

PART 1: THE CoE GUIDELINES ON CHILD FRIENDLY JUSTICE

This session aims to:

- Build on the previous sessions and make a link to the practice on the field, translating major children's rights principles into the reality of justice settings
- Familiarise participants with the content of the CoE CFJ guidelines with a focus on communicating with children and young people
- Introduce approaches and methods to interact with children in judicial settings
- Learn from each other's experiences
- Reflect on daily practice
- Deepen the knowledge and competence to work in amore child friendly way

- Introduction to the Child Friendly Justice Guidelines
- Focus on the more specific guidelines on environment and CF organisation and language
- Focus on the more specific guidelines on evidence and statements by children
- What do children and young people tell us?
- What can participants tell us? Q&A (Tour de table)

Some of the most important conclusions of a survey of Belgian children were stated as such¹: "We think that decisions are often taken without our knowledge. We want more say, and have more of a feeling that we are really being listened to by our adviser, our lawyer or the judge in the juvenile court. At present, our opinion is too often sought via our lawyer. We can answer for ourselves." "We also find it unfortunate that if our opinion is sought, it is not really taken into account sufficiently. We sometimes have the feeling that juvenile court judges only ask our opinion because it is a requirement, but that they do not actually listen to what we have to say."

"I was raped when I was 13, now I am 15. First I was at a Children's hospital where I was examined and questioned by a gynaecologist and a psychiatrist. Later I went to Polyclinic where I spoke to a psychiatrist, a psychologist and a social worker. Then I had to go to the Police where I was interrogated 4 times. I was also told to come to the Social service centre and there I talked about what happened twice. At Court I was questioned once via video link. I also had to undergo a forensic evaluation and I spoke again to a psychiatrist and a psychologist. I had to talk about what happened to me 11 times altogether. It felt terrible to talk about it so many times, as if I am the one to blame."²

1. Introduction to the CFJ guidelines

What is at stake?

After the theory, legal context and policies, it is important to move on to the more practical issues for practitioners in the judicial field (judges, prosecutors, lawyers...). During the first sessions, it was mentioned how important art. 12 of the CRC is, not only as a right in itself, but also as a relevant principle to interpret and implement all other rights. It was also made clear that different actors are responsible for rendering sufficient efforts to give children the most beneficial opportunity to exercise their right to

¹ Survey carried out by the Ministry of Justice and UNICEF National Committee, 'That's My Opinion. What do you think? First report by children and young people living in Belgium for the Committee on the Rights of the Child', UNICEF Brussels, 2002, p. 22

² http://ec.europa.eu/justice/fundamental-rights/rights-child/european-forum/seventh-meeting/files/gordana_buljan_flander_en.pdf

be heard. That this may require some creativity, as well as some assistance among professionals of different background and disciplines. Now how can this be done and what tools are available to bring the necessary support here.

A first intro on the issue at stake and a very short preview on what needs to be done can be seen here: https://www.youtube.com/watch?v=N2WZatf_Z2E

TOOL: FRA report on CFJ – perspectives and experiences of professionals (available to all participants) and https://www.youtube.com/watch?v=N2WZatf_Z2E

“What young people want, is to know that the person making the decision was aware of their views at the point they made the decision. A lot of young people don’t want to make the decision themselves, they understand it’s not for them to make it, they don’t want that pressure. But they want to feel that the person making the decision has heard their voice in the process” (Social worker, UK)³

“It seems like judges still use children to simply check what they already know or believe, not to find additional information on a case.” (Participant in a recent conference in Porto ‘Children and the Law’)

Main paradox: children are not aliens, so ‘communicating’ with them should not require all that training, BUT, children who have had negative or downright traumatizing experiences have specific additional vulnerabilities to take into account. In these cases a more ‘specialist’ approach will be advisory/necessary.

We also need to be aware of the existing perceptions, including misunderstandings, about children and young people and their competences. We need to learn to read not only what they say but also how they behave, try to really understand them. A simple way to do this is to try to ‘put yourself in their shoes’, try to remember what it was like to be 7, 13 or 17 years old.

