

Speakers' contributions



THE RIGHTS OF THE CHILD IN PRACTICE: EXPLORING A MULTIDISCIPLINARY APPROACH TO CHILD-FRIENDLY JUSTICE IN EUROPEAN LAW



116DT08 Dublin, 11-12 February 2016



This series of seminars is organised with the financial support of the specific programme 'Fundamental Rights and Citizenship' JUST-2013-FRAC-AG of the European Commission.

The Rights of the Child in Practice

Exploring a multidisciplinary approach to child-friendly justice in European law

Dublin, 11-12 February 2016

Speakers' contributions 416DT08

Wouter Vandenhoe

- Child-Friendly Justice: an Introduction based on scenarios of children participating in judicial proceedings

Rebecca O'Donnell

- Furthering 'the best interest of the child' in European law
- Workshop I

Aisling Parkes

- The right to be heard: a general principle of the UN Convention on the Rights of the Child (CRC)

Aisling Parkes & Sarah-Jane Judge

- Workshop II

Ankie Vandekerckhove

- The Council of Europe Guidelines on child-friendly justice
- Workshop III

Domagoj Stimac

- Best practices in communicating with children in legal proceedings



This publication has been produced with the financial support of the specific programme 'Fundamental Rights and Citizenship' JUST-2013-FRAC-AG of the European Commission. The contents of this publication are the sole responsibility of ERA and can in no way be taken to reflect the views of the European Commission.

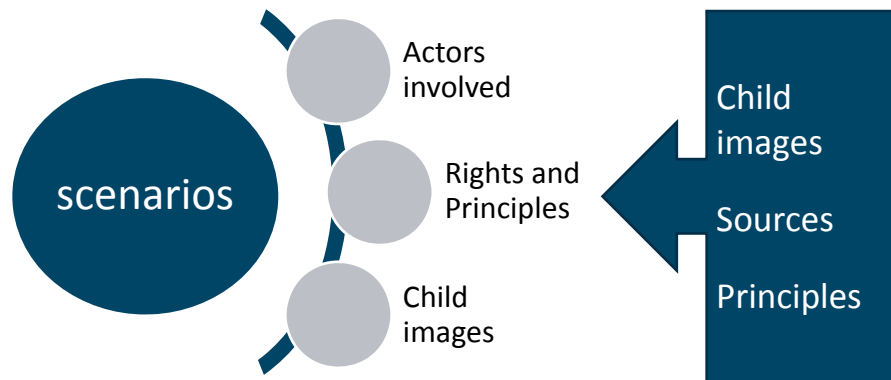


Child-Friendly Justice: an Introduction

Wouter Vandenhole



Scenarios of children involved in judicial proceedings



Children in family proceedings

Placement into care

- adequacy of evidentiary basis
- hearing of children

ECtHR 18 December 2008, *Saviny v. Ukraine*

Parental abduction

- application for return
- grave risk: going beyond what a child might reasonably bear

ECtHR 26 November 2013, *X. v. Latvia*

Custody proceedings

- child's wishes – involvement in proceedings

ECtHR 3 September 2015, *M. & M. v Croatia*

Juvenile justice: child perpetrator & victim

Perpetrator

- Attribution of criminal responsibility
- Effective participation
- Legal assistance

ECtHR 26 December 1999, *T. v. UK*

ECtHR 20 January 2009, *Güveç v. Turkey*

Victim (sexual abuse)

- Taped statements
- No cross-examination of (child) witness

ECtHR 2 July 2002, *S.N. v. Sweden*

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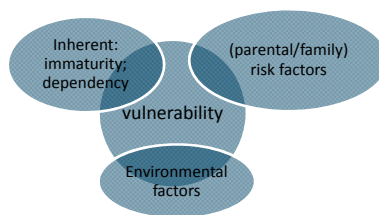


Images of childhood

Child in danger – child as danger

Object – subject

Autonomy – resilience – (tactical) agency – vulnerability



Evolving capacities of the child

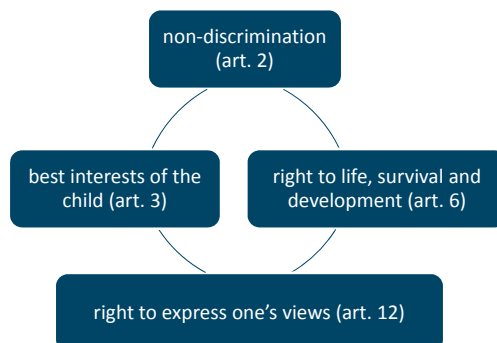
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Convention on the Rights of the Child (1989)

+ OPAC & OPSC (2000); OPIC (2011)

Four general principles:



8



Convention on the Rights of the Child

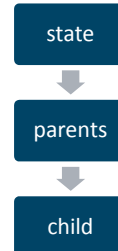
Triangular relationship (art. 5 & 18)

Art. 4: general obligation

Typologies of rights:

- CPR & ESCR
- three 'Ps': Protection, Provision, Participation

Clusters of rights



Some CRCommittee General Comments

The screenshot shows a web browser displaying search results for the Convention on the Rights of the Child (CRC). The page title is 'Treaty Bodies Search - Google Chrome'. The search results are listed in a table with columns: Title, Symbol/Title, Publication Date, and Download. The results include General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, Observation générale no 12 (2009) Le droit de l'enfant d'être entendu, General Comments No. 11 (2009) Indigenous children and their rights under the Convention, General Comment No. 9 (2006) The rights of children with disabilities, General Comment No. 10 (2007) Children's rights in juvenile justice, and General Comment No. 9 (2006) The rights of children with disabilities. The page also includes a 'NEW SEARCH' button and a disclaimer at the bottom.

Title	Symbol/Title	Publication Date	Download
General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1)	CRC/C/GC/14	29 May 2013	View document
General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)	CRC/C/GC/15	17 Apr 2013	View document
General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights	CRC/C/GC/16	17 Apr 2013	View document
General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)	CRC/C/GC/17	17 Apr 2013	View document
General comment No. 13 (2011) on the right of the child to freedom from all forms of violence	CRC/C/GC/13	18 Apr 2011	View document
[Observation générale no 12 (2009) Le droit de l'enfant d'être entendu]	CRC/C/GC/12	20 Jul 2009	View document
General Comments No. 11 (2009) Indigenous children and their rights under the Convention	CRC/C/GC/11	12 Feb 2009	View document
General Comment No. 9 (2006) The rights of children with disabilities	CRC/C/GC/9/Corr.1	13 Nov 2007	View document
General Comment No. 10 (2007) Children's rights in juvenile justice	CRC/C/GC/10	25 Apr 2007	View document
General Comment No. 9 (2006) The rights of children with disabilities	CRC/C/GC/9	27 Feb 2007	View document



European Union

Art. 24 Charter of Fundamental Rights

Victim's rights directive 2012/29/EU

Access to a Lawyer Directive 2013/48/EU

Procedural safeguards for children in criminal proceedings
(forthcoming – Ireland not participating)

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Council of Europe

Guidelines on Child-Friendly Justice (2010)

European Convention on the Exercise of Children's Rights
(1996)

Lanzarote Convention (Protection of Children against Sexual
Exploitation and Sexual Abuse) (2007)

European Convention on the Adoption of Children (Revised)
(2008)

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More information

Handbook on European law relating to the rights of the child:

http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.pdf

Council of Europe

children's rights: <http://www.coe.int/en/web/children/>

case-law database:

<http://www.coe.int/en/web/children/case-law>

Research database:

<http://www.kekidatabank.be/opac/index.php>

ERA Seminar on “The Rights of the Child in Practice: exploring a multidisciplinary approach to child-friendly justice in EU Law”

CHILD RIGHTS AT EU LEVEL



Rebecca O Donnell
Dublin February 11 2016



SCOPE OF THE SESSION

WHEN DOES EU
ACTION AFFECT
ISSUES ON
CHILDREN IN
JUSTICE
PROCEEDINGS?

