

## 1. Evidence / statements by children (par. IV 64-74)

Here again, reference is made to the most favourable settings and the most suitable conditions for getting evidence, having regard to the child's age, maturity and level of understanding and any communication difficulties they may have.

### **Trained professionals**

As said before, children are just human beings and are not so hard to communicate with. At the same time, children are different from adults, have less or other life experiences and they can be seriously influenced by their life and family context. When working with children in court settings, it is important to know about child development, family dynamics, trauma and the effects of it etc. The importance of trained professionals is well put in this testimony of a Polish lawyer (FRA report p. 32): "Despite the fact that the hearing was in the 'blue room', the child did not feel comfortable; especially the younger child. This is because some pressure was used. The policemen have this approach of theirs which is too different. No matter how hard they try to spare the trauma, they lack the skill. They have not been trained to do this.

E.g. children's loyalty to their parents is often really limitless. This has consequences for how to communicate with them. Children's testimony in such cases may have severe consequences on present and future relationships within the family and they need to be made aware of that before being interviewed. In divorce or custody cases children most often will not want to or even be able to choose between their parents. Asking to make such a choice is there for very child unfriendly. Moreover it is unfair to ask such a question as it will not be up to the child to decide on this anyway and it is too much of a responsibility for a child to do this. It will be up to the interviewer to engage with the child in a way that information can be gathered about their living conditions and what they like or dislike about it and then base the judgement on this information, without putting the burden or the choice on the child. (Some will not want to hear the child in such cases to avoid any manipulation, but this involves risks as well. Children will in fact often be manipulated anyhow; not talking to them about what is going on leaves them without a voice all together) The same loyalty will often be noticed in cases of abuse within the family. Children will often find it difficult to disclose information because they will feel like they are betraying their parents.

**The use of audio-visual statements** (while respecting the right of other parties to contest the content of such statements. Technology has been moving forward and we should use this sensibly (see Barnehuset). The advantages of specialist audio-visual recordings of testimonies have become clear: no multiple interviews by different (possible untrained) people, no confrontation with the perpetrator, a safe surrounding.

Have **several interviews done by the same person**, in order to ensure coherence of approach in the best interests of the child. The number of interviews should be as limited as possible anyway and their length should be adapted to the child's age and attention span. This rule as well needs to be adapted to the individual child. Sometimes a child will need more interviews before he/she can trust the interviewer. More, maybe shorter, interviews don't have to be problematic if they are done in a correct way.

The existence of **less strict rules** on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence. A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age. Research has shown that evidence by children is not automatically less valid than evidence given by adults. In a way we are all as reliable or not as witnesses. The mind is a strange thing and we account for things that happened in a very different way. When 2 adults will be explaining what they saw at the scene of a traffic accident, they may give very different details of the same facts. In any case, the child's testimony should be taken seriously and in the end, it will be the judge who will consider the seriousness and validity of any given testimony or evidence. In some cases, e.g. severe disability, it can be better not to use a child as a witness or at least have the interview done by a specialist.

**Interview protocols** that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.

### **Case law and good practices:**

The Court has recognised the specific features of proceedings concerning sexual offences. In the case of *S.N. v. Sweden*, the Court found that: "Such proceedings are often conceived of as an ordeal by the victim, in particular when the latter is unwillingly confronted with the defendant. These features are even more prominent in a case involving a minor. In the assessment of the question of whether or not in such proceedings an accused has received a fair trial, account must be taken of the right of respect for the private life of the perceived victim. Therefore, the Court accepts that in criminal proceedings concerning sexual abuse certain measures may be taken for the purpose of protecting the victim, provided that such measures can be reconciled with an adequate and effective exercise of the rights of the defence. In the same case, attention was also given to the possibly leading nature of some questions. To avoid the negative effects thereof, forensic psychology experts, with specific training and knowledge, could be called upon. (*S.N. vs Sweden*, July 2<sup>nd</sup> 2002, nr 34209/96)

In the case of *W.S. v. Poland*, the Court suggested possible ways to test the reliability of a young child victim and pointed out that this could be done in a less invasive manner than via direct questioning. Several sophisticated methods might be applied, such as having the child interviewed in the presence of a psychologist with questions being put in writing by the defence, or in a studio enabling the applicant or his lawyer to be present at such an interview, via video-link or one-way mirror. (*W.S. vs Poland*, June 19<sup>th</sup> 2007, nr 21508/02)

*NICDH protocol*, used in several EU member states and US and Lyon film (see below)