It is important to understand that bringing in the child’s views and perspective into a case is not only needed because it is their right (CRC, Art 12) but also because it has advantages for the quality and outcome of proceedings. Listening to children in a correct and child sensitive manner brings more background information on the context of a case, can increase the quality of evidence and can add to already available information, sometimes in quite surprising ways. Involving children in e.g. family law cases, can result in a better understanding by the child of the decision taken and the outcomes may be more successful. When people – not only children – feel that their views were respected, even if their views were not followed, they will tend to better abide by the decision taken.

The CFJ Guidelines⁴

For the purpose of this training, some specific guidelines will be discussed in detail, but it is also important to keep all the guidelines in perspective as a whole.

TOOL: Guidelines of the Committee of Ministers of the CoE on child-friendly justice, Monograph 5, Building a Europe for and with children (CoE publishing edition)

The CFJ guidelines were drafted by a group of specialists from different areas of expertise: academics, NGO’s, practitioners from the justice system, the police and the social sector. The main impetus for the

³ FRA, *Child-friendly justice – perspectives and experiences of professionals, Summary, 2015, p. 3* (<http://fra.europa.eu/en/publication/2015/child-friendly-justice-professionals-summary>) Report and summary are available in different languages.

⁴ For all info, see http://www.coe.int/t/dghl/standardsetting/childjustice/default_en.asp

CoE to work on this, is the gap that still exists between children's law on paper and in practice. Not being able to really use your own rights, almost makes them irrelevant. Knowing that children and young people still need to deal with so many barriers to rally get access to justice, made drafting these guidelines a necessity and one of the many steps forward.

As was said before, the guidelines deal with all kinds of proceedings, in and outside of court, dealing with all kinds of legal questions affecting children in their day-to-day life. (Other documents presented in this training deal with more specific situations or proceedings.) The guidelines are built on some fundamental children's rights principles and cover situations both before, during and after proceedings. The underlying goal was mainly to draft a tool, by which proceedings should no longer be harmful for children – as it is too often assumed – but, on the contrary, make the judiciary more aware of children's rights and needs and adapt the judicial system into a system where their rights and needs are respected, upheld and protected.

“While there is a certain belief that children should be kept out of courts as much as possible, court procedure is not necessarily worse than an outside court alternative, as long as it is in line with the principles of child friendly justice.”⁵

Fundamental principles and main content

- Participation
- Best interest of the child
- Dignity
- Protection from discrimination (including age!)
- Rule of law

Without discussing these in detail, as they are presumed to be known, it is essential that the guidelines clearly state that ‘the rule of law principle should apply to children as it does to adults’. These principles, so evident for adults, are still too often not fully respected when it comes to children. They are often minimised or denied under the excuse of ‘the child's best interest’. This is explicitly refuted in the guidelines.

Also important is that the guidelines, like the CRC itself, do not introduce age limits, as this is a very arbitrary way to judge a child's competence and maturity. In general children are also more capable or competent than we tend to give them credit for. When e.g. an 8 year old girl has been living with her mom and her mom's new partner for a while, this child may well be capable enough to give her views on whether or not she would like to be adopted by him or not. That is, if it is clearly explained to her what adoption means. What does this mean for the status of her own father, whom she hasn't seen in ages: is every legal bond definitely cut, will she still be able to see him in the future? How will this work out with other members of her father's family (grandparents, cousins...)? What will happen to her name? Does she get a whole new family, in the legal sense? Or, what about a young couple, who got to know each other while living in care for a long time and who want to get married but are not allowed to by law because they are not 18 yet? Can they ask for a dispensation to the judge, when their parents do not consent? Do they have at least the right to ask a judge?

Or, what to think about the young workers' unions in Latin America. These are fully fledged unions, run by young people who defend their rights in the labour force.