WHAT EU
RESOURCES
MIGHT
SUPPORT MY
WORK?

WHAT TYPE OF
OBLIGATIONS
DO EU LAWS
INTRODUCE
FOR JUSTICE
PROCEEDING
INVOLVING
CHILDREN?

WHAT HAVE
THE EUROPEAN
COURTS SAID?

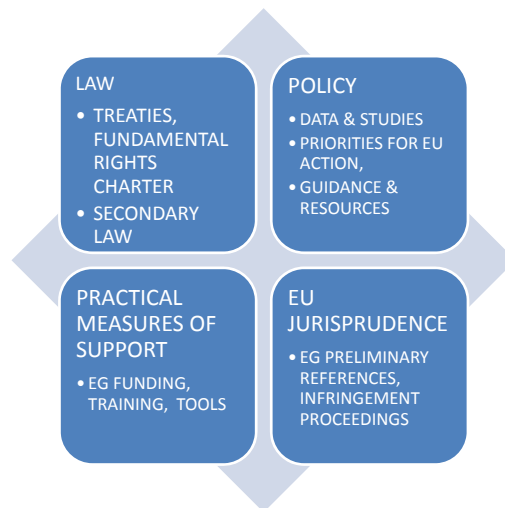
EXAMPLES OF KEY EU POLICY AREAS AFFECTING CHILDREN IN JUSTICE PROCEEDINGS: JUSTICE & HOME AFFAIRS

- EU CITIZENS MOVING BETWEEN COUNTRIES, CROSS BORDER PARENTAL DISPUTES
- CRIMES WITH A CROSS BORDER DIMENSION, TRAFFICKING & SEXUAL ABUSE
- COMMON VICTIMS' RIGHTS & COMMON RIGHTS FOR CHILD SUSPECTS
- ASYLUM & MIGRATION

EXAMPLES OF KEY EU POLICY AREAS AFFECTING CHILDREN ctd

- Many other fields of EU law cover issues concerning children that may be the subject of judicial proceedings, eg. consumer protection and data protection
- See overview: [EU acquis & policy documents on the rights of the child](#)

TYPES OF EU ACTION



LAW: ARTICLE 3 OF THE TREATY OF THE EUROPEAN UNION

... [the EU] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

LAW: EU CHARTER OF FUNDAMENTAL RIGHTS: ARTICLE 24

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration

LAW: KEY EU LAWS AFFECTING CHILDREN IN JUSTICE PROCEEDINGS:

Brussels II bis Regulation

Victims Directive

Trafficking Directive

Sexual Abuse Directive

EU International Protection instruments

Return Directive

Directive on safeguards for child suspects and children accused of crime

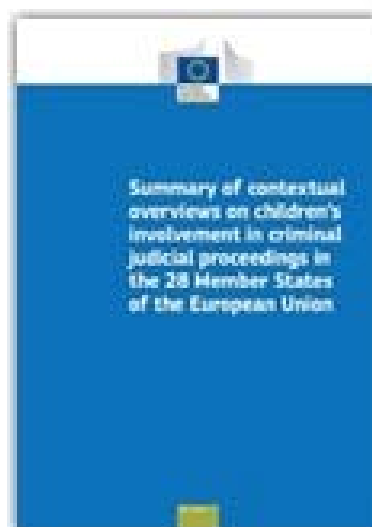
EU RESOURCES: EXAMPLES OF EU POLICY FRAMEWORKS

EU CHILD RIGHTS AGENDA 2010 – 2014

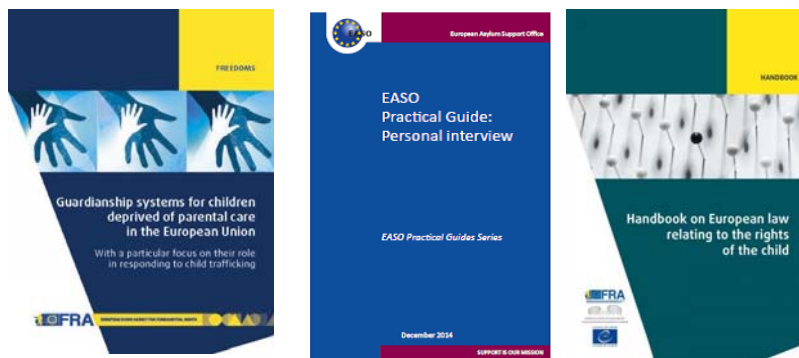
EU ACTION PLAN ON UNACCOMPANIED
CHILDREN 2010-2014

DEVELOPMENT OF EU GUIDANCE ON
INTEGRATED CHILD PROTECTION SYSTEMS

EU RESOURCES: EXAMPLES OF EU STUDIES



EU RESOURCES: **EXAMPLES OF EU PRACTICAL MEASURES OF SUPPORT**



EU RESOURCES: **EXAMPLE OF EU FUNDED PROJECTS**



Building good practices to assist training the reception
responsible national migration, employment
Programme of cooperation of children in Europe



