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Building a Europe  
for and with children



Joint EU DG Reform- Council of Europe project to  
Support the Implementation of Barnahus in Slovenia (phase II)<sup>1</sup>

**Public consultation process of the draft  
Child protection in criminal proceedings and comprehensive treatment of  
children in the Children 's House Act<sup>2</sup> of 1 June 2020**

**PEER REVIEW DOCUMENT  
ON THE DRAFT LAW ON BARNAHUS IN SLOVENIA**

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<sup>1</sup> The project supports Slovenia in establishing and operating their first Barnahus for child victims of sexual abuse in line with international standards and promising European practices. It is co-financed by the EU Structural Reform Support Programme and is implemented by the Council of Europe in close cooperation with the Ministry of Justice of the Republic of Slovenia and the European Commission (EU DG Reform). See more at: <https://www.coe.int/en/web/children/barnahus-project-in-slovenia>.

<sup>2</sup> Hereinafter the “draft Law on Barnahus in Slovenia”. An informal English translation of the draft Law provided by the joint EU DG-Reform – Council of Europe project is available at: <https://rm.coe.int/draft-law-on-barnahus-for-the-republic-of-slovenia-child-protection-in/16809ee7c4>

## **I. Introduction**

The document on Child Protection in Criminal Proceeding and Comprehensive Treatment of Children in the Children's House Act in Slovenia (hereafter the Draft Barnahus Act) represents a milestone in the proliferation of Barnahus among European states. *Should it be enacted, Slovenia would become the first state to introduce a comprehensive legislation on Barnahus.* Hitherto, only Denmark has introduced a piecemeal legal reform to ensure legitimacy and harmony in the operation of Barnahus. The fact that the draft Act has been made prior to the establishment of Barnahus in Slovenia, makes this even more remarkable achievement. It is certainly an exciting prospect to observe nationwide implementation of an Act on multiagency and child-friendly response to child abuse, an effort that will provide new insights into the challenges in enhancing children's protective rights.

The author of this document pioneered and coined the term Barnahus in Iceland in 1998. The process was inspired by the Children Advocacy Centres in USA, in particular with regard to the investigative approach in responding to child abuse. The other foundation of Barnahus was the UN CRC and the Nordic tradition in child welfare, characterized by high level of responsibilities of the public sector. Thus, Barnahus became an integral part of the judicial and welfare structure with the aim to balance the two human right principles: the "due process" and the "best interest of the child".

The Icelandic Barnahus, and later the Scandinavian arrangement, has been an inspiration and/or a role model for implementation for many European states. At least 15 states have already functioning child-friendly and multiagency services and dozens of more are likely to follow, supported by the European *Promise* Project, operated by the Council of the Baltic Sea States and largely financed by the EU. The great achievement of this project includes the European Barnahus Quality Standards.

The proliferation of Barnahus has demonstrated the great potential of the model to be adapted in diverse legal and social structures. The richness and ingenuity of the operational set up in different arrangements underlines the flexibility of the model. Perhaps Barnahus should rather be labelled a "travelling idea" than a model as it is less a recipe for the cook shops of the future than containing the ingredients for strategy with the aim of enhancing and ensuring the rights of child victims and witnesses of crime.

In the following remarks the main features of the draft Act on Barnahus in Slovenia will be addressed, especially in the context of implementation of Barnahus in other European states.

### **Paths of Barnahus coming into being**

The implementation of Barnahus in Slovenia is an example of a "top down" approach in which the Ministry of Justice plays the leading role, including by preparing the draft Barnahus Act. The role of other agencies, such as the Supreme State Prosecutor's Office, the Ombudsman's Office and the Association against Sexual Abuse, is of course appreciated as well. However, it can safely be assumed that the general knowledge in Slovenia of the role and responsibilities of Barnahus among the public and professional alike is confined to those ministries and agencies that have participated in the preparatory process to a greater or lesser extent.