⁵ CoE, CFJ Guidelines, memorandum par. 83

In other words, we can research children's competences, mostly done in rather sterile research settings far away from real daily life context, but we need to look at this on a case by case basis as this can strongly influence the child's capacities and competences. A terminally ill child of 9, who has been through countless treatments, shall be mature enough to consent to yet another treatment or not, or even ask for euthanasia where that is legally possible, while a healthy peer is often not even mature enough to choose what school to attend. This just goes to show that maturity or as the CRC mentions 'evolving capacities' is a multifaceted issue and rules merely based on objective age-limits can often be very arbitrary and unrealistic.

As this training focuses on how to work with children in judicial proceedings, we will not go into the whole set of guidelines. However, it is important that it is clear what the overall framework looks like. We will then go into more practical issues on communicating with children (in italic in the scheme).

Scheme of the guidelines

GENERAL ELEMENTS	Information and advice Protection of private and family life Safety Training of professionals Multidisciplinary approach Deprivation of liberty
BEFORE PROCEEDINGS	MACR, informed choice between alternatives and proceedings, legal safeguards
POLICE	Information, legal counsel, parents, custody separate from adults
DURING PROCEEDINGS	Access to justice (vital!) Legal counsel and representation Right to be heard and express views Avoiding undue delay Organisation of proceedings and CF environment and language Evidence/statements by children
AFTER PROCEEDINGS	Information, guidance, support, remedies, damages, constructive responses

In order to be able to use your right, you have to know them. This **right to information** is also a detailed part of the guidelines (par. IV 1-5):

- In all stages and by all authorities (police, immigration, educational, social or health care services, justice professionals)
- On their rights, the upcoming proceedings, support mechanisms, process events, appeal and complaints mechanisms etc.
- In language they can understand and which is gender- and culture-sensitive and adapted to their age and maturity, in a language and a manner which they can understand.
- As directly as possible. Informing the parents should not be an alternative to communicating the information to the child.

The guidelines also focus on **the importance of training and interdisciplinary cooperation** (par. IV 14-18):

- Interdisciplinary training is required for all professionals working with and for children
- Training on communication with children, on child development and on particular vulnerabilities
- Close cooperation between different professionals should be encouraged – respecting the child’s right to privacy - in order to obtain a comprehensive understanding of the child, as well as an assessment of his/her legal, psychological, social, emotional, physical and cognitive situation.
- Respecting professional rules and ethical codes on confidentiality

Case law and good practices:

In the cases of both *V. and T. against the United Kingdom*, the Court noted that effective participation in the courtroom presupposes that the accused has a broad understanding of the nature of the trial process, including the significance of any penalty which may be imposed. Therefore, juvenile defendants must be, in any case, represented by skilled lawyers experienced in dealing with children. (T. vs UK, Dec 16th 1999, nr 24724/94 and V. vs UK, Dec 16th 1999, 24888/94)

In *Z.J. vs. Lithuania* on custody and foster care, the ECtHR cited the guidelines on issues of best interest, right to be heard and to be treated with care and sensitivity. The Court also referred to the guidelines on avoiding undue delay, which is vital in custody cases. (Z.J. vs. Lithuania, April 29th 2014)

Flemish bar training for youth lawyers. Specific training in communicating with children is deemed necessary in order to avoid additional harm. (Some even state that ethical sanctions may or should be used when mistakes are made, due to lack of training). The Flemish bar offers an 80 hour training with courses on children’s rights and several legal issues (child protection, torts, family law...), youth care, child development and psychopathology, parental issues and custody in a legal, a psychological and a pedagogical approach, juvenile delinquency, youth (sub)cultures, forensic reporting. Note that in 12 EU member states mandatory training on the rights and needs of children is required for judges, in 11 it is required for prosecutors and in 7 for lawyers. Only 5 countries have mandatory training for all 3 groups and multidisciplinary approaches are common in 4 member states only.