www.connectproject.eu



**REFERENCE DOCUMENT ON
UNACCOMPANIED CHILDREN**



**A COMPILATION OF RELEVANT
EU LAWS & POLICIES**

EU OBLIGATIONS: DEFINITION OF CHILD & CHILD RELEVANT OFFENCES/GROUNDS

**MAKING CHILDREN
MORE VISIBLE**

**BETTER DEFINITION OF
A MINOR & AGE
ASSESSMENT
PROVISIONS**

**DEFINITION OF
OFFENCES RELATING TO
CHILDREN**

**DEFINITION OF CHILD
SPECIFIC GROUNDS
FOR INTERNATIONAL
PROTECTION**

EU OBLIGATIONS: RIGHT TO INFORMATION & RIGHT TO BE HEARD

**BETTER
PARTICIPATION
OF CHILDREN**

CHILD SPECIFIC INFORMATION

**ACCESS BY CHILDREN TO
PROCEDURES**

RIGHT TO BE HEARD

ACCESS TO REDRESS

EU OBLIGATIONS: CHILDREN'S RIGHT TO PROTECTION

**PROTECTING
CHILDREN**

ASSISTANCE TO VICTIMS

SPECIALLY ADAPTED PROCEDURES

PROTECTION OF PRIVACY

NON PROSECUTION & NON PUNISHMENT

DETENTION SAFEGUARDS

EU OBLIGATIONS: ACTORS ENGAGED WITH CHILDREN

**ACTORS
WORKING
WITH
CHILDREN'S
CASES**

GUARDIANSHIP

LEGAL ASSISTANCE

TRAINING

**SPECIALLY QUALIFIED ACTORS REQUIRED
TO DISCHARGE CERTAIN OBLIGATIONS**

**MULTIDISCIPLINARY APPROACH
IMPLICATED**

EU OBLIGATIONS: TRANSNATIONAL COOPERATION

CROSS
BORDER
PROCEDURES

JURISDICTIONAL RULES

PROVISIONS FOR EXCHANGE OF
INFORMATION

ROLES OF EUROPEAN AGENCIES,
NETWORKS & CORRESPONDENCE
BETWEEN CENTRAL AUTHORITIES

EU OBLIGATIONS: BEST INTERESTS PRINCIPLE

NEW
DEVELOPMENTS
IN APPLICATION
OF BEST
INTERESTS'
PRINCIPLE

NOW IN THE "OPERATIONAL PART" OF EU
DIRECTIVES

FACTORS FOR ASSESSMENT OF BEST INTERESTS
ARE IDENTIFIED

OUTCOMES DICTATED BY THE BEST INTERESTS
PRINCIPLE ARE IDENTIFIED – E.G. THE NEED TO
FIND DURABLE SOLUTIONS FOR TRAFFICKED
CHILDREN

CHILDREN IN JUSTICE PROCEEDINGS: REGIONAL CASELAW

M.A, BT, DA V SECRETARY
OF STATE FOR THE HOME
DEPARTMENT
(EUROPEAN COURT OF
JUSTICE)

- **Children in migration**

KOVAC v. Croatia

- **Child victims**

S.N. v. Sweden

- **Child victims**

ERA Project: “The rights of the child in practice: furthering child-friendly justice in European law”.

Outline of materials on:

General principles and basic instruments on protecting child’s rights in the international and European context in justice settings

WORKSHOP

Case Scenario:

A child from Vietnam, was trafficked into the EU to be criminally exploited within a cannabis farm.

Law enforcement encountered this young person of foreign origin but without documentation such as a passport or ID working on the cannabis farm, with several other young persons.

Prosecuted and found guilty of crime related to cannabis cultivation. No consideration of how the farm was run and whether the person had been trafficked was contained in this original proceedings.

Young person had no guardian, had a lawyer.

Social services subsequently assessed the person to be 16 and he was sent to a young offender’s institution to serve his sentence.

While in the institution, he was advised by an NGO to appeal.

In the proceeding before Criminal Appeal Court, young person’s lawyer argues that the individual is a child; that the child was smuggled into the country; he were exploited to pay back debt and his involvement in cannabis farm arose out of this exploitation and consequently he should not have been prosecuted or punished.

Prosecutor’s office concedes that, on evidence now available including evidence of Vietnamese debt bondage and cannabis farming activities, it is likely that other persons directed and controlled the young person’s activity.

TO BE EXPLORED IN WORKSHOP

A. What legal issues arose in these proceedings that should have been addressed better in the original proceedings or should be addressed by the appeal? What sources of law are relevant to resolve the case? What child rights were involved in this situation?

B. What practical challenges arise for the justice system in situations of these kind? What actors are/should be Involved in addressing the child’s situation? Exchange of perspectives between different professionals and different national systems.

Part 2:

ENSURING EFFECTIVE PARTICIPATION: THE CHILDREN'S RIGHT TO BE HEARD

Dr Aisling Parkes
School of Law,
University College Cork
Ireland

“There is a growing understanding of the importance of listening to the children involved in children’s cases. It is the child, more than anyone else, who will have to live with what the court decides. Those who do listen to children understand that they often have a point of view which is quite distinct from that of the person looking after them. They are quite capable of being moral actors in their own right. Just as adults may have to do what the court decides whether they like it or not, so may the child. But that is no more reason for failing to hear what the child has to say than it is refusing to hear the parents’ views”

(Lady Hale, Re D)

Aims of part two:

- Conceptual Background to Article 12 of the UN Convention on the Rights of the Child 1989 (CRC)
- Why Listen to Children?
- Nature and Scope of Article 12 CRC
- Article 12 in Practice
 - Family law proceedings
 - Criminal Law proceedings
 - Administrative proceedings
- Common Barriers to Participation in practice
- Sharing experiences about how to implement Article 12 in practice.

Why should children have a voice in decisions affecting them?

- Values and Benefits Generally
 - Informed decision-making
- Values and benefits for children of direct communication
 - Reassurance for the child around mixed messages/inaccurate presentation of views
 - Development point of view
- The child not only has the right to a voice, but they need it – a channel through which they can communicate their views to the decision-maker.

Nature and Scope of Article 12

Four General Principles

- Article 2 – non-discrimination
- Article 3 – Best Interests principle
- Article 6 – Right to life, survival and development
- **Article 12 – Right of the Child to be Heard**

Article 12: A Literal Interpretation

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

For this purpose, the child shall in particular, be provided with the opportunity to be heard in all judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12(1)

- There are two distinct parts to Article 12(1)
 1. The views of the child should be heard
 2. Once expressed, the views of children should be given due weight by the decision maker in accordance with the age and maturity of the child

Article 12 (1): A Literal and Legal Analysis

- Shall **Assure** – no room for states parties discretion
- Capable of **forming** views (NOT capable of **expressing** views) – presumption that all children are capable of forming views, not up to the child to prove capacity (Article 13 - freedom of expression is important in this context)
- Right to express views **freely** – no external pressure, child should be able to choose whether or not to be involved, use of an appropriate environment
- **All matters** affecting the child – all matters which affect a child directly/indirectly
- **Due Weight** in accordance with **Age and Maturity** –
 - Due Weight - listening to children is not enough, views should be seriously considered
 - Age and Maturity – dual criteria, children are not a homogenous group – case by case assessment required

Article 12 (2) in Practice

- Article 12(2) reinforces Article 12(1) in Judicial and Administrative Proceedings
- Envisages Direct and Indirect Participation
 - Direct: Judicial Interview/ Open Court/Letter to Judge
 - Indirect: Legal/ Other appropriate Representative

Child Participation under the CRC: A Holistic Approach

- Article 3 – best interests
- Article 13 – Freedom of expression – alternative forms of expression
- Articles 13 and 17 – right to information

Committee Guidance: Implementing Article 12 in Legal Proceedings

1. Preparation
2. The Hearing
3. Assessment of the Capacity of the Child
4. Information and Feedback to the child
5. Complaint's, Remedies, Redress

