Child Abuse and Adult Justice

A comparative study of different European Criminal Justice Systems handling of cases concerning Child Sexual Abuse

Participating countries:
Denmark, Finland, Germany, Greece, Iceland, Italy, Romania, Spain and Sweden

Christian Diesen

Part of a European project organised by the Save the Children Alliance Europe Group

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Foreword

Save the Children has championed the child's right to prevention, protection and recovery from all forms of sexual exploitation and abuse throughout the world for many years. Inaction on part of Governments, corporations and civil society can never be excused in relation to such violations.

Since 1998, Save the Children has gathered pan-European knowledge and good practice through a series of EU Daphne funded projects covering a range of topics in this area such as prevalence and character of child sexual abuse, various forms of prevention including clinical work with young offenders, evaluation of prevention programmes and general policy analysis. These projects clearly indicated that even though children's rights are protected in European states legislation, the legal practice does not always protect and promote the best interests of the child. The research underlying this report was thus undertaken to specifically review different European legal systems' handling of cases of child sexual abuse.

The project was commissioned by Save the Children Europe Group and managed by a Steering Group consisting of Ellen Hoedt-Rasmussen (Save the Children Denmark), JariVirtanen (Save the Children Finland), Kristín Jónasdóttir (Save the Children Iceland), Arianna Saulini (Save the Children Italy), Zoe Oiestad (Save the Children Norway), Ioan Durnescu (Save the Children Romania), Pepa Horno (Save the Children Spain) and Ewamari Häggkvist (Save the Children Sweden) with assistance from Diana Sutton (Save the Children Brussels office). The national research was conducted by independent experts in these countries and Germany with the exception of Italy and Romania where the Steering Group members also served as researchers. Since Save the Children Norway participated in the project, references are made to Norwegian law and legal practice. However, Save the Children Norway was unable to produce a national report in time for it to be incorporated in this document. Mrs Aase Texmo, independent consultant, initially served as the main researcher. The project was co-ordinated in turn by Lars Lööf Save of the Children Sweden, Jari Virtanen of Save the Children Finland and Ola Florin of Save the Children Sweden.

The report was written by Christian Diesen, professor of procedural law at the University of Stockholm and specialised in criminal procedure and the evalution of evidence. The evaluations of various statutory regulations, practices and methods made in this report are the author's and the national researchers own.

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1 Executive Summary

This report deals with the ways in which the interests of the child as victim and witness in legal proceedings relating to sexual abuse, are protected in 9 European countries – Denmark, Finland, Germany, Greece, Iceland, Italy, Romania, Spain and Sweden. References are also made to the Norwegian legal system. It examines practices related to the criminal investigation, the status, role and representation of the victim/witness in the proceedings and explores the extent to which these processes are adapted to the rights, needs and abilities of the child. Two elements of the criminal investigation – the questioning and the medical examination of the child – are analysed in more detail.

The aim of this Save the Children project is to gather international experience, to define common challenges and identify good practice for abused children in the legal system. It is meant to give an impetus to government initiatives in this particularly challenging area.

It is very difficult for children in Europe today to get justice as victims of sexual abuse and very often participation in legal investigations and proceedings implies extraordinary stress for the child. The legal systems into which children are drawn are designed for adults and modelled on adults needs and abilities. The communicative capacity of adults sets the standard of presumed reliability against which the statement is assessed, the high evidential requirements render the child's statement insufficient as evidence against an accused who denies the allegation and supporting evidence can be difficult to obtain. As a consequence the child is evidentially handicapped. Concern with due process in relation to the accused, in combination with the particularities of child sexual abuse – reluctance to tell due to feelings of guilt and shame, bonds of dependence upon the perpetrator, inability to understand the sexual meaning of the abuse etc. – puts him/her in an extremely subordinate position.

In the countries investigated and elsewhere, the majority of investigations concerning child sexual abuse never lead to judicial consideration, and this is mainly due to the evidential difficulties. The times of investigation and trial are too long and professionals who investigate and assess child sexual abuse largely lack the special competence that is required to achieve fully satisfactory results. The responsible investigating officers may also adopt an overly pessimistic view of possibilities for acquiring sufficient evidence and so choose to discontinue the investigation at far too early a stage. In the long run, the overall inclination to report such matters is likely to be negatively affected by these circumstances, especially since the public may already be aware that a police investigation involves great mental stress for the child.

In some of the countries investigated, reforms have recently been undertaken to reduce the length of time taken to investigate and try cases. In Finland, Germany, Iceland, Norway and Sweden, child sexual abuse is given high priority, whereas in Greece, Italy, Romania and Spain, the opportunities to expedite the proceedings are more limited.

In the legal systems investigated, the crime victim is either regarded as witness or party. The former applies to Greece, Italy, Romania and Spain and means, among other things, that it is considered inappropriate to provide him/her with his/her own legal representative. In principle, the crime victim is obliged to appear as a witness in court and a failure to give testimony may be punished. In Greece, Romania and Spain, there are few special rules exempting vulnerable children from this obligation. Even very young children can in principle be questioned as witnesses in court and are subjected to cross-examination since the right of the defence to question the child is considered a superior interest. This also means that the child, with some exceptions must be prepared to meet the suspected perpetrator in court. In these countries, measures are taken to limit the potential harm done to the child but they are mostly of a practical and ethical character (for instance, attempts are made to ensure that the judicial environment does not seem too alien and frightening to him/her), and are not primarily designed for the best protection of the child's legal interests.

If the prosecutor is required to discontinue the case should a child refuse to attend in court, it follows that the responsibility for justice is largely imposed on the child him/herself. In other countries, including Germany and Italy, where the questioning of the child in the trial is also mandatory, special rules are applied to ensure the child's statement without neglecting due process in relation to the suspect. With video recordings or closed-circuit television, it should be possible to find a compromise solution, which also satisfies the requirement for directness without the principle of evidential immediacy being neglected. The child should never be exposed to direct contact with the suspected perpetrator in court.

In Finland and Sweden the child crime victim is considered to be a party along with the prosecutor and in opposition to the accused and the defence, irrespective of whether or not he/she brings an action for damages. As is also the case in Denmark, Iceland and Norway, it is customary for the victim to be supported by his/her own legal representative from an early stage.

The need for legal support for the crime victim has become more widely recognised in all legal systems. In Germany, Italy, Romania and Spain the child is given, according to law or practice, such counsel if and when it is time for the actual judicial proceedings. However, the legal standing of the child in matters concerning sexual abuse varies between the countries, and support to the child is primarily social welfare orientated. The child should be entitled to his/her own legal counsel at the beginning of the investigation phase, and the person appointed should have special competence in this field and specific knowledge about reactions of abused children.

The child's legal interests and psycho-social well-being are interwoven and should not be seen as mutually exclusive. Rather the child's well-being should be considered a precondition for a properly functioning procedure in which his/her possibility to get justice is optimised. From a European child right's perspective, greater uniformity must be created, so that children in all European countries gain access to their own, legally trained representative, at the earliest possible stage of the procedure.

There is a general need to reduce the number of occasions on which the child is questioned, the time between each interrogation and the professionals involved in this process. If the child must be heard in the trial, this should be done on as few occasions as possible, preferably only once, and he/she should be questioned in a way and in an atmosphere that makes him/her feel secure. In Sweden and Norway, it is prescribed by statute that a child should be exposed to as few interrogations as possible and efforts are also made in Finland to limit their number. In Denmark, Finland, Iceland, Norway and Sweden the task of collecting evidence is supposed to be performed by one single person, usually a police officer with experience in questioning children, or by a judge. In some cases, as in Germany, the investigation commences with a police investigation before the judge takes over, which means that the child is questioned by at least two different persons.

In Spain and Romania, the issue may involve the child repeating the same statement for the police, social workers, investigating judge, trial judge and, furthermore, being kept available for questions from the prosecutor and defence counsel.

During the investigation phase, the child should be questioned as soon as possible after the report. The interrogations must be very well prepared and always be conducted by a competent interviewer. The need for building the child's confidence and new information in the case may motivate further questioning occasions. If the child does not need to appear in a trial, the defence must also be given an opportunity to present supplementary questions during the preliminary investigation since it does not usually participate in the first interrogation by the police. However, additional interrogations should not be held for the sole purpose of allowing new people to assimilate the child's statement. He or she should be spared the trouble of repeating a statement already made and therefore it should be recorded on video on the first occasion.

A child who has to make the same statement to different people for months or even years, is likely to view the procedure as a constant doubting, give up and withdraw the statement. The latter is a particular problem in Spain, Italy and Greece where the legal proceedings are also often very protracted.

In Greece, Italy and Romania, there are no special arrangements for questioning the child during the preliminary investigation. The child is heard, like all other witnesses, in an ordinary room at a police station. In the other countries, there are, to varying degrees, specially designed interview rooms for children (cosy furnishing, one-way mirror connection with control room and microphone-ear-piece communication system) to allow for monitoring and supplementary questions without exposing the child to a number of people and to facilitate confidence between the child and the interviewer.

In general, the competence for interpreting the statements of children is weak at all levels. Police officers and prosecutors may have some special training in questioning children, but the quota for training available is insufficient for the task and the same applies for judges, advocates and other professionals in the procedure. In this regard, there could be much greater consultation with experts such as child psychologists and child psychiatrists during the course of the investigation. However, in those cases where multi-disciplinary competence is engaged,

the lawyer often does not know how to make proper use of the expertise, and equally, the expert often does not know what the lawyer specifically needs advice on. The competence of crime investigators must therefore be enhanced to enable them to assign sensible tasks to the experts and to understand their responses.

In many countries, medical examinations in investigations of child sexual abuse are conducted by a paediatrician or gynaecologist, but in Finland, Germany, Greece, Italy, Spain and Sweden where forensic medicine is a medical speciality, forensic physicians are usually engaged for this task. Such specialisation has the advantage of ensuring a basic level of knowledge and experience of the link between abuse and injury and an understanding of what the court specifically wants to know in such cases.

In general, the option of conducting a medical examination is chosen too rarely considering that it could provide important information for the investigation if only a short time has elapsed since the abuse. This is the case even though potential findings are not unequivocal and may have other causes than abuse. In Norway and Romania, the expense of a medical examination sometimes constitutes an argument for declining to undertake it. Irrespective of whether the legal system requires formal consent or not, the crime investigators should motivate both the child and his/her custodians towards a medical examination. As most children find this examination unpleasant, it is hugely important that it is done in the most considerate manner possible, that the child be mentally prepared for the task and that the physician is knowledgeable also about psychological reactions of sexually abused children.

On interpreting the results of a medical examination, the most critical fact to consider is that the absence of injury or trace does not mean that abuse can be excluded. Medical findings may constitute an important supplement of evidential value for the hypothesis of abuse but, most importantly, absence of findings does not speak against it.

The report concludes by summarizing the general principles that investigations and proceedings should follow in order to improve the protection of the child's interests and by exploring three prioritised areas for further developments – skills, co-ordination and methods. The golden rule, which should apply in all proceedings where children are involved, is that the child, irrespective of the result of the proceedings, should come out of them in a better position than before they started.

The competence of all legal actors in investigations and proceedings concerning suspected child sexual abuse, must be enhanced, through special training and some specialisation. To ensure that similar cases are dealt with similarly, which is fundamental to legal certainty and due process, the quality of an investigation and the assessment should not depend on the individual and competence must therefore exist throughout the entire country and permeate all stages. Competence in these cases is based on specific knowledge about the reaction patterns of abused children, i.e. general knowledge about and experience of children is not enough to understand the reactions that the abused child exhibits. Collaboration with behavioural expertise in the field is often necessary to create a satisfactory information-base for the assessment. The legal actors must

have sufficient specific knowledge to be able to clearly define what the expertise should provide information on. Conversely, the behavioural experts should be specialised to better understand the needs and the requirements of the legal actors. Furthermore, investigation methods should be developed, not least regarding questioning techniques and statement analysis.

Co-ordination between all actors and agencies involved must be strengthened to improve investigations, facilitate development of skills and methods and to avoid situations in which the child has to move between different units for parallel investigation and treatment. Ideally, from the child's perspective, all relevant authorities and services should be represented under one roof. Notably, none of the countries in this study has yet developed a coherent model for co-ordination of investigation resources in this area, either at the local or national level. The Children's House in Reykjavik, Iceland, may serve as an inspiring examples in this respect.

II Introduction

1. Opening; child sexual abuse cases are the most difficult cases in existence

Sexual abuse is committed against children of all ages, from babies to teenagers[1]. The abuse is committed in different forms of varying gravity, consisting of both non-contact and contact actions ranging from flashing and voyeurism to gross rape[2]. It occurs within all social groups and classes, irrespective of ethnic affiliation, culture and religion. The perpetrator is in some cases unknown to the child, but in most cases he/she is someone the child knows, often a closely related person. Some perpetrators are sexually attracted to young, prepubescent children, while others exploit children as a substitute for adult sexual contact and as an instrument of social power. Some children incur permanent physical or mental injuries owing to the abuse, others appear to survive the violations without any noticeable traces. Much abuse never comes to light, as the child never tells anyone what has happened. Other abuse is never investigated, as the child's representative never makes a report or because the reported information is considered impossible to investigate. The majority of police investigations have to be dropped due to insufficient evidence. The information given by the child is often insufficient to form the basis of a prosecution and sentence and, as abuse rarely occurs with witnesses, there is no supporting evidence. Technical and medical evidence is in most cases difficult to secure, as the greater part of the offences have occurred in the home environment and are reported some time, often a long time, after the abuse. Overall, this means that only a small number of suspected incidences of child sexual abuse end up being considered by the courts.

As an introduction to this comparative investigation, it is appropriate to acknowledge that the hidden figure for sexual abuse is likely to be high, that there are substantial difficulties associated with investigations and that it is complicated to prove child abuse in court. The primary difficulty concerns the private, sexual nature of such offences and the fact that the adult world is unable or unwilling to comprehend a young child's ways of communicating his/her experiences. First, the child does not necessarily have the experiences and references to understand what has occurred and the sexual implications of the perpetrator's action. Second, the demands of reliability imposed by the legal system are modelled on adults and interpreted in such a way that the investigators deem the statement a child is able to give in his/her own language as insufficient. The child is therefore in a difficult subordinate position in the legal proceedings and it is consequently very difficult for a child to get justice in court. As the administration of law is

1 As regards legal rights, e.g. the UN Convention on the Rights of the Child, all persons under the age of 18 are defined as children. At the same time, national systems apply their own age limits, for instance 16 years, to separate children from adults in proceedings. This study does not deal with this issue of definitions, but when generally used, the terms 'child/children' refer to people under 18 who are in need of special protection owing to suspected sexual abuse.

2 Not necessarily in itself a legal term, sexual abuse can correspond to various criminal offences.

designed in an adult context, the child is in practice dependent on adult representatives being empowered to fully satisfy his/her interests.

The question that this investigation aims to answer in a comparative analysis is how the best interests of the child are protected in legal proceedings relating to sexual abuse.

What regard is given to the child? How is the criminal investigation conducted? How are the proceedings adapted to the child? Who represents the child in the proceedings? Does the child have any opportunity to assert him/herself?

The aim of the study is to assemble international experience and to share best practice, positive examples and learn from mistakes. With the benefit of such overall experience, the opportunity will also increase, both at the national and international levels, to work towards reforms that improve the prospects of child victims truly having access to justice.

2. *About the study*

The main report presented here constitutes an endeavour to compile 9 national reports into a comparative analysis[3]. *The ambition is to illustrate the differences that exist between various countries and legal systems regarding views on the child in the procedure, and the practical handling of the universal evidential difficulties in cases concerning child sexual abuse.* Good examples of legal solutions for the benefit of children that have been introduced in other countries, may serve as inspiration for reforms and changes to practice in their own country. In the same way, the remaining residual legal discrimination of children, and common difficulties in protecting the rights of the child may be tackled in the best way by collaboration and advocacy work at the international level. The main report concludes with general observations concerning the current handling of child sexual abuse and with some proposals that in my opinion, should they be implemented in all the countries investigated, would constitute a major step forward in improving the legal security of the child. For reasons of consistency there are no references in the text, neither to the national reports, nor to literature of jurisprudence. English language sources that comprise the reference information within psychology, psychiatry and medicine, are not been reported either, besides exceptional cases, but are presented as a bibliography (in Chapter VIII).

3 The project started with a pilot study, in which one key person in each country answered 25 questions concerning how child sexual abuse was dealt with legally in the respective country. From the answers it was possible to map out an overview of the problems that investigators and judges encountered during the investigation of these offences and an opportunity was afforded to discern the pertinent, general, problematic issues. Set against the background of this analysis, the Project Steering Group proposed that the project should concentrate on certain main issues during the next stage, primarily the gathering of the child's statement and the medical examination of the child. With this aim, a researcher was appointed in each country – most of them experienced lawyers themselves – and requested to submit a brief national report concerning the handling of these evidential issues and the general legal position in their home country regarding suspected child sexual abuse. These national reports, for which the respective researcher was personally responsible, form part of this document as an appendix (Chapter VII). The reports were based on interviews with practising lawyers, prosecutors, judges and others with broad and in-depth experience of the special problems associated with child sexual abuse. This information was gathered in accordance with specific guidelines developed by the Project Steering Group.

III The Child in Legal Proceedings

1. General principles for criminal proceedings and their importance in cases with children

The countries in this investigation – Denmark, Finland, Germany, Greece, Iceland, Italy, Norway, Romania, Spain and Sweden – have different systems for criminal proceedings. In some of them, criminal cases are determined by a jury and in other countries by mixed courts of professional judges and laymen acting together. In certain countries the procedure is more inquisitorial, whereby the judges have a significant responsibility for the investigation and, among other things, conduct the main questioning during the main hearing, while in others it is left to the parties to deal with evidence and questioning. In certain countries investigating judges are used to lead the preliminary investigation, while in other countries it is a function of the prosecutor and police to implement the preliminary investigation without such control, but on the basis of an obligation regarding objectivity. The systems are also very different regarding the role of the child in the procedure.

