

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



115DT102 Zagreb, 19-20 November 2015



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 Charter of Fundamental Rights of the EU in Practice

Exploring a Multidisciplinary Approach to Child-Friendly Justice in European Law

Zagreb, 19-20 November 2015

Speakers' contributions 115DT102

Lana Petö Kujundžić

- The difference between legislation and reality in judicial proceedings concerning crimes against children
- Juvenile law Juveniles

Rebecca O'Donnell

- General Principles & Basic Instruments on Protecting Child Rights in Justice Settings in the International & European Context
- Workshop I

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- Best practice guidelines for interacting with children in legal situations
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- Best practices in communicating with children in legal proceedings



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The difference between legislation and reality in judicial proceedings concerning crimes against children

Lana Petö Kujundžić
Juvenile Court Judge
County Court in Zagreb

Legal framework

- **RC Constitution (OG 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10)**
- 1959 UN Declaration of the Rights of the Child
- 1989 Convention on the Rights of the Child
- 2008 Criminal Procedure Act
- 2011 Criminal Code
- Directive 2012/29/EU
- **2011-2013 Juvenile Courts Act**

Basic rules of procedure for child victims

- Expeditious proceedings
- Assistance and support from expert associate
- Authorised person/specialised lawyer
- Specialisation of police, judges, state attorneys, expert associates, lawyers
- Adapted interview rooms

Juvenile Courts Act

- Specialisation of judges, state attorneys, lawyers and police
- Special courts
- Police to notify the state attorney within 3 days
- State attorney files a motion for child's interview within 3 days
- Judge and state attorney look after the rights of the child

Actual state of affairs

- Jurisdiction in Croatia:
 - 21 Municipal Courts
 - 15 County Courts
 - Juvenile Council of the Supreme Court
- Interview rooms are not child-friendly
- Not all courts have an expert associate
- Expert associates lack ongoing training and supervision in their work
- Child victim lacks information about his/her rights

Specialisation of all involved with children

- Ongoing training of judges, state attorneys, lawyers, expert associates and police
- Expert staffing of courts, state attorney's office and social welfare centres (social pedagogues, social workers and psychologists)

Link between institutions

- Juvenile Courts
- Family Courts
- Child Protection Centres
- Local counselling centres and work with special groups of children
- Social Welfare Centres

Proposals

- Court Rationalisation Programme
- Change in Social Welfare Centres – special department for child's assistance
- Special centres as healthcare institutions
- Specialisations for work with children



Juvenile law Juveniles

Lana Petö Kujundžić
Juvenile Court Judge
County Court in Zagreb

History of juvenile proceedings in Croatia

- 1902 Compulsory Juvenile Correction Act
- 1918 Decree of Vice-Roy of Croatia, Slavonia and Dalmatia
- 1929 Criminal Code
- 1959 Criminal Code
- 1997 Juvenile Courts Act

Convention on the Rights of the Child – CRC

- Provides a comprehensive list of obligations taken on by State Parties
 - Direct (provide protection)
 - Indirect (allow others to do their duties)
- Four important “Ps”
 - Prevention (for instance Article 2: non-discrimination)
 - Propose measures (for instance Article 3: what is in the best interest of the child)
 - Provide protection (for instance Article 6: right to life, etc.)
 - Participation (for instance Article 12: respect for child’s views)

Principle of proportionality

- Appropriate to circumstances
- Appropriate to facts
- Appropriate to children (child-friendly)
- Appropriate to the aim

Article 40 of CRC

- The child shall respect the rights and freedoms of others.
- The child shall be entitled to have his/her rights and freedoms respected.
 - To be presumed innocent until proven guilty
 - To be informed promptly and directly of the charges against him or her
 - To have the matter determined without delay
 - Not to be compelled to give testimony or to confess guilt
 - Right to appeal (judicial review)
 - Right to free assistance of an interpreter
 - Establishment of a minimum age criminal responsibility
 - Non-prosecution – alternative measures

Non-prosecution and alternatives

- Non-prosecution – before / instead of proceedings
- Alternatives
 - Before proceedings: police, state attorney, judge (instead of proceedings)
 - During proceedings: judge (instead of judgement)
 - After proceedings: judge (instead of punishment)

Specificity of Juvenile Court Judges

- The judge shall be a tactful person who understands children and knows how to earn their trust. (1919)
- Juvenile Court Judges shall be especially inclined to juvenile correction, needs and benefits and have basic knowledge in the area of criminology, social pedagogy, juvenile psychology and social work with juveniles. (1997)

Juvenile offender

- **Principle of individualisation of juvenile sanctions**
- **Principle of subsidiarity in application of juvenile sanctions**
- **Principle of alterability of juvenile sanctions**

Selection of the corrective measure

- Age
- Psycho-physical status of development and characteristics
- Gravity and nature of the offence
- Motives for the offence
- Circumstances of the offence
- Conduct after the offence
- Relationship to the victim
- Personal and family circumstances
- Previous sanctions
- Criminal record

Corrective measures

protection
care

security

general and professional education

assistance
supervision

to impact on:

- correction***
- personality***
- responsibility***

Duration and replacement of the corrective measure

- Limited legal period of duration, but potential court decision
- Graver corrective measure and no limitation to minimum duration of preliminary measure
- Juvenile detention facility - exception

Expert associates

- Social pedagogues, social workers, psychologists
- At court
- At state attorney's office
- 2013 Rules concerning Work of Expert Associates

Court activities of the expert associate

- Participates in development and implementation of the individual procedural programme for execution of corrective measures
- Convenes follow-up hearings to supervise execution of corrective measures
- Files written and explanatory motion to the Juvenile Court Judge concerning the need to replace or suspend execution of the corrective measure
- Provides written and explanatory opinion during sessions of the Council concerning possibilities of applying conditional release of juveniles from juvenile correction facilities
- Participates in implementation of post-penal reception of juveniles during conditional release from correctional facility and juvenile detention facility in cooperation with competent social welfare, healthcare, justice and educational services

Court supervision over execution of corrective measures

- Follow-up hearings
- Every 6 months session of the Council for institutionalised juveniles
- Twice a year inspection of institutionalised juveniles
- Request for juvenile conduct reports
- Decision-making concerning conditional release from correctional facility or juvenile detention facility

GENERAL PRINCIPLES & BASIC INSTRUMENTS ON PROTECTING CHILD RIGHTS IN JUSTICE SETTINGS IN THE INTERNATIONAL & EUROPEAN CONTEXT

ERA Seminar on “The Rights of the Child in Practice:
Furthering Child-Friendly Justice in European Law”

Rebecca O Donnell

CHILDREN INVOLVED IN JUSTICE PROCEEDINGS



CHILD RIGHTS AT EU LEVEL



SCOPE OF THE SESSION

- **WHEN DOES EU ACTION AFFECT ISSUES ON CHILDREN IN JUSTICE PROCEEDINGS?** Identify policy areas & the kinds of EU actions which support child friendly justice
- **WHAT TYPE OF OBLIGATIONS DOES EU LAW INTRODUCE?** Exploring provisions on support for children, assessment of their circumstances...
- **WHAT HAVE THE EUROPEAN COURTS SAID?** Highlight recent regional jurisprudence from the European Court of Justice and the European Court of Human Rights
- **WHAT EU RESOURCES MIGHT SUPPORT MY WORK?** Ensure awareness of EU resources that may be particularly relevant, including guidance, studies and projects

EXAMPLES OF KEY EU POLICY AREAS AFFECTING CHILDREN IN JUSTICE: 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**

EU LAW: TREATY PROVISIONS

Article 3 of the Treaty of the European Union

... it 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.

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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

KEY EU REGULATIONS & DIRECTIVES AFFECTING CHILDREN IN JUSTICE:

- **Brussels II bis Regulation (on conflict of law issues in family law proceedings between Member States)**
- **Victims Directive**
- **Trafficking Directive**
- **Sexual Abuse Directive**
- **EU International Protection instruments**
- **Return Directive**
- **Directive on safeguards for child suspects and children accused of crime**

KEY 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**

EXAMPLES OF EU PRACTICAL MEASURES OF SUPPORT

- **CONTACT COMMITTEES OF THE COMMISSION FOR IMPLEMENTING DIRECTIVES (E.G. GUIDANCE ON VICTIM'S DIRECTIVE)**
- **WORK OF THE EU AGENCIES:**
 - **FRA (E.G. CHILD FRIENDLY JUSTICE RESEARCH)**
 - **EASO (E.G. INTERVIEWING CHILDREN TRAINING MODULES)**
 - **FRONTEX (E.G. TRAINING FOR BORDER GUARDS)**
- **EU FUNDED PROJECTS**
 - **TRAINING**
 - **TOOLS**

KEY PROVISIONS: DEFINITION OF CHILD & CHILD RELEVANT OFFENCES/GROUNDS

- **Advances have been made through:**
 - **BETTER DEFINITION OF A MINOR & AGE ASSESSMENT PROVISIONS**
 - **DEFINITION OF OFFENCES RELATING TO CHILDREN**
 - **DEFINITION OF CHILD SPECIFIC GROUNDS FOR INTERNATIONAL PROTECTION**

This means the situation of children is more visible and can be addressed by specific provisions

KEY PROVISIONS: RIGHT TO INFORMATION & RIGHT TO BE HEARD

- **CHILD SPECIFIC INFORMATION**
- **ACCESS BY CHILDREN TO PROCEDURES**
- **RIGHT TO BE HEARD**
- **ACCESS TO REDRESS**

KEY PROVISIONS: CHILDREN'S RIGHT TO PROTECTION

- **ASSISTANCE TO VICTIMS**
- **SPECIALLY ADAPTED PROCEDURES**
- **PROTECTION OF PRIVACY**
- **NON PROSECUTION & NON PUNISHMENT**
- **DETENTION SAFEGUARDS**

- **CROSS BORDER PROCEDURES**
 - **JURISDICTIONAL RULES**
 - **PROVISIONS FOR EXCHANGE OF INFORMATION**

KEY PROVISIONS:ACTORS ENGAGED WITH CHILDREN

- **GUARDIANS**
- **LEGAL ASSISTANCE**
- **TRAINING**
- **SPECIALLY QUALIFIED ACTORS REQUIRED TO DISCHARGE CERTAIN OBLIGATIONS?**
- **MULTIDISCIPLINARY APPROACH REQUIRED?**