Judicial Proceedings

- Family Law cases
 - Custody and Access
 - Adoption
 - Child Care proceedings
- Criminal Law Cases
 - ECHR – European Court of Human Rights 1950 – Articles 6 & 8
 - T v UK; V v. UK (1999)
 - SC V. UK (2004)
- Proceedings involving children as victims or witnesses
 - Un Economic and Social Council Resolution 2005/20



CRC: Two Alternative Forms of Participation

- Direct Participation
 - Direct Evidence
 - Letters to the Judge
 - Judicial Interview
- Indirect Participation
 - Court Reports
 - Not limited to legal representation
 - Appropriate bodies
 - Dual representation

Direct Participation



Indirect Participation – Lawyer for the Child



Indirect Participation – Court Reports



**2009
GENERAL COMMENT ON ARTICLE 12
CRC**

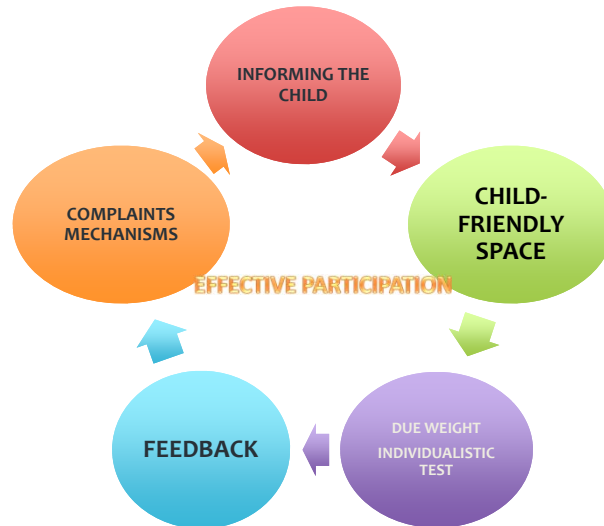
Pre 2009 - Lack of Comprehensive Guidance from the Committee on the Rights of the Child

HOW AND WHEN CHILDREN SHOULD PARTICIPATE IN FAMILY LAW PROCEEDINGS

General Comment on Article 12 CRC Family Law Proceedings

- Adopt Laws to specifically protect this right, or adopt or revise existing laws
- It's a choice for the child, not an obligation
- Provision of child-friendly information essential
- Child-friendly space
- 12(2) – judicial proceedings includes alternative dispute resolution mechanisms such as mediation processes for example
- Specific reference to legislation on separation and divorce to include the right of the child to be heard by decision makers and in mediation processes.
- Individual assessment of child's capacity

Requirements for Effective Participation



Common Barriers to Implementation of Article 12(1)

- Age Limits
 - Custody and Access: Ages range from 7-15 years
 - Adoption: Ages range from 7 to 15 years
 - The Solution? Case-by-Case Assessment
- Cultural Family Traditions
 - Solution? Awareness-raising, Training and Education

Common Challenges

- Adult Gatekeepers
- Lack of Skills and Professional Training
- Skills of the Listener
- Resources

Other Barriers

- Judicial Discretion
- Lack of Political Will and Enforcement
- Lack of Guidance up until relatively recently

The Five Steps...

- Informed in child-appropriate language
- Encouragement and Facilitation, Skills of Listener
- Case by Case assessment
- Feedback
- Legislation: Complaints mechanisms

Case study 1: Family Law Proceedings

Tom and Julie have been married for 15 years and in the past few months have decided that their marriage is no longer working out and they wish to separate. They cannot agree on contact and living arrangements concerning the children so they decide to go to court. Tom and Julie have three children: Jenny (3 ½), Bell (6) and Martin (12). Julie has explained to the children that she and Tom no longer intend living together and that the court is going to make a decision about their living arrangements. She tells the children that she wants them to make their views known to the court.

Jenny asks if she can say hello to the Judge. Bell states that she does not want to talk to anyone about living arrangements – she wants things to stay the way they are. Anyway, she thinks court is for bad people and she doesn't know what she did wrong. Martin writes a letter to the Judge, which reads:

Dear Judge,

Please don't make me choose. ☹

Martin

Questions for Consideration

1. Share your experiences of how this issue would be addressed in each of your own jurisdictions? Choose the most Article 12 CRC compliant with a view to reporting back to the group.
2. If you were a professional involved in this particular case, what steps would you take to ensure that the rights of these children under Article 12 and the CRC are protected under the circumstances?

Case study 2: Administrative Proceedings

Tristan (8) boy has recently been subject to a physical attack from John (9) in the school playground. When he comes home one day with a black eye and a broken nose, his mother goes into the school principal and demands that some form of disciplinary action be taken against John. This is not the first time that John has attacked Tristan physically and he regularly taunts him in class when the teacher is not looking.

Unbeknownst to most, Tristan has been sending social media messages in the evenings to John which has caused him much hurt and upset which is why he lashes out each time he sees Tristan.

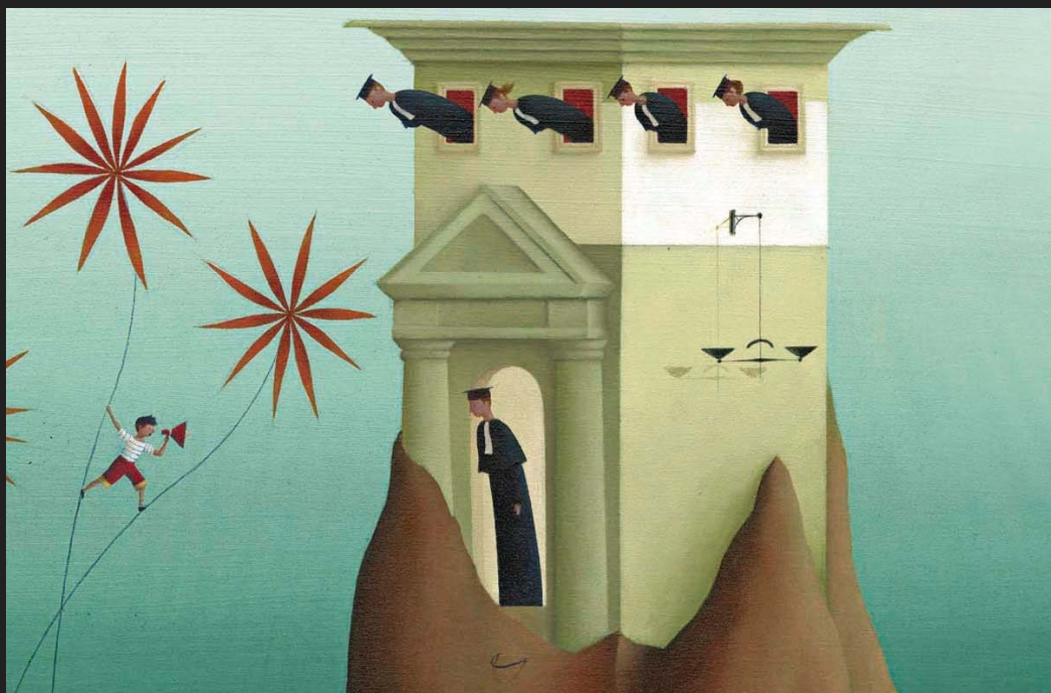
The Principal of the School calls John's parents into the school to tell them that the School is suspending John pending further investigation. John's parents demand to know if Tristan is also being suspended but the principal asserts that there is no evidence to support such action.