We have learned from experience that the social context of the implementation of Barnahus plays an important role with regard to obstacles as well as the potentialities to overcome difficulties in the implementation process. In most of the states where Barnahus has been set up, it has been in accordance of decisions made by the central governmental agencies, ministries and assemblies. In Iceland it was the Government Agency for Child Protection, while in Norway, Denmark, the Baltic states and Cyprus ministries and, in some instances Parliaments, played the leading role. Although most successful implementation has been from the “top down”, this is not without exception. The first Barnahus in Sweden was established by a regional authority, albeit with great initiative and support of HM Queen Silvia. However, this would hardly have happened if it was not for interdisciplinary community of professionals who had for years advocated for the Barnahus model. In Sweden, the rapid growth of Barnahus in the country can to a large extent be explained by the strong encouragement from the Ministry of Justice to the local authorities to collaborate in the establishments of Barnahus as well as advocacy of NGO’s. In England, Ireland and Hungary the initiative was also regional and came from professionals dedicated to bringing about reform in services and child-friendly justice.

Although the implementation of Barnahus in most states have been from the “top down”, there are important exceptions where NGOs’ promoted and facilitated the process through education and awareness raising. Thus, Save the Children was a leading agent in promoting the model Sweden albeit not the only one. This is true as well for Norway and to a certain extent Denmark. In Poland, Lithuania, Latvia and Cyprus, NGO’s played a crucial role, so much that the implementation approach should rather be characterised as “bottom up” with the state apparatus coming into the picture at a later stage. In these states awareness raising and even basic training among professionals in different sectors had already taken place, at least to some extent. Not surprisingly, the NGOs in some of these states have taken on the responsibility to operate Barnahus under the auspice of the relevant ministry, for instance after the contracting out the services of Barnahus.

## **II. Challenges from the onset: interdisciplinary competence building and awareness-raising**

Based on the experience described above, the fact that in Slovenia the relevant ministry and multi-sectoral council of Barnahus will assume the responsibility for the overall implementation will undoubtedly facilitate the process. However, experience has demonstrated that awareness-raising activities among the public and professionals alike as well as competence building is a crucial issue for successful implementation.

The greatest challenge that Slovenia will face from the onset of the establishment of Barnahus will be to promote and advocate for its application in cases of crimes against children within the justice system. The Act wisely allows for a one-year transition period and that during the first three years Barnahus exclusively will focus on sexual abuse before other child victims of crimes will be included. This cautious approach is necessary as it takes time to develop the evidence base foundation of Barnahus with regard to forensic interviewing, medical evaluation and therapeutic services. All these components of services need professionals that have received a specialized training in the respective fields and may not be readily available.

It goes without saying that the prerequisite for successful operation of Barnahus will be the quality of services it provides to children and their families as well as the capacity of the different partners/agencies to collaborate effectively to avoid re-traumatisation of the child victim and witnesses. Importantly, the draft Act is promising with regard to the key factors of awareness raising, education, training, data collection and research. Thus, the draft Act eloquently defines the responsibility of the institution with regard to public awareness raising (Art 7) and competence building of the personnel of the institution and collaborating partners (Art 38). The importance of ensuring high quality of services is reflected in requirement for qualification of the director of the institution (Art 10), the expert interviewer (17.3), the child's counsellor (Art 34.3) as well as in the role of an Expert Council (Art 11). A collegial professional body, the Expert Council is eloquently defined as consisting of independent experts from different disciplines with an advisory function, sharing the expertise by giving opinions and suggestions on the activities of the institution such as training and protocols.

### **III. Governance**

The draft Act stipulates that Barnahus will operate under the auspice of the Ministry of Justice which has the monitoring role as well as assuming responsibility of ensuring adequate funds for the financing of tasks and programs of the institution (Art 13). However, the Act ensures the inter-sectoral and interdisciplinary nature of the institution by specifying the Council of the institution (Art 9). According to this article all the four relevant ministries (justice, family affairs, health and the interior) are represented in the Council of the Barnahus as well as the Supreme Court, the Supreme Prosecution, the Bar Association and two elected members of the staff of the institution.

The management role of the multiagency Council of Barnahus as reflected in the Draft Act is a unique arrangement that has not been an integral part of the implementation of in other states. This arrangement is welcomed as it represents the core of the Barnahus concept and fidelity to its fundamental principles as articulated in the European Standards for Barnahus.