KEY PROVISIONS: 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**

EXAMPLE OF EU LEGAL REFERENCE TOOL

- **REFERENCE DOCUMENT ON EU LAW & POLICY ON
UNACCOMPANIED MINORS**

www.connectproject.eu

BEST INTERESTS PRINCIPLE: CASELAW

Some Examples Of Examining The Best Interests In The Migration Context:

- **RAHIMI V. GREECE (EUROPEAN COURT OF HUMAN RIGHTS)**
- **M.A, BT, DA V SECRETARY OF STATE FOR THE HOME DEPARTMENT (EUROPEAN COURT OF JUSTICE)**

SOME RESOURCES AT EU LEVEL

- **EU ACQUIS & POLICY DOCUMENTS ON CHILDREN**
- **FRA HANDBOOK OF EUROPEAN LAW ON THE RIGHTS OF CHILDREN**
- **GUIDANCE ON THE VICTIM'S DIRECTIVE**

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

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

Article 12 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

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**

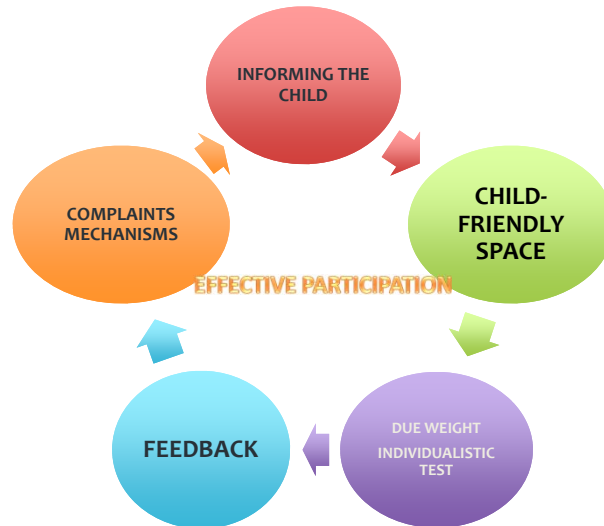
Pre 2009 - Lack of Comprehensive Guidance from the Committee on the Rights of the Child

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.

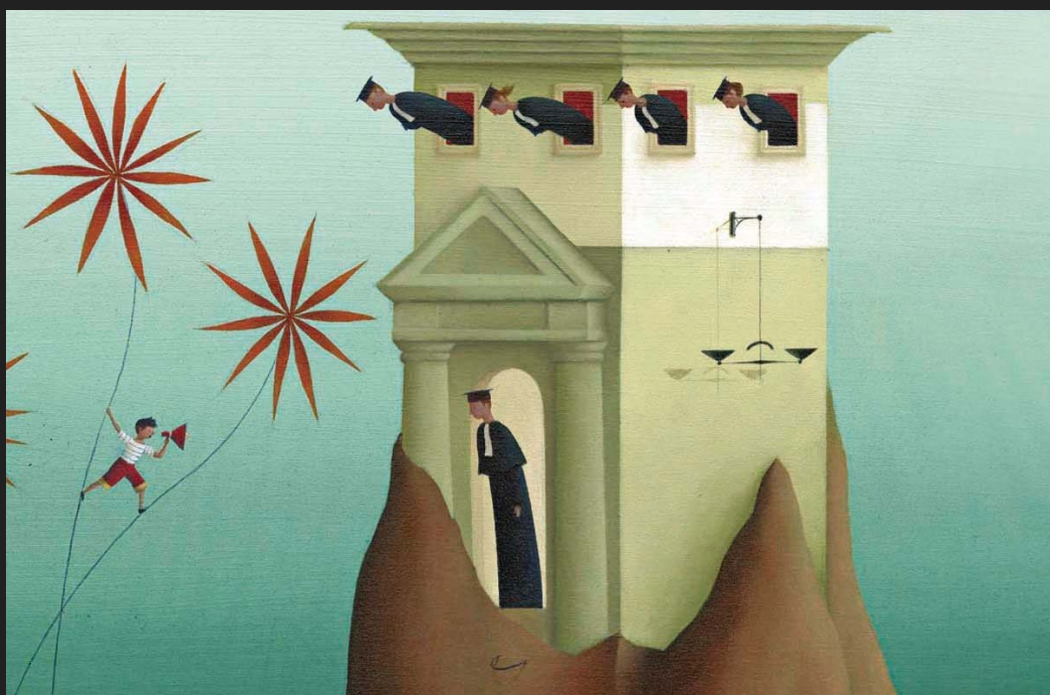
The Principal of the School calls John's parents into the school to tell them that the School is suspending John pending further investigation. John's parents demand to know if Tristan is also being suspended but the principal asserts that there is no evidence to support such action.

