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## **CHILD-FRIENDLY JUSTICE**

### **REGIONAL ACTIVITY IN THE BALTIC SEA REGION**

#### **CHILD EVIDENCE**

A comparative study on handling, protecting and testing evidence from children in legal proceedings within states in the Baltic Sea Region

prepared by

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Disclaimer: The views expressed in this study are solely those of the author and do not necessarily reflect the views of the Council of Europe or its member States.

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## INTRODUCTION

1. In November 2010, the Committee of Ministers of the Council of Europe adopted Guidelines on Child-friendly justice in order to enhance children's access to and treatment in justice. Based on existing European and international standards, the guidelines are designed to guarantee children's effective access to and adequate treatment in justice systems. They apply to all the circumstances in which children are likely, on any ground and in any capacity, to be in contact with the criminal, civil or administrative justice systems. These Guidelines recall and promote the principles of the best interests of the child, care and respect, participation, equal treatment and the rule of law.

2. Today, the Guidelines on Child-friendly justice are considered as one of the key references on how the justice system can better respect the child as a rights holder and how to ensure children's access to justice. They are a very concrete tool that governments are constantly encouraged to base their law reform and furthered practice on.

### *Co-operation to achieve the strengthening of child friendly justice systems at international level*

3. A core focus of the Council of Europe Strategy on the Rights of the Child (2012 - 2015)<sup>1</sup> is to continue strengthening child-friendly justice systems together with partners, international, national, and non-governmental organisations.

4. Close collaboration is on-going with other international organisations such as the Council of the Baltic Sea States which prioritizes the promotion of children's rights and the protection of children against violence, abuse, neglect and exploitation. Child-friendly justice is a central aspect and is relevant in most regional projects including in promoting the Children's House model, ensuring monitoring and auditing of alternative care facilities, combating sexual abuse and exploitation, and preventing and disrupting the cycle of violence and abuse.

5. Close co-operation has been developed with the European Union. Making the justice system more child-friendly in Europe is a key priority on the EU Agenda for the Rights of the Child. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of various instruments, such as EU legislation and support measures for its member States. The Commission is currently conducting a study to collect data on children's involvement in criminal, civil and administrative judicial proceedings which will contribute substantially to the collection of data in 28 EU states.<sup>2</sup>

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<sup>1</sup> [Council of Europe Strategy on the Rights of the Child \(2012 - 2015\) "Growing with children rights"](#)

<sup>2</sup> [EU summary report](#) and [contextual overviews for each member State](#) on children's involvement in criminal proceedings were published on 6 June 2014.

### Regional activity on child evidence

6. In the framework of promoting and supporting the implementation of the Guidelines on Child-friendly justice, the Council of Europe is undertaking, in collaboration with the Council of Baltic Sea States, a regional activity with respect to child evidence within the framework of a child-friendly justice system. The activity will permit the exchange of recent best initiatives and practices in the Baltic Sea Region on the gathering, taking and testing of evidence from children in criminal, civil and administrative proceedings aimed at facilitating their transposition from one legal system to another.

7. The Baltic Sea Region consists of **Denmark, Estonia, Finland, Germany, Iceland, Latvia, Lithuania, Norway, Poland, Russian Federation and Sweden.**

8. The Guidelines on Child-Friendly Justice contain a number of guidelines on gathering and taking evidence from children (**see Appendix I**). Children are to be treated with care, sensitivity, fairness and respect throughout the proceedings and they are to be protected from intimidation, reprisals and secondary victimisation. Professionals who have direct contact with children should be trained in communicating with children of different ages and stages of development. Importantly, ensuring the respect of children's rights - the rights of the other parties involved should not be jeopardised.

9. This study is only a first step to the activity. It will investigate and try to identify recent initiatives and existing best practices concerning evidence provided by children in legal proceedings in the Baltic Sea region. Examples of best practice are not always entirely transferrable as such, yet they can be successfully used as a source of inspiration and be adapted to the legal culture and capacities of the member State.

10. The study served as a basis for discussion at a conference that took place in Tallinn on 19-20 February 2015, and organised with a view to encouraging national authorities in the Baltic region to transpose good initiatives and practices in their rules of legal procedure.

11. Subsequent to this first meeting, a feasibility analysis will be undertaken on the potential of identified good initiatives and practices to be successfully developed in states in the region wishing to introduce them in their rules of legal procedure. The focus of the analysis will be to identify the possible obstacles as well as positive factors that might facilitate their transposition and suggest ways to develop them.

## PRELIMINARY REMARKS

12. This study is a result of information gathered through a questionnaire sent to states in the Baltic Sea Region (**see Appendix III**). The aim of this questionnaire was to investigate and identify recent initiatives and best practices in place in the region on the gathering, taking and testing of evidence provided by children in legal proceedings (criminal, civil and administrative). The initiatives and best practices sought are irrespective of whether the child is a party to the proceeding or a witness, and concern each stage of a proceeding.

13. The initiatives and practices were analysed from the perspective of the rights of the child and the rule of law according to an international perspective of a child-friendly justice.

14. However, it should be noted that the study mainly draws on criminal proceedings. The reasons are several: (i) responses to the questionnaire mainly address criminal proceedings. Some of the answers provided fail to provide information on civil and/or administrative proceedings. Other answers provided information only regarding a specific theme; (ii) in most answers, the information concerning civil or administrative proceedings were also limited in detail; (iii) matters concerning children as handled in civil or administrative proceedings vary greatly between states, and it is not always clear which matter is at hand when referring to certain proceedings. Thus, the description, analysis and results regarding the gathering, taking and assessing of evidence provided by children in civil and administrative proceedings are based on less information than that regarding criminal proceedings.

15. There are probably several reasons why the states, in their replies, emphasise evidence provided by children in criminal proceedings. One possible reason is the increasing determination in societies to investigate and prosecute crimes against children, especially domestic violence and sexual abuse crimes. Since there are seldom any witnesses to these crimes but the victim, this has led to a growing interest in how to handle child testimony in criminal proceedings. This interest can be seen in society as a whole, as well as in national and international justice systems and among academics.<sup>3</sup>

16. The same focus is not placed on the gathering, taking and assessing of evidence provided by children in civil or administrative proceedings. The explanations are numerous, but seen from an investigative point of view, the standard and burden of proof are not the same in civil or administrative proceedings as they are in criminal proceedings and therefore, safeguarding the principles of the rule of law is not always given the same importance. However, civil or administrative proceedings concerning children often deal with matters of great importance for the child, such as the child's need for support and protection. In cases where the parent's capacity is the subject of the proceeding, the parent's ability to safeguard the best interest of the child during the proceedings can also be questioned, especially when abuse or neglect is suspected. Therefore, several of the challenges surrounding child interviews in criminal proceedings can arise in parental disputes and child protection cases.

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<sup>3</sup> See for example research on this matter <http://nichdprotocol.com/peer-reviewed-research/>

## GENERAL COMMENTS

17. States parties, by signing and ratifying the United Nation Convention on the Rights of the Child (CRC)<sup>4</sup>, undertake to protect and promote children's rights. The CRC provides that children are bearers of their own rights and that childhood is entitled to special care and assistance. In this respect, each state has a responsibility to ensure the rights of every child.

18. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice were adopted to ensure effective implementation of existing standards to protect children's rights to have access to justice and to a fair trial.<sup>5</sup> The Guidelines are not binding, yet they provide practical guidance and contain examples of good practice which are helpful for countries undertaking law reform and for the professionals that have to apply them.

### Children's rights to protection from violence and abuse

19. Children's right to protection and safety is vital for children who are witnesses or victims of violence and abuse. The CRC provides that every child has the right to protection from all physical or mental violence, injury or abuse, neglect or exploitation or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19). A child victim of abuse or exploitation is entitled to rehabilitation and social reintegration (Article 39). These rights are closely linked to the fundamental principles of the CRC on the child's right to protection from discrimination of any kind (Article 2); the best interests of the child (Article 3), the right to life, survival and development (Article 6) and the right of the child to express freely his or her own view through participation and information (Article 12).

20. In line with the CRC, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.201) devotes a specific chapter on investigation, prosecution and procedural law. The latter exposes relevant provisions that have to be guaranteed by national authorities when a child is involved in legal proceedings as a witness or victim. This specific frame concerns mainly hearing, information of the child and his/her family and specific conditions during the trial (**see Appendix II**).

### Children's right to access to justice

21. Protecting children from violence, abuse and mistreatment and providing them with rehabilitation are difficult tasks. In this context, criminal law is, in many ways, limited. The standard of proof required in a criminal case is high. Many police reports on crimes committed against children do not result in prosecution; neither does the conviction of an adult, who has committed a crime against a child, automatically mean that the child is protected. Criminal procedural rules, however, fill a number of important functions with respect to children's possibilities for obtaining protection and rehabilitation. Criminal investigation agencies can help the child protection services to identify the child's needs and thus can provide the adequate protection, support and rehabilitation to which the child is entitled. Criminal proceedings may also have a therapeutic purpose by ensuring a child his or her right to be

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<sup>4</sup> [United Nation Convention on the Rights of the Child, 20 November 1989](#).

<sup>5</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#), 17 November 2010, Preamble; Part III (B), paragraphs 2 and 4; Part IV paragraphs 16-18.

heard, recognised and compensated. In addition, police investigations can also identify potential offenders and thereby, future victims can be protected. In order to meet children's rights to protection from violence and abuse as well as to compensation and rehabilitation, the child's right to access to justice and to be heard in criminal cases are of great importance and must be secured.

22. In the "Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime", it is pointed out that the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness. According to this, a child victim or witness must be given the opportunity to freely express his or her views.<sup>6</sup> According to the Committee on the Rights of the Child, this means that every effort has to be made to ensure that the child is consulted on relevant matters with regard to involvement in a case, and be enabled to express freely views and concerns regarding his or her involvement in the judicial process. This is linked to a number of other aspects: the right to be informed about several issues e.g. the availability of health, psychological and social services, the role of a child victim and/or witness, the ways in which the "questioning" is conducted, existing support mechanisms for children when submitting complaints and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibility of receiving reparation, and the provisions for appeal.<sup>7</sup>

#### Child-friendly justice

23. The European Convention on Human Rights (ECHR) guarantees, under its Article 6, the right of any person to access justice and to have a fair trial. As emphasised in the Child-Friendly justice Guidelines, this applies equally to children. However, one must also take into account the child's ability to form their own views, thus the ability of the judicial system to adapt to the best interest of a child is crucial in order to meet the fundamental right of children to have access to justice.<sup>8</sup>

24. According to the Committee on the Rights of the Child and its interpretation of Article 19 CRC, investigations of all instances of violence must be undertaken by qualified professionals with role-specific and comprehensive training. Such investigations require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures can also help to ensure that violence is correctly identified, as well as assist in providing evidence for the administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting children to further harm through investigations. To this end, all parties should be involved and obliged to invite and give due weight to a child's views.<sup>9</sup>

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<sup>6</sup> United Nations Economic and Social Council [Resolution 2005/20](#), *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, in particular Articles 8, 19 and 20. See also Nations Economic and Social Council [Resolution 1997/30](#), *Guidelines for Action on Children in the Criminal Justice System*, 21 July 1997.

<sup>7</sup> United Nations Committee on the Rights of the Child, [General Comment No. 12 \(2009\)](#), *The right of the child to be heard*, paragraphs 63 and 64.

<sup>8</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#), 17 November 2010, the Preamble and Part IV, paragraph 46.

<sup>9</sup> United Nations Committee on the Rights of the Child, [General Comment No. 13 \(2011\)](#), *The right of the child to freedom from all forms of violence*, paragraph 51.

25. The definition of the Guidelines on Child-friendly justice refers to *justice system which guarantees the respect and effective implementation of all children's rights at the highest attainable level, while bearing in mind the principles of the rule of law and the right to a fair trial. A child-friendly justice system gives due consideration to a child's level of maturity and understanding, as well as the circumstances in each case. In particular, child-friendly justice is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of a child, respecting the rights of the child including the rights to due process, to participate in and understand the proceedings, respect for private and family life, and to integrity and dignity.*<sup>10</sup>

26. The scope of the Guidelines is broader than the core justice system and court proceedings as it also covers all professionals dealing with children in and outside judicial proceedings. Sectors such as police, social and mental health services are also responsible for making justice more child-friendly. The guidelines strive to ensure that children's rights are known and scrupulously respected by all these professionals.