Questions for consideration:

1. How do you think this issue would be addressed from the point of view of ensuring the boys views are considered in your respective jurisdictions? Share your experiences and choose one experience which you think is the most Article 12 compliant – explain why.
 2. From an Article 12 CRC perspective, what are the appropriate actions to be taken here by the School Principal as decision-maker?
-

Best practice guidelines for interacting with children in legal situations – Part 1

Dublin, February 11-12 2016



- "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."

Unicef Brussels 2002, young people's report to the CRC committee



INTRODUCTION

- Importance of art. 12 CRC: what do practitioners need?
- Main paradox: children are not aliens but...
- CRC, art. 12: not only a right, but a way to get better results or decisions



The Child Friendly Justice Guidelines (2010)

- Background
- Close the gap between theory and practice
- In all proceedings and respecting children's rights

"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." (CFJ Memorandum, par. 83)

www.coe.int/
childjustice



Fundamental principles

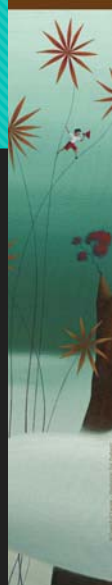
- Participation
- Best interest
- Dignity
- Protection from discrimination
- Rule of law

And no age limits

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childjustice




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 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



www.coe.int/
childjustice

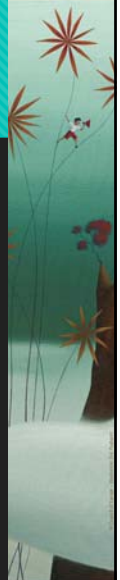
“A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for his or her age”
(GC nr 12, par. 34)



CF Environment and language (1)

- Victim, third party, suspect...they are children first
- Weak legal status
- Respect for their age, special needs, maturity and level of understanding

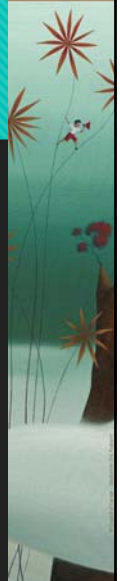
www.coe.int/childjustice



CF Environment and language (2)

- Non-intimidating and CF settings
- Familiarised with court layout and roles
- Language appropriate to age and level of understanding
- Respect and sensitivity
- Person(s) of trust
- Video- and audio recording
- Time and attention span
- CF rooms
- Specialist courts and institutions

www.coe.int/childjustice



Evidence and statements by children

- Trained professionals
- Audio-visual statements
- Same interviewers, as little interviews as possible/needed
- Evidence rules and validity
- Adapted interview protocols

www.coe.int/childjustice



Their requests?

- To be treated with respect
- To be listened to
- To get information that they can understand
- To get information on their rights


www.coe.int/childjustice



Thank you

[www.coe.int/
childjustice](http://www.coe.int/childjustice)





Best practices in communicating with children in legal proceedings

Dublin
February 12, 2016

Domagoj Stimac, MD, psychiatrist and subspecialist in child & adolescent psychiatry; Child Protection Center of Zagreb, Deputy Director

Disclosure – hope or trauma?

The child protection system

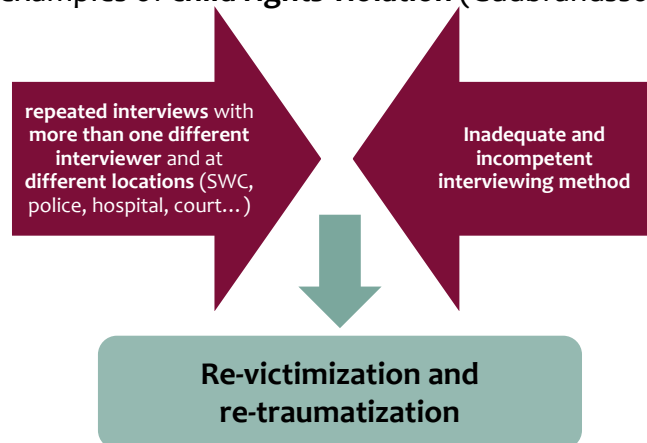
- repeated interviews by different professionals, at different locations
- lack of well trained professionals
- length of the process

Family members

- disbelief, blame and pressure to deny the abuse
- many victims describe the disclosure as a partially traumatic experience (Hunter, 2011):
 - many felt that it **did not change anything**; or
 - stated that the **adults did not believe them** and showed **lack of support**

Child stress predictors during judicial proceedings

Significant **predictors of stress** during the court procedure, and clear examples of **child rights violation** (Gudbrandsson, 2005):



What children need in legal proceedings

- feeling of care/ security; protection from abuse
- clear information, feeling that they are important and involved
- support and patience
- continuation of common daily activities, if possible
- **awareness that he/she is NOT guilty for being abused**
- right to express their feelings
- feeling that others are trying to understand and want to help them
- giving due weight to individual characteristics
- time? time alone is not healing, but **what we do in that time**

Parental support and child adjustment

Support from a **non-abusive parent** is one of the most important predictors of child's adjustment (Cohen & Mannarino, 2008)

- ▣ more important than the characteristics of abuse itself
- ▣ more important than the form of treatment
- ▣ support regarding abuse and supportive relationship are in general equally important



Friedrich

- relationship with the parent is most important for occurrence of difficulties **after** abuse

How do children feel at court?

- ▣ many expect upsetting and intimidating experience
- ▣ fear that nobody will believe them and that somebody might shout at them or blame them
- ▣ fear of confronting the perpetrator
- ▣ anxiety due to a lack of understanding of linguistic terms and concepts
- ▣ even greater feeling of stigmatization

Whitcomb et al., 1991; Eastwood & Stacy, 1998; Quas, Goodman & Jones, 2003

FROM THEORY TO PRACTICE

Integrating existing knowledge into a comprehensive, child centered approach

**Importance of
multidisciplinary and
cross-sectoral approach**

Child Protection Center of Zagreb

Providing help and support to neglected and abused children, as well as children at risk of abuse and their families.