In Iceland, Norway and Sweden, cases of abuse and violence can be dealt with in so-called “*children’s houses*” (Barnehuset). Professionals from social services, forensic medical experts, paediatricians, the police and prosecutors’ offices work together, primarily in the initial stages of a police or social services investigation. They organise and allocate the different tasks to be carried out. Interviews with the children concerned take place in these houses, with the possibility of a third party listening in by video link in an adjacent room. There are also rooms for medical examination and counselling. The Children’s House model has proven to be more effective, even in criminal law terms, as there is more cooperation between professionals, more reporting of crimes against children, better paediatric expertise and more medical examinations (leading to more prosecutions). And above all, more children received the treatment, support and care they’re entitled to and evaluations show that they appreciate the hospitality.

TOOL: https://www.youtube.com/watch?v=LO1IFnkhb_g

In Sweden, the Migration Board developed guidelines for questioning children in asylum proceedings. Staff was trained in this matter and there is a children’s rights expert on the appeal Board.

This particular part of the training however will focus more on practicalities of hearing children during proceedings and how to relate to the input they bring.

“A child cannot be heard effectively where the environment is intimidating, hostile, insensitive of inappropriate for his or her age.” (Gen Comment, nr.12, par. 34)

So what do the guidelines have to say more specifically on this environment?

2. 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 traumatising 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."¹⁴ 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 15th 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.

3. 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 2nd 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 19th 2007, nr 21508/02)

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

4. What did children and young people say?

During the CFJ guidelines drafting process, professor Ursula Kilkelly did some research with children and young people to hear about what they thought of justice proceedings. Some 4000 children filled out a questionnaire and these are some summarised results as they were brought back to them:

“We asked you about your experiences in the justice system, when these decisions were being taken. Most of you said that you were there when the decision was made. You thought that it was explained to you beforehand what would happen and one third of you said you had been asked for your views. Some of you thought that these views had been taken seriously but many of you did not know for sure. Many of you (a third) felt they you not been treated fairly overall.

Lots of you said they you had been supported by having someone there with you, and about half of you said that the decision had been made in a setting that was safe and comfortable. When we asked you what would have made you feel better, most of you said that you should have someone that you trust with you.

Most of you said that you understood the decision made about you and felt that it had been explained to you. You said that you would like your parents or a family member to explain the decision to you. You did not want to have this explained to you indirectly, such as by a letter. Instead, many of you told us that you wanted to talk directly to the person (like a judge) making the decision. You all think it is very important that your voice is heard.

We asked you to tell us whether you thought certain things were important, very important or not important. The ones that most of you thought were either important or very important were:

To be treated with respect;
To be listened to;
To be provided with explanations in language that you understand and
To receive information about your rights.”

5. Discussion

(depending on the time, this part can either be skipped, changed into a short Q&A or replace the workshop)

Does this information sound familiar or rather strange? What are the participants experiences? Can someone talk about a certain case? Is bringing children into proceeding and listening to what they have to say:

- difficult? Confrontational? Impossible?
- enriching? adding relevant information?

Has anyone already worked with other experts: psychologists, social workers, youth lawyers? Does anyone know helpful tools, trainings, practices that are inspiring?

PART 2: BEST PRACTICES IN COMMUNICATING WITH CHILDREN IN LEGAL PROCEEDINGS

This session aims to:

- Inform participants on the basics on how to engage in dialogue with children and young people in legal proceedings in different areas of law
- Get a better understanding of how children may feel and react when they (need to) get involved in proceedings
- Give concrete examples and tips, including caveats
- Demonstrate some existing methods and protocols that can help the judiciary in implementing art. 12 in a child friendly way.

- General pointers on communicating with children in proceedings
- More specific information on how to relate to children in specific cases (civil, criminal, administrative law)
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How to work and communicate with children? Suggestions and caveats

As for adults alike, it is important to realise that your daily working place, e.g. a courtroom, can often be rather intimidating to children. It is therefore vital to be authentic, respectful and human. Keep an open and welcoming attitude and adapt your language to the age of the child as was said before. Explain as much as possible on what is happening, who will be there and why. Try to explain how the procedure will go, what the outcomes and consequences will be, what will happen with what the child has said.