27. In order to protect children's rights to have access to justice, and also to protect them from further abuse or victimisation, the quality of the police investigation, the child protection system and the health care system (both psychiatric and somatic) needs to be adapted to the child's right to be heard as well as the best interest of the child. At the same time, the rights of other parties must be respected according to the rule of law and the right to a fair trial.

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<sup>10</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#), 17 November 2010, Preamble and paragraph 46.



## CHILDREN'S HOUSES – A CHILD-FRIENDLY MODEL<sup>11</sup>

28. An investigative-model called Children's Houses has emerged in the Nordic countries in the past fifteen years. The aim of this arrangement is to adapt the criminal proceedings to the child and let the best interest of the child be a primary consideration when a child is the subject of a police investigation. Children's Houses are based on the American Children's Advocacy Center model. The Children's Houses is an interagency collaboration model where the authorities responsible for a child who is the subject of a criminal investigation interact under one roof in a child-friendly environment. The joint investigative measures seek to optimise the quality of the investigations, interventions and treatment of the child.

29. The purposes are thus several. Firstly, the aim is to create a child-friendly environment where the police interview, the medical investigation and the child protection services risk assessment can all be carried out in one place. Secondly, interagency co-operation under one roof should optimise the conditions for better quality in the police investigation, the risk assessment and psychological treatment of the child. The Children's Houses in the Nordic countries, however, differ especially regarding the extent in which the child protection services are involved in the multidisciplinary work.

30. The Council of Europe, in its Guidelines for Child-friendly Justice, recommends treatment of suspected child victims that is consonant with the practice of Children's Houses that exist in **Iceland, Sweden and Norway** and which have recently been introduced in **Denmark** as well.<sup>12</sup>

### Research on Children's Houses

31. The Children's Advocacy Centers, which have existed in the U.S. since the 1980s, were comprehensively studied during 2001-2003.<sup>13</sup> The study included 1,500 children from four locations with well-established and certified Children's Advocacy Centers and four locations without corresponding facilities. The Children's Advocacy Centers were found to be better for children: the police and prosecutors were involved in more cases, cases were co-ordinated better and more children underwent a medical examination than in locations without Children's Advocacy Centers. More children were referred to child psychiatry and more were taken into custody since the child protections services in the Children's Advocacy Centers assessed that children were at risk. The study also showed that children's parents were more

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<sup>11</sup> This section is partly based on the article Kaldal & Svedin, *Children's Houses (Barnahus): Today and in the future*, in Mahmoudi, Kaldal, Lainpelto & Leviner, *Child-Friendly Justice: What It Means and How It is Realized*, Martinus Nijhoff Brill (in press 2015).

<sup>12</sup> [Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice](#), 17 November 2010.

<sup>13</sup> Walsh, W.A., Lippert, T., Cross, T.E., Maurice, D.M., & Davison, K.S. (2008), *How long to prosecute child sexual abuse for a community using a children's advocacy center and two comparison communities?* *Child Mistreatment*, 13(1), 3-13 and Miller, A., & Rubin, D. (2009), *The contribution of Children's Advocacy Centers to felony prosecutions of child sexual abuse*, *Child Abuse & Neglect*, 33:12-18.

satisfied. The study did not detect that the Centers' activities contributed to an increase in prosecutions.<sup>14</sup> Other studies, however, demonstrated a correlation between a shorter time from the police report to prosecution, especially in more severe cases, and that Children's Advocacy Centers did contribute to more cases resulting in prosecution.

32. The **Swedish** Children's Houses (*barnahus*) have already been studied in three separate national evaluations. The first study included the first six Children's Houses and was presented in March 2008.<sup>15</sup> Although the evaluation found that the Children's Houses were not sufficiently advanced in their establishment, making the evaluation difficult, it was concluded that the situation was better for the children in Children's Houses than in an ordinary police investigation. The children were treated in a thoughtful and positive manner in a child-friendly environment and more had access to some form of crisis support. More police interviews were conducted with children, more children underwent medical examinations, and it was more common for a special legal representative or legal counsel to be appointed. It was noted that child and adolescent psychiatry, forensic medicine and paediatrics were not fully involved in Children's Houses in all locations. However, there was no support for the notion that collaboration in Children's Houses led to better prosecution or shorter processing times for police and prosecutors. The evaluation included interviews with 12 children, all but two teenagers. The children described an overall positive picture of the visit at the Children's House.

33. The thesis "*Right, power, and institutional change – A critical analysis of the authorities' co-operation in Children's Houses*" was based on the material from the evaluation mentioned above.<sup>16</sup> The data consisted primarily of surveys and interviews with co-ordinators working in Children's Houses, and observations from multi-professional consultation meetings. The study concluded that there was an inherent duality in the work of Children's Houses. This duality was described as a tension between a social system characterised by the idea of holistic treatment and thinking, and a legal system characterised by an ideology of formal justice. The two pervasive ideas with the Children's Houses are to protect and support children (processing logic) and to streamline the legal system (criminal logic). It was observed that criminal logic could take precedence over processing logic, which led to a general process of juridification. Examples of this were that child protection services waited for the police interview with children before doing their risk assessment and talking to the child or contacting the parents, thus allowing criminal logic priority, during which time the child could continue living in a dangerous environment.

34. The second national Swedish evaluation was conducted in 2009-2010.<sup>17</sup> The study included 1,000 criminal investigations from eight locations with Children's Houses and four locations without and 500 child-protection investigations concerning children who were investigated by the social services parallel to a criminal investigation. The study found that the arrangement and content of the Children's Houses varied and in many places, for example,

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<sup>14</sup> Juvenile Justice Bulletin August 2009, *Evaluating Children's Advocacy Centers' Response to Child Sexual Abuse*, [www.ojp.usdoj.gov](http://www.ojp.usdoj.gov). The researchers were Cross, Jones, Walsh, Simone, Kolko, Szczepanski, Lippert, Davison, Cryns, Sosnowski, Sahdojn och Magnusson.

<sup>15</sup> Rejmer & Åström, *Det blir nog bättre för barnen*, Rättsociologiska Institutionen, Lunds Universitet (2008).

<sup>16</sup> Johansson, *Rätt, makt och institutionell förändring, En kritisk analys av myndigheters samverkan i barnahus*, Rättsociologiska Institutionen, Lunds Universitet (2008).

<sup>17</sup> Kaldal, Diesen, Beije & Diesen, *Barnahusutredningen*, Jure förlag (2010).

health care was not represented by either paediatric or child and adolescent psychiatry services. Furthermore, in some Children's Houses, the prosecutor was present at the child interview, but not at the consulting meeting and vice versa.

35. This evaluation also noted that Children's Houses were better than ordinary forms of investigation. The evaluation showed that there was more co-operation between the authorities involved in areas with Children's Houses. This applied particularly to the contact between the social services and police, the number of medical examinations of the child, and the number of psycho-social interventions for the child. In areas with Children's Houses, the social services reported more crimes to the police. Also, more information concerning the child was exchanged between the police and social services. Even though few children in the population as a whole underwent a medical examination, the involvement of paediatric experts was greater in Children's Houses; and the participation of paediatrics in the consultation meetings led to more medical examinations. While the study demonstrated no correlation in individual cases, the prosecution rate appeared higher in places where there were more medical examinations. The study also showed that more children received treatment and support in Children's Houses. The study included a survey aimed at examining how children experienced the visit to a *Barnahus*. In most cases, the children were pleased with the hospitality.

36. A third assessment and report, "*Inside a Children's House*", was presented in June 2013.<sup>18</sup> This study was done from the child's perspective on the basis of the CRC. The review followed twelve criteria against which each activity was assessed and rated. The report describes activities in Children's Houses in four different "rooms", each meeting a different need of the child. The four activities are criminal investigation, child protection, the child's physical health and the child's mental health. Different agencies are responsible for respective rooms.

37. The Children's Houses included in the study were classified based on how far operations were conducted in the four different rooms. The overall conclusion was that Children's Houses had come to stay and were a step in the right direction to ensure that children and adolescents experiencing different types of abuse and crimes received good treatment. Several Children's Houses were considered to maintain a very high quality. However, there were still many flaws and weaknesses in many of the Children's Houses. Of the 23 Children's Houses in the study, four met all the criteria of being a complete Children's House with operations in all four rooms. The other 19 Children's Houses lacked activity in one or both rooms for physical and/or mental health.

38. The **Norwegian** evaluation included six of the seven centres set up in Norway, all established between 2007-2009.<sup>19</sup> The experiences with the Norwegian Children's House model are described from the perspective of the children, the parents, the police, legal professionals, staff and administrators. The analysis is based on both interview and survey data. The work in the Children's Houses is divided into three stages: the preparation stage, the

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<sup>18</sup> Landberg & Svedin, *Inuti ett Barnahus*. Rädda Barnen (2013).

<sup>19</sup> Stefansen, Gundersen & Bakketeig, *Barnhusevalueringen 2012 - Delrapport 2, En undersøkelse blant barn og pårørende, jurister og politifolk, samt ledere og ansatte*, Høgskolen i Oslo og Akershus, Senter for velferds- og arbeidslivsforskning, Velferdsforskningsinstituttet NOVA, (2012).

police interview stage and the follow-up stage. All centres carry out important tasks in these three stages, but some pay more attention to all the tasks than others. One conclusion was the need for guidelines to show what the staff's tasks are in the different stages and how those tasks should be carried out. The centres are administered and financed by the police districts in which they are located. This has worked well, and the link to the police system has given the Children's House model a much needed legitimacy in the foundation phase. In the administrators' view, the time has come to rethink this model of organisation. A conclusion of the study, according to the administrators, was that the current model of organisation may work against the aim of a joint agency approach including the child protection services in Children's Houses.

39. Children and accompanying adults gave positive evaluations for both the Children's House staff and police interviewers'. They felt taken care of and appreciated the friendly atmosphere at the Children's Houses. The message from children was that Children's Houses are a good place for children. The police and legal professionals were also positive in their evaluations of the Children's Houses. Children received good care "*under one roof*", with the staff competent in children's issues and doing a good job of taking care of parents. The downside is the extra time needed to travel to the Children's House. Some also felt that the use of Children's Houses led to more weight being put on the best interest of the child rather than on the legal process. A majority of 70 percent felt, however, that these issues were well-balanced. A message from the police and legal professionals was that the current legal regulation should be changed on a number of issues. For instance, a majority of 72 percent stated that Children's Houses should not be voluntary for the police districts, but must be used in all relevant cases.

40. The conclusion was that the aims of the measures are being fulfilled. Children who are interviewed by the police at Children's Houses receive better care than children who are interviewed at the police station or in court. The model also leads to a more co-ordinated effort from the involved professionals, both from the legal and medical systems. Furthermore, it has led to increased awareness in the general population and greater awareness as well among professionals.

41. In 2012, an evaluation of the Iceland Children's house presented the results from a study examining the experiences of children who had given court statements at the Children's house, received medical examinations and completed therapy during 2007 to 2009.<sup>20</sup> The study was based on a survey of 123 children and their parents or guardians and included adults who had benefitted from the services but were over 18 at the time of the study. The main findings of the report—were that children and their care-givers were very satisfied with the services. Interestingly, the children and their parents were significantly more satisfied with their experience in giving court statements in the Children's house than in court.

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<sup>20</sup> Newton, Hjaltadóttir & Jónsdóttir, *The Children's House: Children's experiences of forensic interviews, court testimonies and therapy in Iceland, 2007-2009*, Háskóli Íslands, Félagsvísindastofnun, Centre for Children and Family Research, (2011).

