

BEST INTERESTS OF THE CHILD FOR CHILDREN IN CONTACT WITH THE LAW. VICTIMS AND WITNESSES

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From the moment a child victim/witness comes into contact with the justice system, he/she should be fully informed about the process they may have to go through as this can reduce any feelings of insecurity or anxiety that the child may have. Knowing when and where they will be interviewed and who by, how the justice process works, when they will be required to testify, who will be present, and the protection measures available for them both at an initial interview and when giving their testimony can have a positive impact on the quality of the statement they make. Providing a child with information can empower the child and allow him or her to feel more in control of an unfamiliar situation.

Keywords: *child, victim, witness, crime, criminal proceedings, restorative justice, criminal justice system, investigation, interview, child friendly justice.*

INTERESELE PRIORITARE ALE COPILULUI, VICTIMĂ ȘI MARTOR AL INFRAȚIUNII

Din momentul în care copilul interacționează, pentru prima dată, cu sistemul de justiție, acesta trebuie să fie informat pe deplin despre întregul proces pe care îl va parcurge, pentru a evita orice sentimente de nesiguranță și anxietate pe care le poate simți. El trebuie să fie informat despre modalitatea de audiere, despre persoana care va realiza audierea; el trebuie să cunoască cum se desfășoară întregul proces, care este procedura de a depune declarații, măsurile de protecție ce sunt asigurate copilului – toate acestea pot avea o influență pozitivă asupra calității declarațiilor făcute. Informarea copilului despre întregul proces îl va încuraja și îi va permite să dețină controlul într-o situație mai puțin familiară.

Cuvinte-cheie: *copil, victimă, martor, infracțiune, proceduri judiciare, justiție restaurativă, sistem de justiție penală, investigare, audiere, justiție prietenoasă copilului.*

Essential principles

- Every child has the right to have his or her best interests given primary consideration in all decisions affecting him or her, including the right to protection from any form of hardship, abuse or neglect. (Convention on the Rights of the Child, Article 3; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime) [1; 2].
- Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, and his or her testimony should not be presumed invalid by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).
- Every child has the right to express his or her views, opinions and concerns freely, in his or her own words and to have these given due consideration in accordance with the age and maturity of the child. If it is not possible to accommodate a child's views and concerns, it should be explained to the child the reasons why. (Convention on the Rights of the Child, Article 12; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).
- Child victims and witnesses should have their privacy protected as a matter of primary importance. Measures should be taken to protect the child's identity from exposure to the public. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).
- Every child should be treated fairly and equally, regardless of his or her race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status. In certain cases, special services and protection will need to be instituted to ensure children's rights are met equally. (Convention on the Rights of the Child, Article 2; UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime).
- Professionals should take measures to prevent hardship during the detection, investigation and prosecution process including potential intimidation, reprisals or secondary victimisation. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Council of Europe Guidelines on Child-friendly justice) [8].

- Interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime)
- All interactions should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child and in a language which the child uses and understands to enhance a child's ability to participate. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Committee on the Rights of the Child, General Comment No.12) [1; 2; 3].
- Child victims and witnesses, their parents or guardians, from their first contact with the justice process and throughout that process, should be promptly and adequately informed of their rights. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime)
- Measures should be put in place to limit unnecessary contact with the justice process, such as limiting the number of interviews with a child and using video recording of testimony. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Guidelines of the Council of Europe on Child-friendly Justice) [2; 8].
- Child victims are entitled to prompt redress, as provided for by national legislation, for full reintegration and recovery. (UN Guidelines on Justice In Matters involving Child Victims and Witnesses of Crime)
- Child victims and witnesses should have access to assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and any other services necessary for the child's reintegration through governmental, voluntary, community-based and indigenous means. (UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems) [2; 7].

Moldovan criminal procedure legislation provides [9]:

A victim is any individual or legal entity that suffers moral, physical, or material damage due to a crime. A victim has the right to have his/her complaint immediately registered in the duly prescribed manner to be settled by a criminal investigative body and to be thereafter notified about the results of such a settlement.