Communicating with children in the context of proceedings will largely depend on the type of procedure and the status of the child: hearing a child in an adoption or custody case is a lot different than hearing a child, who was a victim of a crime or a child in the middle of an asylum procedure.

Do not be reluctant to ask advice/support from other professionals. Nor to admit to the child that you don't know all the answers (children often think grown-ups know everything).

Take time to connect with the child in the different phases of a hearing and round up every phase, bridging into the next:

- In the beginning: explain who you are, check if the child knows why he/she is there, how he/she feels about the hearing (this can be quite different depending whether the child wanted to be heard or not), make it clear that only the judge will take the decisions, after having heard all the parties involved or gathering all the evidence (that the decision will not solely depend on what the child will say)
- Start with 'simple' questions to get to know the child a bit better: who they are, what they like, hobbies, school, friends, what they do when they feel sad or upset...How does a 'typical' day look like (at home, in school, in the sports club...). It can also be interesting to check who brought them to court and what was said to them before the hearing.

- Then slowly, more pointed, but open ended question can be asked about the issue at stake. Questions about how the child relates to both parents, what the feelings are about the divorce. What happened when they left their country and whether the child understands what the reasons were.
- Near the end, it is good to add some 'free range' questions: Is there anything else you want to tell me? Do you think I forgot to ask something? What would your ideal situation be?...

In civil cases, Interviewing might be somehow less delicate (e.g. in a conflict with school) but it is still a child, whose interests are at stake. In family conflicts, feelings of loyalty and family dynamics can make such cases rather tricky as well.¹ It is never a good idea to put pressure on a child or to leave the deciding responsibility on their shoulders. Children should never feel as if they are pushed into making a choice. Instead of asking a child whether or not he/she likes to live with or visit dad/mom, it is better to ask about what the child does when he/she lives with either parent, what they like to do in their spare time, what they like about school. Having them make drawings can also help to get over their reluctance to speak.

In court proceedings in which the information of the child is vital (e.g. criminal cases) the way of interviewing the child will define whether or not the evidence will be useable, relevant, valid and helpful. In some cases it is necessary to involve specialists (psychologists, child psychiatrists, social workers...) to do the interviewing. Incorrect, inconsequent and/or invalid information in testimonials is more often related to the way in which a child was questioned than to the child's age or competence. Bad interviewing can minimise all the evidence's value.

The NICDH protocol (very strict scenario – research based) and similar protocols offer some very concrete tips in how to engage with children in court settings:

- Start with clearly defined and explained interview instructions. It makes it clear for the child that this (forensic) interview will not be the average talk, or that the interviewing person does not know it all (as children often think of adults). Explicitly telling the child that you don't know what happened has been proven to increase the accuracy, it decreases the child's inclination to start guessing (because he thinks he has to answer something), it increases the child's willingness to ask more clarification in the questioning and it increases the child's resistance to suggestions. Some instructions are e.g.: 'it is OK to say that you don't know', 'please ask me if you don't understand the question, if you don't know what I mean', 'you tell me what happened because I don't know'
- Start with building some rapport with the child, come down to the child's level and equalize the power balance. Explain how the interview will proceed
- Clearly explain what truth and lies are with some clear examples
- Use open ended questions.
Yes/no questions don't lead to elaborated answers and give little detailed information.
Avoid leading or suggestive questions.