## ASPECTS EMPHASISED IN THE STUDY

### Theme A - Representing the child and defending his or her interests

*An initial question is whether a child is obliged to give evidence or whether it is optional. In both cases, the child's lack of legal capacity means that the parents, the child's typical custodians, often play an important role. Even when mandatory, the summons and interviews often involve the parents. If giving evidence is optional, the consent of the parents in order to interview the child is often required. In cases of suspected child abuse or the child is a witness of domestic violence, the perpetrator can often be a person in the child's own family. In such cases, parents can lack motivation to collaborate with the police in the pre-trial investigation and thereby prevent the child from giving evidence.*

#### Legal representatives/guardians

42. In the majority of states in the Baltic Sea Region, witnesses are not obliged to give testimony when their close relatives are suspected of crimes. Since the perpetrator of a crime against a child or against a family member of the child is often suspected to be a close relative of the child, this can constitute an obstacle to the investigation, as the child's statement is often crucial. The child, however, can voluntarily give his or her testimony. The child's lack of legal capacity implies that he or she does not make the decision to testify, particularly in the case of younger children. Instead, the child's legal guardians, usually the child's parents, take that decision. The child's right to be heard and to give his or her testimony can therefore depend on the legal guardians "loyalty" to the best interest of the child in legal proceedings.

43. In most states, there is a system of representing the child when the parents' loyalty to the best interest of the child is questioned in a criminal proceeding. In **Iceland**, this seems to be the case only when a child is at risk and not a priority to safeguard the child's right to participate and be heard in criminal proceedings. In **Finland**, a legal representative can be appointed based on an assessment of whether the parent will safeguard the best interests of the child during the criminal investigation and whether there is a conflict of interest between the child's involvement in criminal proceedings and the interest of the parent. Similar criteria are applied in **Norway**. In **Latvia**, for example, this only applies to a serious crime and if one of the parent is suspected of the crime.

44. In **Norway**, when it comes to a child giving testimony in a criminal case, the parents' loyalty or capacity to guard the child's best interest is not assessed individually. Instead, giving evidence is mandatory for children under the age of 12 years, even if the suspect is a parent of the child.

45. In **Sweden**, a special legal representative for the child must be appointed if there is a reason to believe that an offence with imprisonment in the punishment scale has been committed against the child and his or her guardian is a suspect. This is also the case when it can be anticipated that a guardian, because of his or her relationship to the perpetrator (for example, as partner or other kinship), will not ensure the best interest of the child. If the police and prosecutors have an interest in initiating an investigation and interviewing the

**child without the guardians' knowledge, the court can order an interim special legal representative for the child without the consent of the guardians. The court can then wait four days before disclosing the decision to the guardians.** This means that the police and prosecutor have four days to plan, prepare and interview the child. This is usually done at an early stage in the criminal investigation. This only applies if the child is a victim and there are no corresponding arrangements when the child has witnessed a crime.

46. The appointed special legal representative for the child participates during the proceedings and has the responsibility of safeguarding the best interest of the child. Since he or she plays an important role in protecting the best interest of the child, a vital question becomes who should be appointed to this role. The answer varies among the states in the study. In **Latvia, the child's special legal representative can be a relative, a representative of an authority protecting the rights of children or a representative of a non-governmental organisation.** Several states describe that the level of knowledge and abilities of the special legal representative can be a problem. In **Sweden, the legal representative is a lawyer and also the child's legal counsel. Several Swedish evaluations show that one of the most important factors for a successful criminal investigation is the child's assistance by a legal adviser in the proceedings.**

#### Legal counsel

47. In most of the states observed, the victim of a crime has the right to legal counsel during criminal proceedings. This right requires certain conditions (for example, an appointment depending on the type and gravity of the crime) which vary from state to state.

48. The legal counsel is in principle a lawyer. Even though, none of the states have a system of specialised lawyers for children, several states have outlined that there are lawyers specialised in representing children.

#### Costs

49. In several states in the study, there appears to be a difference between the special legal representative and the child's legal counsel. The main rule is that the costs of the appointed legal representative are covered by the state and the cost of legal counsel depends on different circumstances, such as the financial situation of the child's family. In some states the aid remuneration is restricted, which can, as pointed out by **Estonia, lead to the limited contribution to the proceedings due to the restricted resources.** In **Iceland, however, the legal counsel of the child is always free of charge. In Norway, Sweden and Finland, the remuneration of the child's legal counsel and the child's appointed legal representative is covered by the state.**

#### Proceedings concerning parental disputes and child protection cases

50. Since a person becomes, in principle, legally competent when attaining the age of 18 years, the child is represented by his or her legal guardian in legal proceedings unless the law states otherwise. This is the main rule in civil and administrative proceedings.

51. In parental responsibility cases, the child is not a party to the proceedings. Even so, the child's view and opinion are of great importance in these proceedings to safeguard his or her best interest. **Norway has developed a system where the court may, in special circumstances, appoint a legal representative or legal counsel for the child.** This is the case where there is a risk that the child is being subjected to violence or abuse.

52. In child protection cases, most states outlined that a child under the age of 18 years can be a party and that a special legal representative can be appointed. In **Iceland**, for example, a child that has reached the age of 15 years can be a party to the proceedings and obtain a separate legal counsel. If a child is not a party to the proceedings, a special representative for the child is appointed. In **Norway**, a child older than 15 years of age is party to a child protection case. In special cases, a child under 15 years of age has rights as a party. In **Finland**, appointing a legal representative is mandatory in cases where there is cause to assume that the custodian is unable to supervise the child's interests, and it is necessary in order to investigate a case or otherwise to safeguard the interests of the child. The court may also appoint a legal advisor if the child or his or her legal representative requests or if the court otherwise considers it necessary. A similar system is in place in **Estonia**.

### Conclusions

53. The child's lack of legal capacity, and thus dependence on a legal guardian, can be a challenge and may create obstacles to the child's access to justice. The conflict of interests that can arise in a criminal case, where the suspect is the child's parent or someone in the child's family, has been addressed in several legal systems through appointing a special legal representative for the child. This legal representative has the responsibility to safeguard the child's best interest throughout the proceedings. One important task of the child's special legal representative and counsel is to provide the child with information in a child-friendly manner in order for him or her to make well-informed decisions.

54. Criteria for appointing a legal representative to the child differ among the states in the region. In **Iceland** and **Latvia** this appointment arises when the child is in need of protection or a serious crime is suspected/committed, whereas in **Finland**, the criterion is where the legal guardian, the parent, may not protect the best interest of the child. In **Sweden**, the requirement is imprisonment and the parent's loyalty towards the best interest of the child can be questioned. None of the states describe a corresponding arrangement where the child is a witness.

55. It is also unclear at what stage in the criminal proceedings the special legal representative is appointed. This variation is not only discriminating to the child, but it may also raise other issues. For instance, when a crime has been committed, the seriousness of the crime can initially be questioned and thus the child's need for protection is often unclear at an early stage of the investigation. Thus, when a crime against a child is suspected, there is often a need to interview the child without delay and without the consent of the parents. This is the case in order to both investigate the potential crime and to assess the child's need for protection.

56. **The Swedish system with a special legal representative allows the police to interview the child at an early stage in the criminal investigation without the consent, or even knowledge, of the parents. When the suspected perpetrator is someone within the child's family, this arrangement can be required in order to safeguard the child's access to justice. As mentioned, this special legal representative is also the child's legal counsel and is a key element for a successful criminal investigation. In order to safeguard the rule of law, the appointment of the special legal representative is made by the court. This system should, however, also apply to underage witnesses of domestic violence.**

57. **The legal representative for the child should be trained in and knowledgeable of children's rights and related issues. He or she should also receive on-going and in-depth training and be capable of communicating with children at their level of understanding.** Appointing a relative therefore is not ideal and may also be problematic since the latter in most cases does not have the knowledge required, and can furthermore be under pressure from other family members. This can affect the capacity of the legal representative to safeguard the child's best interest in criminal investigation and therefore jeopardise the child's access to justice.

58. Legal representatives and counsel are no less importance in parental disputes and child protection cases. On the contrary, in parental disputes, the parents' conflict can potentially affect the parents' ability to put the interest of the child above their own interests in the proceedings. **In Norway**, a legal representative and/or counsel can be appointed even if the child is not a party. In child protection cases where the parents' caring capacity is questioned, the conflict between the parents' interests and the child's interests in the proceedings is always present. In order to safeguard the child's right to access to justice and to the right to be heard, a special legal representative should be appointed at an early stage of the proceedings.

## **Theme B - The interview environment**

*Giving statements at trial can be stressful and intimidating, especially for children. Such often includes, for instance, confrontations with alleged perpetrators or members of the child's family. In order to protect children from further stress and victimisation, an interview can be conducted in a child-friendly environment. At the same time, evidence has to be given according to principles of evidentiary law and the right to a fair trial, including the right to cross-examination.*

### Arrangements when a child gives testimony

59. To ensure the parties' right to cross examination and the transparency of witness statements, one of the key principles of evidentiary law is that testimony must be given in court, during the main hearing and in the presence of the parties (i.e. prosecutor, defendant and his or her attorney). However, in the states of the Baltic Sea region, there are several exceptions to this rule when the witness is a child. In order to protect the child from further stress and intimidation, he or she can be heard outside the main hearing.



60. Criteria to when this exception from the main rule is applicable differ among the states. In **Lithuania**, there is a requirement that the witness must be in danger of suffering psychological trauma or exposed to grave risks due to the giving of evidence in court. In others, in **Latvia** for instance, if a psychologist considers the interview in the courtroom to be too stressful for the child, the interview may not take place. However, if the investigators or public prosecutors do not agree, the interrogation may take place in a court room but only following a court decision. In **Iceland**, the requirement is that the child must be under the age of 15 years and suspected of being a victim of sexual abuse or serious physical or psychological abuse. In some states, the main criterion is that the witness is a child under a certain age (12, 14, 15 years old, etc.). In **Estonia**, for example, the exception is applicable if the child is younger than 10 years of age and repeated interrogations may affect the child's mental or psychological well-being, or if the child is younger than 14 years of age and the interrogation is on domestic violence or sexual maltreatment. Similar criteria are applied in **Germany**. In **Norway**, **children who are victims or witnesses in criminal cases do not have to testify in court if they are younger than 16 years old. The decision as to when an exception applies lies either with the judge or the prosecutor.**

61. When an exception from the main rule of giving testimony in court applies, certain interests according to evidentiary law and the right to a fair trial must be safeguarded. One is the transparency of witness statements and another is the defendant's right to cross-examine a witness. The probative value of oral testimony is considered to be more difficult to assess when the court is not able to see the witness. Therefore the documentation of an interview held with a child outside the court, e.g. during the pre-trial investigation is of great importance. The defendant's right to cross-examine is a fundamental part of the rule of law and the right to a fair trial. Thus, if the witness does not appear in court, the defendant will not be able to cross-examine the child and the oral testimony can be considered inadmissible as evidence.

*Using the pre-trial interview with the child as evidence*

62. In order to protect the child from repeated interviews and from testifying in court, the interview of the child held during the pre-trial investigation may be used as evidence in the main hearing.

63. In most states, when a child's interview, held during the pre-trial investigation is used as evidence, the importance of transparency of witness statements is met by video documentation of the interview of the child. The video documentation is then used as evidence in the main hearing. Accordingly, the child does not need to be present at the main hearing. There are, however, exceptions. In **Latvia** and **Lithuania**, **written statements can be used, which can affect both the admissibility and the probative value of children's statements.**

64. Several states explicitly address the defendant's right to cross-examine the witness by requiring that he or she will be given the opportunity to question the child during the pre-trial investigation. This does not necessarily mean that questions from the defendant have to be addressed to the child; the emphasis is on the right and opportunity of the defendant to do so.

Nevertheless, if the defendant does not use this opportunity or has not been given the opportunity (e.g. this can occur if repeated interviews can harm the child) this can render the evidence inadmissible.

65. The defendant's right to cross-examination does not necessarily mean that he or she is allowed to participate in the interview with the child. In most states, the defendant's questions are put to the child by the person performing the interview.