The proliferation of Barnahus in Europe reflects diverse form of governance. Most commonly the ministries of social, family/children's affairs are ultimately responsible for the administrative role of the institution with the notable exception of Norway. In Norway as in Slovenia, the Ministry of Justice led the preparatory work of the different ministries for setting up Barnahus. After a pilot period it was decided that Barnahus should be operated by the police administration, and currently there are eleven Barnahus functioning in equally many police districts dispersed in the country. This is where the divergence of between Slovenia and Norway becomes apparent as in Slovenia it is proposed that one institution will serve the whole country although it may have sub-branches in different locations (Art 6). Slovenia will resemble Iceland and Cyprus in this respect where one Barnahus provides services nationwide. Furthermore, Slovenia will be step ahead of many other countries where Barnahus are only to be found in certain cities or regions, e.g. Germany, Hungary, Ireland to name only few.

In Slovenia, it will be a challenge to ensure that all children, irrespective of where they live, have equal access to the same quality of services. A centralised institution with a mandate to serve the whole country as is proposed in Slovenia is certainly more efficient organization to ensure equal access and quality than in a more decentralised system. However, it should be pointed out that in decentralised systems this issue can be addressed by setting national quality standards for the activities with centralised supervision and guidance as has shown to be

effective, for instance in the activities of the National Board of Social Services in Denmark. In Norway the implementation does not vary significantly due to the developed organizational structure and coordination of the police administration in the country. On the other hand, Barnahus in Sweden is generally operated by collaboration of local authorities without coordination mechanism or centralized supervision. This has given rise to rather diverse implementation in Sweden, including unequal access and quality of services. The set-up of the national competence centre Barnafriid, was an important step to harmonize and enhance the range and quality of services nationwide.

#### **IV. The multiagency services of Barnahus**

The draft Act articulates the general principles of the activities of the institution and the definition of the comprehensive services (Art 3, Art 4, Art 7). The fundamental principles of the UN Convention on the Rights of the Child, including the “best interest of the child” and the child’s right to be heard, are embodied in these articles as well as the principle of the “due process”. Thus, the draft Act provides an excellent framework for elaboration of the main components of the evidence-based services that Barnahus provides.

##### **A. Hearing the child and forensic interview**

The draft Act stipulates that the child’s statement shall be taken by an expert specifically trained in forensic interviewing, eliciting the child narrative by the application of structured interview protocol to enhance the evidential value. This hearing takes place under the auspice of a court judge and at his order. In an adjacent room the defence/suspect, the child’s council as well as the representatives of the different agencies, the prosecution, the police and the social work centre are able to observe by audio visual aid and questioning the child is allowed at the judge’s discretion. The procedure is recorded for the purposes of court proceeding and should take place in a “specially adapted premises” which is understood to be child friendly environment (Arts 14 to 18).

This arrangement to hear the child is identical as of in Barnahus Iceland but differ from other Nordic Barnahus where the hearing of the child is performed under the auspice of the prosecution. The draft Act foresees that forensic interviewers in Slovenia will be child experts with special training and work experience, again the same arrangement as in Iceland, but different from the other Nordic countries where the police conduct the investigative interviews.

Importantly the draft Act stipulates that prior to the hearing, a preparatory meeting conducted by the investigating judge, should be held to examine the facts and circumstances of the case (Art 21). The purpose of these meetings is to ensure that the hearing will be conducted efficiently and to avoid negative experience of the child. Interestingly, the participants of the meeting include the accused person and his council besides the judge and representatives of partner agencies. Preparatory multidisciplinary meetings of this kind are an integral part of the Barnahus model, for example in the Nordic countries albeit the representation of the defence is generally not allowed.

The hearing procedure as defined in the draft Act is firmly based on the application of the provision of the Criminal Procedure Act on the hearing of witness and expert work. This is the reason why only the court judge can summon a hearing of a child as it is a part of a court

proceedings. The draft Act therefore does not allow for hearing a child outside the criminal justice system. Many Barnahus in Europe, with the notable exception of Norway, provide for the possibility that a child can be heard without criminal investigation being commenced.

Children's disclosure of abuse, in particular of sexual abuse, is often gradual and even ambiguous at first, even without identifying a possible perpetrator. Sometimes, the verbal disclosure is very limited or absent while the child's behaviour may signal possible abuse, for instance overt and inappropriate sexual behaviour. Investigating suspicions of an abuse in such cases is important, and therefore to attempt to elicit the child's narrative.