A witness is a person summoned in this capacity by the criminal investigative body or by the court and who testifies in the manner duly provided for in the law as a witness. Persons holding information on any circumstances to be confirmed in a case may be summoned as witnesses. No one may be forced to testify against his/her own interests or the interests of his/her close relatives.

The legal representative of a juvenile witness shall have the right to know about the summoning by the criminal investigative body or the court of the person whose interests he/she represents, to accompany him/her and to attend any procedural actions involving him/her.

One of the guiding principles of the CRC and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime is that 'best interests shall be a primary consideration' in any decision where a child will be affected. Police, judges and prosecutors should give priority to the child's best interest including pursuing the case without the involvement of a child victim or witness if it is deemed necessary for their development and protection. In practice, this principle must be balanced with competing interests, such as the right of the child to participate in proceedings affecting them, and other people's human rights, such as the rights of the accused in criminal justice cases.

The international standards state children have the right to be heard in all matters affecting them, including judicial proceedings. Therefore, measures should be in place to facilitate child victims and witnesses to be able to fully participate in court proceedings in a meaningful manner. A child, irrespective of their age, should be respected as a competent witness equal to an adult and their testimony or statement should not be deemed invalid or untrustworthy purely on the basis of their age.

The right to be heard also includes allowing child victims or witnesses to express their views and concerns related to the offence, the court proceedings and their own expectations or needs. This does not mean there is a duty on the court or the State to fulfil a child's expectations but it allows for their expectations to be managed and, where it is not possible to meet these expectations, the reason is explained to the child.

1. Reporting and investigation

A duty to report situations where it is believed a child is a victim of abuse or neglect should be enshrined in legislation, either specifically for certain professions such as doctors, or for all citizens. Child helplines

should be set up to allow a child to report a crime or abuse more easily, and to enable them to be referred to appropriate services, and where necessary, the police.

There can be huge psychological stress for a victim or witness when officially reporting and recounting crimes to law enforcement agencies, especially crimes of sexual abuse or where the perpetrator is a family member. The child may be concerned about harm or reprisals from the perpetrator, being blamed or rejected for reporting the crime, not being believed, or negative parental or community reactions. Steps should be taken to try and ease these concerns and to reassure the child that they were correct to report the crime. In some countries, specialised police officers or police units are used for when a child wishes to report a crime. They are trained in child protection issues, interview techniques and are aware of, and have contact with, local children's services to whom they can refer the child as soon as appropriate.

From the moment a child comes into contact with the justice system, he or she should be fully informed about the process they may have to go through as this can reduce any feelings of insecurity or anxiety that the child may have. Knowing when and where they will be interviewed and who by, how the justice process works, when they will be required to testify, who will be present, and the protection measures available for them both at an initial interview and when giving their testimony can have a positive impact on the quality of the statement they make. Providing a child with information can empower the child and allow him or her to feel more in control of an unfamiliar situation. This is particularly relevant in cases of abuse, which are often characterised by manipulation by the perpetrator and a lack of control for the victim.

To ensure that a child is fully informed, a trained individual, such as a social worker or police officer, should be appointed to manage the case for him or her. They should make the child's views or concerns heard, provide them with information at all stages of proceedings and be present whenever they are involved in the judicial proceedings. They should be available to listen to a child's concerns, answer questions both before and after proceedings, and refer them to appropriate services [4].

2. Providing effective assistance

Being the victim or witness to a criminal offence can have serious consequences for a child's physical, emotional and psychological development and well-being and can have a negative effect on their relationships with others. There is evidence that children who have been victims of serious abuse are much more likely to become victims of abuse or exploitation in the future. Therefore, it is necessary to provide as much assistance as possible to children to try and mitigate these consequences and facilitate their rehabilitation. A child and, where appropriate, their parent or guardian, have the right to be informed of all assistance and support services available to them and this should be done at the earliest opportunity.