66. As mentioned in paragraph 60, in **Iceland**, if the child is under 15 years of age, the interview will be conducted in a court session under the auspices of a judge. Thus, if an indictment is issued, the child does not need to give a statement again at trial. The interview takes place in a special interview room where only the interrogator is with the child but the interview is observed in a different room either through a one-way mirror or by closed circuit television. The arrangement as to where and who performs the interview is solely determined at the discretion of the judge. The latter can choose between facilities in the court house or in the Children's House. In 2013, judges decided to take children's statements in the Children's House in 77 percent of the suspected cases of sexual abuse, while in 23 percent of the cases, the interviews were carried out in court facilities.

#### Child-friendly arrangements

67. When the interview of the child is held during trial, several ways are described as to minimizing a potentially stressful experience and a secondary victimisation of the child. One is the exclusion of the defendant and the public from the courtroom during the witness examination. Another is conducting the interview in special facilities other than the courtroom.

68. In **Poland**, interviews of children are held in a "friendly room" outside the courtroom where the child does not see the defendant. Children's statements are recorded on video in order to be reproduced without the participation of the child during trial. The judge is responsible for the child's hearing, but it must be held with the participation of a psychologist. In **Latvia**, an interview with a child is conducted with the use of technical means so that the child does not see the person directing the proceedings or any other persons present at the trial. The child does not hear the questions asked by parties. The person conducting the interview submits the questions to a psychologist who formulates the questions to the child. In other states, the interview may be carried out in a way that the judge conducts it with a simultaneous video transmission.

69. In **Estonia**, cross-examination is not allowed during court proceedings when a child is below 14 years of age. Instead, the judge asks the child to tell the court everything he or she knows about the criminal matter. After the child has given testimony, he or she is questioned by the prosecutor and the defendant may address question through his or her attorney. Prosecutors and judges often use a visor to prevent possible eye-contact between parties. The court may terminate the parties' questioning and questions to the witness on its own initiative or based on written questions from either party to the proceedings. The arrangement when a child is heard in court in **Germany** is similar: the responsibility for the interview lies with the presiding judge. In order to protect the child, the other participants in the proceedings are

restricted in their (direct) right to examine the child witnesses. When a pre-trial interview is held with a child, the judge can prohibit the suspect or other participants of the trial from staying in the interview room. In such cases, a video recording must be done, and the suspect as well as other participants in the trial must be able to observe and hear the interview and submit questions to the child via the judge.

70. Several countries describe the child's right to a support person in order to facilitate giving evidence in court. Who this person is, varies. In **Estonia**, for example, a social worker from the child protection services, a teacher or psychologist can be present at the hearing. In **Lithuania**, a support person can be a psychologist, usually from an NGO, or a social worker from the child protection services. In the **Russian Federation**, the participation of a pedagogue or psychologist is obligatory.

71. The physical location of the interviews depends on whether they are held in the courtroom or outside of it, and whether they are held during the pre-trial investigation or at the main hearing. There are several examples of child-friendly arrangements, such as child-friendly rooms at courthouses and special interview rooms at police stations, furnished especially for children and facilitated with required video equipment.

72. As to what extent these child-friendly rooms exist and are used varies greatly. One reason for this is that the use of these arrangements is optional in most countries. In some countries, the use of special arrangements is linked to economic resources, and their existence and accessibility depend on the engagement of non-profit or non-governmental organisations. **Lithuania** is an example where some of the "child interview rooms" are located in non-governmental organisations. The use of such rooms is optional and due to lack of funds, these rooms are used quite rarely (earlier, when the "Children Support Centre" received financing from foreign funds, the interviews of children in these rooms were more common). The system in **Latvia** is of a similar character.

73. In **Iceland, Norway and Sweden**, most child interviews are carried out in Children's Houses financed by the state or local authorities. As mentioned above, a Children's House is a model for multi-professional co-operation in the interviewing and assistance of children who are victims of sexual and/or physical abuse. The idea is to enhance the co-operation of different authorities and to conduct interviews and examinations of the child under one roof. The interview is recorded on video, and transmitted to another room in the Children's House where e.g. the judge, defence attorney, police investigators, childcare worker, child's special legal representative and legal counsel can be present. During the interview, the police officer interviewing the child will take breaks and come into the other room to check if anyone has further questions that they wish to ask to the child. Special care is taken to ensure that the child does not have to meet the defence attorney.

74. In **Finland**, not every police station has facilities completely designed to be child-friendly but the main police stations are equipped with more comfortable furniture. There are, nevertheless, centres of expertise specialising in interviewing child victims of crime in the university hospitals of major cities. The facilities in these centres are child-friendly and experts with special training conduct the interviews. The National Institute of Health and Welfare is at present co-ordinating a pilot project to adopt the Children's House model in Finland.

### Proceedings concerning parental disputes and child protection cases

75. In most replies received to the questionnaire, no special child-friendly environment was described in proceedings on parental disputes and child protection cases. The environment is mainly the court house or the office of the child protection service. In **Estonia**, for example, a child younger than 10 years can be heard in court. The interview is conducted in a judge's room or in some other special room that is friendlier and which does not scare the child. The interview can also be conducted at the child's school, home, etc. The system in **Poland** is of a similar character.

76. Several states describe that the child's views may also be evident in reports, such as reports from the child welfare service, or reports from experts appointed by the board, the child welfare service, or private parties.

77. In **Finland**, the interview with a child in parental disputes is usually conducted by the social welfare authorities at the child's home or in the office of the social welfare worker. However, the court may decide to hear the child in person if there are good reasons for doing so and if the child does not object to it and it causes no harm to the child. If the child is heard before the court, special efforts are made to make the environment and atmosphere as cosy as possible. The interview can take place in a suitable room in the court house or in another suitable place outside the court house. Finland outlined that there have been problems with cross-examination when the child is heard outside the courtroom

78. In **Iceland**, the court may use its special facilities for taking statements from children in civil proceedings. However, young children rarely appear in courtrooms in civil proceedings whereas older children may give evidence in courtrooms under the main hearing of a case, depending on the nature of the case in question.

79. In child protection cases, it is explicitly stated that if the child is interviewed in the courtroom, only one or more members of the court are present and only if it is necessary to protect the child or to ascertain the child's independent views. The parties concerned must be reserved an opportunity to see, and to give an opinion on the case material of the hearing that is drawn up or recorded.

80. In child protection cases, when a suspicion of sexual abuse may be considered ambiguous or not strong enough to warrant a police investigation, the child protection authority uses the Children's House for taking statements from the child.

### Conclusions

81. To what extent children as victims or witnesses in criminal proceedings are interviewed outside the courtroom in child-friendly environments is not clear. **A number of children fall outside the scope of the law, depending on the criterion at hand and the assessment of the judge or prosecutor. Thus the same rights do not apply to all children.**

82. Furthermore, **several of the arrangements described to facilitate children being heard in court cannot be considered as child-friendly. Children obviously still experience meeting the defendant in a setting as stressful, as it can be even for an adult.** In this environment, the child is expected to describe potentially traumatic experiences and in some cases, be questioned by several persons until a judge decides otherwise.

83. Additionally, **the reason why children are obliged under certain conditions to give testimony in court is not clear.** Upon closer reflection and in light of the child-friendly models existing today, the importance of transparency and cross-examination does not carry the same weight.

84. The ambition to ensure transparent testimony, the right to a fair trial and cross-examination as well as the well-being of the child motivates a number of measures which may be taken when a child provides evidence in a case. At first sight, this seems to challenge fundamental principles of evidentiary law and the defendant's right to a fair trial, including the right to cross-examination. Upon closer scrutiny, this does not have to be the case. Arrangements such as child-friendly environments where the interview with the child can be conducted in the presence of the defendant's attorney without unduly upsetting the child. Forensic interview technics and video-documentation allows a child friendly approach that still safeguards principles of evidentiary law and the defendant's right to a fair trial.

85. **The child-friendly settings and interview arrangements in Children's Houses safeguard not only the best interests of the child and the child's right to a fair trial but also the importance of transparent testimony by video documentation, and the defendants right to cross-examination by the presence of the defence counsel and the right to address questions to the child through the person conducting the interview.**

86. The child's need for protection and feeling secure during the legal proceeding is no less importance than in parental disputes and child protection cases than in a criminal investigation. An interview with the child therefore should be conducted in a child-friendly setting in these proceedings as well. **The Icelandic model of the child protection services' explanatory interviews in the Children's Houses captures both the needs of transparency of a statement and the child's need.**

87. **In order to meet the rights of the child-and adapt legal proceedings to his or her needs, child-friendly environments are necessary. The latter should be funded by public authorities and should not depend upon non-governmental organisations or local dedication and commitment.**

## Theme C - Preparations and methods for interviewing children

*Children differ in age, maturity and levels of understanding. A child can also, for example, suffer from post-traumatic stress syndrome or have a neuropsychiatric diagnosis. This can affect both the need to adapt the proceedings to the needs of the individual child and the knowledge required in order to adequately understand and communicate with the child. Moreover, a number of studies show that interview methods influence witnesses and therewith the quality of statements. As the susceptibility of witnesses varies, in particular with children, the methodology and questions used for interviewing children are important in order to optimise the conditions for obtaining reliable statements.*

### Taking the child's capacity into account

88. States in the Baltic Sea region describe mainly similar characteristics concerning how the proceedings are adapted to the needs of the child: (i) the length of the interview (ii) the knowledge and training regarding interviewing methods (iii) as well as different aspects concerning the capacity and well-being of the child during the interview.

89. As described under theme B, in most states, the interviewing of the child during the pre-trial investigation is documented by video and is used at the main hearing instead of the child attending in person. Other arrangements provide child-friendly environments in the courthouse with the sole aim of protecting the child from the potentially stressful experience of giving testimony in court.

90. There are examples of restrictions concerning the length of the interview which vary widely between states in the study. There are examples where long interviews of a child are allowed. In **Latvia**, the maximum length of an interrogation of a child is six hours per day including breaks. In the **Russian Federation**, the recommendation depends on the age of the child. Concerning children under the age of 7 years, an interview cannot be longer than 30 minutes and in total not longer than one hour. If a child is between the ages of 7 to 14 years, the interview cannot be longer than one hour and in total not longer than two hours. If a young victim or witness is over the age of 14 years, the interview cannot be longer than two hours and in total, not longer than four hours per day.

91. Few states specifically address how the individual competence, maturity and needs of children are handled. Some states however indicate that this is included in the training of judges, prosecutors and police officers. The content and extent of the training is difficult to assess based on the answers to the questionnaire. **Sweden describes that aspects such as the child's age, maturity and level of understanding, post-traumatic stress syndrome, neuropsychiatric diagnosis etc. are carefully included in the special education for child interrogators.** In **Iceland, specialists in the Children's Houses receive specific training regarding the need to take into consideration the different aspects of a child's capacity, such as his or her age, maturity, and different psychological or psychiatric aspects.** This is the case, for example, when determining the wording of a question or regarding which kind of questions

a particular child can be expected to be able to answer. **In Norway, training include how children communicate, how they evolve, the consequences of violence and sexual abuse, behaviour, etc. They also learn about the relevant legal framework, and how to prepare for and conduct a child interview.**

#### Who conducts the interview?

92. In most states, the judge conducts the interview with the child when the child is heard in the court. Interviews with children during pre-trial investigations are, in most countries, conducted by police officers. However, in several states, other professional such as psychiatrists, psychologists, social workers or educationalists assist in interviewing the child. In the **Russian Federation, for instance, depending on the child's age, the participation of an educationalist and psychologist in the course of the investigation can be obligatory.**

93. How the participation or assistance is conducted varies between countries but also within the states. A professional outside the judicial system can perform the interview and ask the child questions, an expert can also participate by assessing a child's capacity or mental state.

