

Interviewing of children within criminal law proceedings

Heading 2

Legal framework regarding the focus areas of the Matra-project in Georgia

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Quote from the forward to the Child-friendly justice guidelines by Maud de Boer Buquicchio:

“Kindness and friendliness towards children aid in their protection. Repeated interviews, intimidating settings and procedures, discrimination: a plethora of such practices augment the pain and trauma of children who may already be in great distress and in need of protection. A child-friendly justice system brings relief and redress; it does not inflict additional pain and hardship and it does not violate children’s rights. Above all, children between birth and the age of 17 – be they a party to proceedings, a victim, a witness or an offender – should benefit from the “children first” approach. The guidelines on child-friendly justice were drafted to protect children and youth from secondary victimisation by the justice system, notably by fostering a holistic approach to the child, based on concerted multidisciplinary working methods.”¹

¹ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, p. 8.

1. Introduction

The goal of the Matra-programme 'Child protection system strengthening for children in conflict with the law' is to improve the implementation of children's rights in the child protection and justice systems to ensure that children in conflict with the law are better protected.

As the programme's activities must align with international and European standards on the rights of children in conflict with the law, a legal framework was drafted: *International and European legal framework for the Matra-programme 'Child protection system strengthening for children in conflict with the law'* (from here on referred to as: the programme's international legal framework).

Within each participating country, specific focus areas have been identified that require a specific legal framework. This tailor made legal framework builds on the programme's international legal framework with a detailed overview of relevant provisions in international and European documents regarding the identified focus areas for the project in Georgia. The focus areas are as follows:

1. A child friendly interview within a criminal law procedure for child suspects and witnesses including the preparation of the interview and the interview at the police and in court.
2. The involvement of different sector professionals (social worker, psychologist) and multi-sectoral cooperation in juvenile justice regarding the preparation and interview of child suspects and child witnesses.

Not only the term 'interviewing' is used in legal documents, but also the terms 'interrogation', 'inquiry', 'questioning' or 'hearing'. For the purpose of this paper, the term 'interview' is used as the overarching term.

Different groups of children can be subjected to an interview within criminal proceedings: children in conflict with the law, child victims and witnesses. The term 'children in conflict with the law' refers to anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence.² The use of 'child victims and witnesses' refers to persons under the age of 18 who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders.³ The definitions of the groups of children are therefore not totally exclusive. For example: an offender might also be a victim, a victim might also be a witness. To illustrate: in the *UNODC/Unicef document Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary* (from here on Model Law or Related Commentary to the Model Law) the definition of how the concept of protection of child victims is used within the Model Law explicitly includes the protection of child suspects or perpetrators who have been victimized, intimidated or forced to act illegally or who have done so under duress.⁴ The definition of 'child victim or witness' within the Model Law follows this notion and refers to a person under the age of 18 who is a victim of or a witness to a crime, regardless of his or her role in the offence or in the prosecution of the alleged offender or groups of offenders.⁵ In other words, the Model Law does not differentiate between victims who are also witnesses and victims who are not witnesses, or between victims and witnesses in conflict with the law and those who are not.⁶

Within this document, we offer a selection of legal provisions that we consider to be relevant for safeguarding a child friendly interview for children in conflict with the law and child victims and witnesses within criminal proceedings while taking into account the specific focus areas that have been identified for the project in Georgia.

The following documents were used:

- UN Convention on the rights of the child (hard law)
- General Comment No. 10 (2007) Children's rights in juvenile justice (soft law)

² UN/CRC/C/GC/No.10; See e.g. UNICEF, Child Protection Information Sheet Children in Conflict with the Law, at: https://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf; Save the Children, Children in conflict with the law, at: <https://resourcecentre.savethechildren.net/keyword/children-conflict-law>

³ Article 9 (a) ECOSOC/RES/2005/20.

⁴ Para. 8 at page iv UNODC/UNICEF (2009). Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. New York, 2009.

⁵ Definition (a) at page 5 UNODC/UNICEF (2009). Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. New York, 2009

⁶ UNODC/UNICEF (2009). Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. New York, 2009, p. 29.

- Guidelines on Justice in Matters involving Child Victims and Witnesses were adopted by the UN Economic and Social Council (ECOSOC) (soft law)
- Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (hard law)
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/22/JHA. (hard law)
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25-10-2007 (Lanzarote Convention) (hard law)
- Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (soft law)
- European Commission recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (Rec. C(2013) 8178/2) (soft law)
- UNODC/UNICEF (2009). Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary (not a legal document)

When focussing on the protection of child suspects and witnesses who have to be interviewed during criminal proceedings the following topics are relevant and legal provisions regarding these topics will be presented within this paper in the following order:

- An integrated child protection system.
- Assessing the specific needs of child suspects and witnesses before they are being interviewed.
- Involvement of parents.
- Involvement of (different sector) professionals.
- Preparation and information.
- Interview method, setting and expertise.
- Privacy.

2. An integrated child protection system

Within the Matra-programme we intent to assist the strengthening of an integrated child protection system for children in conflict with the law. Generally speaking an integrated child protection system: places the child at the system's centre; places the child's best interests at the system's core; works to promote, protect and fulfil children's rights to protection as laid down in the Convention on the Rights of the Child (from her on: CRC); gives special attention to the rights to protection of vulnerable groups like children deprived of liberty and children in conflict with the law; and ensures that all essential actors and systems - education, health, social welfare, justice, civil society, community and family - work in concert to protect and assist children.⁷ Children in conflict with the law are regarded a specifically vulnerable group of children who's protection requires particular attention (see section 2.1 of the programme's international legal framework).