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

Zagreb, November 19 – 20 2015



- "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)

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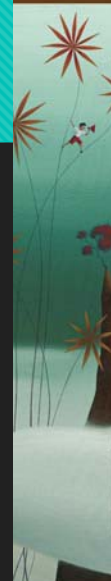


Fundamental principles


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

And no age limits


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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



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“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

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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

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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

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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)



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 live separately with not contact at all. There is no procedure needed as they were not married. But the girls do want to stay in touch. What could they do?

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

Workshop: role-play

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:

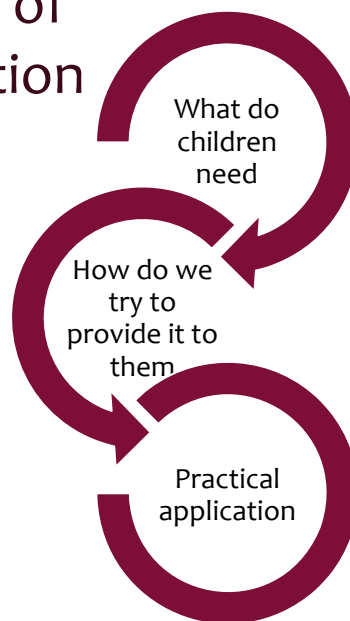
- Julie is the only child of a quite rich couple and does very well in school
- Both parents are professionally very successful people.)

Best practices in communicating with children in legal proceedings

ERA Seminar
20/11/2015

Child Protection Centre of Zagreb
Prof. Gordana Buljan Flander, Ph.D., Director

Structure of presentation



[illegible]

... all my peers sit in school benches... and you're sitting in a room with an unknown woman who **is interviewing you in front of the camera for two hours about the most uncomfortable and disgraceful incident in your life?...**

- Feeling of concern/security, protection against abuse
- Clear information, feeling that they are important and involved
- Support and patience
- Continuation of common daily activities, as appropriate
- **Knowledge that he/she is NOT guilty of abuse**
- Right to express their feelings
- Feeling that others are trying to understand and want to help
- Giving due weight to individual characteristics

Parental support and child adjustment

- Support from a non-abusive parent is one of the most important predictors of child's adjustment (Cohen and Mannarino, 2008)
 - ▣ More important than the characteristics of abuse itself
 - ▣ More important than forms of treatment
 - ▣ Abuse-related support and supportive relationship in general equally important



Friedrich

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

Why do children keep quiet about abuse?

- Fear nobody would believe them – most common reason for non-disclosure
- Concern for keeping family cohesion
- Self-blame and shame
- Emotional closeness and connection with the abuser
- Fear of threats
- Fear of social exclusion and judgement
- Issue of trust and anonymity
- Fear of losing control over the process
- Shame, guilt and feeling of responsibility, especially if they felt pleasure during sexual abuse

(Farell, 1989; Sauzier, Palmer et al., 1999; Hunter, 2000; Somer and

10-16 yrs	<ul style="list-style-type: none"> • Average time-lapse interval between abuse onset and disclosure (McGregor, Coggan and Thomas, 2006; Read, McGregor, Coggan and Thomas, 2006; Somer and Szwarcberg, 2001)
1 mon.-56 yrs	<ul style="list-style-type: none"> • Time-lapse interval between abuse onset and disclosure (Read et al., 2006)
21-28%	<ul style="list-style-type: none"> • Number of children who never broke silence about abuse – more commonly boys than girls (Hébert, Tourigny, Cyr, McDuff and Joly, 2009; Smith et al., 2000)

How do adults respond to disclosure?

Positive response	Negative response (30-70% cases)
<ul style="list-style-type: none"> • Show care for and interest in the child • Empathy • Believe the child • Support • Listen without judging <ul style="list-style-type: none"> • Younger children receive the smallest number of supportive responses 	<ul style="list-style-type: none"> • Blame the child • Deny or underestimate the incident • Ignore • Blame the child for lying • (Corporal) punishment • Parental rejection • Neglect, indifference and/or anger • Avoid listening and discussing such topic • Stigmatisation

Positive response from the environment has proved to be an important protective factor after the child's disclosure. Negative parental responses are associated with more adverse consequences in children.

(Cohen and Mannarino, 1998; 2000; Berliner, 2011)

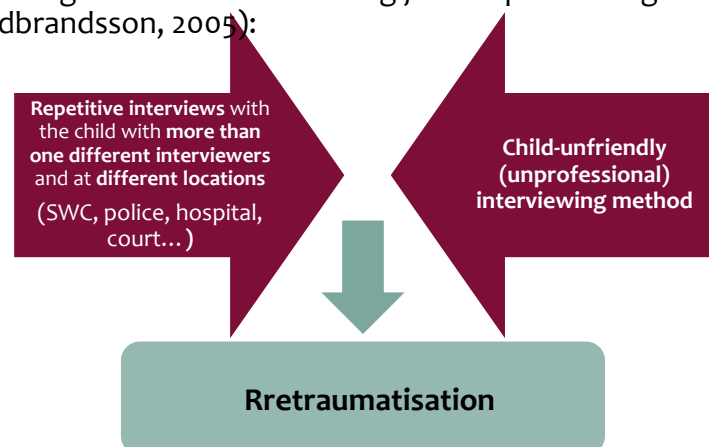
How do children feel at court?