94. Whether an expert is used during the interview may depend in some states on the child's age, the crime at hand or the potential effect on the child's mental health. In most countries, the person responsible for the interview (judge or prosecutor) assesses the need for assistance. In other countries, **Estonia for example, if the questioning police officer has not received appropriate training, there is a need to involve a child protection worker, an educationalist or a psychologist. In Iceland, specialists (most often psychologists) trained in forensic interviewing conduct most of the interviews in sexual abuse case.**

95. To what extent experts are used varies in countries in the region and in the vast majority, interrogators during the pre-trial investigations are police officers. **The investigators in Sweden and Norway are mostly police officers specially-trained in interviewing children.** In **Finland**, the police mainly conduct children's interviews. However, in larger police departments, police officers specialised in investigating crimes against children conduct the interview. The head of the investigation may decide that the interview should be conducted by another person, such as a healthcare professional. Furthermore, there are centres of expertise specialising in interviewing children victims of crime in university hospitals of the major cities in **Finland**.

#### Interview methods

96. Few states outlined a single method for interviewing children. Requirements concerning children's interviews in most countries concern the organisation of the interviews rather than how the child is actually questioned. However, states with specific, recommended, interviewing methods use similar techniques. **In Finland, the NICHD Protocol (International Evidence-Based Investigative Interviewing of Children) is used. This is also used in Sweden, along with the so called PEACE<sup>21</sup> method of interviewing. In Norway, KREATIV is**

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<sup>21</sup> Planning and preparation, Engage and explain, Account, Clarification and challenge, closure and Evaluation.

recommended as the interviewing method.<sup>22</sup> In Iceland, specialists in Children Houses and most police officers interviewing children are trained in forensic interviewing according to evidence-based protocols. These interviewing methods are all very similar, especially the technique of questioning and communicating with children. **All methods emphasise on the one hand the importance of children feeling safe and secure during interviews in order to optimise the child's ability to give a statement and, on the other hand, a broad use of open questions in order to safeguard a child's statement from external influences and thus protect the probative value of statements.**

#### Communication and interview training

97. Several countries outlined special training for prosecutors, judges and police officers. **Germany, Estonia and Latvia**, for instance, have mandatory training for prosecutors. However, training described in the study is otherwise optional for most other professionals and depends on the interest and workload of the individual. Most of the training seems to mainly cover general knowledge of children such as understanding children's psychology, needs and behaviour. **Some of the training includes communication with children and emphasises the importance of lenience in order to avoid harming a child.** Nevertheless, **Sweden, Iceland, Finland and Norway describe more substantial training on special methods of interviewing children, as well as children's development and different neuropsychiatric diagnoses. The training is organised and funded by the State in most countries.**

98. **Even if training is optional in most cases, e.g. Sweden, Norway and Iceland strongly recommend that every child-investigator should undertake special training.**

99. Nonetheless, some countries do not have any requirements regarding the training of professionals for interviewing children, or any criteria for selecting specialists to interview children, or training programmes for specialists.

#### Interdisciplinary work gathering evidence

100. Several countries in the region describe some sort of interdisciplinary work concerning the gathering of evidence from a child. In numerous countries, this concerns whether a child has the capacity to give a statement and whether he or she has the capacity to give testimony in a courtroom. In both cases, the interdisciplinary work focuses on children's well-being or capacity as a witness rather than techniques on obtaining or evaluating children's statements.

101. In some countries, the person responsible for the interview, in most cases the prosecutor or judge, decides whether there is a need for a psychologist when interviewing the child. This concern, in the majority of cases, when a child is to be heard in the courtroom. **In Poland, interviews conducted by judges in the courtroom are always done with the participation of a psychologist.** In **Lithuania**, it is generally accepted that the help of psychologists when interviewing children, is of major importance when seeking to reduce

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<sup>22</sup> *Kommunikasjon* (Communication), *Rettsikkerhet* (The rule of law), *Etikk og Empati* (Ethics and Empathy), *Aktiv bevisstgjøring* (Actively securing proof), *Tillit* (Trust), *Vitenskapelig forankring* (Scientifically based).



stress and other negative impacts on children. However, currently, due to a lack of special financing only two psychologists work in the Lithuanian courts.

102. A challenge outlined by Lithuania is that there is no unique system to help children when giving evidence. Different persons interview children (judges, psychologists, pre-trial officials) and different methodologies are used for interviewing children, therefore the probative value of the child's answers can differ.

#### Proceedings concerning parental disputes and child protection cases

103. In most countries, the interview with a child in parental disputes and child protection cases is either conducted by the judge – in some cases with the assistance of an expert, such as a psychologist – or a social worker. In **Norway**, if a legal representative is appointed for the child to express the child's views, he or she will talk to the child outside the courtroom (prior to the hearing).

104. None of the countries describe a single method of interviewing children in proceedings concerning parental disputes and child protection cases. Several countries describe similar training to that provided for criminal proceedings (e.g. general aspects of children's needs and development).

105. Both **Iceland** and **Norway**, however, **mention that the children's right to participation and expressing their views has been strengthened in the law and that children's views are of great importance in proceedings on parental disputes and child protection cases.** In **Norway**, **for example, the government has been working to strengthen the competence to talk with children in order to ensure their right to participation.**

106. In **Norway**, The Ministry of Children, Equality and Social Inclusion has published special guidelines on "conversations" with children for the child welfare services. **The Directorate of Children, Youth and Family Affairs is developing tools and systems for the child welfare services to be used when talking with children.**

107. In **Iceland**, in cases where a child has disclosed sexual abuse or sexual exploitation, the child protection services refer the case to the Children's House. In these cases, the child is interviewed by a trained expert using the same interviewing techniques as used in criminal proceedings.

#### Conclusions

108. All the countries in the study describe aspects of the proceedings adapted to the needs of the child and how his or her capacity is taken into account in the reception, preparation and interviewing in criminal proceedings. There is a broad spectrum of awareness of the complexity of children witnesses in criminal proceedings reflected in the legislation and practices. The child-friendly approach varies. **Some countries have developed systems highlighting a balance of the rule of law and the right to a fair trial on the one hand, and the child's right to access to justice and right to be heard on the other.** Other countries do not indicate the same level of ambition.

109. **An interview lasting for hours is not only incompatible with the well-being of a child and a child-friendly justice system, but it can also be questioned from investigative and evidentiary perspectives as repeated questioning during a long period of time can make a child feel pressured to give certain answers or withdraw earlier statements.** Either way, this does not optimise the conditions needed for children to give trustworthy statements. **The length of interviews must be adapted to a child's capacity and well-being in order to obtain statements of a high probative value.**

110. The focus on training in communicating and interviewing varies among the states. Since interviewing children is a challenging task, demanding a high level of expertise, adequate methods and training are crucial.

111. Only **Sweden, Norway, Iceland and Finland describe substantial training containing interview methods, children's development, different aspects of a child's capacity, age and maturity, as well as different psychological or psychiatric aspects such as post-traumatic stress syndrome and neuropsychiatric diagnosis.**

112. Interviewing techniques can be described as a perishable commodity and therefore a technique that practitioners need to support in order to maintain competence. In practice, practitioners need more than only adequate training and practice. They also need to perform a certain number of interviews on a regular basis in order to maintain their knowledge and skills.

113. A challenge described in **Lithuania** is linked to the question of the skills required when gathering evidence from a child. When the expertise is not subject to a system, method or training requirement, there is a risk that the professionals will not gain and maintain the skills required. The same problem is indicated by other states. Therefore a system where the child's interview is performed by different professionals (e.g. police officer, pre-trial investigator, judge, etc.) will not result in a professionally well-trained interrogator. Since the interviews are crucial for the probative value of children's statements, this not only means unpredictability for a child's access to justice, but is also a breach of the right to non-discrimination.

114. **Most of the challenges described when interviewing children in criminal proceedings are applicable to parental disputes and child protection cases. The need for specific methods of interviewing children and training is evident.** Even if the questions at hand are different, **the statement of the child is of crucial importance.** Therefore it is essential that the person conducting the interview receive appropriate training.

## Theme D - The timing and number of interviews

*That evidence to be provided by a child is obtained as soon as possible can be important, particularly in cases of alleged mistreatment or crimes against a child. As a child may need time to build confidence and/or trust, more than one interview may be necessary. New information and the right to cross-examination can also motivate repeated interviews. At the same time, from a child's perspective, repeated interviews over a long period of time can be perceived as doubting the child and lead to a withdrawal of a disclosure.*

115. The Importance of the timing of the interview with the child differs among the states is crucial. Only a few answers to the questionnaire reflect the importance of interviewing the child without delay in a criminal investigation as well as the importance of co-ordinating investigations in order to assess the child's need of protection.

116. **The Swedish Prosecution Authority and the Swedish National Police Board both recommend that the first interview should be conducted within 14 days after the crime has been reported to the police.**

117. **Norway points out that it is crucial that the interview be conducted as soon as possible and by professionals trained to put open (and not leading) questions to the child.** One explanation given is to safeguard at an early stage the child's story if e.g. the suspect accuses an ex-partner of having convinced the child to tell a lie about violence or sexual abuse. **Sweden points out the importance of conducting the interview as soon as possible since children have a different sense of time than adults and to avoid that the child's statement be affected by others: It will not suffice unfortunately, no matter how skilful interrogators are, if the child's capacity to provide correct and clear information has been "initially damaged" by other persons.** This can occur, for example, where other professionals working with a child, such as teachers, social workers etc., unknowingly ask leading questions before the police can interview the child.

118. **Norway** relates that it can take a long time unfortunately before the police's interview with the child is carried out, and is currently considering how to approach this issue. **An interview with the child at an early stage in the criminal investigation can also affect the child protection services' possibility to assess the child's need of protection.**

119. All states in the study seek to have children interviewed as few times as possible. In some states, the requirement is that a child be heard only once. **Sweden**, however, **points out the importance of adjusting the number of interviews to the needs of the specific child and the circumstances of the case at hand.** No obvious problems are noted with repeated interviews **as long as they are conducted in a proper manner.** In many cases, it is even desirable to give a child more time to remember and enabling the child "to dare to tell", which in certain cases, only occurs with repeated interviews.

120. Most countries emphasise the importance of only a few interviews conducted with a child. Nonetheless, no countries have regulations prohibiting repeated interviews. In **Latvia**, criminal law proceedings states there should be as few interviews as possible and no repeated

interviews at all if possible. In several states, the restriction of the number of interviews, and in particular to only one interview, is motivated by a concern that children may subsequently change their statements later.

121. In **Iceland** emphasis is placed on one interview with the child to save the child from re-victimisation by multiple interviews in many locations by different professionals. Thus the child victim of sexual abuse generally is only interviewed once in a child-friendly facility by a professional interviewer according to an evidence based protocol.

122. **In Finland, the National Police Board has issued instructions to the police on child victims and witnesses in pre-trial investigations. According to these instructions, it may be necessary to arrange more than one interview with a child. If the child is frightened or shy, it may be necessary to use the first interview to get acquainted with the child. Young children especially, may be able to produce further details if more than one interview is arranged.**

123. In several answers the importance of the defendants right to a fair trial is pointed out and according to this that the defendant or defence counsel is given the opportunity via the interrogator to question the child. This means that a second interview with a child may be necessary.

#### *Proceedings concerning parental disputes and child protection cases*

124. It is clear that civil and administrative proceedings are not as detail-controlled as criminal proceedings. Few states address the question of the number and timing of the child-interviews in these proceedings. **Latvia, Finland and Lithuania** outline that there is no specific regulation on these matters.

125. **Finland**, for example, states that there is no special regulation on the number and timing of the interviews in parental disputes. The social welfare authority usually meets with the child more than once. The child is heard in court in person only if there are important reasons for doing so. In this case, only one interview is organised. In child protection cases the social worker usually meets with the child more than once. In these cases, the child is not giving a testimony, but is expressing his or hers opinion and feelings in general.