However, in all countries included in the investigation, the general European legal principles, which are for instance expressed in the European Convention on Human Rights, represent a common feature. These legal rights, which are enumerated in Article 6 and can be summarised by the term 'fair trial', are expressed primarily in the form of protection for the person who is suspected of an offence; deprivation of liberty shall be considered by a court without delay, the suspect should be regarded as innocent until the opposite is proven at a trial, the requirements on evidence to determine liability are very high (and normally defined as 'beyond reasonable doubt'), the suspect should be entitled to defence counsel and access to all evidence directed against him/her, etc. The principles of the Convention are therefore focused on *due process in relation to the suspect.* In contrast, the fundamental international legal principles are, to a very small extent, orientated towards *the crime victim's legal security,* i.e. on the right to be protected by the state and supported in the event of a citizen being subjected to abuse or other offences by another citizen. However, there is a UN Declaration from 1985 on the 'Basic Principles of Justice for Victims of Crime', which lays down that victims of crime should have 'access to justice and fair treatment' and a framework statement by the EU Council of Ministers from 2001 (Council Framework Decision of March 2001 on the Standing of Victims in Criminal Proceedings), the approach of which is that the standing of victims of crime should be reinforced. Crime victims should be ensured 'a real and appropriate role' in the criminal proceedings and be treated with 'due respect for the dignity of the individual'.

To acknowledge the right of a crime victim to a judicial consideration, and to a dignified treatment during such consideration, are fundamental principles for a state governed by law. The same applies to the principle of *'equality of arms',*

which means that both of the parties in a trial should have the same opportunities to express their views. Both parties should be entitled to competent legal assistance, both parties should be able to have adequate investigation resources applied and both parties should be able to present and respond to evidence. Nevertheless, in practice, the prosecutor's side has the greatest resources as regards investigation and evidence, but this imbalance is considered to be compensated in a state governed by law by the prosecutor carrying the *burden of proof.* In criminal proceedings, it is the state that should prove the accused's guilt, not the accused that should prove his/her innocence. This also means that the victim of the crime, to a great extent, must rely on the competence of the police and prosecutor to get justice.

Concerning the standing of children as victims of crime, the UN Convention on the Rights of the Child (CRC), which all countries included in this investigation have ratified, is considered a conceptual platform for how the legal proceedings should be adapted to the individual circumstances of the child. The key principle of the convention is that, in all investigation and decision-making processes, the best interests of the child shall be a primary consideration. The rights contained in the CRC belong to every child, but the State Parties to the CRC nevertheless have an opportunity to formulate their rules and their practice so that the parents of the child retain responsibility for providing the child with appropriate guidance when they exercise their rights. The convention, (Art 12), states that the child who is capable of forming his her own views has the right to express those views freely in all matters affecting him/her and that the views of the child shall be given due weight in accordance with his/her age and maturity. The child should therefore have an opportunity to be heard in any judicial and administrative proceedings affecting him/her, either directly, or through a representative in a manner consistent with the procedural rules of national law. The CRC does not provide further detail on dealing with cases of children as victims of crime, nor is there any European convention to this effect. Hence, it is up to the member states to implement relevant provisions appropriately.

The corresponding regulation in the field of family law already exists through *The European Convention on the Exercise of Children's Rights* (1996) regarding the standing of children in family law proceedings. According to this Convention, which consequently applies for instance in custody disputes, the child shall be ensured certain procedural rights. These include, the right to receive all relevant information, the right to be asked about his/her position, the right to be informed about the possible consequences of satisfying his/her wishes and also the right for own legal representation if the custodians have a conflict of interest with the child. However, the latter right is limited to children who, according to national law, are deemed to be sufficiently mature. It is also stated in the Convention that, if the child is mature enough, the court should directly, or through other persons, question the child him/herself, if necessary *in camera,* in such a way that is adapted to the child's age and development.

In summary, the relationship between due process and legal security involves identifying an appropriate balance between efficiency and regard to the integri-

ty of the individual. Due process involves criminal laws being applied in such a way that no-one's rights are violated by the state as a consequence of such application, and legal security involves the person who is the victim of a crime being able to expect the protection of the state and action regarding prosecution of crimes against the person. This also means that all parties involved in a criminal process should be treated with dignity. When a child is the victim of a crime, the application of the principles is in many respects problematic, as it is adult representatives of the child who must interpret and assess the interests of the child in the individual case. There is often an issue of exposing the child to investigation and judicial hearings against the risk of further traumatisation and the need for rehabilitation. In concrete terms: Should one allow the child to be exposed to further investigations, questioning and examination or will the child be harmed by this?

If, out of consideration for the child, his/her role in the investigation is limited – for instance by excluding participation in the trial – there is a risk that the quality of the investigation will be deemed insufficient for the conviction of an accused in the face of his/her denial. With these sorts of rules or decisions, with reference to the protective interests of the child, the outcome may be that the child does not get the justice that he/she would demand as an adult. If the special position of a child in the procedure is overprotected, there is also a risk that the suspect's due process is jeopardised. If on the other hand one exposes the child to the same examination as adult crime victims, for example by defence counsel cross-examination, there is the risk that the child will be exposed to further violation at the hands of the adult world. If the special conditions of the child are not taken into account, these crime victims will find themselves in a subordinate position, in which they cannot be helped. This means that the role of the child in cases concerning sexual abuse must be considered most carefully.

It is virtually absurd to treat children as adults in a context where they do not have the skills to deal with the situation. Some form of affirmative special treatment of children in criminal proceedings must always take place if the child should be able to assert him/herself.

2. The role of the child in the legal proceedings

A fundamental difference between the various legal systems is found in the view of the role of the crime victim in the procedure. In the majority of the countries investigated, and also within Anglo-American law, the crime victim is regarded as a *witness*. This means, among other things, that the victim in the proceedings is normally questioned under oath and thereby subject to legal liability for perjury. This also means that, in procedural law respects, it is not considered adequate to provide a witness with his/her own legal representative. In contrast, in some countries, including Sweden and Finland, the crime victim is considered to be a *party* in parallel with the prosecutor. In these countries, the victim is viewed as an opponent party to the accused and the defence, irrespective of whether or not she/he brings an action for damages. This means that the crime victim is not heard under oath and it is natural for the victim to be supported by

his/her own legal representative[4]. In Sweden and Finland, the reason that one views the crime victim as a party has a historic explanation insofar as that cases concerning offences against the person previously, i.e. before the mid-1800s, had to be instituted and pursued by private prosecution. Although virtually all offences are now subject to public prosecution, i.e. are a function for the state prosecutors, the right of the crime victim to support or take over the prosecution has not been removed. This has resulted in a closer link to the principles of the parity and equality of arms. Even in those countries where the victim is viewed as a witness, there has been a move towards the recognition of the need for legal support for the crime victim. In many cases this is an automatic consequence of the crime victim also bringing, within the framework of the criminal proceedings, an action for damages for loss/injury and violation and thereby being represented by an advocate in that respect. But even when this is not the case – or there are special reasons for the crime victim also having legal assistance on the liability issue – in all the countries investigated there is nowadays an opportunity to provide the crime victim with special support during the proceedings. This particularly applies in connection with child sexual abuse. How this support differs between the various countries will be dealt with in the next section.

When the crime victim is a child, the issue of the standing of the child in the proceedings is particularly problematic. If a crime victim is generally treated as a *witness*, this means that there is in principle an obligation to appear as a witness and a failure to give testimony may be punished. Perjury can also be punished but, if the witness in question does not have criminal capacity, this potential sanction is not available. The issue is thereby whether one can force a vulnerable child to court or if the legal system has special rules in this field. According to the national reports there are no such special legal rules for children in Spain, Greece and Romania, which means that even small children can in principle be questioned as witnesses in court. The issue of what will happen if the child, or his/her custodian, refuses to attend in court is not subject to this study but, according to some experts on Human Rights, it is contrary to general European legal principles to compel a minor crime victim to give testimony. If the consequence is that the prosecutor must discontinue the prosecution if a child does not wish to give testimony, this means that these legal systems impose far too much responsibility for justice on the child him/herself. It cannot be reasonable that a legal consideration of a suspected sexual abuse of a child should be discontinued solely for the reason that the child cannot or does not wish to attend a trial. The special rules in other countries, including Germany and Italy where the questioning of the child in the trial (irrespective of age) is also a main rule, demonstrate that one can implement different practical arrangements to ensure the statement of the child without neglecting due process in relation to the accused.

If the child is instead treated as a *party*, the issue arises of who should represent the child in the proceedings, as the child does not have procedural capaci-

4 The German system adheres to the principle of the inquisitorial process which means that neither the prosecutor nor the defence are considered as parties (technically speaking), they are just participants in the process. The victim of a crime can therefore not become a party – he or she can only become a private accessory prosecutor with certain rights within the process. The victim of a serious sex crime can get an attorney-at-law as a counsel and if he/she is under the age of 16 such counsel shall be provided even if the unlawful act is a less serious offence.

ty owing to his/her minority. Viewed naturally, the child's guardian, normally his/her parents or one of them, assume this role for the child in the proceedings (and possibly the family arrange representation by an advocate as a representative of the party). But, as there are often conflicts of interests between the child and his/her custodian in cases of sexual abuse, particularly when some closely related person is suspected, it has instead in Sweden and Finland been decided to allow the child to be directly represented by a special legal counsel ('aggrieved party counsel')[5]. In a possible trial of a criminal case, the chosen advocate will then, in parallel with the prosecutor, present the child's action and in that connection represent the child's needs of support and interests relating to financial compensation for the injury. The corresponding 'supporting advocate' in Norway, Iceland, Germany, Italy and Spain plays the same role as a 'co-plaintiff' during the trial.

If one looks at the child's procedural role in the countries investigated, one finds two different approaches. According to one, the crime victim is viewed as a witness and for the child this means that he/she does not have his/her own standing in the criminal proceedings. In these proceedings the child is a source of information, among others. This means in turn that the child should, as far as possible, be viewed as an adult, with the rights and obligations that apply for an adult witness, though at the same time the child must be protected to a certain extent.

According to the other approach, the crime victim is viewed as a party, which means that he/she, both through the prosecutor and through his/her own legal counsel, brings an action in the case. Thereby the crime victim and his/her possible suffering is likely to be given a greater and more important place in the proceedings. For the part of the child, this means that he/she has personal procedural standing, though such status may only be exercised through indirect representation. In practice, this also means that adults other than the child's custodian have the main responsibility for what is in the child's best interests in a case of suspected abuse.

3. The representative of the child in the proceedings

All judicial systems in the investigation acknowledge that a child has special needs in legal proceedings, not least regarding suspected sexual abuse. The child must be protected from further violation and unnecessary stress, even if one must simultaneously take into consideration the needs of the suspect to be allowed to question information provided by the child. How the special protection for the child is formulated differs substantially between various legal systems. One cause for these differences is quite simply the procedural role that the crime victim has been allocated in the national procedure, i.e. whether the victim is regarded as a party or a witness. With respect to the question of protection and support for the child, this difference means that the starting points are somewhat different. If the child is a party, the support mainly take the form of legal back-

5 In Sweden such a counsel ('special representative for child') may already be appointed during the preliminary investigation without the custodian even being made aware of this initially.

up while, if the child is a witness, it primarily relates to protecting the child from the negative psychological impact of the proceedings.

When one assesses how the protection for the child should be designed during the proceedings, it is of central importance to know whether, and in that case how, the child may be harmed by the legal proceedings themselves. In Denmark, Finland, Iceland, Norway and Sweden there is a presumption that such a risk exists and there are various protective rules and practices to protect the child. For example, the police investigations should be concluded rapidly, the number of questionings should be minimised, the social welfare services should be involved in police investigations, and children under the age of 12 do not need to be questioned in court, etc. In Anglo-American law (which is not included in this study), the right of the defence to question the child is considered a superior interest and consequently even small children are subjected to cross-examination, even if there would be a risk for the child being harmed by such action. The same appears to be the fundamental view in some of the countries that are included in this investigation (Greece, Romania and Spain), even if in these countries (and also in England and the USA) measures are taken to limit the potential harmful effects. However, these measures appear to be primarily of a practical, ethical and sometimes more cosmetic nature; the children get to acquaint themselves with the court premises in advance, can have views on whether the judges should wear wigs or not, do not have to meet the accused in direct confrontation, etc. These measures primarily deal with the child not having to feel too alien in and frightened by the judicial environment, not on how the child's legal interests should be best protected. There are, as far as is known, no clear research results concerning whether the child really is harmed by being treated as an adult in court[6] but, given the many examples of children who have collapsed following cross-examination in court, it is safe to conclude that there is such a risk. To what extent this risk can be reduced by the court's practical arrangements and defence counsel ethics (that are adapted to the terms of the child) is uncertain, as every child is different. Something that is perceived as frightening and threatening behaviour by a child of a particular age may be accepted by another child as an understandable examination. Furthermore, one can query whether it is the questioning itself – the defence counsel's endeavour to get the statement to appear to be a lie – that constitutes the danger for negative mental impact. According to the approach taken in Denmark, Finland, Iceland, Norway and Sweden, the circumstance that the child is 'compelled' to personally describe the violation yet again involves a risk for further traumatisation.

Depending on the role of the child in the proceedings and how one views the risk for further traumatisation, European countries have formulated their child-protection in legal proceedings along two main lines. One, which is primarily used when the children are to a great extent equated with adult witnesses, proceeds on the basis of providing social support during the proceedings. The legal system therefore offers the child a *support person* in preparation for and during the proceedings. The other line, which is used when the child is a party, but also

6 However, there is research that shows that the greatest fear of a child in anticipation of such proceedings is encountering the accused in the court, Richard May Criminal Evidence (1999).

in a number of countries where the child is a witness, is based on ensuring the child's legal rights by *a legal representative for the child* besides the prosecutor.

The system with a support person for the child is used, among other places, in the Anglo-American legal systems and in Greece. A support person may also be appointed in Sweden and Finland, even if the child also has his/her own advocate. In Greece, it is often a social worker who fills the support function for the child, but in that case this function also includes the preparation of a special report for the court concerning the child's background and family situation. At the same time, the support person is not entitled to participate during the questioning during the preliminary investigation.

On the other hand, it appears that Spanish and Romanian children must cope with very little support in the proceedings, apart from the support that can be provided by the child's parents. But, if the suspected perpetrator is a closely related person, a guardian is appointed for the child. This is usually done after the child has been taken into care by the social welfare authorities.

The system with a 'support advocate' is applied, in somewhat different ways, in Iceland, Norway, Sweden, Finland, Germany and Italy. Of those countries investigated, the most extensive legal support for the child is provided in Sweden, where there is an opportunity, once the preliminary investigation has commenced and at the cost of the state, to appoint an advocate as a special representative for the child. This advocate not only generally represents the child's legal interests but also take over the guardianship of the child in relation to the measures involved in the crime investigation in those cases where some person closely related to the child may be suspected of the abuse. It is therefore this representative who decides whether, when and how the child should attend for questioning and a medical examination. If there is a risk that the child is influenced in a negative way, an appointment – and thereby also questioning and medical examination – can occur without the parents receiving any advance notice of this. If the crime investigation leads on to prosecution, the child's special representative continues to operate as the child's legal counsel, support advocate, during the proceedings.

In Germany, Iceland, Norway and Sweden there is a general power to appoint a support advocate already during the preliminary investigation, i.e. also in cases where the suspected perpetrator is not closely related. But, in Italy, Romania and Spain such an appointment will only be made in conjunction with the main hearing, when prosecution is instituted. There are some differences between Denmark, Finland, Iceland, Norway and Sweden regarding the powers of the support advocate. A Danish, Icelandic or Norwegian support advocate may not get involved in the issue of liability itself (but rather must limit him/herself to the damages issue and procedural arrangements such as, for example, the requirements for matters to be dealt with *in camera*). In contrast, a Swedish or Finnish advocate with the same role can support the prosecution and work alongside the prosecutor in all aspects of the substantive issue.

To summarise, the countries investigated demonstrate great differences in terms of legal and curative support for the child in proceedings relating to suspected child sexual abuse. In Denmark, Finland, Iceland, Norway and Sweden

the child is provided with his/her own legal representative at an early stage[7]. In Italy, Romania and Spain the child is given, according to law or practice, such counsel if and when it is time for the actual judicial proceedings. The legal standing of the child in matters concerning sexual abuse is weak in Greece as support to the child there appears to be limited to possible measures on the part of the social welfare authorities. One of the most important demands for reform from a European child rights perspective is to create greater uniformity, so that children in all countries gain access to their own, legally trained representative, at the earliest possible stage of the procedure[8].

4. Questioning the child in the proceedings

There are also different views on the question of whether the child should participate in the main hearing. In certain countries the point of departure is that the child must be heard before the court, while some countries are satisfied with a video recording from a previous questioning.

In the USA, it is necessary for a child that is subjected to a crime to give testimony in court. According to the American Constitution, the Sixth Amendment, the accused has an unconditional right to be allowed to confront key witnesses before the court and, through his/her defence counsel, conduct a cross-examination with a view to undermining the credibility of the person making the statement. This right is not changed by the witness/crime victim being a child but, according to a decision by the US Supreme Court in 1992, the right of confrontation may be subordinate to the child's fear of encountering the perpetrator. In some cases, following individual consideration, a child may therefore be questioned in the court using closed-circuit television, though this method is in practice rather unusual, which means that most child victims, irrespective of age, are heard as witnesses directly in the court. This practice has lead to the development of various so-called empowerment programmes, where the child is prepared mentally and practically for the appearance in court.

A similar approach, is taken in England, where the child should in principle be heard directly in the court, but where, following a rule introduced in 1988 this may be done via a television link. The child sits in an adjacent room and sees the person questioning (judge, prosecutor or defence counsel) via a television screen, at the same time as it is possible to see the child in court on a screen. Thus, within Anglo-American law, modern technology has meant that the demand for direct confrontation has been subordinated without thereby overturning the principle that a child should attend at the trial.

The principle that a *child, irrespective of age, should attend the main hearing* also applies in Spain, Italy, Greece and Romania. Child victims of abuse are consequently equated by the rules of procedure with adult witnesses. In Italy chil-

7 In Germany, there is the possibility to assign a lawyer to assist the child for the time of the interview during all hearings by the prosecutor or the investigating judge. The assignment is not compulsory.

8 Such an endeavour appears to have been expressed by the European Union; Council Framework Decision of March 2001 on the Standings of Victim in Criminal Proceedings, even if the Decision is primarily aimed at the legal systems where the child appears as a party (and not as a witness).

dren under the age of 16 are questioned in special ways, normally using one-way mirrors or direct telephone[9]. In Spain there are some courts that have equipment to question the child through closed-circuit television, video and one-way mirrors but it appears that the application of these techniques is restrictive, even when it is available. However, it appears that Greece and Romania do not have such kinds of arrangements for the protection of children. In Germany, which previously had mandatory requirements for the attendance of the child, has now introduced exceptions. Child sex crime victims are allowed to make their statement outside the main hearing. The evidence is collected by the judge in the case conducts a questioning with the child, which is recorded on video and then played back during the main hearing.