The interviews described above are in Iceland referred to as "exploratory" interviews. Such interviews are conducted in Barnahus at the request of the local child protection services without the involvement of the judicial sector. However, if the child discloses abuse during the exploratory interview or identifies an offender, the interview is discontinued, and the case would be referred to the police and the court judge. In fact, the majority of investigative interviews in Barnahus Iceland are of this kind. It should also be mentioned that the explorative interviews are applied in growing number of cases where the alleged offender is below the age of criminal responsibility as the nature of abuse can be of great significance for medical examination a therapeutic service.

The Icelandic Barnahus was set up by the child protection sector and the legal basis for its operation to be found not only in the Criminal Procedural Act but also the provisions of the Child Protection Act. Thus, the child protective services should instigate an independent social investigation following reports of suspected child maltreatment with the aim of establishing the course of action in order to ensure the safety and the best interest of the child. Although the social investigation often takes place parallel to the criminal investigation, this is not always the case. The intervention of child protective services requires the child to be heard and it is important that an experienced and qualified investigative interviewer carries out this interview. Applying forensic protocol to avoid contaminating the child's possible disclosure is paramount, not only to determine if there are sufficient grounds for requesting judicial hearing but for the court judgement as such.

In Slovenia there does not exist a specific child protection legislation as in Iceland nor is a central child protection agency in existence. The role and mandate of the social work centres according to the Social Assistance Act or other relevant legislation such as the Domestic Violence Prevention Act and the Family Code is presumably insufficient to provide the legal basis for introducing "explorative" interviews into the Draft Act at this point in time. However, this is an issue which merits attention and should be examined during the transitional period (Art 41).

The draft Act does not introduce a timeframe with the aim to avoid unnecessary delay of taking the child's statement, other than there are defined time limits with regard to maximum 8 days adjournment of the preparatory meeting or a hearing. However, a defined timeframe within which the court judge needs to issue an order for the hearing is absent in the draft Act. In this context it is interesting to know that Denmark has decided that the maximum time to the hearing until it takes place should not exceed 7 days.

As referred to earlier, the draft Act stipulates that the suspect/accused person will have the right to participate in the preparatory meeting (Art 21) and observe the hearing of the child victim

or witness (albeit in the adjacent room). The Barnahus standards do emphasise a setting in line with the principles of “fair trial” or the “due process”. Importantly, however, it has been considered sufficient to ensure the presence of the defence council of the suspect/accused person to meet these criteria. It is this author’s understanding that the case law of the European Court of Human Rights supports that understanding. Should Slovenia choose to ensure the participation of the suspect/accused in accordance with the draft Act, an arrangement has to be made to ensure that the child victim and or other child victims that may be present on the premises of the Barnahus, are not endangered by meeting that person face to face.

## **B. Medical examination**

Medical examination in a child-friendly setting is one of the pillars of the Barnahus model. However, the actual arrangement may be different from one location to the next, not only between countries but also within. In some instance, Barnahus may even be part of a hospital setting (London) or operates in close proximity with hospital (Linköping Sweden). The most common arrangement consists of a medical room in Barnahus where medical doctors (e.g. paediatricians, gynaecologists) and nurses perform the physical examination of the child. Examination of suspected child sexual abuse requires video-colposcope to facilitate non-invasive examination and avoid anaesthesia. Generally, forensic medical examination of acute cases of sexual assaults (including extracting DNA) are performed in hospital settings while historic sexual abuse (non-recent or older than at least 72 hours) are examined in Barnahus. Medical treatment of fresh injuries is also most often be performed in hospitals.

In the chapter B. on physical examination, the draft Act defines the supportive role of the Barnahus by providing premises and other assistance such as obtaining medical documentation and views of the child’s personal doctor. In order to ensure the child-sensitive approach an emphasis is placed on the respect of the dignity of the child by communicating with the child and explaining the procedure as well as obtaining the child’s consent. The chapter reflects the exercise of prudence as it does not elaborate the arrangement of the physical examination in any details without one important exception.