126. In **Estonia**, the main rule in civil proceedings is that a court may hear a witness repeatedly in the same court session and confront witnesses if their testimony is contradictory. If the witness is a child, however, repeated interviews only occur in exceptional cases. **One problem with repeated interviews, as pointed out, is the suggestibility of the child. For example, the opinions that lawyers and social workers/child protection officers give to the court, can differ a lot due to the fact that children give different answers to respective questions.**

127. When it comes to the number of interviews, **Iceland emphasises the right of the child to participate in civil and administrative proceedings and this may require more than one interview with the same or different people** (e.g. judge, special assessor, child specialist, mediator, social worker, legal counsel or legal representative). Regarding the timing of interviews, **Icelandic law places a general emphasis on speedy proceedings in child protection cases. Furthermore, in order to safeguard a child's statement relating to abuse or mistreatment, the child protection services, in certain instances, can interview a child without the knowledge or consent of the parents.**

128. As mentioned previously under theme C, **the Icelandic child protection services can refer a suspected case of sexual abuse for the purpose of clarification to the Children's House before deciding if there is cause for a criminal investigation. A trained interviewer using the same method as in criminal proceedings conducts the exploratory interviews in these cases.**

### Conclusion

129. In order to safeguard the probative value of children's statements in criminal investigations and optimise assessments by child protection services of a child's need for protection, **interviews of children should be conducted without delay. The probative value and admissibility of evidence must be safeguarded by proper interview methods and documentation.** Furthermore the defendant's right to cross-examine the witness must be met as early as possible in the investigation.

130. All states in the study have restrictions regarding the number of interviews of children. **Sweden notes, however, the importance of adjusting the number of interviews to the needs of the individual child and the circumstances in the case at hand. Repeated interviews are not problematic as long as the interviews are conducted in a proper manner, safeguarding the defendant's right to a fair trial and the transparency of the interview.**

131. Even if the number of interviews is very limited and their length adapted to the child's age and capacity, the situation and the number of interviews must be adjusted to the individual child and to circumstances in the case at hand. **The child must be given time to build up trust and even the courage to give his or her statement. Sometimes this includes being interviewed several times. In these cases it is of the utmost importance that the interviews be conducted in a proper manner.**

132. In order to meet the defendant's right to cross-examine a child and pose questions via an interrogator, a second interview in most cases is necessary. **When repeated interviews are conducted they preferably should be carried out by the same person.**

133. In cases where abuse and/or violence are suspected, an interview at an early stage in the investigation is of great importance. **The model described by Iceland, where the child protection service can refer a case to Children's Houses in order to interview the child, optimises not only the child protection services' fulfilment of the child's need for protection, but also the probative value of the child's statement.**

## Theme E - The probative value of children's statements

*The probative value of evidence, regardless of whether proffered by children, is important and often safeguarded by evidentiary principles. The treatment of a child's statement, according to the child's vulnerability and need for protection, can at times conflict with such principles, and therefore can affect the probative value of such statements. One example is the absence of a requirement for a witness oath and another is the admission of a statement not given at trial. A child's statement, in certain cases, can also be presumed invalid or untrustworthy by reason only of a child's age. Various approaches to these dilemmas have been taken in different legal systems.*

134. The principle of the free assessment of evidence applies in all states in the study. This principle means that evidence is not given a definite probative value. Instead an overall assessment of the evidence is conducted. However, the probative value and the admissibility of evidence are safeguarded by the evidentiary principles and the right to a fair trial. The ambition to adapt the proceedings to the child's vulnerability and need for protection from secondary victimisation can, at times, conflict with such principles.

135. One challenge with children witnesses and victims is balancing the child's ability to give a statement on the one hand and the importance of a statement of high probative value in order to prosecute a crime on the other hand. The child's capacity to give evidence is not only a question of age and maturity; it is also a question of the child's sensitivity to the surrounding environment (e.g. suggestibility, loyalty, dependence and fear). Moreover, the importance of children feeling safe and having confidence in the interviewers in order to talk about potential traumatic experiences are of greater importance. These factors complicate the quality of the child's right to access to justice. Measures taken to protect children from a secondary victimisation and optimise the conditions for children to feel safe can conflict with such principles and therefore can influence the probative value of children's statements.

136. As described above, most countries have systems where children's statements are handled in ways implying a breach against fundamental principles of the rule of law and evidentiary rules, such as not summoning children to the main hearing and modified cross-examinations. Even if the general and underlying dilemma is the same in all countries, the problem is not always articulated or even noted in the legislation or practices described.

137. In **Sweden, Norway, Finland and Iceland**, however, this dilemma is indicated as the reason for advanced forensic interview techniques in order to obtain a free narrative from the child, the importance of video-documentation of interviews and the defendant's right to address questions to the child during the pre-trial investigation.

138. **In Iceland, for instance, the introduction of the approach mentioned above in the Children's Houses, has greatly improved the probative value of children's statement in criminal proceedings in cases of abuse.**

139. Norway and Sweden outlined the effect on the probative value of children's statements where many individuals have talked to the child before the forensic interview is conducted. The court may assume that the younger a child is, the more vulnerable he or she is to having memories influenced by talking to too many people. **Much may be resolved if the interviews are taken close to the time of the child's disclosure.**

140. As mentioned under theme B, several states explicitly address the defendant's right to cross-examine the witness by requiring that he or she be given the opportunity to address questions to the child in the pre-trial investigation in order for the evidence to be admissible.

141. Nevertheless, **Sweden** points out one aggravating circumstance that can occur when children's statements from the police investigations are used as evidence in court. As the child is not present in the courtroom and therefore cannot answer any questions, the defendant can maintain advantageously that a child's statement is dubious. Therefore **Sweden also points out that the investigator needs, at an early stage, to reason in the perspective of alternative explanatory hypotheses; hence revealed alternative explanations from the suspect need to be explored and clarified during the interview of the child.**

142. Furthermore, **Sweden emphasises the importance to use special expertise in child psychology.** Taking into consideration the child's development and possible disabilities, an expert can provide important knowledge in order to better understand and assess children's statements. Therefore **it is always recommended to give consideration to requesting such expertise in these investigations.** The prosecutor has the right to request special experts to assist the court. **There are reasons to use such experts more frequently, especially in cases where a child suffers from mental disabilities or a disability affecting a child's ability to provide detailed information, or where the child is very young.**

#### *Parental disputes and child protection proceedings*

143. In comparison to criminal cases, the probative value of the child's statement differs when it comes to cases regarding parental disputes and/or child protection cases. The emphasis is clearly on the child's view and opinion in these proceedings, whereas the focus in criminal proceedings is giving evidence concerning the facts in the case.

144. **Finland** points out that even if the child's wishes and views must be taken into account in practice, young children are seldom heard in administrative courts and even when they are, their views are rarely taken into account in the decisions. **Recently, however, more attention has been paid in general to child-friendly justice and children in court and there has also been some training on these matters.**

145. In **Norway**, children's right to participation has been recently strengthened. The provision regarding the child's right to be heard has been made more explicit.

146. **Iceland** also states that in recent years, a greater emphasis has been placed on the views of the child. **Iceland also points out that the strong reliance on special assessors and child specialists interviewing children in cases concerning parental disputes and child protection has enhanced the probative value of evidence given by children.**

## Conclusions

147. Principles of evidentiary law can at times conflict with the ambition to adapt proceedings to a child's vulnerability and need for protection from secondary victimisation. Several approaches to this dilemma are described by the states in the study. One approach is to interview children outside of the main hearing and modify the cross-examination so that the questions to the child are posed via an interviewer. **In order to ensure legal certainty, the interview, for example, can be held under the authority of a judge and documented on videotape.**

148. The high standard and burden of proof in criminal cases require statements of a high probative value. In order to meet the child's right to be heard and access to justice, interviews with children must be safeguarded by principles of evidentiary law and the accused's right to a fair trial. **In this respect, interviews of children should always be carried out by professionals trained in methods of interviewing children, taking into account different stages of a child's development and communications skills.**

149. Since children's mentalities are evaluated in accordance to the principle of the free assessment of evidence, a child's testimony should be evaluated in the light of the child's age and maturity and other relevant circumstances in the case. These circumstances can include post-traumatic stress reactions, neuropsychiatric diagnoses, etc., which can affect a child's reactions and communications skills. Therefore, the evaluation of a child's statement must include necessary knowledge concerning these matters. Special expertise in child psychology should be used. Experts can provide important knowledge in order to be able to better understand and assess children's statements taking into consideration a child's development and possible disabilities.

150. **In Sweden, interrogators and investigators are encouraged to reason at an early stage from the perspectives of alternative explanatory hypotheses; hence revealed alternative explanations need to be explored and/or clarified during children's interviews.** This approach also strengthens the probative value of children's statement when questioned by the accused.

151. The question of the probative value of a child's statement varies when it comes to parental disputes and child protection cases, as the emphasis in these cases is often on the child's opinion and view. This is quite natural as the child's opinion is of great importance in cases concerning the child's personal situation. However, this does not mean that the child's statement is of less importance when it comes to investigating the facts in order to assess the child's need of protection. Since decision taken in parental disputes and child protection cases are binding, aspects of the probative value must be taken into consideration when interviewing children. Therefore, interview methods and documentation are not of less importance than in criminal proceedings in these types of cases.



## Theme F - Parallel civil and administrative proceedings

*A child's statement can be of importance in more than one legal proceeding. For example, a child's testimony in a criminal case can be of importance in a child protection case or custody dispute. Measures can be taken in order to ensure access to children's statements in parallel proceedings. A joint agency investigative interview of a child is such an example. This approach spares children from having to tell their story repeatedly to different professionals. It also helps to prevent a decrease in the probative value of a child's statement.*

152. The child's statement is often crucial in order to assess a child's need for protection when abuse or mistreatment is suspected. If the child has given evidence in a criminal investigation, this information can be of importance as evidence in a child protection case and even in a custody case.

153. Most states only address this issue at a superficial level in their answers to the questionnaire. In **Latvia** and **Lithuania**, for example, using statements from criminal proceedings is not possible in parallel civil and administrative proceedings. In **Poland, on the other hand, the testimony of a child in a criminal case may be used in other proceedings. For example, files from a criminal case can be communicated to the family court. In Estonia, a recording that is stored in the court information system is available to other judges and court staff using the court information system.**

154. Ways to address this issue have been developed in **Sweden** and **Iceland** using the Children's House-model. **One of the core functions of the Children's House is to facilitate joint agency investigative interviewing, where a child's statement can be used both in the criminal proceedings and by the child protection services.** The Children's House brings together the social services, police, prosecutors, forensic medical experts, as well as paediatric medical and psychiatry services. These professions work together, primarily in the initial stages of the preliminary police investigation and the investigation by the child protection services. When the child is interviewed at a Children's House, professionals who need to hear the child's story can follow the interview by video link in an adjacent room. This means that children's statements are available for both criminal investigation and child protection services. **The arrangement has to be conducted according to confidentiality aspects.** The aims are to coordinate the investigations and without delay and, at the same time, safeguard the child's statement according to the defendant's right to a fair trial. Thus, the emphasis is placed on deciding at the earliest opportunity whether there will be a police investigation and securing a forensic interview.

155. If representatives of the child protection services observe the interview by video, issues can arise due to the confidentiality of the preliminary criminal investigation. **Since it is often in the child's best interest that investigations are co-ordinated, the child protection services should normally be able to attend and observe the interview.** Dialogues should be held with social services about how detailed the notes need to be and how the information is managed with due regard to confidentiality aspects of the preliminary criminal investigation.

156. On one hand, it is crucial that prosecutors are very clear, for example, with child protection services that they agree on what should be documented and how it should be used so as not to jeopardise the confidentiality of the preliminary criminal investigation, which could potentially be disadvantageous to the child. On the other hand, the child's need of protection, which is handled by the child protection services, also must be addressed.

157. In **Norway**, national authorities are currently considering this matter. **A solution may be to conduct child interviews quickly, and to allow a child welfare worker to be present and ask questions during the interview. Alternatively, the child welfare authorities may be given a copy of the interview.**

158. In **Finland**, the National Institute of Health and Welfare is co-ordinating a pilot project to adopt the Children's House-model. The idea is to enhance the co-operation of different authorities (police, prosecutors, health sector and social sector) and to conduct interviews and examinations of child victims under one roof. This will aid in avoiding repeated questioning of children and improve the flow of information between different authorities.

### Conclusions

159. Since children who are victims and witnesses of crime are often in need of protection and rehabilitating treatment, the criminal investigation can be of great importance in a parallel child protection case. In order to safeguard the child's right to access to justice in criminal cases as well as the right to protection from further abuse, interviews with children are often of crucial importance in both investigations.