This solution, *questioning by a judge outside the main hearing* (which is recorded on video), is the main rule, at least regarding young children, in Norway and Iceland and is one possible measure of witness protection in Germany. It was introduced by the German Witness Protection Act 1998 and can be applied regarding child sexual abuse under the age of 16. It is not used very often in practice and the video questioning is often supplemented by the child being kept available during the trial to answer any supplementary questions. In Norway, the questioning by a judge of a child has a very long tradition; the procedure was already introduced in 1926, and relates to collection of evidence with people who are mentally ill and for children under the age of 14. This procedure is therefore also applied not only in connection with child sexual abuse but also in other situations. Nowadays, the interrogation by the judge is recorded on video and then played back during the main hearing. During the questioning of the child, the judge should engage a person with special competence, for example a psychologist, to assist in the interrogation. The Norwegian system was adopted in 1999 by Iceland, with certain modifications, for instance the questioning by the judge applies as a main rule to all victims under the age of 18. Furthermore, the right of the defence to attend the questioning is protected; in Norway it is considered sufficient that the questions by the defence are communicated to the judge.

In Sweden, Denmark and Finland it is also possible to conduct the collection of evidence outside a main hearing, for example in such cases when a questioning of a child is involved, and this power is sometimes used in Denmark, but rarely or never in Sweden and Finland. This is partly because the institute is intended for situations when there is a risk that evidence may be lost if it is not secured for future use in a trial (preservation), but primarily because another option has been chosen. The methods of recording the child victim's statement used in Sweden, Denmark and Finland, mean that the child's statement forms the preliminary investigation, i.e. *the video recorded police questioning with the child, is played back for the court* and may constitute evidence in the case. At the same time, there is no age limit for children who can be questioned before the court, which means that the practice varies. In all three countries, it is usual to question children over the age of 12 in court, while the statements of young children are only presented in video form. However, for children aged from 8 to 12,

9 In Italy, the recording of the child's statement is also conducted at the pre-trial phase under protected forms, where the judge decides how the questioning should be conducted as regards the technical arrangements and how the questioning should be led

there is a hybrid form, namely that, as a complement to the video questioning, the child will come to court and answer any further questions. When children appear in court there are various technical solutions to avoid a direct meeting between the victim and the perpetrator.

Besides the best interests of the child, two legal principles must be observed when assessing the pros and cons of the various solutions. One relates to the *principle of adversarial procedure,* concerning the right of the defence to question the accusation by exposing a person providing information to examination, questioning and confrontation. To satisfy this principle, which is an element of the concept of 'fair trial', the defence must be given an opportunity to in some way present questions to the child. The view on what is required to maintain this principle varies. In Sweden and Norway, it is considered sufficient that the defence is allowed to communicate questions to the police officer or judge who conducts the questioning of the child. In order for information provided by a child to be considered reliable, it is required that the defence, at some time during the proceedings, has had an opportunity to communicate supplementary questions to the child. If this has not been done, this means that there will either be an impediment for the main hearing (i.e. if it is considered possible to then remedy the inadequacy) or that the child's statement must also be valued 'with great caution' (which, in that case, means that other strong evidence besides the child's statement is required to convict the suspect)[10]. In other legal systems, in for example (USA, England) Spain, Greece, Italy and Romania, there is a significantly more restricted view on exemptions from the contradiction; the right of the defence to cross-examine may not be limited. Instead, to protect the child, it is necessary to create technical, social and ethical solutions to prevent the child being treated too badly during this confrontation. The most common solution is to prevent a direct meeting between the perpetrator and the victim and allow the defence advocate alone (i.e. in the absence of the suspect) to conduct the adversarial task. There are unfortunately elements in the national reports that suggest that the maintenance of the 'right of confrontation' is considered more important than the best interests of the child and that the child is often exposed to extreme pressure during the proceedings. In Greece, Romania (and with some exception of children aged under seven) in Spain, the child must be prepared to meet the suspected perpetrator in court.

On the other hand, it is also in the best interests of the child that the principle of adversarial procedure and the general rights of the defence are not neglected. If the defence is not given a fair chance to respond to the information from the child (by, directly or indirectly, presenting his/her own questions to the child) the statement of the child will not be worth as much as if the child had coped with this direct questioning. To comply with the practice of the European Court of Justice regarding the provision of fair trial, but also to ensure that the statement of the child is given an opportunity to achieve the optimum evidential value, the European legal systems must therefore in some way ensure that the defence, at some time during the proceedings, is afforded an opportunity to pre-

10 This instruction on the evaluation of evidence is found in a determination by the European Commission on Human Rights (Lindqvist v. Sweden) and has been adapted by the Supreme Court in Sweden and Norway.

sent questions to the child. This also appears to be the case in all the countries investigated. Nonetheless, the right of the defence to question is no argument for forcing children into court, as this right can be satisfied by other forms than a cross-examination before the court.

The other argument for not making exceptions for children involves the *principle of evidential immediacy.* The underlying aim of the principle is that the judge should receive all evidence in the case with his/her own senses; evidential objects shall be produced, persons involved shall attend the court in person and explain what has happened, etc. Maintaining this principle also means that an item of evidence that is delivered to the court in a communicative form, *a priori* is deemed to have a lower evidential value than evidence that is taken in directly during the main hearing. This means in its turn that a statement by a witness on a videotape is generally deemed to have less value than if the statement had been presented before the court. If one presses this principle to its limits, the statement of a child recorded on video has a lower evidential value than the same statement presented during the main hearing. The basis for this position is not only one of principle, but also means that a recording does not satisfy the same due process standard as a questioning in court. The reasoning for this scepticism is that: it is not known under which circumstances the video questioning was conducted; what was said before the questioning commenced and after it had been concluded; that recordings can be edited and manipulated; that the recording rarely demonstrates the interaction between the questioning leader and the person questioned (but often focuses only on the latter); that technology can be inadequate in clarity; and that there is no opportunity for supplementary questions. To some extent these inadequacies can be compensated for, as for instance in Norway and Iceland, by allowing the judge, who shall conduct the main hearing, to also conduct the video questioning. As all parties in the case (i.e. even the prosecutor and defence counsel) should have the same access to all evidential material (i.e. even to the child), this compensation is not complete. *For the above-mentioned reasons, it is consequently, from the evidential perspective, in principle, preferable if a child appears before the court.* If one declines to question the child directly in the court, this probably means that the valuation by the court of the child's statement will be characterised by some caution. Therefore, it is also in the best interests of the child to be allowed to speak during the trial.

If one declines to question the child during the trial, this is done to protect the child and in particular take the child's needs into account. If the trial involves too great a pressure on the child, if the questioning in court may involve further traumatisation, one may instead select a solution that reduces these risks. With video recordings or closed-circuit television, it may be possible to find a compromise solution that satisfies the requirement for directness without neglecting the principle of evidential immediacy being neglected. To refuse to disturb this 11mmediacy to maintain an old principle of direct attendance, instead of protecting the child, is a far too rigid and conservative approach at a time when technology allows solutions that should be acceptable from the perspective of due process.

Introducing an opportunity to allow the child to avoid questioning in court by accepting a video recorded questioning, also has certain advantages. First, the

legal examination is adapted to the circumstances and abilities of the child. It is not reasonable to assume that a child can cope with a confrontation with the accused in court and furthermore be exposed to cross-examination by defence counsel just as well as an adult can. A video recording where the questions of the defence are communicated to the questioning leader, is an investigation situation that is significantly more sensitive. Second, the video questioning takes place in closer conjunction with the abuse than the questioning at the trial. The memory of the event is thereby more recent, more unprocessed and uninfluenced than at the later occasion. By the questioning being recorded 'once and for all' the child avoids having to once again go through what happened in a new questioning. Third, the child is further spared a new alien public environment. The court situation may as such have a great inhibiting effect on the child's preparedness and ability to explain, particularly if there are also new people who are responsible for the questioning. The players involved in a court by no means have the same time and opportunities as a questioning leader to build up confidence. This involves a great risk that the child becomes stressed and closes up.

In the choice between 'adult treatment' where the child shall always come to the court, and 'child treatment' where the child avoids attending, there are many combinations of possibilities. The most efficient is probably that the child's statement is recorded on video and that the child thereafter, possibly through close-circuit television, is available for supplementary questions, possibly communicated by the same questioning leader as during the preliminary investigation. To allow the judge who shall lead the main hearing to also attend the questioning of a child during the preliminary investigation may also be a way to tackle the continuity and reinforce the due process aspects.

There should also be many opportunities for individual solutions where greater regard is given to the age, development and maturity of the child. One wish regarding the often rigid practice, which exists in the countries investigated, would be a greater level of flexibility. More regard should be given to the individual child and to the individual circumstances in the case. In certain countries, the child should have an opportunity (or greater opportunity) to avoid questioning in court, in other countries one could to a greater extent allow the child to attend court for supplementary questions. In a case of gross rape, it should be possible for a 17-year old, who may also be in jeopardy of encountering psychological problems by an appearance in court, to be questioned via video alone; in another case where a less grave abuse has occurred with an outside person, one can allow a court questioning of an 8-year old (even if the statement is also on video) etc. In all legal systems, it should, also be possible to apply the protective rules for the children as witnesses and victims up to the age of 18[11].

11 Proposals along this line are included in the national reports from Germany and Denmark.

IV Investigation of Child Sexual Abuse

1. The difficulties at the investigation phase generally

It is important that a child is given the chance of making his/her voice heard in court, directly or indirectly. The fact that a child does not have an adult's experience, references and language should not constitute an insurmountable handicap as regards the possibility of getting justice. But, irrespective of how the treatment of children is designed, the quality of an investigation of suspected child sexual abuse in the course of a trial depends less on the main hearing itself and its design, and more on how the collection of evidence is arranged during the preliminary investigation. In many cases, where other clear evidence is lacking, the investigation stands or falls on the child's statement. For this reason, it is of vital importance that the legal system really gives the child a fair chance of coming forward with his/her statement. This is also why this study is focusing particularly on the *forms and methods for questioning children,* in the various countries and this issue is dealt with in the first section below.

One means of evidence, which can often constitute an important support for the statement of the child concerning abuse, is the *medical examination.* To investigate what importance is attached to the medical examination in different countries is therefore another important object for a comparative European study. It was particularly interesting to try to establish whether the absence of any medically manifest injury was used as evidence for abuse *not* having occurred.

Besides the two above-mentioned areas, it has been considered important to make a more general enquiry about what *other problems* are encountered in the various countries regarding investigating suspected child sexual abuse. It was found that the long investigation and trial times are a major common problem. An equally great problem is that most people in the legal apparatus who investigate and assess child sexual abuse lack the special competence that is required to achieve a fully satisfactory investigation result. A further universal problem regarding investigation of suspected sexual abuse, is the *low frequency of prosecution.* The majority of investigations concerning abuse never lead to judicial consideration. The main reason is that the evidential difficulties are far too great. The child's statement is insufficient as evidence against an accused who denies the allegation, medical evidence is absent and nor is there any additional evidence to support the suspicion. The consequence is that the investigations are discontinued. This may result in reduced inclination to report matters. When the public becomes aware that the majority of police investigations concerning sexual abuse do not lead anywhere, it is probable that reporting of suspected abuse is not favoured, particularly as one may be already aware that a police investigation involves great mental stress for the child. As a consequence of the difficult (investigation) situation, the responsible investigating officers may adopt an overly pessimistic view on the opportunity of acquiring sufficient evidence and therefore discontinue the investigation at a far too early a stage.

2. Questioning the child

In the majority of the countries investigated, the first recording of the child's statement takes place at the police. The exceptions are Norway and Iceland, where the questioning is transferred to a judge at the outset, preferably a judge who is included in the bench if the case should then progress to court[12]. The questioning (either by a police officer or a judge) is, in most of the countries recorded on videotape, which may then serve as a means of evidence in the event of a future trial, either as a substitute for questioning the child or as main evidence with questions for the child as a complement.

In Italy, questioning of the child by a judge may occur when the police questioning with the child has provided sufficient substance for a possible prosecution of a suspect and, in the form of a video recording, then serves as a main means of evidence during the trial. The collection of evidence outside a main hearing, i.e. questioning of the child through the agency of the court, is also to some extent applied in Denmark. In other countries (Sweden, Finland, Greece, Romania and as a main rule also Denmark), all questioning of children (preceding a possible main hearing) takes place with the police or prosecutor authority[13]. In Spain a judge may be contacted to hear a child by the hospital or social welfare office, with out any involvement by the police. When the police makes the first interrogation, the matter thereafter is handed over to the social authorities which investigate the suspicion of abuse and conduct repated interviews (normally four) with the child, before the case can continue to a prosecution.

The number of interrogations that are held with an abused child vary greatly between the various countries, as does the length of time taken in practice for this series of questionings. In Sweden and Norway, it is prescribed by statute that a child should be exposed to as few interrogations as possible. In Finland efforts are made to limit, as far as possible, the questionings of children, preferably to a single occasion. In contrast, in Spain, Italy and Greece the child may be subjected to numerous interrogations during the preliminary investigation. If legal proceedings are then instituted, this means that the child will be questioned at least once again. If there is an appeal against the verdict, it may draw out in time over several years[14]. This means that the abused child may be involved in legal proceedings for a very long time, in the worse cases up to 6–7 years, and therefore forced to keep the abuse and its details alive in his/her memory.

In my view, it is of great importance that proceedings with children are as short as possible, but also that the number of questionings with the child is minimised. It is important for the rehabilitation of the child, to ensure that the child does not develop into behaving as a victim, that the legal proceedings can be concluded as soon as possible. Not least if the police investigation is dropped or the accused

12 However, in Norway the questioning itself is conducted by a person with special competence, for example the same questioning leader from the police who held the original questioning with the child. This may also occur in Iceland the judge considers it appropriate.

13 However, in the three latter countries one (or more) interrogation(s) of the child are conducted, prior to prosecution, before an investigating judge.

14 In Italy it is possible to avoid several questionings in court if the child's statement is taken outside the main-hearing and recorded on video, but in other cases, as in Spain and Greece, an appeal may involve new court appearances for the child.

released, it is a great psychological benefit for the child to commence the processing phase as soon as possible. It is therefore not reasonable – but rather a violation of the child – to drag out the legal proceedings over several years.

The appropriate number of interrogations during the investigation varies from case to case, but it is not reasonable that a child time and time again, for various investigators and at various instances, should need to tell his/her story of sexual abuses. If there is, for example on video, a version of the child's statement available for the purpose of evidence, this version should also be satisfactory throughout the entire proceedings, without new questioning of the child. Nonetheless, one cannot expect that a child's statement may be secured for the future by a single initial questioning. There are actually many reasons suggesting that in practice it often becomes necessary to hold several questionings with the child. First, one cannot proceed on the assumption that the child wishes to explain what has happened. Particularly regarding closely related perpetrators, there is on the contrary a significant resistance on the part of the child to explain about the abuses that have occurred and therefore several meetings may be required in order for the questioning leader to be able to build up sufficient confidence. Second, it may be far too difficult for a small child to muster sufficient concentration and memory capacity to be able to communicate his/her experience at one and the same questioning occasion. Particularly regarding series abuses, the investigators must often have several questioning opportunities available to establish sufficient details concerning various events that have occurred. Third, before the first hearing of the child, the suspicion against a particular person is rarely deemed strong enough for the suspect to have appointed a defence councel. At the first police questioning, there is consequently often no defence participation and, if the child does not need to appear in a trial, one must therefore ensure that the defence is given an opportunity to hold a supplementary questioning with the child during the preliminary investigation.

The latter right, which is based on the European Court of Justice interpretation of 'fair trial', also means that two interrogations of the child apply as a minimum in principle. *It must be assessed from the perspective of the child how many further interrogations need to be held with the child.* If the new questioning has the aim of enabling better investigation of the matter, it is often in the child's best interests that this questioning is held, as the alternative may be that the entire investigation is dropped. But if the new interrogation only has the purpose of allowing new people to assimilate the child's statement, the video version already recorded should be sufficient. Similarly, regarding the issue of whether the child should be 'forced' to attend court or not, determining the number of questionings involves finding a balance that is appropriate both for the child generally and in a particular case. If a further interrogation may involve unnecessary mental strain for the child, it should be avoided, but if to decline means that the child cannot get justice, his/her representatives must carefully consider whether it is worth this risk.

The issue of the child's representative in the proceedings is dealt with in Section III:3 where it is mentioned that, in the majority of the countries investigated, legal counsel or a support person is allowed to be *in attendance during*

the interrogation with the child *in the course of the preliminary investigation.* Furthermore, it can be expected that, in the majority of these countries, a parent is allowed to attend during the questioning, in any event subject to the precondition that none of the custodians or closely related persons can be suspected of the offence and attendance does not impede the child's preparedness to communicate. However, as regards some countries, Spain, Italy and Greece, the information suggests that a child is normally left alone with the police investigator (or the investigating judge or corresponding). This can probably also take place in other countries in cases when it promotes the investigation, i.e. when attendance of further persons would possibly disturb the concentration of the child[15].

Attendance of other persons than the questioning leader during the child questioning is intimately linked with the issue of *the environment in which the child is questioned.* In Italy, Greece and Romania, there are apparently no special arrangements for child questioning during the preliminary investigation; the child is heard, like all other witnesses, in an ordinary room at a police station. In other countries, there are, to a greater or lesser extent, special rooms for child questioning. Normally, they are cosily furnished and resemble a home environment, at the same time as the rooms have the character of a recording studio; through a one-way mirror in a control room the assistant police officers and others (for example, the prosecutor, defence counsel and/or aggrieved party counsel) monitor the questioning. Any supplementary questions (from, for example, the defence counsel) are passed onto the assisting police officer's microphone to the questioning leader's ear-piece. In this way, one avoids the child being exposed to a number of people, who wish to present questions and it is easier for the person conducting the questioning to gain the confidence of the child.

As regards *who should collect the child's statement*, it has already observed that in some countries there is a routine that the child is questioned by several persons with different roles during the investigation and proceedings. For instance, in Spain and Romania, the issue may involve the child repeating the same statement for the police, social workers, investigating judge, trial judge and, furthermore, being kept available for questions from the prosecutor and defence counsel[16]. In other countries, for example in Denmark, Finland, Iceland, Norway and Sweden, the role of collection of evidence is concentrated on a single person, ordinarily the interviewer at the police, who is specialised in questioning children, or to a judge. Specialized police units and interviewers also exist in Spain but they are under-utilized. In some cases, as in Germany, the investigation commences with a police interrogation before the judge takes over, which means that the child meets at least two different interviewers.

It should be manifestly clear that the more people that a child must meet during the investigation, the more stressful the process will be for the child. This particularly applies if the purpose of these meetings is so that the child shall

15 When using interview rooms with mirrors, the international routine is that the child and the interviewer are alone in the interview room while the other parties are in adjoining rooms, either in a waiting room (custodian, support person), or on the other side of the glass (prosecutor, defence counsel, aggrieved party counsel).

