

## 1. Organisation of the proceedings child friendly environment and child friendly language (par. IV 54-63)

Children can get involved in court proceedings in many different ways: as a victim, as an involved person (most often not a 'party' in the case, but having to deal with the outcomes of it), as a suspect, as a litigant or just in search of an answer to a request (be it legitimate or not). The role the child wants to take up, or is rather forced into, will partly define how professionals and officials will treat him/her.

Having children as an involved person in court proceedings directly relates to one of the fundamental rights in the CRC: art. 12. The right to express your views and have these taken into account has been discussed in depth in the General Comment nr. 12. This has been a great help in drafting the CFJ guidelines.

TOOL: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>

Above all, we should always remember that they are children first: bearers of rights yes, but often also the more vulnerable party in the proceeding context. Not only vulnerable due to the circumstances of the case, but because of their weaker legal status and fewer legal capacities (e.g. independent access to court, not always the right to appeal...) It seems that it is not all that easy for us, as adults, to try to remember what it was to be a child, to try to take their perspective, but this is what we should do every now and then. Try to imagine what it means to you hear that your parents will no longer be living together (with or without the constant fighting), what it feels like to have to move to another country where you know nothing or nobody, what it must be to be suspected of a crime and having to appear in court for the first time...If we could even begin to imagine all this, we may also begin to be more understanding or even cut them some slack.

**In all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, and bearing in mind any communication difficulties they may have.**

Communicating with children, as said at the start, does not have to be rocket science. When approached in a decent, friendly, humane and welcoming way, they may even talk about their situation quite openly. When they are informed on what will be happening next, who's who in the court setting and what could be the consequences, they can even trust the person who they need to speak to. But later on we will give some specifics of children who went through quite traumatising experiences.

The CFJ guidelines give some clear suggestions on how this could be done, such as:

**Non-intimidating and child-sensitive settings.**

It is quite common these days to hear children in what I would call 'Ikea rooms', smaller rooms that may feel a bit like a living room. This can help them feel a bit more at ease. At the same time, I would like to comment that no matter how nice the room looks, it will be the behaviour of the adult, that will define whether they feel at ease and taken seriously or not. At a certain age (adolescence e.g.) or in certain cases (abuse within the family e.g.) it may even be advisable to do the hearing in a more formal setting, like the judge's chamber or a lawyer's office space

**Have them familiarised with the layout of the court or other facilities and the roles and identities of the officials involved before proceedings begin**

Court houses can be intimidating and it may help to take a child around the courthouse and into the room where the procedure or hearing will take place before it all starts. This could be done by the child's lawyer or social worker, or even the parents.

**Use language appropriate to their age and level of understanding**

This can be a tricky guideline in practice. As stated before the child's level of understanding may depend in the age, the living context, a possible disability...It is good to explicitly check every now and again to see if the child still understands what's going on. Understandable language needs to be used also to explain the nature and scope of the decision taken. This doesn't necessarily have to be done by the judge but can also be explained to the child by the lawyer, social worker or other people in charge.

E.g.: UFP (Porto) research on children in criminal proceedings, the way they are interviewed and the level of understanding of legal jargon among children of different ages (Ana Sacau and team). 33 audio recording of criminal cases were analysed, mostly on sexual abuse. The judges in this research have proven not to be very child sensitive interviewers: little free recall, abrupt endings, very factual and technical. This affects the value of the testimony in a negative way (with some acquittals as a result) Children between 6 and 15 were questioned about their understanding of legal terms: as expected, the older children understood more, but it is still hard to get the full meaning of some terms that are frequently used in proceedings. Practical suggestions and recommendations were given, such as working with drawings, asking 'who has seen what?' instead of 'who is the witness?'

**Treat them with respect and sensitivity.**

Some children may need more support than others. Research e.g. has shown that children with ADHD can give as coherent narrative testimonies as other children if they receive the right support. As they seem to be more 'Yay sayers' than other children, the questioning will have to be adapted to this.