Assistance can consist of financial, legal, counselling, health, social or educational services; and physical and psychological recovery. In order to best benefit the child, these services should be made available as soon as possible after the offence has been committed or discovered, throughout the justice process, and as long after the end of proceedings as is deemed necessary to help the child. Assistance can be provided by state public services, family or community support, NGOs, schools, or other community settings [4].

Promising practices [6]

Latvia: Child victim policy

In Latvia, special sections in medical institutions are used for the medical rehabilitation and treatment of child victims of violence, physical abuse and sexual abuse with resources allocated from the State budget. Compulsory psychological treatment expenses are also covered by the State, recouping the cost from the offender.

3. Investigation and interviewing

Cases where a child victim or witness is involved should be investigated as quickly as possible. Once a child or concerned individual or professional has reported a crime, strict time frames should be set out to ensure that the investigation is carried out without delay. This principle should also be applied to the investigation of a case once the decision has been made to prosecute. Allowance should be made for the time needed for a child victim to consent to be a witness in court proceedings.

At various stages of the investigation and preparation of a case, child victims and witnesses need to be questioned and interviewed. This must be done in a way that is sensitive to the child's needs and respects

their dignity and integrity. At the same time, interviews need to elicit accurate information that can be used in court. For a victim or witness, recounting what has happened to them may cause secondary victimisation, fear of harm by the perpetrator, a fear of not being believed and feelings of self-blame. These issues are best tackled by approaching the communication and interviewing of children in a sensitive, fair and child-friendly manner. Incorrect interviewing techniques for investigation of the case can be stressful for the child and may even mean the interview has to be repeated if the wrong questions are asked or not enough evidence is collected. Therefore, there should be strict guidelines about who the interviewer should be, their professional training, and when and where it takes place. All those questioning child victims or witnesses should be professionally trained in techniques for interviewing children [5].

Setting up the interview

Interviews should be planned in collaboration with a child welfare expert so that the questioning of the child is done in a way that protects their rights and avoids causing them any harm. Planning will include discussing where and when the interview is held, who should interview the child, and the questions to be asked (to cover as much ground as possible so as not to require multiple interviews from different agencies). Where a child is old enough they may be included in this planning process, such as deciding where and when the interview will be held.

Location

The basis for a good interview with a child involves making the child feel comfortable enough, both in their surroundings and with the person interviewing them, that they feel able to recount what are often traumatic events. The preferred location for an interview is in an environment familiar to the child, for example a school room. Where by law it must be in a police room or court setting, there should be special rooms for children that are comfortable and with child's furniture and toys available [5].

Promising practices [6]

Poland: Child-friendly interview rooms

In Poland the Ministry of Justice, with the help of NGOs, has established child-friendly interviewing rooms with competent, professional staff to interview child victims and witnesses. They ensure that the interview is carried out by a judge in the presence of a psychologist, and with others (prosecutors, the accused, lawyers) present in a separate room with either a two-way mirror or a live broadcast of the interview. The room is equipped both to make the child feel at ease and comfortable, and also, to accommodate the needs of the justice system, such as with a camera, microphones, etc.

Example

Czech Republic: Special hearing rooms

In 2007, the Ministry of Interior established special rooms for the interviewing of children who have been victims or witnesses of sexual abuse or violence. The specially- designed rooms, free from external distractions, are designed for the victim or witness and the police or psychological expert to interview the child and attempt to explore the facts of the case. Legal representatives of a child (parent, guardian, lawyer) can follow the hearing from another room. The interview is recorded (audio and video) in order for it to be further analysed and assessed at a later date, without the need to interview the child for a subsequent time.

Interviewer

The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crimes state that where possible a child should only be subjected to one interview. To follow this rule as far as possible, two different approaches are often put forward: some countries choose to involve multidisciplinary teams (including criminal investigator, victim support worker, child protection etc) to question a victim or witness in a child-sensitive way in a joint interview; while other countries prefer to use highly skilled individual interviewers to collect evidence and information that can be relevant and used by a range of different agencies to assist the child and gain evidence [2].