160. As mentioned under theme D, repeated interviews in different investigations can lead to children's statements being questioned from an evidentiary perspective. Therefore, **co-ordination of the child protection investigation and the criminal investigation not only reduces the burden of repeated interviews at different settings with different professionals, it also safeguards the probative value of children's statements.**

161. In order to uphold the demand for transparency and the right to a fair trial in criminal cases, the interview must be properly documented and the defendant must be given the opportunity to address questions to the child. If this is done in collaboration with the child protection services, both authorities can fulfil their responsibilities of investigating the crime and giving the child the protection and treatment needed. In this perspective, the joint agency investigative interview of a child according to the Children's House-model optimises a child's right to access to justice as well as protection from the burden of parallel investigations.

## SUMMARY AND CONCLUSIONS

### Criminal proceedings

162. The answers to the questionnaire from the states in the Baltic Sea region demonstrate a broad scope of awareness as to the complexity of the position of children who are victims or witnesses in criminal proceedings. The underlying dilemma is the same; balancing the best interests of the child on the one hand and the principles of evidentiary law and a fair trial on the other. The ways to address this underlying conflict however varies among the states.

163. There is a consensus concerning children's vulnerability and need of protection from involvement in criminal proceedings, such as the burden of giving testimony, repeated interviews, being summoned to court, etc. When it comes to a child's access to justice and the approaches on how it is carried out, the approaches differ. A number of states emphasise the child's need for protection in criminal proceedings without describing arrangements that are truly adapted to the needs of the child. A focus on the burden of a child being involved in criminal proceedings and the defendant's right to a fair trial can lead to a system where the child does not receive access to justice. **Instead the state needs to balance these interests of the rule of law and the defendant's right to a fair trial on the one hand and the child's right to access to justice on the other.**

164. Not only access to justice and the right to be heard are fundamental human rights of children, identifying, investigating and prosecuting crimes are also of great importance in order to protect children from violence and abuse. Thus, protection from being involved in legal proceedings can be a misplaced and short-term ambition to protect children. In order to fully meet the fundamental human rights of children, legal system need to be adapted to the best interest of the child.

165. Gathering evidence from a child is a core task in criminal investigations and therefore crucial for a child's access to justice. However, there are some basic criteria that need to be met in order to realise the right of child victims or witnesses and a system of child-friendly justice as listed below.

#### Appointing special legal representatives and counsel early in the investigation

166. When children are witness or victim of a crime, their lack of legal capacity and dependence on their parents, as legal guardians, can be an obstacle to their right to access to justice. Therefore, appointing a special legal representative for the child, who has the responsibility to safeguard the child's best interest throughout the criminal proceedings, can be crucial for a child's right to access to justice.

167. **This special legal representative needs to be appointed at an early stage in the criminal investigations when a crime against a child is suspected or the child has been a witness of domestic violence.** In order to investigate the potential crime and the parents' motivation and capacity to safeguard the best interests of the child, as well as to assess the child's need for protection, **there is often a need to interview the child without delay and**

**without the knowledge or consent of the parents. In order to realize such an arrangement according to the rule of law the legal representative should be appointed by the court.**

168. Furthermore, the special legal representative should also be the child's legal counsel. Hence, **the legal representative and counsel should be a lawyer trained in and knowledgeable of children's rights and related issues, as well as having received on going and in-depth training and be capable of communicating with children at their level of understanding.**

169. The special legal representative and counsel for the child should be **free of cost and funded by the public authorities.**

#### Interviews in child-friendly environments

170. Cases involving children should be dealt with in non-intimidating and child-sensitive settings. Adapting legal proceedings to the needs and rights of children requires child-friendly environments. **Several of the arrangements described by the states in the study to facilitate children being heard in the courtroom cannot be considered as child-friendly. There are today techniques where interviews can be video-documented and the defendant present, addressing questions without facing the child.** These are arrangements where evidence can be obtained from a child in a child-friendly manner at the same time as offering transparency and the right to cross-examination.

171. **The child-friendly settings and interview arrangements in Children's Houses can be seen as a good compromise between the best interests of the child and the right to a fair trial. The documentation of the interview safeguards, the importance of transparent testimony, and the presence of the defence counsel and the right to address questions to the child, safeguards the right to a fair trial and the right to cross-examination**

172. To fully meet the rights of all children who are victims or witnesses of crimes and to adapt legal proceedings to their needs, **child-friendly settings and interview arrangements need to be state-funded and not dependent on non-governmental organisations or local dedication and commitment.**

#### Expertise and training in interview methods for children

173. All countries in the study describe aspects concerning how proceedings are adapted to children's needs and how the child's capacity is taken into account in the reception, preparation and interviewing in criminal proceedings. The answers, however, do not indicate the same levels of ambition or child-friendly justice.

174. An interview lasting for hours is incompatible with the well-being of children and a friendly-justice system. **The length of the interview must be adapted to a child's capacity and well-being in order to obtain statements of a high probative value, and therefore safeguard the child's right to access to justice and to be heard.**

175. Since interviewing children require a high level of expertise, adequate methods and training are crucial. **In practice, practitioners, not only need training, but also need to perform a certain number of interviews on a regular basis in order to maintain their expertise.** A system where children's interviews are performed by different professionals will have difficulties in maintaining a profession corps of well-trained interrogators. This does not only mean unpredictability for the child in question but is also a breach of the child's non-discrimination right, since the quality of the interview affects the probative value and therefore the child's right to access to justice.

176. Interrogators need to be exposed to appropriate training and interviewing methods. **Training must be broad and in-depth in interviewing methods and children's development, as well as in different aspects of a child's capacity, age and maturity, and different psychological or psychiatric aspects such as post-traumatic stress syndrome and neuropsychiatric diagnoses.** Furthermore, **training must be mandatory, state-funded, and required for all professionals investigating crimes against children and conducting interviews of children.**

*Safeguarding interviews according to children's needs, evidentiary rules and the right to a fair trial*

177. **Interviews of children should be conducted without delay in criminal investigations.** This is of great importance in order to safeguard the probative value of children's statements in criminal investigations and, at the same time, optimise the assessment of the children's need of protection.

178. **Even if the number of interviews should be as limited as possible and their length adapted to the child's age and attention span, the situation must be adjusted to the individual child and the circumstances in the case at hand.** For example, if the defendant gives an alternative explanation to the child's narrative, the main rule should be to interview the child a second (or third) time in order to investigate this alternative hypothesis. Therefore the child must be given the opportunity and right to be interviewed several times. **When more than one interview is necessary, they preferably should be carried out by the same person.**

179. **In order to meet the defendant's right to cross-examination, a second interview with a child should always be planned.** This will optimise the conditions for an indictment and the probative value and admissibility of the child's statements.

*Modern techniques, arrangements and knowledge-based assessments of the probative value of children's statements*

180. **Modern techniques and arrangements exist to meet the principles of evidentiary rules in a child-friendly setting and in-which the defendant's right to a fair trial is safeguarded, such systems must be made available to every child victim and witness.**

181. In order to fully protect the probative value of the child's statements and meet the child's right to be heard and to access to justice, professionals conducting interviews must be highly competent and trained in methods of interviewing children. According to the principles of evidentiary rules and the high demand of transparency, interviews must be video-documented.

182. **A child is never to be exposed to a cross-examination by the defendant or defence counsel. The right to cross-examination can fully be met through questions posed via interrogators in a child-friendly manner.** Furthermore, if the defendant has not used opportunities to address questions to the child, or if such an opportunity has not been given, e.g. because of reasons such as the child's health and well-being, this should not automatically render the evidence inadmissible. Instead, statements can be assessed according to the principle of the free evaluation of evidence and remaining circumstances not investigated in the interview will affect the probative value of statements.

183. Highly-skilled interrogators, arrangements to safeguard the probative value of children's statements and the defendant's right to a fair trial will, however, never be sufficient unless the judges assessing the probative value of children's statements also possess the required knowledge and training concerning children's development, possible disabilities and reactions as victims or witnesses of crimes. **A knowledge-based evaluation demands training throughout the entire legal chain.**

#### Parallel civil and administrative proceedings

184. In order to protect children from violence, abuse and mistreatment, **a joint agency approach is of great importance.** Children's statements from police investigations – obtained as close as possible to the time of the disclosure – can be of crucial importance in the assessments by child protection services of the needs of the child. In order to safeguard the child's right to access to justice in criminal cases as well as the right to protection from further abuse, interviews of children are often of crucial importance in both investigations.

185. Therefore, the co-ordination of child protection investigations and criminal investigations not only reduces the burden of repeated interview at different settings with different professionals, it also safeguards the probative value of children's statements in criminal investigations and enhances the possibilities of child protection services providing a child with the protection and support to which the he or she is entitled.

186. From this perspective, **joint agency investigative interview of children according to the Children's House-model optimise the child's right to access to justice as well as protection from the burden of parallel investigations.**

#### Proceedings concerning parental responsibility and child protection

187. Since replies from countries to the questionnaire for the study provided less information to civil and administrative proceedings than to criminal proceedings, the analysis and results given here in this study are limited. However, several countries describe these proceedings with a focus on parental disputes and child protection cases, which is consistent with the

overall aim of this report as children in such proceedings are a vulnerable group. Furthermore, such children often cannot count on the protection and support of their parents, as the latter may have a conflict of interest regarding the issue at hand. Consequently, many of the challenges posed in criminal proceedings concerning children as victims or witnesses of crimes can also be found in parental disputes and child protection cases. If a child is to give a trustworthy statement concerning either his or her opinion or the facts in the case, the legal system has to adapt to the needs of the child. Since civil or administrative proceedings concerning children often deal with matters of great importance for the child, such as the child's need for support and protection it motivates that far more importance should be given to the gathering, taking and assessing of evidence provided by children in these cases.

188. Firstly, **in order to safeguard the child's right to participate in these proceedings and the right to be heard, a legal representative and counsel can be of importance in parental disputes and child protection cases.** A legal representative and counsel should be appointed, even if the child is not a party in a parental dispute case, particularly if abuse or mistreatment is suspected. Furthermore, in order to safeguard the child's right to access to justice and the right to be heard, **a special legal representative should always be appointed at an early stage of the child protection investigation, as the parents' capacity to safeguard the child's interests in the proceedings can be questioned. Any specially appointed legal representative and counsel must be highly skilled and free of cost to the child.**

189. Secondly, if the child is to give a trustworthy statement concerning either his or her opinion or the facts of a case, the legal system has to be adapted to the needs of the child. The interview therefore should be conducted in a child-friendly setting and documented by video. **The Icelandic model of the child protection services' explanatory interviews in the Children Houses captures both the needs of transparency of a statement and the child's needs.** This model gives the child protection services the opportunity to investigate vague information of abuse before deciding whether or not to report it to the police and additionally requesting protection for the child. At the same time the probative value of the child's statement is safeguarded and can be used in case of a police investigation.