16 In Spain, if the case is considered at a second instance this may also mean that the child must make his/her statement seven times.

repeat a statement already made. The risk is obvious, particularly if the procedure drags on (perhaps for several years) that the child views the investigation as a constant doubting, gives up and withdraws his/her statement. Retracted statements appears to be a particular problem in Spain, Italy and Greece and one of the primary causes for this can probably be found in the circumstance that legal proceedings there are often very protracted.

As regards the persons who question the child, there is a great difference in competence between the various interviewers. In Sweden and Finland, but also often in Denmark, Germany and Italy, the interviewers within the police specialise in the abuse of children. In their police work they work exclusively with investigation and questioning in matters dealing with the abuse of children, and this work is conducted within a special investigation unit at the police authority. Most police officers who are engaged with the collection of evidence within this field have many years of police experience, a particular interest in working with children and often have some special training for the task[17]. In Denmark, Finland, Iceland, Norway, Sweden and Italy, the majority of prosecutors who lead preliminary investigations in cases concerning child sexual abuse also have special training. Nevertheless it is a problem that many investigations, particularly in the rural areas, start with the local police and the specialists are only called in when it is too late, if at all. Where specialisation in this field is absent among the police, for example in Greece, or when the investigation is conducted at the local level, e.g. in small districts in Finland and Italy, it appears that women police officers are particularly preferred for the task of questioning children.

In Norway, but also sometimes in Italy, instead of using specialised police, people with *competence in the behavioural sciences* are used for the task of putting together a child's statement[18]. In Norway, the arrangement is that the judge responsible for the child questioning uses a child psychologist or other expert to conduct the questioning. Then the judge's task is personally limited to deciding the arrangement of the interrogation, control the form of the interrogation and assess its result[19]. In Italy and Spain, when collecting evidence outside a main hearing (or at the main hearing itself), the judge can use a psychologist as an aid for a questioning. This applies particularly to small children, when the psychologist is given the main responsibility of implementing the interrogation; here the task is to pass on the questions that the parties wish to present to the child in such a way that the child understands what is meant and also possibly to assist the court in the interpretation of the answers.

In several countries, *experts* are also used for other tasks than for conducting interviews with the child, namely to express opinions on the reliability of the child's statement. For this task, child psychologists or child psychiatrists are sometimes used, but it is normally witness psychologists, specialised in statement analysis, who are appointed. Various schools within witness psychology use

17 Also in certain quarters in Germany and Italy there is now special training on the police side.

18 There is also such a recommendation in Swedish law, but this is seldom observed in practice.

19 The result does not involve determining the evidential value of the statement but rather assessing whether the statement is sufficiently exhaustive. If it is difficult to assess credibility, the Norwegian judge can appoint an expert (normally a psychologist) to express an opinion on this.

various methods for this analysis, but a common feature for the majority is that the assessment is based on some kind of analysis of criteria[20]. When conducting such an analysis, the strength of the statement is assessed in relation to its potential to satisfy requirements for richness of detail, consistency, homogeneousness, emotional links, individuality, etc. The method is questioned as there is no clear empirical support for a truthful statement being more rich in detail (homogeneous, etc.) than an invented story, and witness psychologists have as a group been criticised for intruding on the domain of the judges by (partly) evaluating evidence on the issue of liability.

The use of witness psychology experts has consequently reduced drastically in Sweden over the last 5–6 years (and is now applied in less than 5 % of cases concerning child sexual abuse). However, in Norway the use of witness psychologists during the same period has increased. How common it is in Germany to have experts, expressing opinions on the child's credibility and the reliability of the statement, is not indicated by the national reports, but the prosecutor's side sometimes endeavours to reinforce its evidential position by using such expert opinions[21]. In Italy and Spain, expert psychologists are used for several different tasks in cases concerning abuse of children, among other things to assess credibility and sometimes experts present some form of criteria-based statement analysis. Nonetheless, psychologist experts are also used by the Italian and Spanish courts to establish whether a child can cope with a court questioning (or if the child should be questioned outside the main hearing) and to express views regarding the psychological harm that the child has suffered from the abuse[22].

Still, the most demanding task involved in investigating child sexual abuse is not in the interpretation and evaluation of the child's information – even if this task is also very difficult, particularly in cases involving young children – but to be able to produce a statement from the child that is actually good enough for a judicial evidential consideration. In a criminal case, it is not sufficient to be able to show that an abuse has occurred; the prosecutor must also be able to show when, where and how the abuse has occurred. The investigators must therefore devote great resources to ensuring a clear, cohesive and detail-rich statement about what happened. Because the child possesses limited language skills and limited empirical references, the difficulties are substantial and, in fact, the younger the child is the harder it is to obtain a statement that satisfies the requirements of the legal system on reliability.

In this context, the *questioning technique* is often of decisive importance to the outcome. The technique is not mainly a matter concerning the presentation of questions in a correct way, but having a correct starting point for the interrogation. The starting point is based on general knowledge of how abused children

20 Various concepts occur for different batteries of criteria, for example Statement Reality Analysis (Germany, Sweden), Statement Validity Analysis and Criterion Based Credibility Analysis (USA).

21 According to an unpublished study by Professor Jörg Michael Fegart at the Universities of Rostock and Ulm, the victims credibility had been examined by an expert in 26.5 % of 807 cases concerning sex crimes that came to the attention of the public prosecutor from 1994 to 1998, in the federal state of Mecklenburg-Western Pomerania.

22 In the majority of other countries the task of introducing evidence to show the injury to the child is the responsibility of the prosecutor (or the child's legal counsel).

function and on an individual assessment of the particular child's motivation to make a statement. To be able to motivate the child to independently explain, making a statement that can satisfy the requirements of the court, the interviewer must build up an atmosphere of confidence and understanding. The child must learn to understand why it is important to independently explain as comprehensively as possible what has occurred.

Children often experience a block when trying to explain abuse committed by a closely related person; it is necessary to be aware of this potential impediment for a child making a statement.

If the perpetrator is a stranger, for example if the abuse was committed by an unknown man or woman at a place outside the home, it is probable that the child will immediately following the abuse tell his/her parents about it. But if the child is exposed to regular abuse by a closely related person, for example by a stepfather in his/her own home, it is instead more likely that the child will not reveal this before he/she is separated from the perpetrator. The reason for a child not running to his/her mother and saying what has happened, is that the perpetrator normally succeeds in building up a bond of loyalty with the child. The child may not understand that the 'common secret' comprises improper behaviour, but the child's feeling of guilt or threat of the serious consequences of a disclosure can also maintain such a bond. A child may first retroactively talk of long-term sexual exploitation by a closely related person only after, for example, the separation of the custodians. This is not something to be surprised about but rather natural behaviour.

If the perpetrator is a person outside the family, who has a special relationship to the child in terms of care (for example as an employee to day-care nursery), it is common that the abuse can continue for a long period without the child saying anything about it. It can even be the case that a child who is grossly abused and at the same time exploited in child pornography, does not disclose this. Furthermore, when the child is confronted with pictures of the abuse of which he/she is a victim, he/she may continue to deny what has happened[23]. The most important basic knowledge in preparation for a police questioning with a child who has presumably been sexual abused by the same person on several occasions is therefore that *children do not tell*. The child does not speak of abuse of that kind before he/she feels motivated to do so. Hence, the interviewer must first build up an atmosphere of trust and confidence.

During the child interrogation, it is important that the questions posed are open and not guiding. There is no scientific support for asserting that children, viewed overall, have more propensity than adults to lie or fantasise or even that children are more easily influenced by suggestion. Suggestibility is more linked to the situation and the personality than to age. Therefore, it is remarkable that in Spain, according to the national report, children are still widely regarded as 'born liars'. At the same time, it should be abundantly clear that many people in a questioning situation are inclined to be accommodating and run the risk of giving answers they believe the interviewer wishes to have. As the child is in a

23 C-G. Svedin & K. Back 'Barn som inte berättar' [Children who don't tell] – Swedish Save the Children, Stockholm 1996.

particular subordinate position in relation to the adult (interviewer), this risk is greater for children than for adults and, therefore, the interviewer must be careful not to steer the interrogation too rigidly. The questions should be as open as possible and be aimed at encouraging the child's own explanation. Hypothetical and leading questions should be avoided as far as possible[24]. Nevertheless, with very young children, leading questions may at times be necessary to obtain details of the abuse. In such cases the answers must still be interpreted very carefully and the suggestibility of the child tested; by assessing whether the answers contain supplementary information (i.e. more than what is proposed by the interviewer) and by trying also to lead the child into 'incorrect' alternatives, credibility can be assessed. Although, as a main rule, *leading questions should be avoided as far as possible.* Unnecessary use of leading questions with children, may impair the child's opportunities to assert his/her rights. The information will be questioned by the defence and evaluated with more caution by the court than if the child has been given an opportunity to submit a spontaneous statement.

In the case of very young children, it is doubtful whether a question can at all lead to such a result that one obtains what could be designated to be a 'statement'. As children under the age of 3 normally do not have a sufficient vocabulary and verbal capacity to submit a comprehensible, coherent statement, in Sweden and Iceland the conclusion has been drawn that such young children do not need to be questioned at all. Instead, the evidence in the case must be presented with the assistance of witnesses, technical and medical evidence. In Norway, a special rule on means of evidence has been introduced for children, aged under 5, known as *child observation*, with the aim of enhancing the evidential possibilities. The judge appoints an expert, normally a child psychologist, who in a combination of play and discussions meets the child 2–4 times over a two-week period and then submits an opinion (regarding statements, attitudes and symptoms, that may suggest that the child has been the subject of abuse).

As many children often express themselves more clearly by other means than words, for example through play, gestures and drawings, professional observation can give the child some assistance in connection with the evaluation of suspicions of abuse. Even so, it is important that the opinion of the psychologist is not attributed evidential value that is far too great and independent. Symptoms and expressions on the part of the child can often be linked to the occurrence of psycho-socio disturbance but, even when the expressions appear to have a sexual implication, it is often difficult to directly and with certainty be able to refer them to the sexual abuse[25]. At the same time, an absence of symptoms cannot be taken

24 An example of doubtful questioning methods can be taken from the so-called Bjugn matter in Norway, where an assistant at a day-care centre was prosecuted (and subsequently released) for the abuse of 21 children aged 2.5–7 years. Even the other personnel at the day-care centre were suspected of abuse. During the investigation hypothetical questions were presented (in accordance with the so-called 'Furniss method') to the children; 'if there was someone who . . .?' 'if he/she touched you, how . . .?' etc., which resulted in the reliability of the information being extremely difficult to assess.

25 Precisely as with questioning, one cannot ignore the risk for control of the associations. There has been particular criticism in this respect concerning the use of anatomical dolls; at the same time as dolls are excellent aids for the child if there has been abuse, they can result in leading the child's associations incorrectly if an abuse has not occurred. The prospects of finding clear indications resulting from sexual abuse will probably, according to certain psychiatric expertise, be greatest if the child has been subjected to oral sex.

as an indication that no sexual abuse has occurred.
How the questioning technique is otherwise developed in various countries is not indicated by the national reports in this study, but the capacity to record an abused child's statement is to a great extent an issue of *competence*. Indeed, as an interviewer, one can achieve a lot with intuition, personal talents and empathy, but without specific knowledge of how sexually abused children can function in the questioning situation, there is a great risk of failure. The most important skill is just to realise that a general knowledge about children is *not* adequate and sufficient to understand the behaviour and needs of abused children. This requires special skills concerning defence mechanisms and psycho-socio symptoms, which appear in various forms with children following abuse.

3. Medical examination

Besides the child's statement, the results of a medical examination may constitute important evidence of abuse. A medical examination is particularly important in the case of very young children, first because the child's capacity to explain is limited, second because of the probability of medical discoveries (if an abuse has occurred) is likely to be somewhat greater than with older children.

Nonetheless, the most important knowledge concerning the result of the medical examination is the realisation of its limitations; *that if on medical examination one does not find any injury or trace of abuse, this does not mean that an abuse can be excluded.* On the contrary, the situation is that the majority of abuse does not leave any physical effects. One reason for this is that the medical examinations take place such a long time after the abuse that there are no traces (for example of sperm) remaining. Another reason is that the abuse occurred in such a way that no injury was incurred or that any possible injury had time to heal. The absence of medical findings or a conclusion of normal physical status, should therefore not govern or influence other investigations. If medical findings are made they may, depending on their certainty as regards origin, constitute a rather important supplement that is of evidential value for the hypothesis of abuse[26], but the absence of any such findings does not constitute a factor that speaks against the hypothesis.

Medical opinions in cases concerning child sexual abuse occur in all the countries investigated. What differs is *competence, frequency and routines*. In Finland, a medical examination is conducted as a matter of routine as soon as the police report has been made, in other countries this is only done when the police (or prosecutor/judge) consider that there is a need to do so. In practice, this can, as in Spain, mean that this is only done exceptionally, i.e. in cases where it is obvious that a medical examination should be conducted[27]. It may also, as in Norway and Romania, mean that the medical examination is viewed as an issue of resources and that the expenses for the medical examination sometimes cons-

26 In extreme cases, one can conceive that an absolutely clear examination result may constitute the sole evidence for the occurrence of abuse. However, further evidence is probably required to link the perpetrator to this abuse.
27 In Spain, there is only medical evidence in approximately 10 % of the cases.

titute an argument for declining to conduct such an examination. A general conclusion of the national reports is that the medical evidence is used far too seldom.

Besides the expense, the causes for this restriction may be the experience of few medical examinations yielding any result that is relevant for the investigation. Such experience has been confirmed to some extent by practice in Finland, where there is actually a medical examination as a routine; usable results were only obtained in 15% of the cases. Another possible cause is the fact that the results are rarely unequivocal and that the scientific reliability of the opinion of physicians is doubted[28]. In a 10-year perspective, in any event for Denmark, Finland, Iceland, Norway and Sweden, the medical expert opinions now play a less prominent role. Physicians' opinions are not requested as often and are attached less importance than previously. This may result from the physicians expressing themselves more cautiously or because the courts are more independent in their assessments today, but the common cause for this tendency is probably that there was once an over-interpretation of the link between certain findings on the child and abuse being the cause[29]. In recent years, following major scientific studies, it has been possible to conclude that the variations within 'normality', for example regarding the size of the vaginal opening, the hymen's appearance and the occurrence of scars in the vagina of young girls, is significantly greater than was previously assumed. Despite this increased caution, it is important to bear in mind that in certain, usually more serious, cases of abuse one can find injury that can be concluded to be caused by penetration (in any event if the examination occurs within three months of the abuse). This means in its turn that *a medical examination is a means of evidence that should not be neglected in connection with the investigations of sexual abuse.* If certain findings are made, they may be of importance as supporting evidence, even if they are not unequivocal (and it cannot be excluded that the injury can have arisen through an accident or illness). If no findings are made, this only means that the investigation must seek to find other ways.

If and when the medical examination of a child is conducted, it is important that the examining physician has the greatest possible competence. In many quarters, medical examinations of children are conducted by a paediatrician or gynaecologist, but in some countries (Sweden, Finland, Germany, Italy and Greece) forensic medicine is a medical speciality and the examination there (with the exception of Germany) is normally – but not always – conducted by a forensic physician. The advantage of specialisation is that a forensic physician normally has greater knowledge and experience of the link between abuse and injury, but also a better understanding of what the court wants to know in these connections. Furthermore, the corps of forensic physicians is, in the majority of countries, subject to its own national supervision, which means there is an overall responsibility for quality assurance, to ensure that the same routines, norms

28 In Norway and Sweden, persons convicted have had relief for substantive defects and been released on a new trial after it transpired that the medical expert opinions, which were used in the previous proceedings, were far too categorical in the light of more recent knowledge within the field.

29 The most striking example is the investigation in Cleveland, England, 1987, where, during a period of five months, two physicians diagnosed 121 children as being subjected to violence after a looseness of the anal muscle of these children had been observed.

and concepts are applied throughout the country.
In addition to the examination itself, the forensic physician (or other physician who conducts the examination) must normally submit a written opinion and attend court, as an expert advisor or expert witness, to amplify on his/her conclusions. In this function, it is important to distinguish between evidence and expertise. It is any possible injury to the child that comprises the evidence – the physician's conclusions concerning the probability of this having been incurred through abuse is an evaluation of the evidence. This evaluation is indeed based on professional special competence, but it does not mean that the court is bound by the conclusions and assessments of probability made by the expert. The opinion by the expert is an *aid for the court* when evaluating evidence, not evidence as such. This means that the court shall, in accordance with the judicial function and principle of free evaluation of evidence, conduct an independent evaluation of every item of evidence in the case. But, in practice, there is always a risk that the judge, owing to his/her own limited knowledge of an area (medical, financial, forensic science, etc.), relies on the expert's evaluations and authority to a far too great an extent.

In summary, concerning medical examinations, it can be stated that this investigation instrument is used far too seldom. In significantly more cases than at present, a competently conducted medical examination could provide important information about what has occurred. Particularly if only a short time has elapsed since the abuse, it is important that the child undergoes an examination of this kind, even if this involves further strain for the child. As the majority of children find this form of medical examination unpleasant, or even very unpleasant (as it can remind them of the abuse), it is extremely important that it can take place in the most appropriate of forms. The child should be prepared mentally for the task and the physician, who meets the child, should not only have knowledge about medical aspects but also about certain psychological reactions that occur among sexually abused children.

Another issue in this connection is whether one can allow the medical examination of a child without the parent's consent or against the will of the child. In several countries in this study, every person (under certain circumstances) is liable to co-operate in a crime investigation for a medical examination for the purposes of evidence and it is not indicated by the national reports whether there are any direct special rules concerning children[30]. This probably does not mean that there is in practice a policy of compelling children to undergo medical examinations, but that the importance of the examination is assessed from case to case on the basis of the best interests of the child. In some cases, there may be cause to try to conduct an examination even if the child does not wish this, in other cases a child, who him/herself expresses a justified resistance, should not undergo examination. As a main rule, the crime investigating authorities should not leave this to be determined by the child (even less so by his/her parents).

Trying to optimise the evidence in the matter may in the long turn be more

30 An exception from the obligation can, as in Germany, be made on the same grounds as there are exceptions from the obligation to be a witness (i.e. for example if the suspect is closely related).

in accordance with the best interests of the child.
In other countries, a person must have consent to a medical examination (if the person in question is not a suspect). This means that the child or the child's custodian can refuse an examination[31]. In those cases where the suspect is also the custodian, this may involve problems and mean that the crime investigation is obstructed[32]. Another problem with the requirement of consent is that parents, who as such are willing to allow the child to participate in the crime investigation, will nevertheless allow the child to avoid it. If a prosecutor and police officer are of the view that such an examination is necessary to be able to reinforce the evidence, the lack of consent may ultimately result in the entire preliminary investigation being dropped.