- ❑ 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 defendant
- ❑ Anxiety due to a lack of understanding of linguistic terms and concepts
- ❑ Even greater feeling of stigmatisation
- ❑ Uneasy due to presence of jury and other court officials, difficulties with understanding legal language, sensitive to attitude and conduct of judges

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

Child stress predictors during judicial proceedings

Important stress predictors and clear examples of infringed child's rights and interests during judicial proceedings (Gudbrandsson, 2009):



Disclosure – hope or trauma?

Child protection system

- Repetitive interviews with the child by different professionals, in different institutions
- Unprofessional interviewing method
- Duration of judicial proceedings

Family members

- Disbelief, blame and pressure to withdraw the statement
- Abuse victims describe disclosure as a partially traumatic process (Hunter, 2011):
 - Many believe that it **hasn't changed anything**; or
 - Declare that **adults didn't believe them or give them support**

EU Directives

□ Directives of the European Parliament and of the Council of the European Union:

- Establishing minimum standards on the rights, support and protection of victims of crime
- On combating the sexual abuse and sexual exploitation of children and child pornography
- On preventing and combating trafficking in human beings and protecting its victims

FROM THEORY TO PRACTICE

Integrating current knowledge into a comprehensive child-oriented approach

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

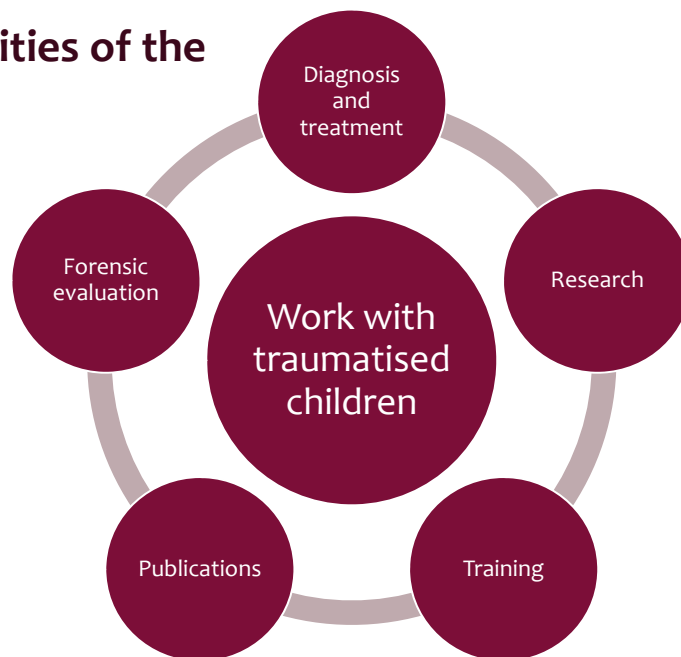
Child Protection Centre of Zagreb

Opened at the end of 2002

The purpose of the Centre is to provide assistance and support to children with different traumatic experiences, including abused and neglected children, as well as to their families.



Specificities of the Centre



Multidisciplinary team

- 11 psychologists
- 4 psychiatrists
- Neuropediatrician
- 2 social workers
- 2 social pedagogues
- Speech therapist
- 6 nurses
- Lawyer



Team experts

- ❑ Mental health professionals
- ❑ Trained in the area of child development and child abuse
- ❑ Professional experience in evaluation and treatment of abused children and their families
- ❑ Experienced in implementation of forensic evaluations and court testimonies
- ❑ Keeping up-to-date with recent insights and references
- ❑ Aware of different cultural values and characteristics that might affect the process of disclosure and interpretation of information
- ❑ Regularly supervised



Disclosure process – importance of child-friendly approach

**“Disclosure is a
process...
not an event.”**

Sorenson & Snow



Implementation of forensic interviews – skills required:

- ❑ Establishment of adequate rapport with the child
- ❑ Active listening and processing of information
- ❑ Asking developmentally appropriate questions
- ❑ Asking non-suggestive questions, the answers to which questions may serve as evidence at court
- ❑ Obtaining information not affected by personal beliefs and attitudes
- ❑ Confrontation strategies for emotionally intensive content

Child-friendly approach

Polite, warm and open child-friendly approach:

- Improves memory
- Reduces suggestibility
- Greatest help to children and families

(Berliner & Conte, 1995)



Forensic interview structure

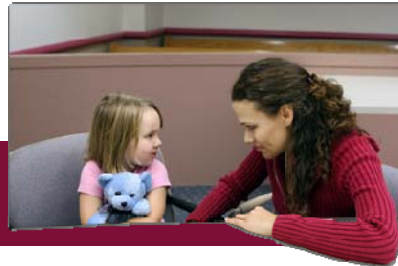
- **NICHD Protocol** (The **N**ational **I**nstitute of **C**hild **H**ealth and **H**uman **D**evelopment, 2000-2011)
 - The most well-known and most studied interview system
 - Developed with reference to child development issues – linguistic capabilities, memory, suggestibility, forensic needs, interviewer's behaviour, the effects of stress and trauma
 - Developed by a team of researchers, interviewers, police officers and legal professionals
 - Independent studies in four countries confirm its efficiency concerning increase in quality of obtained information

(Cyr et al., 2006; Lamb et al., 2006; Orbach et al., 2000; Sternberg, Lamb, Orbach, Esplin and 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 incidents
6. Break
7. Eliciting information that has not been mentioned by the child
8. If child fails to mention information you expected
9. Information about the disclosure
10. Closing
11. Neutral topic



PREPARATION FOR THE INTERVIEW:
CREATION OF CHILD-FRIENDLY
ENVIRONMENT

Time and duration

Preferably, the child should be interviewed **as soon as possible** after the alleged incident(s)

- Preferably shorter interviews, especially with younger children
- Important awareness of signs of fatigue, loss of concentration, physical needs...