**Allow them to be accompanied by their parents or, where appropriate, an adult of their choice, whom they trust on who they can rely on**

Going to court is quite stressful for everyone, let alone children. We sometimes underestimate that because we are used to work in such settings. Having a person by your side who can make you feel a bit more comfortable can have a calming effect. However, not every adult the child chooses as a person of trust is to be considered as such. It is e.g. not a good idea to have a girl be accompanied by her boyfriend if there is a suspicion that he may be a loverboy or an alleged abuser.

(See also the CoE Convention on the Protection of children against sexual exploitation and sexual abuse, art 35. 1.f: the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.)

**Video or audio-recording or pre-trial hearings in camera should be used and considered as admissible evidence.**

Take advantage of available technology when possible. It can be less stressful for the child to be interviewed in another setting than the courtroom (although that is not always possible: in some systems a personal appearance in court is required). Be aware however, that videotaping is not always the best way to work: in specific cases such as sexual exploitation, the victims may have been filmed and therefore be very uncomfortable in front of a camera. Secondary traumatisation needs to be avoided at all costs.

**Time and attention span of children: regular breaks, not too long hearings, avoid disruption and distractions, avoid people walking in and out.**

**Make interviewing and waiting rooms as child-friendly as possible.**

This doesn't mean that we have to infantilise interrogation rooms, but it may be good to have some comfortable chairs, some magazines, plants and 'living room' like decoration. It can also be helpful not to wear wigs and gowns or uniforms but children can also prefer these formal elements as it makes it clear who they are talking to (e.g. a police officer and not a social worker).

**Specialist courts (or court chambers), procedures and institutions should be established for children in conflict with the law. This could include the establishment of specialised units within the police, the judiciary, the court system and the prosecutor's office.** Not all European countries have separate juvenile courts, or even more specialist training for judges and lawyers, dealing with children. Not only can this negatively affect their rights and well-being or feeling of being treated well, it can also hinder the evidence gathering quite a bit.

**Case law and good practices:**

Following the cases of *T. v. the United Kingdom* and *V. v. the United Kingdom*, where the national court settings were considered to be intimidating for a child, a *Practice Direction for Trial of Children and Young Persons in the Crown Court* was drafted. The aim is to avoid intimidation, humiliation or distress for the child on trial. Elements of this practice direction are, inter alia: the possibility for the child to visit the courtroom before the trial to become familiarised with it, the possibility of police support to avoid intimidation or abuse by the press, no wigs or gowns to be worn, the explanation of the procedure in terms the child can understand, restricted attendance of court's hearings, etc.

In a case dealing with an accused minor with a low level of understanding, the Court found that "effective participation in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence."<sup>14</sup> Moreover, it is "essential that he be tried in a specialist tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly". (*S.C. vs UK*, June 15<sup>th</sup> 2004, nr 60958/00)

The Polish Ministry of Justice promotes and implements the concept of *child-friendly interview rooms* in co-operation with an NGO. The main goal is to protect child witnesses and victims of crime, especially crimes involving sexual and domestic violence, through putting into practice principles of interviewing children in child-friendly conditions and by competent staff. The procedure ensures that children are interviewed by a judge in the presence of a psychologist. Other persons involved (prosecutor, lawyer, the accused, the private complainant) are present in a separate room and have the possibility to participate in the interview thanks to communication systems between rooms, one-way mirrors and/or live broadcasting. Important details to make children feel more comfortable include, inter alia: guaranteed privacy (soundproof door between interviewing room and other rooms/premises); rooms equipped in accordance with the child's needs in order to ensure physical and mental safety of the child during the interview, in the use of neutral colours and furnishings in the room which ensure that children can spend time comfortably (two sizes of tables and chairs, a sofa or armchair, soft carpet); rooms equipped with materials and other items useful in gathering information from a child (coloured pencils, paper, dolls, etc.).

In Catalunya, judges can rely on a *Technical Advisory Team* of highly specialised psychologists, to question children-victims or very young children in the pre-trial phase.