¹ See <http://www.coe.int/t/dghl/standardsetting/childjustice/CJ-S-CH%202010%2015%2028%2009%202010%20Child%20Friendly%20Version.pdf>

- 'Wh' questions. (what, when, who....) without too much information. These questions lead to much more information, details and elaborated answers. (E;G. Lamb et. Al., 2000: The number of details among 8-9 y olds was about 8,5 with 'tell me' questions, compared to 4,5 with Yes/no questions)
- Keep the questions short and let the child talk
- Start with 'easy' questions or something the child can feel comfortable about (e.g. last birthday or Xmas – stories with a beginning, a middle and an end, to see whether the child has a notion of timeline)
- 'Tell me more' or 'what happened next' prompts. Continue on what the child has answered before. ('you said you like soccer. What is it that you like about soccer so much?') Keep using the words/names/places the child uses (not grandfather but 'Grandpa George')
- Go slow, leave time for the child to answer
- Ask for specific things, as concrete as possible ('Where did he touch you?' 'In the bedroom')
- Don't add your own views or ideas (is irrelevant for the case and takes the child's attention away)
- Be careful with pronouns or grammatically difficult constructions. (E.g. use names of persons instead of he/she.)

This may come across as very self-evident and rather easy, but this is often not so much the case in reality. What definitely needs to be **avoided** are:

- Too formal behaviour; the child must know he/she can trust the professional. (Seven in wigs and gowns you can still act friendly)
- Never presume the child knows all about the situation or understands all legal terms. (For a child a 'prosecutor' may well be related to a velociraptor). Children also often think that the judge – or adults - knows everything
- Directly dive into the questioning
- Add pressure to the child
- Induce guilt feelings (E.g. by asking 'why didn't you call?' or 'Why were you out so late?')
- Add your opinion or view on the issue
- Suggestive or leading questioning ('When did she start beating you?')
- Yes/no questions (the child will not give elaborate answers)
- Tags like 'didn't he'

- Forced choice questions with 'or' (child feels obliged to make a choice among the given alternatives, risk for last item bias or choosing one of both while it doesn't comply with the facts)

Background material and inspiring practices

https://www.youtube.com/watch?v=LO1IFnkhb_g (CoE, keep me safe, 13')

<http://nichdprotocol.com>

<http://www.poliklinika-djeca.hr/english/>

<https://www.youtube.com/watch?v=7my1T4Ghf7A> (Thomas D Lyon, 56:12 – 59:27)) en ook

<http://works.bepress.com/cgi/viewcontent.cgi?article=1037&context=thomaslyon>

<http://nichdprotocol.com/the-nichd-protocol/> (different languages and training material)

<http://www.answers.uk.com/services/peace01.htm> (PEACE method)

http://www.cps.gov.uk/publications/docs/best_evidence_in_criminal_proceedings.pdf (UK guidelines on interviewing children)

<http://www.doria.fi/handle/10024/88732> (Finnish research on how (not) to interview victims of sexual violence)

<https://www.youtube.com/watch?v=7my1T4Ghf7A> (Thomas D. Lyon on interviewing children)

<https://books.google.be/books/michaellamb> (Michael Lamb, 'Tell me what happened')

<http://www.coe.int/t/dghl/standardsetting/cdcj/Kaldal.pdf> (research on evidence by children, Anna Kaldal)

<http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=> (case-law ECHR database)

PART 3: WORKSHOP MATERIALS

This session aims to:

- have participants discuss on children's rights issues in the context of legal proceedings
- exchange experiences and opinions
- get a better view on how they can defend or advocate for children's rights from their professional position
- exchange information on existing legal systems and possible shortcomings for children and young people
- get a better view on how professional cooperation may be relevant and fruitful

Depending on the preference of the participants I would either go for the case discussions or the role-play, as there will not be enough time to do both.

With the cases and the roleplay alike, the important goal of the workshop is the discussion itself. There are no clear cut right or wrong answers, as much will depend on the participants' legislative context and legal systems they are involved in.

1. Workshop: case discussions

Some cases are described. Participants break up in groups (preferably no more than 8 persons) to discuss a case. They can all be from the same country, have the same positions or professions or, on the contrary, have different backgrounds. The goal of the exercise is the discussion in itself and what they can learn from each other. Depending on their function within the judicial system, similar or not, the discussion will be different. The issues for discussion, as mentioned, are not limited, just an example.