Interview venue

- **Comfortable, informal, no distractors**
- **Child-friendly**
- **Neutral**



- **Interviewer** – the only person present with the child (as appropriate)
- **Parents** – present only if the child refuses separation and only during initial interviewing phases

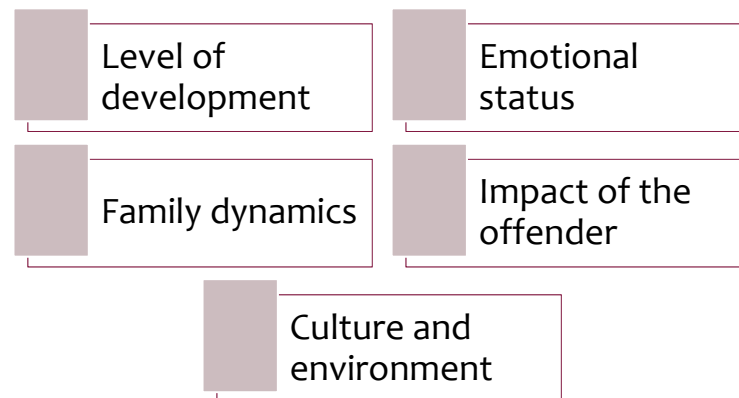
Rapport building

- ✓ **Warm and supportive** approach, whilst maintaining objectivity
- ✓ **Capacity to really hear** the story of the child
- ✓ **Allowing the child to adjust** to the new environment and the interviewer
- ✓ Attempts to **reduce the position of authority** (bodily posture, tone of voice, vocabulary...)
- ✓ **Approach adjusted to** the child's age and level of development
- ✓ **Commendations unrelated to the content of** the interview
- ✓ **Patience in case of silence**
- ✓ Allowing the child to set the **pace** of the interview him/herself

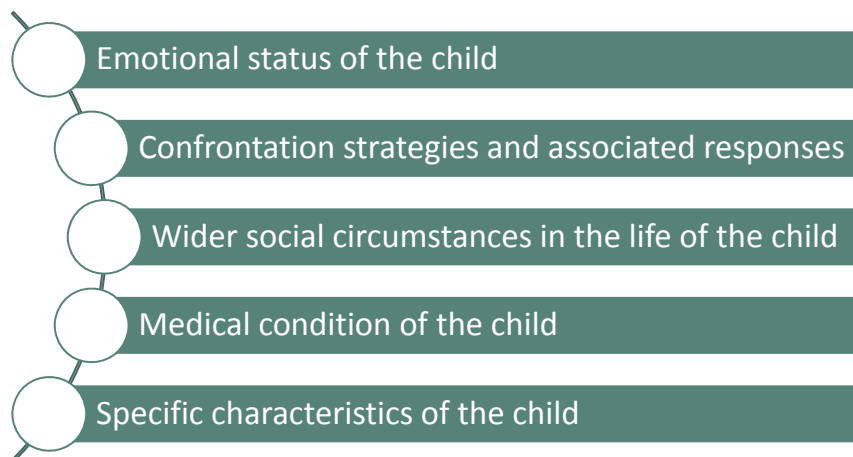
Preparation process

- Consideration of the child's **age and level of development**
- Information about whether the child has any **special needs** associated with development and/or physical disorders
- Consideration of **cultural and/or ethical factors** that might affect the course of interview
- Provision of a **qualified interpreter** as needed
- Taking into account alternative explanations of the statement or conduct that might indicate potential abuse – **keep open approach**

Child characteristics that might affect the output of the forensic interview



What does the evaluation of the child's capacity for credibility of testimony depend on?



Assessment of the child's development

- Continuous process during the interview
- Purpose:
 - Adjustment of vocabulary and the interview itself
 - Determination of the **child's way of speaking and level of development** – the child's natural communication style during discussion about non-traumatic events

Imperative to distinguish between the child's developmental characteristics and a lack of credibility

“She always hits my brother.
It happened a thousand times.
He hurt my mum.
Then Superman came and saved her.”

Speaking and language

Evaluations/time

Basic concepts – first, last, always, inside, before, after, etc.