Irrespective of whether the legal system requires formal consent or not, it is consequently of the greatest importance that the crime investigators *motivate* both the child and his/her custodians towards a medical examination and ensure that these examinations are conducted in the most considerate manner possible.

4. Other problems and inadequacies in the investigation

As mentioned previously (see IV:1 and IV:2) the *long investigation times* constitute a major problem regarding offences against children. Protracted procedure, which is common for most kinds of crime causes problems: the evidence becomes increasingly stale; the memory of what has occurred is more processed; and the risk of influence increases. Together with the uncertainty concerning the outcome of the proceedings, this is all stressful for everyone involved. Moreover, when a child is involved, the person in question is at a developmental stage, for which reason he/she is normally very sensitive to external influences. For a vulnerable child, protracted proceedings can constitute a further violation and involve long-term mental suffering. For this reason, it is of extraordinary importance that proceedings with children are concluded as soon as possible. In some of the countries investigated, reforms have recently been made in this direction. In Sweden, a recommendation has been issued that investigations of offences against children should, if possible, be completed within three months, and in Norway a hearing by a judge with an abused child should normally be held within two weeks from the police report. Also in Denmark, Finland, Iceland and Germany, sexual abuse of children is given high priority. In contrast, in Spain, Italy, Greece and Romania, it appears that there are extremely limited opportunities to expedite the proceedings.

In Spain and Greece, *withdrawal of statements* also constitutes a manifest problem. As mentioned above, this may be attributable to the long processing period and the pressing situation that the methods of investigation involve for the child. Another factor may be the general scepticism, which is considered to exist regarding the occurrence of sexual abuse, particularly within families and particularly in conjunction with custody disputes. In such a climate it can be dif-

31 In Sweden, the consent of the child is required if it has attained the age of 12, for younger children consent is required from the custodians.

32 In Sweden, this problem has been resolved by, in this situation, transferring the responsibility for the medical examination to an advocate in the capacity as special representative for the child.

ficult for a child to be believed and the child perhaps then gives up the attempts to explain what has occurred. Abused children who encounter distrust feel that they have once again been betrayed by the adult world.

As regards the issue of *false accusation*, there is a myth suggesting that this is rather common and that manipulative mothers, for example in conjunction with custody disputes, have the capacity to induce false statement by the child; through the mother's interpretation of slight symptoms and with the assistance of leading questions, a false statement develops concerning abuse. In actual fact there are, internationally viewed, extremely few scientifically established cases of conscious false accusations by mothers being transferred into unconscious false information from a child. Nor are there many verified cases where the child has consciously lied about abuse, for example to seek revenge against a person who has harmed them in some other way. That a statement concerning abuse, an accusation, is subsequently withdrawn, cannot be viewed as a clear sign that the information was wrong – the reason for the withdrawal may be a feeling of personal guilt, the wish for reconciliation with the perpetrator or insufficient strength to pursue the proceedings.

This is not to say that false accusations do not occur but there can be other explanations than false accusations behind the withdrawal. What can indeed be said about the matter in general, is that there are plenty of cases everywhere where the interpretation, even after an investigation has been conducted, must remain open. It may not be possible to say whether the accusations are founded on a real abuse or if the statement is a product of fantasy and self-suggestion in combination with influence. This difficulty, to interpret an alleged crime victim's statement, is itself the key issue for the investigation of sexual abuse generally and vulnerable children in particular. For this reason, the crime investigators must have very solid competence in evaluating statements.

The general impression in the national reports is that competence for interpreting the statements of children is weak at all levels. Police officers and prosecutors may have some special training in the questioning of children, but the quota for training available is not sufficient for the task and the same applies for judges, advocates and other people participating in the procedure. Of course, the task is more difficult if there is no training, for example if the only qualification that is required for the task is being a woman. In general, far too little regard is given during the investigation to the assistance of behavioural expertise, for example child psychologists and child psychiatrists. The reason for this may be that investigators (and lawyers in particular) have a sceptical attitude towards these sciences and dismiss them with the justification that one can almost always find an expert to say that the child is saying the truth and another expert to say that the child is lying. Therefore, one satisfies oneself with one's own life experience and one's own common sense in the area. In those cases, where multi-disciplinary competence is nevertheless used, there is often a big gap between 'the client' and the consultant. Often, the lawyer does not know how the expertise should be used, and just as often the expert does not know what the lawyer wants to have an answer to – the result may be that the crime investigators and the courts are by no means provided with the interpretation aids that would be

of service to them. For this reason the competence of crime investigators must be enhanced. It is only when one comprehends what the difficulties are ultimately about and realises what one specifically needs help with, that one can give the psychologist experts a meaningful task and have the capacity to understand their results[33].

33 See Clara Gumpert Alleged Child Sexual Abuse; the Expert Witness and the Court, Stockholm 2001.

V Conclusions

There are no patent solutions to get children to make a statement concerning sexual abuse or to get the statement as clear, cohesive and detailed as lawyers would like. Neither are there any scientific methods to differentiate lies from truth using only statements as a basis, nor is there any given method to ensure the correct interpretation of a child's statement.

Different methods of questioning, collection of other evidence and presentation and evaluation of evidence can yield the same results, and the same method can yield different results in matters with the same components. This is simply because *children are different.* Every child has his/her individual abilities and thereby gives his/her own reactions to a particular treatment, which means that a method and an attitude that suits one child is unsuitable in relation to another. For similar reasons, it cannot on solid grounds be maintained that a particular form of procedure (for example in a particular country), with a particular treatment of the child, gives a superior quality in relation to another. This is because children are also participants in the culture, even the legal culture, in which they live and they are capable, with the limitations of their experience, to understand it. The treatment that a child in one country finds acceptable may, of course, be viewed as a violation by a child in another country.

As the material in the national reports is limited and the direct comparison of quality would require more in-depth studies, it is difficult to draw any extensive conclusions concerning the forms of procedure themselves and the legal regulation of the child's role in the proceedings. Nevertheless, it does allow for a comparison regarding the *strain of the proceedings on the child and the child's opportunity to be heard.* The treatment of the child and the satisfaction of his/her personal needs are the most fundamental aspects of the legal handling of these matters to consider in an international context. It may therefore appear that I am concerned mainly with the psycho-social consequences of the procedure, but this is not the case. On the contrary, it must be stressed that the well-being of the child is a precondition for a properly functioning procedure, while a violated child who is treated badly during the procedure is exposed to further violation. The quality of cases concerning suspected sexual abuse of children primarily involves providing the child with the necessary basic security in a situation where the child is completely in the hands of the adults. This fundamental security is partly created through procedural rules that protect the child and by an empathetic attitude, but primarily by all professional actors who deal with the child having in-depth knowledge and an understanding of the situation of the abused child.

The golden rule, which should apply in all proceedings where children are involved, is that the child, irrespective of the outcome, should come out of the proceedings in a better position than before the proceedings started. If the child's situation is aggravated as a consequence of the proceedings, irrespective of their outcome, the legal apparatus has failed. In this context, the long proceedings in countries such as Spain, Italy and Greece are a major problem. In virtually all the coun-

tries of the study it appears that the investigation of suspected sexual abuse takes far too much time. To allow a child, during the sensitive childhood years, to live for a long period in uncertainty about the conclusion of the suspected abuse, causes unnecessary suffering. It is obviously also in the suspect's interest that the matter is investigated and considered as soon as possible. It follows that the first conclusion of this investigation is that

1. *Investigations concerning sexual abuse against children should be given the highest priority,*
2. *the investigations should be concluded as rapidly as possible, and*
3. *the proceedings should also have priority, so that they can be concluded within the shortest possible period of time.*

Another conclusion of the investigation is that children in many countries, are unnecessarily exposed to repeated questionings. In this connection one must differentiate between new questionings with the purpose of obtaining further information, i.e. more details of the abuse referred to, and new questionings with the aim of allowing new legal actors to hear the statement of the child. For the latter purpose, one must always ensure that the defence counsel has, sometime during the proceedings, been afforded an opportunity to question the child. Otherwise there is reason to limit re-questionings to a minimum. It is not reasonable that a child have to make the same statement over and over again. First, these repetitions create mistrust on the part of the child. Second, the preparedness for new questioning, if an abuse has taken place, mean that the child is compelled to keep the memory of the abuse alive during this period. Furthermore the risk for pressure and influence will increase. Video recordings of the child's statement should, possibly in combination with supplementary questions, suffice as evidential material in the proceedings, in any event in cases involving young children. A child who feels fear should not need to encounter the accused eye to eye. For these reasons, the conclusions can be formulated so that

1. *During the investigation phase, the child should be questioned as soon as possible after the report and as many times as necessary to safeguard his/her statement at the same time as one minimises the number of questionings and the time between them*
2. *to minimise the number of questionings with the child, these questionings must be very well prepared and always conducted by a competent interviewer*
3. *if the child shall be heard in the trial, this shall be done on as few occasions as possible, preferably only once*
4. *the interrogation shall be conducted in such a way and in such an atmosphere that the child feels secure, and*
5. *the child should not be exposed to direct contact with the suspected perpetrator in court.*

Throughout the entire processing, the investigation and any trial, the child

needs support of various kinds. First, social, curative and rehabilitation support is required and one cannot assume that the support by the parents in this connection is sufficient. Particularly when the suspect is a closely related person, one must instead proceed on the basis that the child needs professional help. Second, legal support is required to enable the child to protect his/her own interests, at least in those situations where the child is a party in the proceedings. This support can be designed in various ways, in various procedural systems, for various situations, depending on the needs of the individual child. In certain cases, it will probably be possible to combine the curative, supporting task with the legal, while in other cases it would appear necessary to have different support persons for the different functions. The national reports indicate that there are inadequacies regarding the support to children, and therefore the third conclusion is that

1. *Support for the child in investigations and proceedings concerning sexual abuse must generally be improved*
2. *the child should be entitled to his/her own legal counsel, paid by the state, as soon as there is a need for this, which means*
3. *that such counsel should be appointed as soon appointed in the beginning of the investigation and also*
4. *that the person appointed for the task should have special competence in the field and specific knowledge about how abused children can react.*

The competence, which a legal representative of the child should possess, should of course also be possessed by everyone who investigates and assesses suspected abuse of children. Every police officer, prosecutor, defence counsel and judge should have special experience and knowledge concerning the difficulties involved in meeting children subjected to sexual abuse. Without such knowledge, there will be far too many matters discontinued owing to inadequacies in the results and the investigation arrangements. Far too many cases are concluded in uncertainty. The available information may suggest that some kind of abuse has actually occurred, but it cannot be proved at a trial. At present, the special skills that are required to conduct high-quality investigations and correctly assess the statements of children concerning abuse, are often absent. Hence, the fourth conclusion is that

1. *Competence on the part of all legal actors, who are involved in the investigations and proceedings concerning suspected sexual abuse of children, must be improved,*
2. *this competence must be provided for the legal actors through special training and some specialisation,*
3. *it is necessary to have advanced multi-disciplinary collaboration with medical, psychiatric and psychological expertise*
4. *that co-ordination between various actors must improve, and*
5. *that investigation methods must be developed, not least regarding questioning techniques and statement analysis.*

The three latter items in this conclusion will be amplified in detail in the following sections.

1. Development of skills

Whatever might lie behind a suspicion of sexual abuse, this suspicion expresses a *grave social conflict* between a child and one or more adults (or in exceptional cases primarily between adults, with the child as an instrument). The function of the relevant legal authorities is to establish what lies behind this conflict and the aim must be to obtain an explanation to the cause of the suspicion. This ambition must be based on knowledge about what social reality is like and how children function in this reality. As indicated several times in this presentation, knowledge about how children generally function is not sufficient in this connection; investigators and persons making assessments must have special insight into how abused children function in various situations. It is essential to realise that children react differently to the same kinds of situations and that, above all else, one cannot expect that a young child will function rationally when subject to abuse. Many times a child does not understand the impropriety of particular conduct and in many cases of less serious abuse the child's experience is fragmented among various feelings, where the child's needs for closeness and intimacy are in conflict with feelings of guilt and unpleasantness.

This means that the legal actors must thus possess a great measure of special psychological knowledge and capacity to be able to implement the right approach to the child and the investigation. This knowledge may be provided through a highly developed specialisation for all professional groups, in combination with special training for the task. To the extent that specialisation is not possible with the current structure, special units with regional responsibility should be created. If it still appears to be far too difficult to have organisational specialisation, for example for prosecutors and judges in certain countries, there should be an obligatory basic education (at least one week before one is deemed qualified for the task). Continuing education must be organised for *judges, prosecutors and advocates* who deal with these matters so that they keep themselves up-to-date with the relevant scientific and methodological developments.

When own knowledge is insufficient, the prosecutor or judge must be prepared to refer to *expertise in the field,* i.e. to specialists in child psychology or child psychiatry. In this connection it is of extreme importance to use the right competence for the task in question and that the expert is given clear instructions about what the assistance should comprise. It should, for example, be made clear that a clinical psychologist or psychiatrist who is treating a child, has a rehabilitative function and thereby may be appropriate witness to express views on the child's symptoms, diagnosis and mental status, but is less suitable to assist in the investigation of what has occurred or have an opinion concerning the credibility of the child. Correspondingly, it must also be clear whether one desires a statement in general terms from an expert opinion, for example concerning what the typical symptoms following abuse are or how the memories of vulnerable children function, or whether one wants to establish the expert's view on the pro-

bability of the child's statement originating from a real abuse or not. As an investigator has different needs for expertise in different situations, it is desirable that every investigating unit has a special pool of competent experts to refer to and, even better, if experts of various kinds (child psychologist, child psychiatrist, social workers, etc.) work as a team.

Training is particularly important for those investigators who are given the task of recording a child's statement, i.e. usually the *police officers* who deal with the child questioning itself. Week-long courses on how to question abused children are not sufficient here – in addition to this, in-depth skills are required. The Norwegian system, with a psychologist as interviewer under the supervision of a judge, may possibly constitute a positive example for other countries. But if someone without special behavioural education (or long experience) in the field, accepts the task of questioning an abused child, there is a great risk of failure. Such failure is often difficult to repair – the child closes up and does not want to say what has happened. The fact that one may have some basic knowledge of the task is no guarantee of success – on the contrary, the art of questioning a child in a successful manner often requires involvement and talent – but without this base there is a risk that one will ruin the child's opportunity to get justice. This destructive effect either arises by blocking the child through an improper method of questioning, so that he/she is unable to provide sufficient details, or by the child being directed so strongly that, on later examination, the statement is deemed to lack evidential value – the information that was established during the questioning having emanated from the interviewer and not from the child.

This study cannot give any instructions about how education of interviewer of children should be designed. International studies in the area, primarily from the USA, suggest that questioning techniques must be learned in practice[34]. Theoretical knowledge and the assimilation of 'tricks' or entrances to get the child to talk about the abuse are not sufficient. Above all else, practical training is required. Each interviewer needs guidance and feedback and this also means that one should work in a group. By the group together reviewing questionings conducted, ways of succeeding and failing can be learned from one another, but also continuous assessment of individual competence and awareness, and where possible difficulties and inadequacies exist, can be obtained.

2. Co-ordination

Matters concerning child sexual abuse form an area in particular need of professional collaboration since they are so difficult and demanding. This is because an optimal investigation effort requires such broad multi-disciplinary competence and it is hardly possible for a single individual to possess all these skills. To ensure that all features and aspects of the investigation are utilised, and in order for the child to get the best support possible, all good forces should be assembled. Even if it may be sufficient with informal contacts and networks, including a well-developed collaboration between social and (juridical administrative)

34 See Michael Lamb et al 'Conducting investigative interviews of alleged sexual abuse victim, Child Abuse & Neglect 1998.

legal authorities, there is a lot to be gained from *structural co-ordination*. If all resources that can and should be mobilised to investigate a suspected abuse and to support the abused child are assembled in one place, the opportunities are enhanced for building up efficient routines and fruitful multi-disciplinary collaboration and learning.

In this spirit, in some States of the USA, e.g. Utah, special centres have been developed, where children who might have been abused can receive all the assistance – medical, psychological and legal – they need and where the investigation of the suspected abuse also takes place. The institution *Children's House (Barnahús)* in Iceland is based on the same idea, where all the resources are gathered under the same roof. I wish to highlight this institution as an inspiring example of reform in the best interests of the child.

The purpose of establishing the Children's House was to achieve the best possible co-ordination between the social services, healthcare services and investigating authorities (i.e. police and prosecutor). By gathering the resources, a formalised collaboration was established between various professional groups and sciences, which in its turn not only facilitates the exchange of information and knowledge but also clarifies the individual role and the responsibility of the professional in investigation and care. The individual and joint special competence, both in investigation and treatment, may be expected to increase continuously, as the target groups for new knowledge in the area (whether regarding legal practice, questioning methods or forensic medical questions) are gathered in one place. The pressure on the child is reduced since all these services are provided under the same roof and there is no need to visit several different authorities. Because the environment is adapted to children and the child becomes acquainted with it over time, the sense of security increases. If efforts are always made to use the same contact person (e.g. same interviewer) and to conduct the investigation phase as rapidly as possible, this will hopefully minimise the risk of the investigation itself having a harmful impact on the child. In short, the ideology behind the Children's House is to *prevent the children being subjected to traumatisation and to investigate the matter as rapidly as possible.*

The Children's House was opened in 1998 in the capital Reykjavik, and is available for all abused children in the country. At that time, the police, available on-site, were responsible for questioning children during the investigation. However, in the following year, Iceland introduced a Norwegian model with judge questionings and this involved an important element of the investigation being placed off-site. Many judges have actually chosen to come to the Centre to conduct their judge questionings with the child, but as several courts have installed their own questioning room for children (with video recording facilities, etc.), many judges have also chosen to implement these questionings at the court[35]. From a child rights perspective, this right of choice for judges is considered regressive, first, because a change of environment may involve an inhibiting or stressful effect on the child, second, because the form of investigation

35 The Supreme Court of Iceland has laid down that a child cannot demand to be questioned at the Children's House. If the court has adequate facilities, it is a matter for the court to determine where the questioning should be held.

depends on the personal preference of the particular judge; it is only when it is made disclosed which judge will deal with the matter and what this judge considers about the matter, that it will be known where the child questioning will be held. The child's need for security is therefore nowadays considered to be of less importance than the judge's right to choose where the questioning shall be heard.