National criminal legislation defines interviewer as an invited person in a criminal case by the competent authority to mediate hearing a child victim / witness of a crime. Presently, the status of the interviewer is being determined and mechanisms to identify the most fit specialists for this role and to ensure their certified training are being developed.

Conducting the interview

Communicating with and interviewing children who are victims or witnesses can be a difficult job and national regulations should be developed and followed to ensure that accurate information is collected in a way that is child sensitive and minimises harm to the child. The subsequent outline should be followed:

- Introduction and rapport

To begin an interview, the interviewer should fully introduce themselves and put the child at ease by explaining the purpose of the interview, who will be present, how long it will take, and what will happen once the interview is finished. They should also explain to the child how the interview will be recorded and how the information they give will be used.

Secondly, the interviewer should inform and reassure the child that if they do not know the answer to a question, or do not understand a question, then they should say so. Further, the interviewer should tell the child that if it appears that he or she has misunderstood the child's answer or summarised it incorrectly then the child should tell him or her.

This part of the interview should be used to relax the child and build trust between him or her and the interviewer. It is important to understand that it can take some time before a child is relaxed enough to be comfortable talking to the interviewer, especially when they are recalling events that are traumatic or involve intimate details [4: 5].

- Obtaining information

The interview should consist of as much free recall from the child as possible and he or she should be encouraged to tell their story in his or her own words. Details, further information or continued free recall should be encouraged by responses such as 'and then what happened?'

When it is necessary to ask questions to clarify events or request further information they should be as open ended as possible. Leading or suggestive questions that push a child towards a certain answer should never be used. The use of repeated questions should be avoided as it can signal to a child that the previous answer they gave was unacceptable or 'wrong'.

- Closure

Closing the interview properly is also vital. The child should be asked if they have anything else they would like to mention, wish to tell you, or any questions they would like to ask. It is also important to reiterate how the information will be used and manage the child's expectations for what may happen in the future. The child should be thanked and be made aware of any support services available to them after the report of the crime, but should not exceed 2 weeks, and for severe crimes should not exceed 24h.

Moldovan criminal procedure legislation stipulates the manner the hearing of the child should be conducted. Thus, the hearing of the child below 14 years old in criminal cases regarding the sexual crimes, child trafficking or domestic violence, as well in the cases where the child interests it requires will be conducted by investigative judge in special installed spaces equipped with means of audio / video recording via an interviewer. The hearing will be conducted in a short term [9].

The child witness together with interviewer will be in a hearing room separated from investigative judge or other participants at this procedural act.

In the observation room the following participants will be present: the investigative judge, the prosecutor, the defence, a psychologist, clerk, the legal representative of the child subject of the hearing, the legal representative of the injured party and, where applicable, other persons under the law. Participants at the hearing will address questions to the investigative judge who will transmit them to the interviewer verbally through headphones, or in writing during the break. While it is understandable why a multi-disciplinary team of specialists must participate in the interview, it may be traumatizing for the child to re-tell the story of his or her abuse to so many people, given that the child will be told of the participants in the observation room. Therefore, a revision of this provision is advised with the view to reduce to the highest extent possible the repeated victimization of the child during the forensic procedures [9].

The hearing of the child witness shall be conducted in such way as to avoid causing any adverse effect on his or her mental state.

Trial stage

A child-friendly, well-run trial can have a positive or empowering effect on a child: in order for this to occur, the child should be fully supported and have their needs and rights met at all stages of the justice process and by all those who participate in it.

1. Pre-trial

A long waiting period for trial can be stressful for a child victim or witness, especially those of a younger age or those who are experiencing harassment from perpetrators. This is of particular concern where the perpetrator is a family member because the child is at a higher risk of being pressured to amend their testimony. Cases where child victims or witnesses are involved should also be treated as quickly as is possible in order to allow the child to move past the experience of being a victim. The majority of the responsibility for this lies with the prosecutor and any adjournment in the proceedings that they request must be justified with consideration for the child's best interests. Another measure put in place to ensure cases with children are attended to swiftly is to give them priority in the court timetable over cases not involving child victims or witnesses.