Depending on the time available, it would be good that all breakout groups could give some feedback to the group.

Every group works on the same questions:

- What rights are at stake? How are these protected in your legal context (or not)?
- Who or what instance should deal with it?
- Is there a reason or a need to involve other instances or experts? Why? How will the cooperation take shape?
- How would you act in this given case? As a lawyer? As a judge? As a prosecutor? (every participant can speak from their own perspective.)

Jamal, 13, fled Syria, with his dad, a journalist who is being chased by the Assad regime. They first arrived in a closed centre in Pireaus, Greece, where his father died. Jamal could then get away to Belgium, where he is now staying in a center for unaccompanied minors. He needs to go back to Greece to file his asylum request (Dublin regulations). Greece is known for its inhumane treatment of asylum seekers. His guardian (an administrative guardianship, provided in Belgian law for all unaccompanied minors) contacts a lawyer.

Issues that may be discussed:

CRC, art. 3, 12, 19

The Dublin regulations (in the context of the refugee crisis) and how these (should or could) relate to the binding CRC norm

(Non) existing systems of guardians for under-age refugees

Youth care systems and responsibilities

Possibility to access a judge

Bianca, 17, entered an independent living program after a life of living in residential and foster care. She hardly has any contact with her family and is in a lot of financial trouble. She wants to apply for an additional social welfare allowance but gets refused. She calls the registrar at the juvenile court.

Issues that may be discussed:

CRC art. 3, 12, 27

Youth care system, social security system and responsibilities

Liability, (financial) responsibility of parents

Legal aid for minors, practical information for minors

Access to court or other remedy

After their respective parents got divorced, **Helena and Cathy**, both 13y old, have been living together in a newly composed family with Helena's mom and Cathy's dad. Through the years they have become best friends. Again, the couple separates and doesn't want any more contact, they are no longer on speaking terms and just started a high conflict divorce procedure. But the girls do want to stay in touch.

Issues that may be discussed:

CRC art. 3, 9, 12

Legal context on right to contact with non-family members

Issues of parental authority and the age/maturity of children

Definition of 'Family' in the law

Access to court or other remedy

2. Workshop: role-play

In order to get a good result, it is advisable to work only with volunteering participants. Role-play requires people to step out of their comfort zone, so not everyone is so keen to jump in. Participants will need some time to prepare (10 minutes or so) and get into their role.

The roles will be: the child(ren), the parent(s), the lawyer, the judge, the prosecutor. The background info can be used or not, up to the participants.)

May-Li and San-ho, 9 y old twins, are caught in the middle in their parents' divorce for 2 years already. Their mom will be moving to another town, some 50 km away, with her new partner and the parents enroll them in 2 schools, so that they have to switch weekly as they live alternatively with mom and dad.

(some background info:

- May-Li is very outspoken on this whole settlement and she wants to live with her dad as she does not like her mom's new partner.
- San-ho has become very quiet throughout the whole family breakup and simply wants his parents to get together again
- The mother would do anything to make her new relationship work.
- The father is still a little depressed about the whole breakup but does not want to give up the fight immediately.)

Tim, 16, drug user, mostly cannabis. Stands trial in juvenile court where he gets the choice: juvenile detention for 4 months or drug rehab programme. He prefers the detention and his lawyer wants to plead for the rehab.

(some background info:

- Tim has been in and out of youth care most of his life and has seen it all. He is not very impressed by the whole system and thinks that a couple of months in youth detention will be easier than rehab. He does not want to quit using drugs.
- Tim's lawyer has known Tim for quite some time and wants him to get out of his circle of drug using friends. He is very committed to Tim's case and is one of the few people Tim still trusts.)

Julie, 16, was offered a modelling contract. She would like to get into this line of work but her parents object.

(Some background info:

- Julie is the only child of a quite rich couple and does very well in school
- Both parents are professionally very successful people.)