Corresponding investigation centres for children are also found in some places in Spain and Italy, for instance in Milan (*Il Centro del Bambino Maltrattato,* which was already established in 1984) and in Palermo (GOIAM), and some trial projects have also been started in Greece. Still, co-ordination with the investigating activity (the local police and prosecutor authority) in these countries appears not to be as well-developed as in Iceland.

In my view, the Iceland example can serve as a model for the development of both investigation and treatment of abused children. By co-ordination of the social resources in the field, it is likely that the investigation work can be conducted more efficiently. The children will thereby also be given significantly better support and feel greater security than if they are investigated and treated in parallel at different units.

3. Development of methods

On the legal side, the most difficult problems related to suspected sexual abuse of children cannot be tackled with structural changes. The greatest difficulty is finding a correct balance between due process and legal security. On the one hand, one cannot request that a small child should be able to communicate his/her story about a suspected abuse in an equally clear way as an adult. On the other hand, one cannot sentence a suspected person solely on the basis of a child's story, if the statement is so vague that it is not possible to determine whether it involves abuse or not. As the same evidential requirements are imposed within the European legal systems in cases concerning child sexual abuse as in all other serious criminal cases, i.e. that the offence should be 'proved beyond reasonable doubt', this means that the child has an evidential handicap in relation to adults. A radical move would be to reduce the evidential requirements in cases with children or, in any case, reduce the demand on the precision of the description of the act (i.e. the description of when, where and how the offence was committed), but such a reform is hardly on the agenda of any of the countries investigated. A change of this kind would, as a matter of principle, possibly be in violation of the European Convention and would, in practice, increase the risk of innocent people being sentenced.

Hence, in criminal cases where a child as a victim faces an adult suspect, more regard is given to due process than legal security, more regard is given to the adult than the child. In practice, this means *that it is difficult for abused children to get justice in criminal proceedings* and that many matters must be dropped at some point, as the evidence is not deemed to be sufficient to satisfy the high evidential requirement.

This is the grave legal situation for the child in Europe today. A defeatist view on the issue means that one capitulates in cases with small children where direct

evidence (witness, DNA traces, clear medical injury, etc.) is absent, and allows the best interests of the child to be determined by the social welfare authorities. Instead of assessing whether a punishable abuse has occurred, the matter turns into the problematic issue of assessing what support (social, psychological, curative, etc.) the child needs and whether the child needs to be protected (for example taken into care) to eliminate any risk of continued abuse. If, on the other hand, the approach is taken that the suspicion of a criminal abuse should not be abandoned before one has got to the bottom of the matter, the challenge instead becomes how to improve the ability to conduct better crime investigations.

Greater knowledge, broader competence, on the part of all actors in the investigation and assessment of abused children would, of course, improve the situation and, as previously mentioned, the prospects would increase even more in the future if the expertise is co-ordinated and works more as a team. Nevertheless, one should bear in mind that good collective knowledge may be a precondition, but not any guarantee, for good investigation results. To achieve the optimum results, knowledge must also be utilised properly – it must be applied in a particular investigation method to increase the prospects of establishing the truth about a suspected sexual abuse.

As investigation results today are largely considered to be poor – the percentage solved is low – a quality enhancement must be attained, which not only comprises competence as such, but also methods. *Method development regarding investigations of sexual abuse of children is therefore an important step for increased legal security.*

Theoretical models of questioning techniques for abused children, will not automatically result in a higher percentage of cases being resolved, no matter how much they are improved. *Method issues are ultimately to a great extent an issue of attitude.* This applies both at the micro level and at the macro level.

As regards the individual interviewer, the outcome largely depends on personal qualities, on empathy and on a capacity to apply the theoretical model in the individual case. This capacity is linked to sensitivity and flexibility, to an insight that every child is a particular individual and that there are no patented ways to establishing a child's statement. That which can be learned on courses constitutes a starting point, strategy and a battery of solutions for various questioning problems, but it does not guarantee that a trained person is also capable of applying these techniques. For some people, the strategic base always functions, for others it sometimes functions and for others it never functions in relation to an unwilling child. The difference in outcome does not necessarily depend on differences of technical skill but simply on certain individuals finding it easier to create trustful communication with the child. For this reason, it is important that the legal system does not make theoretical education the only criteria for suitability for questioning abused children. The theoretical, specialised, questioning training is necessary to provide interviewers with essential basic skills and keys to resolve the problems that arise in various questioning situations, but at the same time one must always choose an interviewer who with the greatest aptitude to achieve results. If the preliminary investigation leader proceeds on the basis that the child to be questioned will not be able or want to speak spontaneously,

it is exceedingly important for the child that the questioning is conducted by the person who is most capable to reach out to him or her.

At the macro level, the attitude issue concerns the prevailing views on the general evidential difficulties that arise when children are victims. If it is taken for granted that legal proceedings belong to the adult world – which as such is quite correct – little is required to assume that it is necessary to get the child to function as an adult as far as possible. The optimum from this perspective is to get the child to function as 'well' as an adult witness, but this ambition can rarely be satisfied. If one instead proceeds on the basis of the child's limited abilities, the focus is instead placed on an understanding of and support for the child. From this point of view, when questioning the child, it is vital not to impose greater expectations than he or she, with respect to (his/her) age, maturity and verbal capacity, can meet. Instead, the entire situation is considered and attention is directed towards areas where one could possibly find support (or lack of support) for the suspicion of abuse. This means that the investigating officer must try to use all conceivable opportunities to acquire *supporting evidence* for the abuse thesis (which is normally based on information from the child). In practice, this involves different elements of investigation in different kinds of cases, primarily dependent on whether the suspect perpetrator is known or unknown. If the offender is an unknown person, the investigation difficulties normally emanate from the child not being able to give a good description and it is then important to secure traces at the scene of the crime and on the child, search for witnesses, look for similar cases in the area, etc. If the suspected perpetrator is known to the child, one must instead question persons closely related to him/her (normally the mother in the first instance) to establish how the suspicions arose and how they were disclosed by the child. It is also necessary to undertake a medical examination, to investigate psychosocial symptoms and to conduct an analysis of the child's statement but above all else to question the suspect so many times and so thoroughly that one gets an 'acceptable' explanation for the child's accusation. If it is not possible to establish any strong supporting evidence, an investigator is nevertheless not entirely dependent on what the child can say. If an abuse has occurred – or if something has happened that can improperly be interpreted as abuse – there is actually another source of information than the child, namely the adult who was involved when it happened.

A common mistake regarding attitudes towards the suspect is to automatically presume that he/she will deny the offence even if he/she did actually commit it. The correct attitude should instead be to proceed on the basis that the suspect has a need to admit the abuse if it has occurred and that, with this approach, it is also surprisingly often the case that the suspect is prepared to admit some improper conduct[36]. In certain places in the world, among others in the USA and France, this 'socio psychological' investigation attitude has yielded very good results[37]. The key word is patience – one views the investigation of a sexual offence primarily as an investigation of a social conflict between two individuals, which must be resolved to allow those involved to move on in their life.

36 However, the abuse is normally trivialised or defended by saying that the child took the initiative.

37 There the method is applied within the framework of a school known as Therapeutic Jurisprudence, see e.g. D. Wexler & B. Winick Law in a Therapeutic Key, Carolina 1996.

VI Recommendations from Save the Children

For reasons discussed in this report, it is extremely difficult for abused children in Europe to get justice in criminal proceedings and the situation of the child in these matters is far from satisfactory in any of the countries investigated. Examples of good practice and models are patchy and few in relation to the gravity and magnitude of the crimes. The percentage of cases solved and the quality of investigations is low. This is in part likely to be due to insufficient consideration for the needs and the ability of the child. In cases where a child as a victim faces an adult suspect, more regard is given to due process for the adult than legal protection of the child

The procedure today is adapted to adults and children are not given a natural place within it. Both as regards procedure and evidence, the child is handicapped by standards designed for adults. The younger the child is the greater the difficulty he/she has to assert his/her interests.

In order to ensure that all victims of crime in Europe have access to justice, irrespective of their age, it is therefore necessary to initiate long term, structural reforms of the European legal systems towards complete adaptation to the needs, conditions and abilities of the child, including the child who is disabled or in other ways disadvantaged relative to other children.

Within the current systems, there is scope for considerable, immediate improvement of the legal as well as the psycho-social support provided for abused children in criminal proceedings. Save the Children believes that it is possible to enhance the prospects of the child to get justice while seriously reducing the risk of re-victimatization without infringing the right of the accused to a fair trial.

Save the Children recommends the Governments of Europe, together with all relevant authorities and civil society, to take all appropriate measures to immediately improve the situation for sexually abused children in criminal proceedings along the following lines:

1. High overall priority should be given to legal investigations and assessment of child sexual abuse

Decision-makers and all actors involved with legal investigations and assessments of sexual abuse of children need to *acknowledge that these matters are different and more complicated than the majority of other criminal cases and therefore must be prioritised in terms of resource allocation.*

Since an erroneous judgement as well as a prematurely discontinued investigation, may have extraordinary consequences for those involved, it is *extremely important that all investigations of suspected sexual abuse are of the highest possible quality.* Bearing in mind the interests of both parties, the investigation should be conducted *as expeditiously as possible and given priority before other crime investigations.*

2. The protection of the legal interests of the Child should be strengthened

As in all legal proceedings *a fine balance between the legal security of the child and the due process for the suspect* must be found. Neither of these two interests should have priority in the proceedings, but when in conflict with adult interest, whether they are expressed as the rights of the suspect, the traditional forms of the legal proceedings or the power of the judges to decide the forms for the trial, the child's rights must have priority. *The child's rights must also be visible in national law.* The procedure must be adapted to the child's ability, needs and protection, both in those cases where they must participate physically in the investigation and trial and in those cases where the child is absent and makes his/her voice heard through a representative.

The child should be entitled to his/her own legal counsel, paid by the state, as early as possible during the investigation phase. The person appointed for the task should have special competence in the field and specific knowledge about how abused children can react.

When necessary, expertise on abused children should be engaged to collect the child's statement. On questioning the child, as a main rule leading and hypothetical questions should be avoided as far as possible since the information will be questioned by the defence and evaluated with more caution by the court than if the child has been given an opportunity to submit a spontaneous statement.

The practice of the legal systems investigated is often remarkably rigid and should allow for a greater level of flexibility. The rights and interests of the child would benefit from individual solutions based on considerations of age, development, maturity and circumstances of the case. In all European legal systems, it should also be possible to apply protective rules for children as victims and witnesses between up to the age of 18.

When only a short time has elapsed since the abuse, a medical examination to improve the investigation information-base should be undertaken, even if most of the abuse does not result in physical injury and possibly detected injury may have another cause than abuse. A specialist physician should always be engaged for the examination and specialisation must be developed in those countries where forensic medicine is not yet a medical specialty. The physician should also know about psychological reactions among sexually abused children and the child must be mentally prepared for the task. Medical findings may constitute an important supplement of evidential value for the hypothesis of abuse but, most importantly, absence of findings does not speak against it. If no findings are made, the investigation must seek other ways forward.

The psycho-social well-being of the child should be seen as a precondition for a properly functioning procedure in which his/her possibility to get justice is optimised. In general, concern with support (social, psychological, curative, etc.) and protection from further abuse, must be combined with, but never abate, serious efforts to improve crime investigations.

3. The psycho-social well-being of the Child must be better protected

All investigation work and appearance in court must be assessed in relation to the principle of the best interests of the child. In determining the best interests of the child in each individual case due weight must be given to his/her needs, development, maturity and current mental status.

The investigation and the procedure must be designed so that the risk for re-victimisation is minimised, following the principle that *the child, irrespective of the outcome, should come out of the proceedings in a better position than before they started.*

In the event of the legal counsel not being able to provide sufficient psycho-social support during the interrogation, the child should be given the option to receive such support by a professional also in cases where the suspect is not closely related to the child. The child may not communicate freely in the presence of parents/guardians on whom the interrogation can also put a lot of strain.

The child should be questioned, examined and treated in an environment designed to make her/him feel secure and comfortable. All agencies involved in proceedings and investigations – the prosecutor, police, the social and medical care – should organise and co-ordinate their work in such a way that the child does not have to move around between different units for parallel investigation and treatment. Preferably, all relevant authorities and services should be represented under one roof.

The number of persons that a child must meet during the investigation should be minimized, since the more people he/she must meet, the more stressful the process will be for him/her – and even more so if the purpose of these meetings is to repeat a statement already made.

The number of occasionson which the child is questioned and the time between them should be minimised. The number of occasions required to secure the child's statement and to satisfy the needs of the defence for supplementary questions may vary, but with due planning it should normally be sufficient to question the child on 1–3 occasions. In order to allow the child to avoid repeting the statement it should be recorded on video.

The child should not be confronted directly in court – should the child be heard in court, close circuit televison should be used.

Face to face meetings between the child and the alleged perpetrator in connection with interrogations (or any other contact with relevant authorities) during any phase of the legal process, should as far as possible be avoided.

4. The skills of all legal actors and the co-ordination between all agencies involved in the investigations and proceedings should be enhanced

Legal certainty and due process require that *similar cases should be dealt with similarly.* The quality of an investigation and the assessment should not depend on the individual and competence must therefore exist throughout the entire country and permeate all stages. It may be improved through special training and certain specialisation of the legal actors. There is a general need for continuous development of investigation methods, in particular of questioning techniques and statement analysis.

Competence in cases concerning child sexual abuse is based on specific knowledge about the reaction patterns of abused children. General knowledge about and experience of children is not enough to understand the complex reactions that the abused child exhibits. Collaboration with behavioural expertise in the field is often necessary to create a satisfactory information-base for the assessment. The legal actors must have sufficient specific knowledge to be able to clearly define what the expertise should provide information on. Conversely, the behavioural experts should be specialised to better understand the needs and the requirements of the legal actors.

Advanced multi-disciplinary collaboration with medical, psychiatric and psychological expertise focused on investigations and well co-ordinated wider interagency co-operation for child protection should be the frameworks for the development of skills. If representatives of the various professions are assembled in the same physical place, it also facilitates the process for the child and indirectly the protection of his/her legal interests.

Every European government should promote and support the development of *a model for co-ordination of investigation resources* regarding child sexual abuse in its own legal system. None of the countries in this study has yet developed a cohesive organisation for investigating suspected child sexual abuse, either at the local or national level. The Children's House in Reykjavik, Iceland, and certain local centres in other countries, may serve as promising and inspiring examples in this respect.

5. International co-operation and minimum standards should be developed in Europe

The study demonstrates great differences between the countries investigated, both with respect to the design of the proceedings generally and the regard that is given to the child in them. A lot can be learnt from the examples and experiences of other countries and the European governments should promote and support comprehensive legal and scientific collaboration for integrated capacity building in the areas of investigation, protection and treatment.

There is a manifest link between legal culture and social development. The official estimation of the child's legal security and the design of child protection reflects the prevailing views on children and their rights in a particular society. Throughout Europe a common view is required as regards sexual abuse of children, a child focused view which is reflected in the practice and ethics of the legal actors.

Save the Children calls for the development of a European framework that provides minimum standards for the rights of the Child in criminal proceedings. In addition to adequate social and psychological support, minimum standards should include the child's right to legal support during the proceedings.

VII Appendix: Summary of the National Reports

by Kate Augestad, Research fellow at the Department of Media Studies at the University of Bergen, Norway.

An overview of the central issues raised

The national reports treat the same issues in very different ways. The different national cultural practices seem to permeate both the legislation and the legal practices. The material and professional resources of the judicial system seem unevenly distributed across the selected countries. Abused children in Europe are thus not treated unanimously, but are met with different legislation, practices and attitudes.

These differences have lead to different focuses in the national reports and thus bring forth a range of different problem areas. Still, some issues appear repetitively throughout the reports and their tale is of the same story: The way the judicial system in child sexual abuse cases treat children is not acceptable:

- The *child's statement* is taken more *often* and by too many than acceptable and necessary.
- The overall impression is that the *special training of professionals* involved in all aspects of a legal procedure dealing with cases of child abuse, is *severely lacking*.
- The *personnel* taking the child's statement often have no special training in handling children, nor do they have the special qualifications for dealing with children who have experienced sexual abuse. Furthermore, they do not seem to possess the necessary skill and special competence of the required *questioning methods* for interviewing children with the purpose of getting information of use for a legal court procedure.
- There seems to be *confusion and uncertainty* concerning the status of the medical examination and what purpose it may serve in the legal process.
- The *coordination* of the collection of evidence and the handling of the child has potential of improvement.
- The cooperation between the different instances of professionals involved seems insufficient.
- The investigations take *far too long* and the duration of the legal process is beyond decency.
- The locations where the child's statement is taken are often of *poor quality* and are not child friendly.

What follows is a review of the central aspects the different countries' reports raise, including an overview of each country's particularities. Highlighted are the different reports' treatment of the issue of the child's statement and the medical

examination, followed by each country's contribution to improving the situation. The full reports can be obtained by contacting the e-mail addresses given at the end of each résumé.

Greece

National researcher: Nafsika Yannopoulou

The Greek report has chosen to focus on sexual abuse of children *within the family* and how this is addressed legally, medically and socially.

In Greece the concern seems primarily to be on the care taking of the child. Thus the role of *the social worker* is important. From the moment an abuse is reported, the social worker is appointed to take care of the child through the whole legal process. There is a social worker present at most of the police stations.

The social worker has the duty to provide a written report of the child's background. This information may serve as illuminating supplementary evidence.

If the child is *taken out of its home* or close environments, as is customary in cases where the offender is close to home, it is the social worker who arranges for a place in an institution. It is also possible to oblige the parent-offender to move. Often the child is placed with relatives.

The role of the social worker is in essence a recent pilot program, and not officially enacted as yet, thus the public prosecutor takes the relevant report into consideration only as supplementary evidence.

The long, *drawn-out criminal procedures* are of concern in the Greek report. The investigation phase may take one to two years and the hearing process may be delayed for four to five years, often due to constantly requested postponements or adjournments, either by the court or by the defence.

The report is also concerned with *the jury-arrangement,* supposedly leading to many acquittals. In cases where the children abused are more than 12 years old, the jury members are often suspicious and operate on the basis of stereotypes with respect to both the offender and the victim. The jury may not understand how children at the age of 13–15 years are not able to refuse or fight back. In cases with no tangible physical evidence the average ordinary citizen who bears the weight of the verdict is particularly suspicious and reluctant to convict.