Concepts of numbers

Knowledge of colours

Kinship

Representational ability

Reality and imagination

Vocabulary and understanding of feelings

Understanding of truth/lies

Asking questions

OPEN-ENDED QUESTIONS

- Enable obtaining forensically most accurate information
- Encourage the child to give his/her statement and enable obtaining a larger amount of information in comparison with other types of questions

LEADING QUESTIONS

- Who, what, when, where and how
- Help clarify details of the disclosure

CLOSED-ENDED QUESTIONS; QUESTIONS OF CHOICE

- Multiple choice and yes-no questions
- Use only when the child fails to respond to open-ended questions, seldom and always paired with open-ended questions and incentives – risk of suggestibility
- Important to include all relevant options (e.g. did it happen in the kitchen, in the living room or somewhere else?)

To be avoided:

Specific questions

- "Did the coach touch you on your body?"

Suggestive questions

- "I heard that the grandpa touched your winky, is that true?"

Double negations

Question: "How many times did it happen to you?"

WHY questions

- Children most often do not know why they did or didn't do something, but are keen to give an answer

What can jeopardize validity of the interview?

- **Attitude of the interviewer to the disclosure**
 - ▣ Affects the structure of the interview and taking of the statement
- **Asking questions**
 - ▣ Often leads to alteration of answers, especially yes/no questions
- **Effect of repeating wrong information**
 - ▣ Giving wrong information during the interview affects the accuracy of the statement given by the child subsequently

- **Emotional tone during the interview**
 - ▣ Important to give support to the child during the interview, but not to encourage the child to say what we want to hear
- **Suggestive questions**
 - ▣ Presentation of such information may affect statements and testimonies given subsequently
- **Impact of group pressure**
 - ▣ Siding with the majority opinion as to what happened
- **Impact of an authoritative adult**
 - ▣ Children are sensitive to the status and power of the interviewer and have a tendency to indulge him/her

Techniques for clarifying details

- **Drawings**
(e.g. the child's family, location of abuse, offender, child)
- **Anatomical sketches**
- **Anatomical dolls**
(dolls with primary and secondary sexual characteristics)
- **Plain dolls**
(without any characteristics)

Drawings + Verbal Disclosure

=

Increased quantity and accuracy of details

Especially in school children

(Brennan & Fisher, 1998)

Anatomical dolls are used with caution, only after verbal disclosure of the incident

- May be very suggestive
- Anatomical details on dolls may upset some children
- In pre-school children there is a possibility that they still have not developed representational ability that enables them to show themselves by using an aid

Closing of the interview

- Summing up information and wrapping up the interview
- Inviting the child to ask questions if he/she wants to
- Evaluation of the need for treatment
- At the end of the interview, switching to a neutral topic

It is important
to commend
the child for
cooperation,
and not the
content of the
interview itself

Some specificities of the child require more than one interview

- Shy and resistant children
- Traumatized children
- Younger children
- Children with special needs or children with developmental disorders

Extended forensic evaluation

Collecting additional documentation

- Information about circumstances of the incident or doubt
 - ▣ What the doubt concerns, to whom the child confided, responses from the environment and the child, relationship with the offender, information about the child's life, the child's social and development history, educational routines, access to information about sexuality, family names for body parts, what was the child told why he/she is here...
- Police reports
- Social Welfare Centre reports
- Medical documentation
- Interview with the non-abusive parent

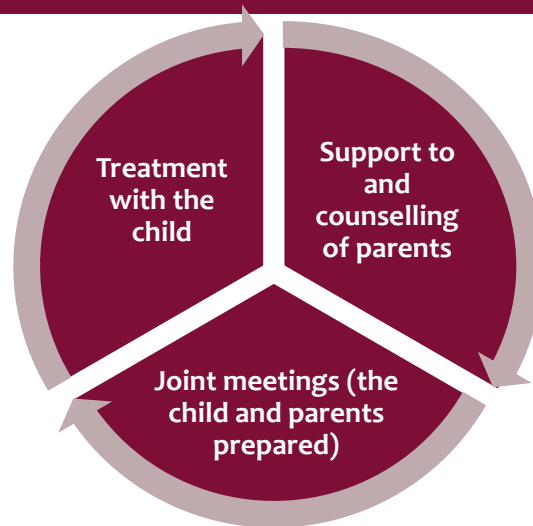
Evaluating the need for treatment

- **Evaluation of trauma symptoms**
- **Need for treatment:**
 - ▣ Forensically sensitive therapy
 - ▣ Traditional therapy
 - ▣ Professional support
 - ▣ Work with the non-abusive parent



Trauma treatment

Trauma-focused cognitive behaviour therapy (TF-CBT)
as a therapy of choice in majority cases



Forensically sensitive therapy

- Ongoing judicial proceedings, but the child needs treatment
- Most often cognitive behaviour approach
- Projective techniques and interpretation of the way child plays and his/her drawings are avoided