190. Thirdly, **the need of trained interviewers is not of lesser importance than in criminal cases. The statement of the child, the child's opinion as well as facts concerning abuse or mistreatment, are ever so important, when authorities must make life-changing decisions such as separating a child from his or her parents.**

## **APPENDIX I**

### **EVIDENCE AND STATEMENTS BY CHILDREN** **EXTRACT FROM THE CHILD-FRIENDLY JUSTICE GUIDELINES (Part D)**

64. *Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.*
65. *Audiovisual statements from children who are victims or witnesses should be encouraged, while respecting the right of other parties to contest the content of such statements.*
66. *When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.*
67. *The number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.*
68. *Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim.*
69. *Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.*
70. *The existence of less strict rules on giving evidence such as absence of the requirement for oath or other similar declarations, or other child-friendly procedural measures, should not in itself diminish the value given to a child's testimony or evidence.*
71. *Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability.*
72. *With regard to the best interests and well-being of children, it should be possible for a judge to allow a child not to testify.*
73. *A child's statements and evidence should never be presumed invalid or untrustworthy by reason only of the child's age.*
74. *The possibility of taking statements of child victims and witnesses in specially designed child-friendly facilities and a child-friendly environment should be examined.*



## APPENDIX II

### INVESTIGATION, PROSECUTION AND PROCEDURAL LAW (CHAPTER VII) EXTRACT FROM THE COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE (CETS NO.: 201)

#### **Article 30 – Principles**

1. *Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.*

2. *Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.*

3. *Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.*

4. *Each Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.*

5. *Each Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law:*

*– to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations;*

*– to enable units or investigative services to identify the victims of the offences established in accordance with Article 20, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available through the use of information and communication technologies.*

#### **Article 31 – General measures of protection**

1. *Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:*

*a. informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;*

*b. ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively;*

*c. enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;*

*d. providing them with appropriate support services so that their rights and interests are duly presented and taken into account;*

*e. protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;*

*f. providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimisation;*

*g. ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.*

*2. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.*

*3. Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.*

*4. Each Party shall provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim.*

*5. Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.*

*6. Each Party shall ensure that the information given to victims in conformity with the provisions of this article is provided in a manner adapted to their age and maturity and in a language that they can understand.*

### **Article 32 – Initiation of proceedings**

*Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.*

### **Article 33 – Statute of limitation**

*Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.*

### **Article 34 – Investigations**

*1. Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.*

*2. Each Party shall take the necessary legislative or other measures to ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.*

### **Article 35 – Interviews with the child**

*1. Each Party shall take the necessary legislative or other measures to ensure that:*

*a. interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;*

*b. interviews with the child take place, where necessary, in premises designed or adapted for this purpose;*

*c. interviews with the child are carried out by professionals trained for this purpose;*

*d. the same persons, if possible and where appropriate, conduct all interviews with the child;*

*e. the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;*

*f. the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.*

*2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.*

*3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.*

**Article 36 – Criminal court proceedings**

1. *Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children’s rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.*

2. *Each Party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that:*

*a. the judge may order the hearing to take place without the presence of the public;*

*b. the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.*

## APPENDIX III

### QUESTIONNAIRE ON CHILD EVIDENCE WITHIN THE FRAMEWORK OF A CHILD-FRIENDLY JUSTICE SYSTEM

#### **Background information**

The Council of Europe is undertaking, in collaboration with the Council of Baltic Sea States, a regional activity on **child evidence** within the framework of a child-friendly justice system. The activity will be an opportunity to exchange information about recent best initiatives and practices in the Baltic Sea Region on the gathering, taking and testing of evidence from children in criminal, civil and administrative proceedings.

The aim of this questionnaire is to investigate and identify recent initiatives and best practices in place in this field in legal proceedings (criminal, civil and administrative) in the Baltic Sea region. The initiatives and best practices sought are regardless of whether the child is a party to the proceeding or a witness, and concern each stage of a proceeding (investigation/pre-trial, as well as examination/cross examination and treatment of witnesses).

On the basis of replies to the questionnaire, **a study will be undertaken to analyse the functioning, results and critical factors of these recent best initiatives and practices on child evidence** in the legal systems.

The result of the analysis will be presented at a meeting to take place in the Baltic States in 2015 (date and place to be identified). It is expected that the meeting will help and encourage national authorities in the Baltic Sea region to transpose good initiatives and practices within the region into their rules of legal procedures.

**In this respect, answers to the questions below should be addressed in respect of all three types of proceedings (criminal, civil and administrative) and should include, as far as possible, the reasons for the development of such initiatives and best practices, their functionality and in particular their results if known; and relevant critical factors for their adoption and success.** Such critical factors should relate specifically to the legal system, but also, where appropriate, to relevant political, social and cultural factors.

In order to capture these initiatives and best practices with respect to evidence as given by children in different proceedings, at different stages and irrespective of the standing of the child in proceedings (party or witness), the terms *interview* and *statement* are used. *Interview* is used for all forms of hearings, interrogations and questionings of a child. *Statement* is used for what might also be termed testimony, evidence or deposition. A central aspect of the right to a fair trial with respect to evidence is the right of the opposing party to question the person providing the evidence. The term for this varies depending on legal proceedings at hand; the standing of the person and at what stage the evidence is given. The term *cross-examination* is used here for all kinds of questioning where a party has the possibility to test a child's statement.

## **A. Representing the child and defending its interest**

Depending on the particular legal system and proceedings, an initial question is if a child is obliged to give evidence or if this is optional. In both cases, the child's lack of legal capacity means that parents, the child's typical custodians, often play an important role. When mandatory, the summons and interview often involve the parents. If giving evidence is optional, the consent of the parents to interview the child is often required. For instance, in cases of suspected child abuse, the perpetrator can often be a person in the child's family. In such cases, parents can lack motivation to collaborate with an authority and thereby prevent the child from giving evidence. In cases of family proceedings, where the child is to be asked to give evidence, he/she may be in a vulnerable position as his/her testimony may affect his or her relationship with his or her parents or other parties. This conflict of interest has been addressed in some legal systems through legislation which allows an authority to interview a child without the consent, or even knowledge, of the child's custodians. Also, the child may have access, in some legal systems, to a lawyer or other institution or entity which, according to the national law, is responsible for defending the child's rights, and be represented in their own name.

### Questions

*A.1 Please indicate whether there is a specific practice(s) whether in criminal, civil and administrative proceedings in your legal system to help children give evidence in cases where there is, or could be, a conflict of interest between the child and the parents or other involved parties?*

*A.2 If so, please describe:*

- a) how the practice(s) work(s) (e.g. is there a system of specialised youth lawyers);*
- b) how the child may have access to his or her own representative that will defend the child's interest;*
- c) Is there a special system of free legal aid to children in place? (e.g. remuneration system for the representative of the child).*

*A.3 For each practice, please indicate their results, relevant critical factors for their success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*

## **B. The environment for the interview**

Giving statements at trial can be stressful and intimidating especially for children as it often includes, for instance, confrontations with alleged perpetrators or members of the family of the child. In order to protect children from further stress and victimisation, an interview can be conducted in a child-friendly environment (e.g. the child may be familiarised before proceedings begin with the layout of the court or other facilities and the roles and identities of the officials involved; regular breaks are planned and hearings do not last too long). At the same time, evidence has to be given according to principles of evidence law and the right to a fair trial, including the right to cross-examination. Depending on the legal system and proceedings in question, there are different approaches to this dilemma. In some legal systems, interviews with children are conducted separately from the trial and outside the courtroom (for instance “children houses”), documented on video. There are also legal systems where the child gives a statement at trial but from another room through closed-circuit television.

### Questions

*B.1 Are there any specific arrangements in your legal system made for gathering statements from the child in a child-friendly environment? If so, please indicate for which type of proceedings (criminal, civil and administrative) and whether they are mandatory or optional.*

*B.2 In the event the interview is conducted in the courtroom, please indicate for each type of proceedings (criminal, civil, administrative) what specific measures are taken to protect the child from a stressful experience and the risk of secondary victimisation.*

*B.3 In the event the interview is conducted outside the courtroom, please indicate:*  
*a) for which types of proceedings (criminal, civil, administrative);*  
*b) if there are any requirement for interviewing the child in these specific rooms (age and capacity of the child, sexual abuse cases, child witness of a crime, family disputes cases, immigration cases).*

*B.4 Please describe:*  
*a) the location and environment where the interviews with the child are conducted;*  
*b) how they are funded;*  
*c) which authority is responsible for interviewing the child;*  
*d) how the interview is documented and presented to the court/decision maker;*  
*e) how the right to cross-examine the child is met.*

*B.5 For each practice(s), please indicate their results, relevant critical factors for their success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*

### **C. Interview preparation and methods for interviewing the child**

Children differ in age, maturity and levels of understanding. A child can also suffer, for example, from post-traumatic stress syndrome or have a neuropsychiatric diagnosis. This can affect both the need for adjusting the proceedings to the needs of the individual child and the knowledge required in order to adequately understand and communicate with the child. Moreover, a number of studies show that the method used for interviewing may influence witnesses and therewith the quality of the statement. As the susceptibility of witnesses varies, in particular with children, the methodology and questions used for interviewing the child are important in order to optimise the conditions for taking reliable statements.

#### Questions

*C.1 How are age, maturity, and different psychological or psychiatric aspects of a child's capacity taken into account in your legal system when interacting with a child in the reception, preparation and interviewing?*

*C.2 Who conducts interviews with the child (e.g. judge, lawyer, police officer, social worker, psychologist etc.)? Please indicate in which types of proceedings (criminal, civil, administrative).*

*C.3 Do all professionals working with children receive appropriate training for interviewing the child? If not, please indicate for which types of professionals and in which types of proceedings (criminal, civil, administrative) they do not receive such training?.*

*C.4 Please describe:*

- a) How these trainings are organised (by whom, how often, how are they funded);*
- b) Are these trainings mandatory or optional;*
- c) What are the essential components of the course of these trainings (communication skills, understanding of the child's psychology, needs, behavior);*
- d) Do professionals have a special qualification recognised after completing these specific trainings.*

*C.5 Is this system of training of professionals well established in your legal system?*

*C.6 Are there any special methods of interviewing required or recommended?*

*C.7 Is there a practice of interdisciplinary work between professionals when gathering evidence from the child? How does this practice work in your legal system? Is it in place in all types of proceedings (criminal, civil, administrative)?*

*C.8 Please indicate results of this practice of interdisciplinary work between professionals, relevant critical factors for its success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*



#### **D.The timing and number of interviews**

That evidence provided by a child is taken as soon as possible can be important, particularly in cases of alleged maltreatment of or crimes against a child. As a child may need time to build confidence and/or trust, more than one interview may be necessary. New information and the right to cross-examination can also motivate repeated interviews. At the same time, from a child's perspective, repeated interviews over a long period of time can be perceived as doubting the child and lead to a withdrawal of a disclosure.

#### **Questions**

*D.1 Is there any regulation or practice(s) concerning the matter if there is a need for more than one interview?*

*D.2 Is there any regulation or practice(s) concerning the matter of when (in relation to the disclosure or the report) the first interview is held?*

*D.3 Have any measure(s) been taken to minimise repeated interviews in order to avoid further trauma to the child?*

*D.4 For each practice(s), please indicate their results, relevant critical factors for their success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*

### **E. The probative value of statements**

The probative value of evidence, regardless of whether proffered by children is important and often safeguarded by principles of evidence. The treatment of a child's statement, according to the child's vulnerability and need for protection, can at times conflict with such principles, and therefore can affect the probative value of such statements. One example is the absence of a requirement for a witness oath and another is the admission of a statement not given at trial. The child's statement, in certain cases, can also be presumed invalid or untrustworthy by reason only of the child's age. Various approaches to this dilemma have been taken in different legal systems. One approach is to interview children outside of the trial and modifying the cross-examination through the interviewer. In order to ensure legal certainty, the interview, for example, can be held under the authority of a judge, be documented on videotape and observed by representatives of different agencies. Even with such measures taken, the probative value of a child's statement can be questioned with reference only to any breaches of evidentiary principles. Another approach is questioning the child at trial with measures taken to protect the child from a secondary victimisation. In both cases, evidentiary principles are put in relation to the interest of the child in feeling secure and therefore the child's ability to give evidence.

#### Questions

*E.1 Is the probative value of the child's statement questioned with reference to principles of law or to the child's age?*

*E.2 How is this dilemma handled?*

*E.3 Have any measures been taken in order to compensate or eliminate such possible contradictions? Please indicate their results, relevant critical factors for their success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*

## **F. Parallel proceedings**

In certain situations, a child's statement can be of importance in more than one legal proceeding. For example, a child's testimony in a criminal case can be of importance in a custody dispute or child protection case. Measures can be taken in order to ensure access to the statement of the child in a parallel procedure. A joint agency investigative interview of a child is such an example. A joint agency interview spares children from having to tell their story repeatedly to different professionals. It also prevents the probative value of the child's statement from diminishing.

### Questions

*F.1 Is there any regulation or practice(s) to make the child's statement accessible to other authorities?*

*F.2 How is the probative value of a child's statement protected in case of its use in parallel proceedings?*

*F.3 For each practice(s), please indicate their results, relevant critical factors for their success or the difficulties and problems encountered, and if known, methods and means used to address these issues.*