The Institute for Child Health ran two successive three-year programs, between 1989–1992 and between 1992–1995. These programs were open clinical programs especially for sexually abused children. In the first program there was very close collaboration with the public prosecutor. In cases where he deemed it necessary he notified the Institute to provide psychological support and treatment. The second program was a study of the profile of the mothers of sexually abused children in cases not referred to the public prosecutor's office.

Interviews with the competent under-directorate for juveniles on Athens showed that many issues, beyond the letter of the law, depend on the sensitivity and training of the officials responsible and on the co-operations between the authorities responsible for these cases.

The child's statement

After a relevant investigation the case is handed over to the competent criminal prosecutor who officially launches the entire procedure for investigations. The file will then be conveyed to the juvenile prosecutor.

Whether or not a preliminary inquiry or an investigation is carried out, the competent juvenile prosecutor can take statements from the child with no other person present. It is then left to the sensitivity of the examining magistrate and to the ability of the juvenile prosecutor to intervene in order to avoid the child having to make a further disposition.

However, the interviewed public prosecutors in the Greek study stated that in most cases the investigators insists on taking additional statements from the child. The result is that before the process has arrived at the hearing stage, the child may have repeated the events in front of the authorities at least three times (to the police, to the prosecutor, to the investigator and even perhaps some supplementary statements). Thus the child often has to give a statement a great number of times to different people at different places.

During the proceedings before the police authorities, the child, irrespective of gender, gives testimony to a *female* officer in a small *closed office at the police station without anyone else present.* For children under the age of seven it is preferred to collect evidence from the family environment and thus no testimony is taken from the child.

If the child is more than seven years old, drawings, puppets and dolls are used as means of expression in taking the testimony. Questions are initially avoided and the child is left to describe the events him/herself. Taping or videotaping is not permitted because these are not admissible in court as evidence.

The child usually appears in court. Physical face-to-face presence and examination is required, thus the child victim is obliged to stand before the offender and the court and give a statement.

The medical examination

The medical examination is initially conducted upon the order of the public prosecutor by a medical officer. This is not a person who has specialized in cases of the sexual abuse of children. The child has already been seen by a paediatrician and a child psychologist, and has been prepared for the medical examination by the social worker. She has described the situation in detail and she also accompanies the child to the clinic; likewise the juvenile prosecutor has the right to be in attendance nearby. The treatment of the child by the medical officer depends on the latter's general sensitivity.

In most cases there are no medical findings.

Suggestions/recommendations

- An explicit legislative provision aiming at the flexibility of the system for the benefit of the victim, i.e. *limiting the number of times the child has to testify.*
- There should be a uniform single legislative framework that has to do with the role and importance of *the co-operation* of the police and prosecuting authorities *with the social workers.*
- On-going *education and training* should be offered the professionals involved, mainly with respect to the psychological development of the child and the family in dealing with incest cases.

Spain

National researchers: Josefa Sánchez Heras

In Spain the issue of *false accusations* is of concern to the professional discourse. Most cases of false accusations seem to be related to separation proceedings in which the custody of the child and related issues are not settled amicably. In some cases accusations of abuse attached to legal separation proceedings are simply dismissed.

The notion that children are born liars and thus less reliable as witnesses than adults, seems to prevail throughout the Spanish judicial system, leading to an atmosphere of prejudice towards children reporting abuse. Since the credibility given to the child's testimony plays a key role, establishing the child's reliability and credibility would be expected to be of major concern. However, the judicial system seldom takes the advantage of seeking the testimony of an expert, trained in validated and reliable procedures, for assessing the credibility of the child's testimony.

Related to the issue of false accusations is the issue of the *retraction of accusations,* which seems to be of a high level in Spain. Not only are retractions almost always accepted without questioning its validity but also, retractions seem to be a relief to the legal institutions, and are thus welcomed. There is obviously a great discrepancy between the faith placed in the child's retraction of the accusations and the faith the initial accusations of the abuse are met with.

Many professionals regard the retracting of accusations as part of the process the abused child undergoes, acknowledging that the child may have different reasons to withdraw the accusations. The child may be pressured by the family or may at an early stage of the proceedings experience severe unpleasantness.

Another pronounced concern is *the lack of training* of many of the professionals handling children in general and especially abused children, both in the investigation phase and during the court proceedings. Still, very few of the informants within the judicial milieu admitted that they needed additional and special training. Based amongst others on a principle of independence, the judges consider themselves capable of handling the situation without any expert assistance.

According to some of the informants, how a case is concluded depends largely on the judge in charge of the proceedings, meaning that the same evidence might result in different verdicts.

The Spanish report also focuses the problem of *the lack of multi-disciplinary teams along with lack of coordination, cooperation* and *a clear cut division of work* amongst the professions involved in these cases, a situation that obstructs the child's protection.

The special arrangement of *a legal guardianship* for the abused child is also questioned. When the alleged offender is a member of the family, the question of legal guardianship is raised. If enforced, the child is removed from the home to a centre, while the alleged offender remains.

The child's statement

The Prosecutor's Office has provided guidelines for legal proceedings involving minors, but they are often not followed. Children have to testify in court, where they are treated as if they were adults and questioned accordingly.

Even though the courts are asked to do without robes, explain the legal proceedings to the child and use an everyday language, this does not always happen.

Many courts have available resources such as specially equipped rooms for taking the child's testimony and other devices for protecting the child, but even these courts do not always avail themselves of these resources, but prefer a traditional approach. Another possible explanation is that those judges, who *do* follow a practice in accordance with these recommendations, are subject to stigmatisation and ridicule by fellow colleagues and likewise by the media.

The child victim is a mere witness whose rights are often forgotten in benefit of the rights of the alleged offender.

The judicial system in Spain consists of several court instances where the child has to give a statement; at the most the child will have to give testimony seven times.

The medical examination

The Spanish report states that in most cases the offender does not use force and therefore there are no physical injuries that may be determined during a medical examination. Only in 10 % of the cases material evidence of this nature is gathered. In the Community of Madrid during the year 2000 only 16 of 137 cases showed physical evidence of abuse and in many cases these indicators were compatible with other issues. Moreover the physical evidence disappears three months after an abuse takes place.

Suggestions/recommendations

- Create *multi-disciplinary* working teams, together with joint action protocols.
- Unify the professional's *code of ethics.*
- Change the *protection* system's approach to avoid secondary victimisation of the victim.
- *Avoid* that children should *testify twice or more* about the same events.
- *Expedite* the trials involving minors.
- Provide *specific training* to law enforcement members, lawyers, public prosecutors and judges and other professions involved in cases of sexual abuse.
- Formulate a reliable procedure to enable the minor's *testimony* to be taken as *pre-trial evidence.*

Denmark

National researchers: Mona Meelberg and Jytte Thorbek LLD

A major concern in the Danish discourse is the question of *child witness/victim protection.* Essential here is how the judicial system seems to view the *credibility* of children and the *reliability* of children's testimonies.

In Denmark the offended has an attorney appointed. This is relatively new and started out as an arrangement for rape victims only, but during the 80's it came to include all victims of general violence and sexual offences. The victim's attorney cannot argue the guilt of the accused or the size of the penalty. His/her task is to submit and argue the claim for compensation, be present at the questioning by the police, put forward claims of closed doors and claiming that the accused should leave the courtroom during the child's testimony. The Danish report is concerned about the fact that the judicial system does not show the same respect for the victim's attorney as for the defence's.

The child's statement

Tape recorders were previously used during the questioning by the police and this recording was used in court, limiting the questioning of the child to a brief conversation with the purpose of a general character evaluation.

In 1987 the police began to use *video recording* during the questioning, performed in *specially designed rooms,* with the representative from the social services present, sometimes together with the child's mother. The questioning was watched via a monitor in an adjoining room by the following: a defence attorney for the accused, or possibly the accused if he was not yet charged, a prosecutor, a police officer, and, when it became customary, an attorney for the child. The accused or the possibly accused was not admitted. The right of the defence to be present was statutory, and he was allowed to ask supplementary questions through the questioning police officer. This procedure allowed the court to show and use the video recording as evidence in court. Some children did not have to attend the trial, while others were summoned.

Around 1990 the video testimony was contested. Amongst the questions that were raised were the possible sources of error, i.e. that the video testimony usually is not the first questioning, since the child prior to that has spoken several times to different people working on the case, psychologists, parents, informally to the police, etc. One concern was that the court might be tempted to weigh the video testimony too heavily and not take the earlier stages of investigation into necessary consideration. Another issue that was raised was whether the arrangement was in violation of the European Convention on Human Rights' Article 6 on the accused's right to question or let question witnesses brought against him, since neither the accused nor the defence attorney were given the possibility of interrupting the explanation given to the police or of clearing up misunderstandings.

The Supreme Court has stated that the video recording may be used as evi-

dence in court during the trial and as such take the place of examining the child in court. A condition is that it has taken place under observation of due process guarantees corresponding to those during court questioning. In 2000 The Supreme Court decided that, as a starting point, the suspected or accused, along with his defence attorney, was allowed to be present. The Supreme Court found that the accused's access to be present in another room and via a TV-screen watch the questioning, secured the consideration of due process, since the defence attorney hereby was capable of posing relevant supplementary questions via the examining criminal assistant. The Supreme Court has left it open to the court to decide when exceptions should be made and the State General has drawn up guidelines. An exception can be made if the accused's presence would be traumatizing to the child.

The current practice is that children above the age of 12 are heard in court and younger ones video questioned.

Danish law allows the court to remove the accused during the child's testimony. This is especially important for children above the age of 12 since their video testimony may not be used in court. The accused will then listen to the child's testimony in another room.

There are special rules for questioning children under the age of 15. The court decides how the questioning shall take place and who shall conduct it. The judge may decide to undertake the interview him/herself, eventually in his chambers and may also decide that the defence may not be allowed additional questions. Children above 15 years are only protected by the judge's regular conduct of proceedings in this respect.

The medical examination

In cases of sexual offences an examination of the offended is performed at the institute for forensic medicine. It is rare that the police have physical evidence in the form of medical statements showing that the child has been exposed to abuse.

Suggestions/recommendations

- The questioning be elsewhere than at the police stations and *the questioning room* be comfortable to children.
- *Specially educated police officers* are to perform the questioning in close contact with trained psychologists.
- The *rules of protection* of children below the age of 15 should also be applied for those between *15 and 18.*
- *Offer courses* on children's perception of reality to judges, defence attorneys, prosecutors and appointed attorneys.
- Improve the *cross professional co-operation.*

Finland

The national researcher: Laura Lonka

The Finnish report is concerned about *the lack of uniform investigation methods and clear instructions* regarding the hearing of the child in cases dealing with sexual abuse.

The Ministry of Justice is however preparing new legislation concerning the preliminary investigation.

The Ministry of Social and Health Affairs has appointed a group with the task of creating a compatible manual for the different occupational groups of social welfare and public health services, the police and the prosecution, and possibly including the judges.

Reporting suspicion of child sexual abuse is often connected to custody cases. The social welfare worker aware of the possible abuse may be reluctant to report such suspicion to the police until the situation is evaluated. This practice has been criticized, since the social worker thus seems to do the work of the police. There is a conflict between the duty to report an abuse and the professional secrecy in these cases.

Another issue the report raises is the fact that there *are no investigation units specialising in sexual offences.*

The child's statement

The child's own statement about the sexual abuse is usually the most central evidence. Still instructions for hearing the child are rather scant in the legislation, for instance there are no detailed rules about age limits.

According to the preliminary investigation Act, the guardian – unless it is the suspect – or another legal representative, have the opportunity to be present during the questioning of children under the age of 15. The right of attendance can be restricted if it can prevent clarifying the crime.

In some areas children under the age of 15 are always heard, if she/he is mature enough to understand what is going on. In other regions the practice is that those under 12 years are not questioned at all. The investigation is then conducted by taking statements from the nursing staff, the parents and others who may have relevant information.

Very young children, not able to understand what is going on, will be spoken to and videotaped. Expert statements will be used.

The hearing of the child can be performed in the child's home if there are hindrances to hearing the child at the police station. The United Nations committee has recommended that Finland ensure that children under 12 years old mature enough to give a statement, are always heard in a child-friendly environment.

A *support person* may be appointed to serve the plaintiff, both during the preliminary investigation phase and in the trial itself.

Instructions for hearing the child do not exist, and the methods used depend

on the child, the character of the case and the questioner's skills. The police seldom have sufficient expertise about child psychology. The social welfare authorities and the child psychiatrist have spoken to the child before the preliminary hearing.

In smaller police districts there may be no experienced investigator. There is a habit of assigning the investigation to a female officer.

In practice the police talks to the child only once during the investigation phase. In a second hearing there may be a professional expert from the health service present to assist the police, but this is rare. This second hearing is videotaped, and lasts as long as the child manages.

The practice of videotaping is not uniform throughout the country. In some places there are no facilities – it be the taping equipment, or a suitable room. The videotaping is only arranged when thought necessary. In cases of very young children, their statements are videotaped, but the closer the child is to the protection age limit, the less significance is placed on the videotaping as evidence. Still, the use of videotape is increasing.

A videotape of the hearing of the child can be presented as evidence in court. If the accused has been given the right to ask questions through the investigator, this has been viewed to meet the demands of a fair trial in The European Convention on Human Rights (ECHR).

The quality of the videotape determines whether the child has to repeat the statement during the legal proceedings.

However, there is no clear legislation regarding the opportunity to present the videotape in court instead of the personal hearing. There is no verdict by the Supreme Court concerning the acceptability of the videotaping. The presentation of the videotape is considered in each case.

In Finland a major problem is the weakness of the documentation of the child's statement.

The role of the experts and the medical examination

A case of sexual child abuse often starts with the public health service or the social services. Expert examination within public health services is done as a cooperation of several professionals. If at this stage the police have been informed, the interviews will be performed in cooperation with the police. The interviews – made without the parents' presence – are made in a peaceful and neutral environment and videotaped. After the examination the team makes a written statement. This usually suffices for the court, but sometimes the doctor in charge will have to testify personally in court.

If the victim is under 15 years old, the police usually ask for an expert statement before the case is handed over to the prosecution.

The Finnish child psychiatrists have drawn up recommendations for a manual for the different professions in the public health services who are involved in cases of sexual child abuse, with the objective to create a uniform practice.

A *medical examination* of the child is almost *always performed*. There are physical findings only in 15% of the cases.

The examination is usually performed at one of the central hospitals, where a paediatrician, a gynaecologist or a forensic pathologist both take the necessary samples and estimate and document the findings. The medical examination is sought performed only once. The result of the examination is manifested in a written statement that can be used in court. The performing doctor may be called personally to court.

Suggestions/recommendations

- The *competence* of the different professionals involved must be increased.
- The *coordination* of the authorities of the social welfare, the public health services and the police should be significantly tightened.
- *Uniform services* and equal treatment must be offered *throughout the country,* regardless of where the victims live.
- *Videotaping* should be *customary*, and the legislation must be changed to secu-re better use of videotape in court.
- The *procedures* have to be *guaranteed* by the legislation.
- The crime *investigation and the medical examination* must be concentrated in certain skilled unites.
- There should be appointed *a legal representative/counsel* for the child victim at the outset of the preliminary investigation.

Germany

National researcher: Kathleen Schnoor

Victim and witness protection has become an important issue in the criminal procedure in Germany. Sensational cases of child sexual abuse have led parliament to make changes in criminal law concerning sexual crimes. Still, the German study shows that the implementation of new rules in the legal practice is poor, and depends on the personal engagement of individual professionals. This results in strong regional differences.

In 1986 the German parliament enacted the *Victim Protection Act* as the first codification of *victims right* in German law. An important change was the right for victims of sexual crimes to become *co-plaintiffs* and thereby enforce their rights in court and thus make use of legal representation. Another change was that the victim upon request would be notified of the outcome of the trial. The victim of a sexual crime can become a co-plaintiff at any time of the process after the public prosecutor has accused the suspect. As a co-plaintiff, he or she has the right to be present for the entire trial and so has his or her solicitor. If the victim only has status as a witness, she does not have the right to be present until after her statement has been given. As a witness the victim may have present her solicitor or another trusted person for mental support whilst giving her statement. The court will assign a solicitor if the victim is not able to protect her interests; with very small children this is always the case.

In 1998 the *Witness Protection Act* was passed. This enabled for the first time the questioning of witnesses by *closed circuit television*. However, none of the judges in this study made use of this facility. This new Act included the possibility of using *video depositions* of witnesses in court *instead of a live deposition*. This was made possible even if a leading principle of German criminal process is *the principle of directness,* which means that all evidence has to be presented directly to the court in the courtroom. However, if a judge takes a video deposition, it may *substitute the questioning* of children under the age of 16 who are victims of sexual abuse. Multiple questioning of child witnesses can be avoided by this method, but the law states that supplementary witness examination is admissible. Another change was that the state now pays for the legal representation of the victim. According to the 1986 Act the council had to be paid for by the victim.

All the criminal investigation offices included in the German study have special departments for sexual offences. Police officers are instructed to pass on cases of child abuse to the special departments. In Berlin there are only female officers concerned with this kind of cases. In the other cities, officers are both men and women. In Stuttgart and Cologne the officers receive special training before they start working in these departments. The two weeks full-time course includes witness protection possibilities and questioning techniques. Not all police departments offer or order such a course. These courses are rare and places are hard to get. The quality of the work depends on the enthusiasm and the initiative of the officer and is mostly based on self-education.

The German report states that the child should be allowed active participation. Children below the age of 14 are not criminally liable, but have the obli-

gation to appear in court and testify. Only if the accused is a close kin, they may refuse.

Informants of the German study mentioned most often the following three sources of stress for the child: (1) The lack of information of the procedure. (2) An encounter with the accused. (3) Repeated confrontation with the offence.

The child's statement

The interview of the child takes place in ordinary offices in the special department. There are *no special rooms.* Only the officer and the child are present during the interview, and officers interviewed for this study underlined the importance of the absence of the parents. Experience has shown that children will tell the police more than they will tell their parents. There are no set of rules for interviewing children, but one seeks to limit the number of statements by making the interviews as detailed as possible.

The *videotaping* of the initial interview varies a great deal from not being performed at all to being performed on a regular basis. The videotaping is thus not compulsory. Conditions at each police department – varying from well equipped rooms to total lack of equipment or just secretarial help for transcriptions – determine whether taping is done or not; and it is up to the officer in charge to decide. After the crime has been reported to the police the victim is questioned, with her solicitor present, if he/she wishes. The interviews are documented very differently, from the testimony usually being recorded on audio and video tapes, to not at all, due to practical and economical concerns as well as concerns regarding expediency.