Traditional therapy

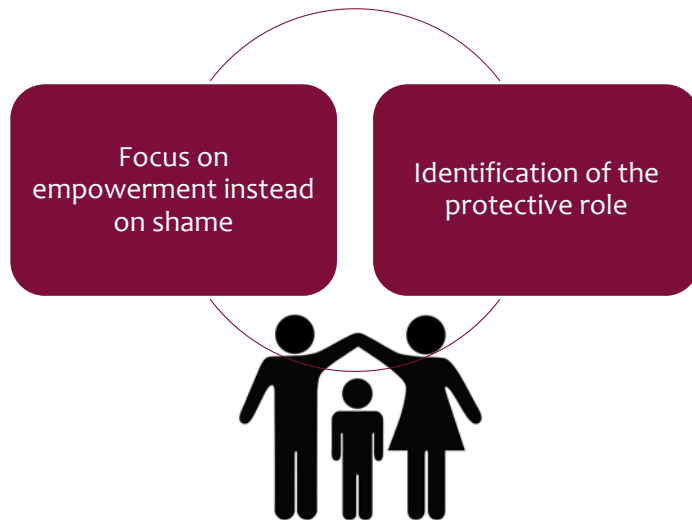
- Different therapeutic orientations
- Use of projective techniques
- Use of playing and drawings

Importance of working with the non-abusive parent

Želim povući iskaz radi mame jer se
oni vole pa ne želim da on bude
u zatvoru, a ona bez njega.
Što puta me nazivala u dom i
govorila mi da joj ne odgovaram
muža. Sad će mama biti sretna
a i ja ću biti sretnija radi nje.
Ja sam znala što je on sad loš pravica
njoj sve se ono dogodilo ali
mama mi nikad nije vjerovala ni
suzdržavala ni odgovarala. Često ne
može po noći spavati jer mi mama ne
jeru pa nikog nema. Želim
da mama bude sretna pa će
onda i mene voljeti.

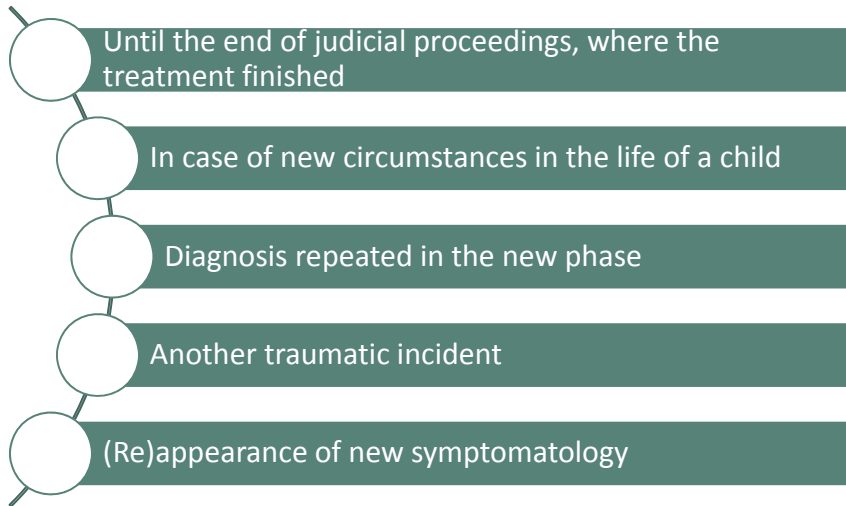
- Individual support and counselling
- Psycho-training
- Group support
- Possibility of individual parental therapy (after empowering the parent to give support to the child)

From non-abusive to supportive parent



Children are followed-up and receive professional support throughout the process

Follow-up



Child Protection Centre of Zagreb: cooperation with courts

JUDGES ENCOURAGED TO HAVE THE CHILDREN INTERVIEWED IN THE PREMISES OF THE CENTRE

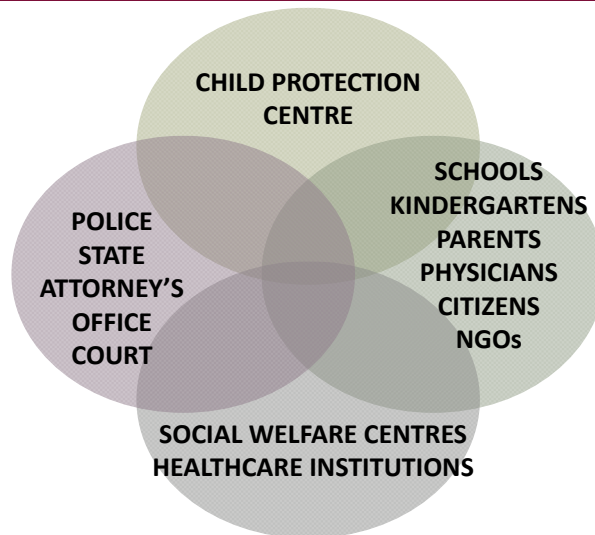
- The child interviewed in a special room, by trained expert of the Centre
- **Other involved parties**– in another room connected with audio and video link with the forensic room
- **The judge and involved parties ask the expert questions about the child**
- **The expert adjusts questions to the child taking into account his/her level of development and emotional status and also uses other techniques**



**THE ENTIRE PROCESS IS RECORDED AND USED AS
EVIDENCE IN FURTHER JUDICIAL PROCEEDINGS**

**In this way multiple interviewing of the child by
different persons at different places is avoided and
judicial proceedings are shortened.**

Importance of cooperation with other institutions in the system



**Thank you
for
attention**

...

**Child Protection Centre of
Zagreb**

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