12 years – 12 328 children and families

Common reasons for referral

- **suspected abuse and/or neglect**
- **witnessing domestic violence**
- **high conflict divorce**
- traumatic event
- bullying
- complicated grieving
- behavioral problems/conduct disorder
- attention deficit/hyperactive disorder
- learning disabilities
- problematic sexual behavior

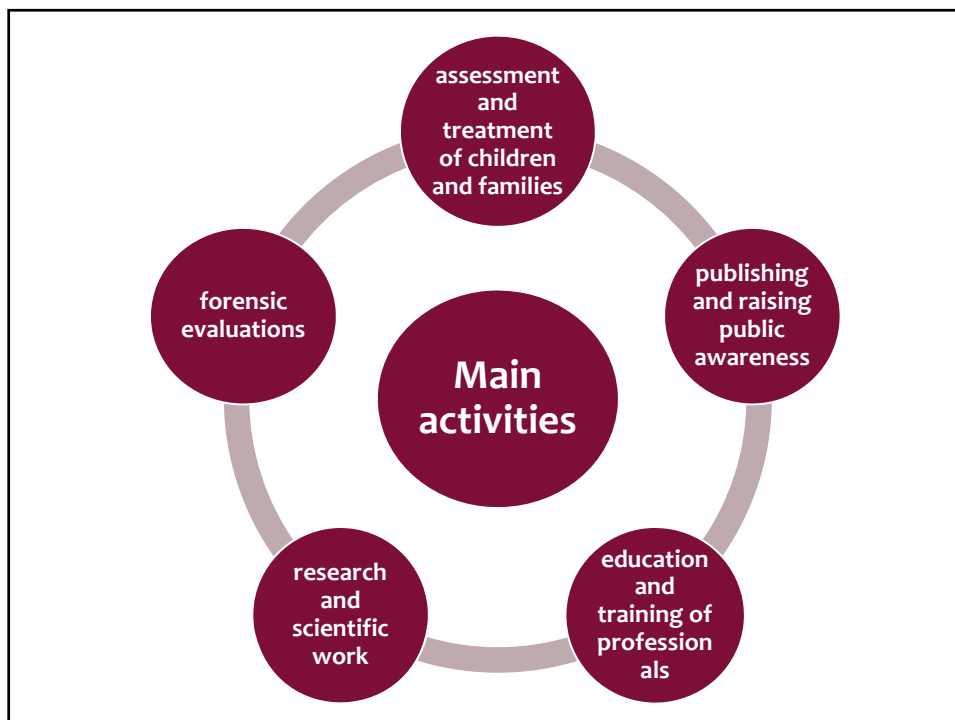
Multidisciplinary team

- 11 psychologists
- 4 psychiatrists
- neuropaediatrician
- 2 social workers
- 2 social educators
- speech therapist
- 6 nurses
- jurist



All mental health professionals are trained to:

- conduct investigative, forensic interviews
- conduct clinical assessments
- provide various forms of support and therapeutic treatment





THE SENSITIVE BALANCE OF CONDUCTING A CHILD-FRIENDLY FORENSIC INTERVIEW

Gathering relevant information while protecting the child from re-traumatization

Conducting forensic interviews – necessary skills:



- ❑ building adequate rapport with the child
- ❑ active listening and information processing
- ❑ asking developmentally appropriate questions
- ❑ asking non-suggestive questions, the answers to which may be used as evidence at court
- ❑ obtaining information not altered by personal beliefs and attitudes
- ❑ strategies for coping with emotionally intense contents

Child-friendly approach

Kind, friendly and reflective approach:

- enhances memory
- decreases suggestability
- is most helpful to children and families

(Berliner & Conte, 1995)



Forensic interview structure

- **NICHD protocol** (The National Institute of Child Health and Human Development, 2000- 2011)

- the most well-known and studied interview system
- developed by a team of researchers, interviewers, police officers and legal professionals
- independent studies in 4 countries confirm its efficiency concerning increase in the forensic quality of obtained information

(Cyr et al., 2006; Lamb et al., 2006; Orbach et al., 2000; Sternberg, Lamb, Orbach, Esplin & Mitchell, 2001)

NICHD protocol

□ Phases of forensic interview:

1. Introduction
2. Rapport building
3. Training in episodic memory
4. Transition to substantive issues
5. Investigating the incident(s)
6. Break
7. Eliciting information that has not been mentioned by the child
8. If child fails to mention information interviewer expected
9. Information about the disclosure
10. Closing
11. Neutral topic

PREPARING FOR THE INTERVIEW: CREATING A CHILD FRIENDLY SETTING

Process of preparation

- Considering the child's **age and developmental level**
- Finding out whether the child has **special needs** related to developmental and/or physical disabilities
- Considering **cultural and/or ethnic factors** that may effect the interview process
- Providing a **qualified interpretor** if needed
- Considering alternative explanations for the statements or behavior leading to concern about the possibility of abuse - **keeping an open mind**

Timing and duration

It is preferable to
interview a child
as soon as possible
after the alleged event(s)

- aiming for shorter interviews, especially for younger children
- being mindful of signals indicating fatigue, loss of concentration, physical needs...

Interview setting

- **Private, informal, free from distractions**
- **Child-friendly**
- **Neutral**
- **Interviewer** - the only person present with the child (whenever possible)
- **Parents** – present only if the child refuses to separate, and only during initial stages of interview



Essential parts of the interview

- **Creating relationship** with the child
- **Developmental assessment**
- **Gathering information** – fact finding and trauma assessment
- **Assessment of child's future needs**
- **Closure**

Developmental assessment

- a process lasting throughout the interview
- purpose:
 - adjusting the vocabulary and interview
 - determining **baseline** - the child's natural style when discussing non traumatic events

Necessary for differing child's developmental characteristics from the lack of credibility

Setting the ground rules

A. TELLING THE TRUTH

„It is very important that you only tell me the truth today.”

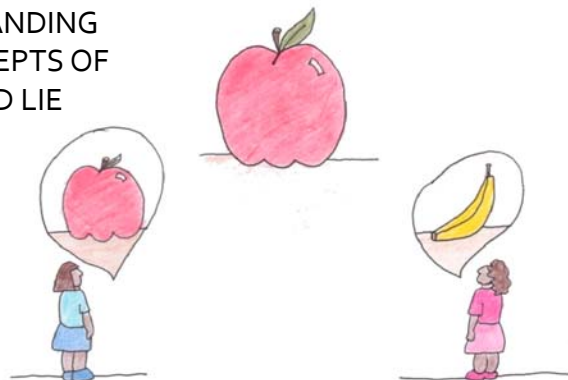
„If I say that my shoes are red is that true or not true?”

„I see that you understand what telling the truth means.

You should only tell me about things that really happened to you.”

Lyon/Saywitz Materials for Interviewing Professionals

UNDERSTANDING
THE CONCEPTS OF
TRUTH AND LIE



Look at this food- what kind of food is this?

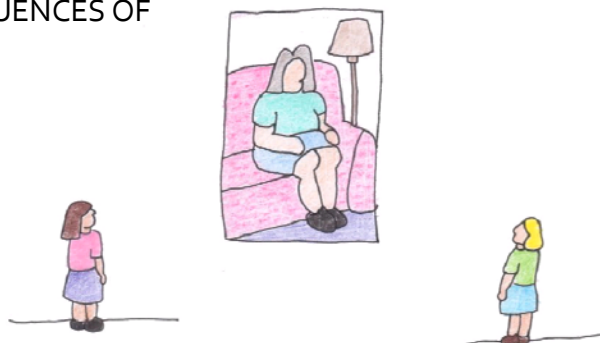
LISTEN to what these girls say about the [child's label]. One of them will tell a LIE, and one will tell the TRUTH.

