take place and who is going to do what.
- make sure that the young person has understood what is going on and what is being said, and ask if he or she has any questions.
- take recesses.
- avoid discussing questions with colleagues, the prosecutor, aggrieved party counsel or public defence counsel over the young person's head. Any discussion should be carried on with the young person directly before other actors are allowed to speak.

What the presiding judge should tell a young witness about:

- the people present in the courtroom and what they do.
- how the witness examination will proceed.
- who has called the witness.

- who will begin putting questions and that counterquestions and supplementary questions may also be put afterwards.
- the opportunity to testify via alternative means of communication (if any).
- recording the hearing on tape and why.
- entitlement to payment.
- how the witness can find out about the outcome of the trial and obtain a copy of the judgment.

The presiding judge should also:

- make sure that the young witness has understood what is going on and what is being said.
- ask the young person if he or she has any questions and emphasise that it is important that the young witness says so if he or she does not understand a question.

### **The prosecutor's preparations**

Bear in mind the following:

- It is the joint responsibility of the presiding judge and the prosecutor to make sure that young witnesses are given sufficient basic information about the trial.
- inform the young witness that it is possible to be granted witness protection.
- to encourage the young person to have his or her parents or some other support person present.
- say where the various support persons will be sitting in the courtroom.
- where a young aggrieved party does not have an aggrieved party counsel to represent them on matters of compensation.

### **The aggrieved party counsel's preparations**

Where the aggrieved party is a young person, special attention should be paid to the fact that information may need to be repeated and that counsel make sure that the young person understands and can take in necessary information, and that it is clear to the young person that he or she is entitled to, and also should, ask about anything that he or she does not understand.

Bear in mind the following:

- tell the young person how long the hearing will be, about recesses, and about how a hearing in a criminal case normally proceeds.
- say who will be present in the courtroom during the hearings, where they sit and what they do.
- inform the young person of the witnesses who have been called and by whom.
- explain what the purpose of the review of the defendant's personal particulars is.
- inform the young person about an aggrieved party's possibility to have a support person appointed by a local crime victims' help centre.
- tell the young person that he or she can get help from the Support Centre for Young Victims of Crime.
- explain how the examination will proceed.
- tell the young person that the examination is recorded on tape and why.

- tell the young person that it is what the aggrieved party says that forms the basis for the court's assessment of both culpability and any claim for compensation.
- explain that it is important that the young person says so if he or she does not understand.
- tell the young person that the defendant may be allowed to hear the examination of the aggrieved party via alternative means of communication (if any).
- tell the young person that the defendant will be handcuffed if he or she has been committed for trial.
- inform the young person that the presiding judge wishes the defendant to say whether he or she feels threatened in any other way, for example by the presence of people in the public area, because this may have repercussions on the hearing.

### **Public defence counsel's preparations**

Where the defendant is a young person, special attention should be paid to the fact that information may need to be repeated, that that defence counsel should make sure that the young person understands and can take in necessary information, and that it is clear to the young person that he or she is entitled to ask about anything that he or she does not understand.

Bear in mind the following:

- tell the young person how long the hearing will be, about recesses, and about how a hearing in a criminal case normally proceeds.
- tell the young person who will be present in the courtroom during the hearings, where they sit and what they do.
- say where the parents will be sitting in the courtroom.
- tell the young person that alternative means of communication (if any) may be used during the hearing and what this means in practice.
- inform the young person of the witnesses who have been called and by whom.
- explain what documents and information might be required during the review of the defendant's personal particulars and what the purpose is.
- that handcuffs might be necessary if the young person has been committed for trial.
- explain how the examination will proceed.
- tell the young person that the examination is recorded on tape and why.
- tell the young person that it is important that he or she says so if he or she does not understand.
- explain that the social services are present in the courtroom and the young person's views on this.
- explain that the presiding judge wishes the defendant to say whether he or she feels threatened in any other way, for example by the presence of people in the public area, because this may have repercussions on the hearing.