The statement given to the police or the public prosecutor cannot be used in court. When *the public prosecutor* receives the results of the interim investigation he can request *a judicial questioning* of the child, *i.e. a witness statement before a judge.* Only the statement of a witness given before a *judge* can be used in court. The questioning of the child in court can be substituted by *a video recording of a judicial questioning,* but only if the accused and his lawyer has had the possibility to participate at this hearing.

The public prosecutor can in addition order *a credibility assessment* of the victim, but only if the victim agrees.

However, the public prosecutor never applies for judges to take statements only to spare the child from having to give statements in court. One of the interviewed judges for this study stated that he had never experienced that *a judicial questioning* from the investigation phase had been of high enough quality to be used in court instead of a live statement from the child. Thus the child is not spared a court appearance if the defence attorney has further questions later in the trial. None of the interviewed judges had ever replaced the statement of the child in court by the recording of a judicial questioning. According to these judges it is absolutely necessary to be able to ask questions and speak to the victim face to face.

Children have no right to refuse the videotaping of a questioning, and there is no obligation to inform the child about the recording.

The medical examination

Along with the obligation to give a statement is the obligation to bear *physical examination for forensic evidence and injuries.* The examination can be refused for the same reasons as the statement.

Most of the examinations take place at gynaecological or paediatric hospitals. The police order is to the hospital and not to a specific examiner, meaning that the examination is carried out by the doctor on duty and not necessarily an expert or someone with experience in these matters.

One problem may be the documentation and securing of forensic evidence. The results of the medical examination are documented on special forms given to the doctor by the police. According to the interviewed police officers and public prosecutors the medical examination is not detailed enough and difficult to understand for non-experts. Some of the interviewed solicitors mentioned that doctors, like lawyers and judges, have no training in how to deal with victims of crime.

The law states that the medical expert who examines the child must give testimony in court if the victim suffered a serious injury. In any other case the report can be read out in court. In most cases the medical examiner is heard as an expert witness. Most clinics do not have colposcope since it is too expensive.

Suggestions/recommendations

- *Specially qualified investigation judges* who are trained to deal with children and who are experienced in cases of sexual abuse and in questioning children, should be *working exclusively* in these kinds of cases so that the quality of the interviews improves.
- *Special departments* should be installed in all *public prosecutor's offices* as experience in these cases is very important.
- Improved *equipment* at police stations.
- *Clearer instructions* for the *medical examination* and the *training of doctors* for these types of cases.
- *Assigning a solicitor* to every child below the age of 16 as a law and above 16 as a recommendation.
- Ensuring, as a rule, professional support for the whole duration of the criminal process, i.e. *witness attendants.*

Iceland

National researcher: Margrét Vala Kristjánsdóttir

In the Icelandic constitution children are ensured the protection and attendance necessary for their well-being, and several provisions in Icelandic law and international agreements include special obligations by the state towards children. The Icelandic discourse has been concerned about how to take the child's statement, the most important evidence in child sexual abuse cases, so that it can be used to solve cases of suspicion of sexual abuse. The debate has also concentrated on strengthening the legal position of the victim, resulting in changes in the code of Criminal Procedure by Act no. 16/1999.

In Iceland, everyone has the duty to inform child protection authorities of child neglect. Child protection authorities evaluate the need for a police investigation and medical examination on the basis of such information. When the police investigate a case where there is suspicion of a criminal act against a child, they shall inform local child protection authorities and give them an opportunity to monitor the investigation.

A child victim has a legal advisor appointed to him/her by the police. He is authorised at all times to be present during interviews with the victim and to request that the victim is asked about certain matters. Once the indictment has been issued, the legal advisor is authorised to be present at all times during the trial.

The child's statement

The police have the duty to seek the assistance of a judge who handles the interview with a victim under the age of 18. When an interview is conducted in that manner, the prosecutor, the defence and the victim's legal advisor are to be informed so that they may be present. The judge may decide that they may not be present in the courtroom or where the trial is held, but may watch as the interviews are conducted. The child's statement is videotaped for use later in the proceedings. A victim under the age of 18 shall not appear again before the court unless the judge finds there to be a special reason to do so. Investigative interviews therefore serve a dual purpose: they are part of the investigation and evidence before the court. The judge may appoint a specialist to assist him, a rule especially applicable when the victim is under the age of 14. The judge always leads the interview.

The Child Welfare Office made proposals for reforms in 1997 emphasizing the coordination and co-operations of the different professionals involved in child sexual abuse cases, resulting in establishing a special house for that purpose, *The Children' House* in 1998. At *The Children's House* the child and its needs are at the centre of attention. The most innovative element here is the idea of one single location where the different experts and professionals come TO the child instead of the child having to be moved around to different places, i.e. the police, judges, paediatricians, gynaecologists, psychologists, child-care profes-

sionals and so on come to a child-friendly environment. Here evidence is secured, i.e. video-recordings of the child's statement and the medical findings, which later on can be presented in court. In addition one offers information, counselling and treatment. One important element of this *House* is the gathering of a diversified group of professionals who through such an arrangement are given the opportunity of coordinating their work and of professional interchange and development. *The Children' House* is further described in the general part of the report and highlighted as an example of best practice.

The medical examination

The medical examination is mainly conducted at *The Children's House*. See the general part of the report for further information on the medical examination.

Suggestions/recommendations

- *Strengthen* the *legal* position of *child victims.*
- Ensure that the criminal case is *not a burden* to child victims.
- Create a *child-friendly environment* for treating cases of child sexual abuse, enhancing coordination, expertise and efficiency.
- *Clearer provisions* on the procedure.

Italy

National researcher: Arianna Saulini

The legal and practical implications of *recent legislative measures* receive major attention in the Italian report. Several new laws have been implemented with the aim of providing concrete tools for *protecting victims* of sexual abuse. This includes provisions for a special regime regarding the timing, methods and rules for hearing evidence from children under the age of 16. These changes, focusing the *rights of the offended,* represent a turning point. The previous focus has been on safeguarding the rights of the accused. But even if the legislation today offers good protection provisions, these are often undermined in practice. The report states that the inconsistencies seen in everyday practice are not dependent on legal obstacles but can be attributed to: (1)the ignorance and insensitivity of a few operators, (2) to laws that are poorly applied, and (3) to the lack of collaboration amongst the authorities involved.

Even though the child has the right to ongoing *psychological and love-sustaining support* at all stages of the proceedings, either by the presence of parents or another person chosen by the child and accepted by the tribunal or judicial authorities, the dignity and personal integrity of the child witness can still be improved.

The *council for the victim* is often appointed late in the process, just before the hearing.

The time it takes to arrive at a sentence is too long, due to a system allowing continuous postponements.

The report is also concerned with establishing a specialized team to report suspicions of abuse. This applies to anyone interacting with children and especially the different professionals working in close contact with children. In the big cities there are several centres with multi-specialist facilities for victims of sexual abuse.

The child's statement

There are no internal protocols governing *the procedures and techniques for interviewing* a child. Many different people at different and often *inappropriate locations* carry out the interviews. If the child is interviewed at the police station, this usually means *the police officer's office* and it is recorded as a written statement together with statements from parents and so on.

The Italian arrangement of *the special evidentiary hearing* is designed for the protection of the child victim. The judge decides any special procedure for applying the special evidentary hearing. The hearing can be held *out of court.* The judge can make use of specialised welfare structures or even the home of the child. The hearing is recorded by using *audio and audiovisual equipment*, or if the equipment is unavailable, by using an advisor or expert.

The Italian report is concerned about the sketchy and approximate nature of the formulation of the legislation. It does not contribute to a uniform procedu-

re across the whole country. The provision only refers to the evidentiary hearing and does not apply to the trial stage.

However, additions to the code for Criminal Procedure states that the examination of sexually abused children in court should be carried out by *using a two-way mirror and an entry phone system.* The judge may also decide that a child who has already given testimony at a special evidentiary hearing may be exempted from further questioning.

Anyway, the child *has to appear in court.* Only special cases are heard out of court. Nearly all interviews and examinations of minors take place in a courtroom equipped with a *closed circuit television.* The *protected hearing for children* is becoming now a common procedure in many Italian courts.

Since no fixed rules govern the number of interviews, nor how the procedures are to be carried out, it is up to the discretion of each Public Prosecutor to decide how to proceed in each case. Still, one agreed-up standard is that usually when the child is young the public prosecutor is assisted by a psychologist.

The role of the psychologist

There are at least three situations when a *psychological expert* is called for:

1. As the child's **therapist** giving *an expert testimony* in court of the clinical diagnosis.
2. As a **consultant**, to assess *the reliability* of the minor and its mental capacity for being interviewed.
3. As an **aid** to the judge in court in the role of *interpreter or translator*. His task is to pose questions agreed-upon by the parties in a manner that the child may understand.

The report is concerned with the expert's possible *conflicting roles*, for example in the role as an expert with clinical duties and as an expert with a consulting role.

The medical examination

The Italian report states that the medical examination of the child is not performed as a rule, but generally only in cases of abuse by penetration. The examination should be carried out using *a colposcope and a camera.* In most cases there will not be any medical findings that can confirm an abuse.

Example of best practice within the country

One of the major problems reported in everyday practice is the *lack of coordination* between the various judicial authorities involved. To find a remedy to these problems the judicial authorities in a number of cities have drawn up a *document of intent* between the authorities involved with the purpose of establishing guidelines for co-ordinating their respective departments.

In 1993 the court of Milan introduced as a general rule that the hearing of the child should take part in specialized psychological centres, and in this respect Milan has been a pioneer city.

The new law of 1998 made a provision for establishing *Special Forces at every police headquarter* dealing with crimes on minors, sexual abuse and assault. Milan was the first city to put such a force into practice. In Palermo the department has been operative since 1999 and in Rome since March 2001. All staff normally receives special training through experience, courses and guidance by a senior officer.

The Milan experience has led to the establishment of *pools of investigative magistrates* specialized in sexual abuse on minors. This has lead to significant changes: Nearly all cases brought to court have ended with a conviction that has been confirmed in the successive courts, and cases of withdrawal of charges have been reduced to a minimum.

Suggestions/recommendations

- The various professionals involved need to *integrate* their areas of *competence* and *co-operate*.
- The legal operators have to realise that a proceeding for sexual abuse is *different* from all others.
- The role of the *child psychologists* must be strengthened.

Romania

National researcher: Sofia Luca

In Romania one of the greatest concerns is the *lack of specially trained personnel* handling children in general and especially abused children. Still, at some police stations certain police officers are assigned these cases, though they also have to deal with other types of crime. The workload is heavy and the time limited. These conditions weaken the quality of the investigations. Since the staffs at the faculties of psychology lacks the necessary qualifications, no specialized courses in handling child sexual abuse are offered; such training must be sought for abroad.

The status of the *psychological evaluation* of the child receives attention in the Romanian report. It is suggested that the psychological assessment of the victim should constitute compulsory proof, either as a witness statement or as extra-judiciary evidence. This is not the case today. Requiring a psychological evaluation is an option of the investigator and not compulsory. Likewise it is up to the police to decide whether a psychologist should be present during the taking of the statement. The tendency seems to be that such presence is less and less sought for.

The Romanian judicial system treats victims as sources of information and do not protect or support them.

The child's statement

During the investigation phase the child's statement is taken only once, and in the presence of a legal official. According to the informants, the child is asked to speak freely, to describe the events, and if possible to write them down. The child is asked short and simple questions and no answers are suggested.

After the initial investigation the case is handed over to the public prosecutor who may take an additional statement from the child. The public prosecutors participating in the study stated that such a statement would be asked for only in extreme cases. There are no legal provisions limiting the number of statements.

The law makes no provision for the protection of children with special needs, but in cases where the offender is a close kin, *a curator* is appointed to represent the child's interests in court. Neither does the law impose the assignment of an *ex officio lawyer* for the child. However most of the public prosecutors in the study did call for one.

The Romanian report is also concerned with the lack of specially provided *rooms* where the child may be interviewed. The questioning usually takes place in the *police officer's office*, where there may be other colleagues present.

The *child gives testimony in court* and is given an important role during the criminal proceedings. The victim is an active part and is called to assist at all times during the trial.

If the victim is a minor, the hearing will take place in the presence of the legal

representative, and the Tutelary Authority, the organ in charge of protecting the child's interests will be summoned. The underage victim is not always asked to repeat the statement, often only to confirm if the complaint against the offender is maintained. Still, if the judge after having examined the evidence finds it necessary, he may ask additional questions.

Almost all the judges in the Romanian study took the child's statement in *secret sessions.*

The medical examination

A majority of the informants regarded *the medical-examination* to provide the most useful evidence: The forensic experts often issue a medico-legal *certificate* and write a medico-legal *report* that together constitute evidence with decisive value in cases of sexual abuse. Usually it is the police that requests an examination; if the parents do, it usually happens before they report to the police. In any case The Forensic Medicine Laboratories charges a rather high fee for its services, 7 USD in a country where the average wage is 100 USD.

If the medico-legal certificate is contested in court and the judge finds the reasons for this real and pertinent, another expert may be called for to make a new evaluation based on the original findings and/or on a new examination.

Example of best practice within the country

A local police district, Iasi, has on its own taken an initiative to *educate their staff* in general child psychology. Separate *interview* rooms with audiovisual equipment, have been established, and the Iasi *courtroom* is equipped with *audio-visual devices.*

Suggestions/recommendations

- The *psychological assessment* of the victim should constitute compulsory *proof* in cases of sexual abuse of children, either as a witness statement or as extra-judiciary evidence.
- The staff should have *special training* in handling sexually abused children, and these specially trained officers only should handle these cases.
- There should be *special rooms* were the child is questioned.

Sweden

National researcher: Helen Westlund

The Swedish report is concerned with the fact that the Swedish legal system has not taken into consideration the special conditions surrounding children, especially children subject to sexual abuse. The criminal proceedings place the same demands on children as on adults, i.e. that they be clear, concise and able to coherently describe the events they have experienced. The need to protect the adult perpetrator seems to prevail over the need to protect the child victim.

Still the Swedish political and judicial climate seems favourable for working towards improving the status of the child victim.

The report raises the issue of continuous guidance for police officers and prosecutors. Better cooperation and coordination of the work is called for, together with improved education and increased competence of the involved.

The child's statement

Criminal proceedings are initiated by a preliminary investigation, where evidence is gathered and documented.

There are no legal rules concerning when a child should attend the trial. In practice children under the age of fifteen do not appear. The prosecutor presents the testimony in the form of a video-recording of the police questioning. However, there are no legal impediments to calling and questioning a child before court. In cases where the child is a teenager, depending on the maturity and development of the child, it may be more appropriate to participate in court.

From an evidential point of view, many of the informants consider it to be an advantage if the child participates in court, since a video-recorded statement has a lower evidential value. In cases with very young children the Supreme Court has stated that it is a precondition that supporting evidence is presented in order to satisfy the evidential requirements, i. e. in the form of other oral evidence, a forensic certificate or a DNA analysis.

No rules state that a special judge be appointed in these cases. The court has the opportunity to call for external expertise, but this is seldom done.

The legislation has no special provision concerning when a child is to be questioned in the course of the preliminary investigation. Likewise, there are no legal rules regarding where the police questioning of the child should take place, but usually this happens *at the police stations.* At some police stations there are special interview rooms for children, but the quality of these vary a great deal, often depending on financial resources.

In cases of grave offences the prosecutor should lead the preliminary investigation, but it is unusual for the prosecutor to attend the questioning of the child, due to shortage of time. Police officers, prosecutor and attorneys interviewed regarded this as an inadequacy. The prosecutor should attend the questioning, as a support for the investigation, and in order to present supplementary questions.

Another issue in this connection is the questioning *skills* of the police and the prosecutor. The legislator regards questioning children different from questioning adults. Previously, requirements for interviewing children were defined as a special aptitude. This has recently been changed so that a person now must have special skills for the task, i.e. have relevant training. There are no such requirements for the prosecutor, except that he/she preferably should have specialist training.

Very seldom a person possessing special expertise in child or questioning psychology assists the questioning of the child.

The rule is that questioning may not take place on more occasions than necessary, taking into account the nature of the investigation and the best interests of the child.

It is up to the questioning leader to plan and implement the questioning, since no precise provisions exist concerning how the questioning should be arranged.

The child is entitled to legal support, and according to the Parental code, should be represented by someone else in the legal proceedings; the main rule is that this is the custodian. On January the 1st, 2000, a new Act entered into force, The Special Representatives for Children Act. It aims at reinforcing the opportunities to protect the child's rights and to improve conditions for investigating suspicions of offences where the child and the perpetrator are closely related. An attorney, an assistant attorney at an attorney's office or some other person may be appointed as special representative. Furthermore, the aggrieved party is always entitled to an aggrieved party counsel. Several informants thought that these attorneys should have more knowledge and training in how to respond to children exposed to sexual abuse.

The right governed by Article 6 of the European Convention on Human Rights securing the suspect's right to present supplementary questions, have been put forward as a problem. In these cases the defence is entitled to attend at the questioning with the child, by sitting in an adjacent room and through the questioning leader, present supplementary questions.

The medical examination

There are no legal rules concerning in which cases medical investigations should be conducted. The Prosecutor General's recommendations state that a medical examination should always be conducted if the child's own statement or other information suggest that the child may have been subjected to sexual abuse.

According to an investigation conducted by The Sexual Offences Committee, the number of medical examinations has been reduced during the last years. This is due to the fact that sexual abuse of children seldom leaves signs of physical injuries, as they are seldom committed with violence. Several of the physicians interviewed regarded it as important, for several reasons, to conduct a medical examination as a matter of routine: (1) to establish whether there has been a physical injury, (2) to signal to the child that it has been taken seriously and (3) for the child to know if its body has a normal appearance. There are no

rules regulating when a medical examination should be performed. It is usually performed at a paediatric clinic in cases of younger children, and for children of twelve-thirteen years of age, at a gynaecological clinic.

It is the police or the prosecutor who requests a medical examination and no rules exists regarding what kind of physician should perform it, though the Prosecutor General recommends that it be a paediatrician together with a forensic medical officer or a gynaecologist, *and* that the physician in question has the necessary skill and experience to perform and interpret the examinations.

Suggestions/recommendations

- The *prosecutor* should be committed to a more *active role* in the preliminary investigation.
- There should be established, within the National Police Board, *a central resource-group* with cutting-edge competence to work throughout the country.
- In order to compensate for the lower evidential value of the video-recording, the court should have *an evidential recording* in conjunction with the child being questioned during the preliminary investigation.
- *Special training for appointed attorneys* for the aggrieved party and special representatives.
- *Special training* and further education for *judges* dealing with child matters.
- Quality assurance regarding *medical certificates*.
- Cases of child sexual abuse should only be handled by those with *special interest and appropriate aptitude* for working with child victims.

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