In order to make the experience of attending and testifying in court less daunting for a child, many countries have 'familiarisation' processes where, at a date prior to the trial, a child is shown around the courtroom where they will testify, sometimes meet those who will be present, be explained what they can expect to be questioned on and how the proceedings will run. Where possible the child should be accompanied by the individual managing their case so they feel more at ease and able to ask any questions they may have [4].

2. Use of pre-recorded evidence

Child victims should be allowed to give evidence without needing to appear in court, via pre-trial recorded evidence. This has many additional benefits for a child including not having to wait to appear at trial, avoiding issues of deteriorating memory, and reduces the length of time of a trial.

While pre-recorded evidence is regularly used by courts in a number of countries, often they will still require a child to attend court and be cross-examined or asked questions on their original pre-recorded evidence. This should only be used as a last resort and only if non-appearance in court may affect the right of the suspect to defend him- or herself.

3. Privacy

Any release of information regarding a child's identity can have consequences, such as putting the child at risk of reprisals or retaliation, causing the child shame or humiliation, and/or causing emotional distress. Protecting a child victim or witness's right to privacy can be done by restricting the disclosure of information that could lead to their identification. This can be done by keeping all documents that have identifying information about the child in a secure place with severely restricted access. In many States, legislation is in place that prohibits the publication or broadcasting of any information that may lead (either directly or indirectly) to the identification of the child. Therefore, even if information is leaked or discovered from the documents or the trial, the media is forbidden to publicise it.

Another way of protecting a child's privacy is restricting attendance at court proceedings that involve a child victim or witness. The restrictions may vary, including the exclusion of certain categories of person, or the exclusion of all members of the public.

4. Giving testimony in court

It is most likely that a child, whether he or she has provided pre-recorded video evidence or not, will need to provide live evidence, either via video-link or by appearing in court. The experience of attending court and giving testimony can be a stressful and daunting ordeal for a child. Measures should be put in place so that hardship or stress is reduced as far as possible.

The Council of Europe Framework on the Standing of Victims in Criminal Proceedings also states that all court premises should have special waiting areas for victims to ensure that they are able to avoid contact with the accused [6].

Many States provide in their legislation for the attendance and assistance of a support person at court to give emotional support to the child victim or witness. While it differs from country to country, the support person is usually a family member, someone the child chooses, or a specially qualified person approved by the court. They should be able to fully support the child, be trusted by the child, and enhance his or her ability to participate in proceedings.

A number of measures can be put in place to facilitate testimony. Video-link conferencing is now used in a number of countries to allow a child to testify from a more child-friendly setting in a separate part of the courthouse. Further technological developments in this area have made it possible for children to testify from locations outside the courthouse. Other measures, where video-link is not available, include the use of a screen so that the victim or witness cannot see the defendant or having the accused leave the courtroom and view the testimony on a monitor in a separate area of the courthouse.

Post-trial

1. Closure

Obtaining closure from the trial and case is an important step for a child. The child should be thanked and informed that their testimony has been important in the justice process. Where appropriate, and where this has not already occurred, the child should be referred to relevant assistance or support services. The child should also be informed of the outcome of the case or trial, and where the outcome may not have been in line with their testimony or recall of events, they should be reassured that their views were considered and taken seriously. Furthermore, if appropriate, the sentencing execution authority (court, judge, prison director) should inform the child and/or his or her caregivers about the upcoming release of the perpetrator at least a few days in advance to enable the child or their family to set up precautionary measures.

2. Reparation

Reparation is an important step for victims in having the harm they have suffered recognised and redressed. It can be in the form of financial reparation for material loss or damages that have occurred due to the crime, medical or psychological services, or getting recognition for the suffering that they have endured. It can be an important symbolic message to child victims that some level of justice has been achieved for them [4].

Restorative justice processes can also be used to address the harm done to the victim. However, in cases where there is a child victim, restorative justice should only be used where deemed appropriate and in the child's best interests.

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