One of the main purposes of the draft Act is to define the institutional framework and procedure for ensuring child-friendly justice. Thus, in line with this objective, physical examination can only take place in Barnahus in Slovenia following the order of the investigative judge (Art 28). This will limit the beneficiaries on this child-friendly expert services to those children who are already in the judicial process. The same observations here are relevant as those made with regard to the hearing of the child vis-à-vis the “explorative” interviews. It is highly important that children who have not disclosed at all or only partially, non-verbally or through their behaviour, can benefit from expert medical evaluation in Barnahus. In Iceland, Sweden and Denmark, to mention only few, the child protective services, parents and the child him/herself can request such physical examination in Barnahus. Experience has shown that the evidence obtained from medical examination can be decisive factor in referring the case to the judicial system.

A final comment with regard to the physical examination regards the omission of defining the special qualification of the medical profession entrusted to perform the tasks required. The draft Act specifies required qualifications of all professionals involved in the different services

of Barnahus with this one exception. While exercising prudence in this respect, there is a strong argument for mentioning paediatrician in this context.

### **C. Crisis support and Psycho-social (therapeutic) services**

The Chapter on crisis support and psycho-social services introduces a highly important child-sensitive arrangement in the form of a child counsellor who shall be appointed without delay following the court order for hearing and whose responsibility is to manage crisis support and psycho-social assistance (Art. 34). Crisis support refers to help during the hearing and physical examination period while psycho-social support is therapeutic and social assistance after the investigation phase is over. The child's counsellor receives the child upon arrival in Barnahus and navigates the child through the process, including preparation for the hearing and other services offered. The counsellor is also responsible for the assessment, preparation of the treatment plan and to provide the psycho-social services, including trauma-focussed therapy if needed, for up to 6 months period. In need of further assistance or treatment the counsellor shall refer the child to another appropriate agency.

The elaboration of the role of the child counsellor in the draft Act is exemplary. This assertion is made in light of the fact that the organization of social work in Slovenia is based on the principle of subsidiarity. Thus, there is lacuna in terms of legal provisions that defines the role of the social work centres in providing therapeutic services for child victims and witnesses and ensure their safety. Therefore, a defined length of time that the child is entitled to psycho-social service is crucial.

The negative impact of child abuse affects not only the child victim but also the non-offending parent and siblings. They can even be traumatized but in most instances the parent(s) need is for reliable information and support to enable them to brace the child in the healing process. Therefore, psychological support to non-offending family members are an important criterion of the Barnahus quality standard. However, this is not addressed in the draft Act, an oversight that needs to be amended.

### **D. Personal data protection and sharing of information**

Importantly, the draft Act addresses the issue of processing of personal data, storage, security and confidentiality issue. This has been one of the most difficult challenge for Barnahus to solve in many states due to professional secrecy rules and strict personal data protection. Only Denmark has introduced specific legal provision to facilitate the collaboration of the different agencies and profession in Barnahus that allow for sharing of personal data if it is necessary for the best interest of the child. The draft Act does not contain explicitly similar provision. On the contrary it is stated that "data obtained for the purposes of criminal proceedings, and the police, prosecution office or court, shall be kept separately from the data processed by the institution for crisis support and psycho-social assistance purposes" (Art 5.6). In light of the inherently multiagency and interdisciplinary nature of Barnahus, for the purposes of comprehensive approach to support child victims and witnesses, this provision is in need of some clarification.



## **V. Concluding remarks**

The writing of this peer review on the draft Act on Barnahus in Slovenia has been a rewarding work as the draft Act is extremely well drafted and articulated. It is firmly based on the principles of human rights and child rights standards such as the UN CRC, the European Convention of Human Rights, the Lanzarote Convention, the CoE Guidelines of Child-friendly Justice as well as the relevant EU Directives. The Slovenian draft Act integrates the European Barnahus Standard and the relevant domestic legal provisions, which if adopted, will bring about fundamental reforms with regard to protective rights of the children of Slovenia. Furthermore, the enactment would be an inspiration for many European states that already have set up Barnahus without accomplishing the task to ensure it's legal foundation.

In the Concluding observation of the Committee on the Rights of the Child 2013 following the submission of the last state report by Slovenia the Committee was concerned "that the right of the child to be heard in legal proceeding and in the Social Work Centres is not adequately implemented in practice". Hence the Committee it recommended Slovenia to "ensure that the courts attach due weight to the views of the children concerned". It can safely be said that the Draft Act of Barnahus reflects the dedication of the Government of Slovenia to comply to the recommendations of the Committee in this respect to the highest degree.