(point to girl on the left) THIS girl says "It's an [child's label]."

(point to girl on the right) THIS girl says " It's a banana".

Which girl told the TRUTH?

UNDERSTANDING
CONSEQUENCES OF
LYING



Here's a Grandma. She wants to know what happened to these girls.

Well, ONE of these girls is GOING TO GET IN TROUBLE for what she says.

(point to left girl) This girl tells the TRUTH.

(point to right girl) This girl tells a LIE.

Which girl is GOING TO GET IN TROUBLE?

B. PERMISSIONS

„If you do not know the answer do not guess, just say you **don't know**.“

„So, if I ask you, 'What is my dog's name?' what would you say?“

„If I ask a question that you don't understand, just say, I **don't understand**. Okay?“

„If you can't remember something, just say you **don't remember**.“

„If you **do not want to answer** it is ok to say so.“

„If a question is too hard, we can come back to it later.“

C. THE UNINFORMED INTERVIEWER

„You know more than me about what happened. And if I say things that are wrong, you should tell me. Okay?“

D. EXPLAINING REPEATED QUESTIONS

„If I repeat a question, it does not mean the first answer was wrong. Maybe I forgot or got confused. If your first answer was right, just tell me again.“

Episodic memory

- asking a child to tell about a specific event from beginning to end
- **recent event** (first day of school, birthday, vacation, holiday...)

Ability to provide a comprehensive narrative

Memory abilities

Investigating the incident(s)

Disclosing the incident(s)



Use of techniques that encourage narrative responses

Questions about people

Nonsuggestive transition

- “Now I’m going to ask you about people that are important to you”
- Family, friends, relatives (writing names on a piece of paper and questions about each of them)

Starting with the person about whom the child feels most comfortable to talk

Starting with positive details

- “Tell me something more about your brother”.
- “What do you like to do with him?”
- “What you don’t like to do when you are with him?”

Separation of incidents and exploration of specific incidents

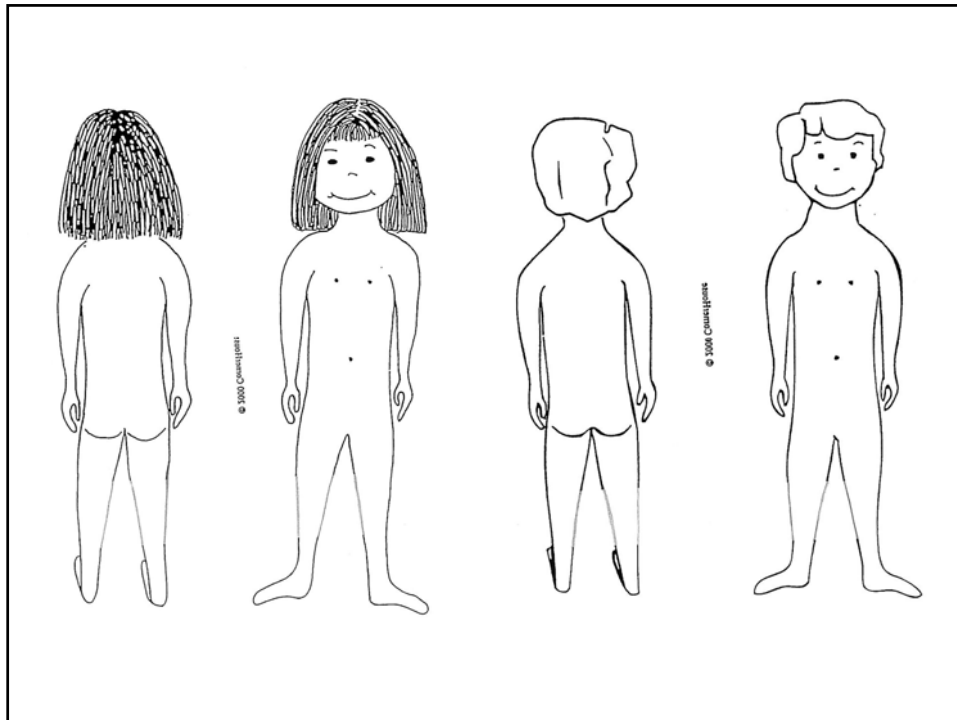
- „Did that happen one time or more than one time?”
(if more than once – begin with the last time)

Open ended invitations

- „Tell me everything that happened, even the little parts you don’t think are important.”

Requests to elaborate

- You mentioned (person/object/activity), tell me more about that.



Drawings + verbal disclosure

=

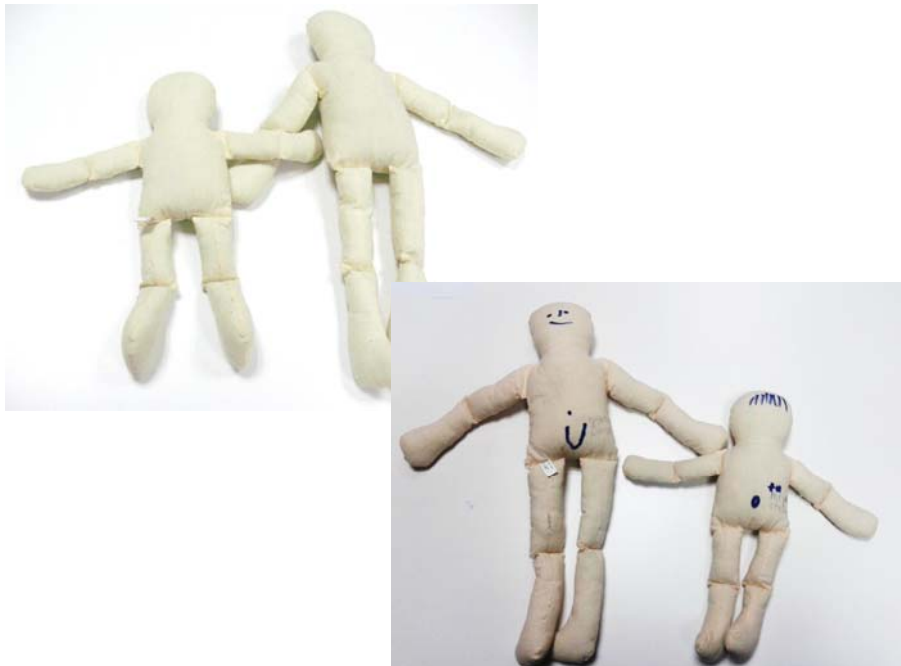
Increased quantity and credibility of details

especially for school-aged children

(Brennan & Fisher, 1998)

Anatomical dolls are used with caution, only after verbally disclosed event

- may be overly suggestive
- doll's genitalia may alarm some children
- preschoolers may not be able to use aids to represent self



If child fails to mention information indicated by evidence

- using only relevant enquiries we already have knowledge about

"I heard you talked to ____ in [location/time]. Tell me what you were talking about.,,

"Did something happen to you when you were in [place/time]? Tell me everything you know about it."

Information about the disclosure

switching to
information
about the
disclosure

- "Tell me what happened after [the last incident]."
- "Does anyone else know what happened?"
- "Tell me what you were talking about."

Closure

- summarizing information and the closure

it is important to
thank the child
for participating,
not for the
content of the
conversation

"You told me a lot of
things today and I want to
thank you for talking to
me."

"Is there anything else you
would like to tell me?"

- switching to a neutral topic at the end of the interview
 - ▣ "What will you do today after you leave?"

Some children may require more interviews

- shy and reluctant children
- traumatized children
- young children
- children with disabilities or developmental delays

Extended forensic evaluation (six sessions)

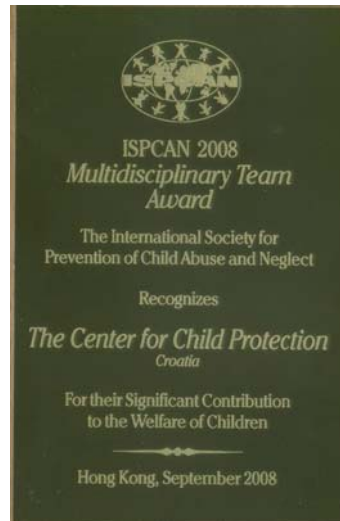
What can endanger the validity of the interview?

- **Interviewer's attitude towards the disclosure**
 - ▣ affects the interview structure and the statement obtaining
- **Repeated questions**
 - ▣ often leading to changed answers, especially yes/no
- **The effect of repeating wrong information**
 - ▣ giving wrong information during the interview affects the accuracy of the child's statement later

- **Emotional tone of the interview**
 - ▣ supporting the child during the interview is positive, but encouraging the child to say what we want to hear is not
- **Suggestive questions**
 - ▣ presenting such information may influence later statements and testimony
- **The influence of group pressure**
 - ▣ adjustment to the prevailing opinion about what has happened

What we encourage in our work

- respect for the specialized knowledge and skills of each professional
- multidisciplinary
- team work and cooperation with other services
- interventions by team members
- personal involvement of professionals
- child-friendly approach

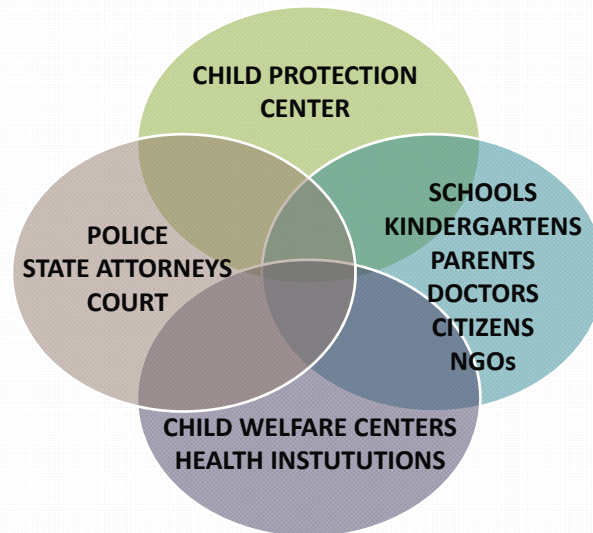


Key importance of cooperation

the process of complete recovery is not possible without coordination of institutions within the system and cooperation of professionals



Child Protection Center of Zagreb: cooperation with other institutions



Cooperation with the court of law

WE ENCOURAGE JUDGES TO INTERVIEW CHILDREN ON THE CENTER'S PREMISES

- **One room** – Center's interviewer and the child
- **Another room** – judge, SA, defendant (separate exit), defense lawyer, social worker, police...
- Judge and involved parties ask the child through the mental health expert
- Expert adapts the questions according to the developmental level and emotional state of a child and uses other techniques



**THE WHOLE PROCEDURE IS AUDIO AND VIDEO RECORDED,
AND CAN BE USED AS AN EVIDENCE IN THE COURT
PROCEDURE**

**In this way multiple interviewing of the child by
various professionals at various institutions can be
avoided and the court processes shortened.**

Forensically sensitive therapy

- court proceedings are unfinished, but the child needs immediate treatment
- most often cognitive-behavioural approach
- projective techniques and interpretations of child's play and drawings are avoided

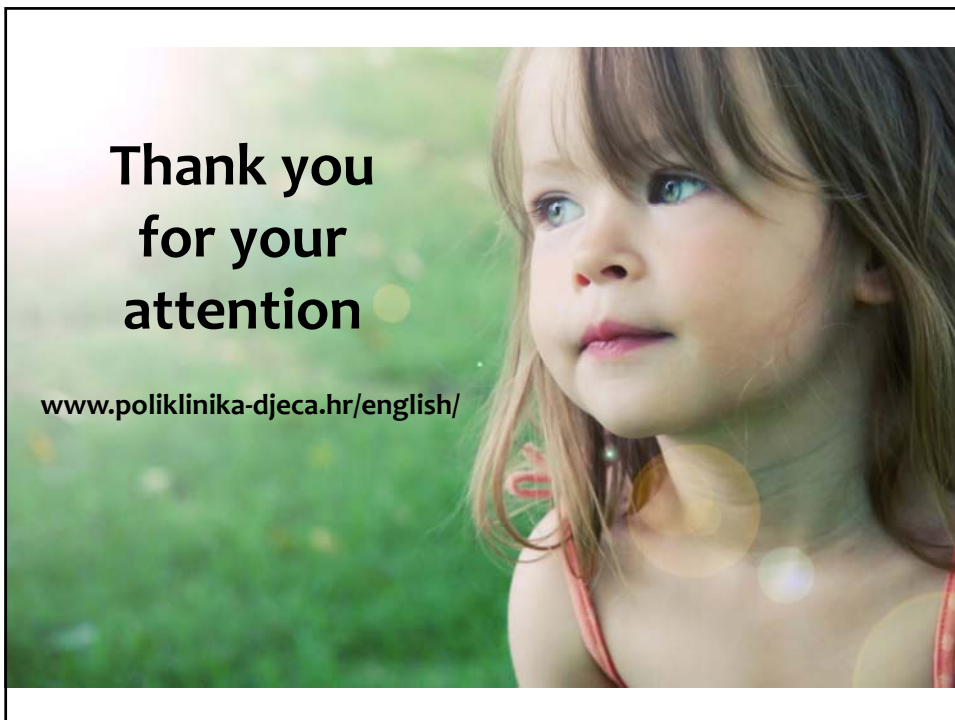


Children are
being
supported
during the
whole process



**Thank you
for your
attention**

www.poliklinika-djeca.hr/english/



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

1. Workshop: case discussions

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.)