Children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs, in order to prevent further hardship and trauma that may result from their participation in the criminal justice process.⁸ Child victims and witnesses can suffer serious physical, psychological and emotional consequences of crime and victimization, in particular in cases involving sexual abuse and sexual exploitation.⁹

An integrated child protection system for children who as suspects or witnesses are being interviewed as part of a criminal law procedure entails:

- Measures and structures to prevent and to respond to abuse, neglect, exploitation and violence affecting children (see section 2.1 of the programme's international legal framework). For child suspects and witnesses, who are being interviewed within a criminal procedure, this means:

⁷ See e.g. Council of Europe, Integrated strategy against violence, at <https://rm.coe.int/168046d3a0> ; European Union Agency for Fundamental Rights, Child protection systems, at <http://fra.europa.eu/en/publication/2015/mapping-child-protection-systems-eu/background-info>

⁸ ECOSOC/RES/2005/20, p. 1; article 30(2) Lanzarote Convention.

⁹ ECOSOC/RES/2005/20, p. 1.

- (1) measures and structures to prevent secondary victimisation by the justice system when they take part in a criminal law procedure notably by fostering a holistic approach to the child, based on concerted multidisciplinary working methods¹⁰, and
- (2) measures and structures to ensure that children who are victims of abuse, neglect, exploitation and violence receive the proper care and treatment to promote physical and psychological recovery and social reintegration (article 39 CRC).
- Preferably a multisectoral approach to assess the needs of the child, to determine the necessary and possible protection measures.
- Measures and structures ensuring to respect the responsibilities, rights and duties of parents and support their involvement (see section 4).
- Procedural protection measures to ensure a child friendly criminal justice procedure when child suspects and witnesses are being interviewed.

3. Assess specific needs of child suspects and witnesses before they are being interviewed

Best interests of the child

Regarding every decision that has an impact on a child or a group of children, the best interests of the child must be a primary consideration (article 3(1) of the CRC). For children in conflict with the law, this means that the best interests of the child must be a primary consideration throughout the entire process and in all decisions taken (see section 3.1.1 of the programme's international legal framework). For child victims and witnesses the right to have his or her best interests given primary consideration is also of paramount importance, while safeguarding the rights of an accused or convicted offender.¹¹

Multidisciplinary approach

The Committee on the Rights of the Child recommends that as far as possible a multidisciplinary team of professionals should be involved in assessing and determining the best interests of the child.¹² In various international documents a multidisciplinary approach to assess and determine the best interests of children is strongly recommended (for more see section 3.1.2 of the programme's international framework). This multi-disciplinary assessment is particularly necessary when dealing with children in conflict with the law¹³. The multi-disciplinary assessment aims to identify the short- and long-term needs of the child, caregivers and family. Assessing the best interests of the child who is in conflict with the law includes the assessment of the child's history and child protection needs.¹⁴ The child and his/her caregivers and family should be invited to take part in this process and the child's views as well as those of the caregivers and family should be given due weight.¹⁵

A child (regardless if he or she is a suspect, accused, witness or victim) who has suffered trauma, should receive proper treatment (see section 3.1.1 of the programme's international legal framework). The obligation to protect children from violence (article 19, par 2 CRC) includes an effective inter-sectoral referral procedure (for more see section 3.1.2 of the programme's international legal framework).

Individual assessment

It is important to include the protection needs of child suspects and witnesses regarding the interview (at the police or in court) in the assessment. The individual assessment is potentially a great instrument for this. In Directive 2016/800/EU and Directive 2012/29/EU an individual assessment to identify specific needs, for respectively children who are suspects or accused persons and (child) victims, is introduced as an obligatory instrument within criminal proceedings.

¹⁰ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, p. 8.

¹¹ Para. 8 (c) ECOSOC/RES/2005/20; See for an example on how to include this in a national law: article 1 Model Law on Justice in Matters Involving Child Victims and Witnesses of Crime. UNODC/UNICEF (2009).

¹² Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), UN Doc. CRC/C/GC/14, 29 May 2013, para. 47.

¹³ Article 72 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

¹⁴ Para. 76 UN/CRC/GC/14.

¹⁵ Para. 50 UN/CRC/GC/13.

Individual assessment

The individual assessment shall be carried out at the earliest appropriate stage of the proceedings.¹⁶

For children who are suspects or accused persons the individual assessment shall in any event be available at the beginning of the trial hearings before a court.¹⁷ This means that it might not always be available before the child is questioned by the police, but it must be available before a child is questioned in court.

The individual assessment shall be carried out with the close involvement of the child and take into account his/her views.¹⁸

The individual assessment shall be carried out by qualified personnel.¹⁹

Child suspects

Child witnesses/victims

For children who are suspects or accused persons this individual assessment should identify their specific needs in terms of protection, education, training and social integration, determine if and to what extent they would need special measures during the criminal proceedings, the extent of their criminal responsibility, and the appropriateness of a particular penalty or educative measure.²⁰ The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.²¹ The individual assessment shall serve to establish and to note such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when: (a) determining whether any specific measure to the benefit of the child is to be taken; (b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child; (c) taking any decision or course of action in the criminal proceedings, including when sentencing.²²

For child victims the individual assessment aims to determine the extent in which they are at risk of secondary and repeat victimisation, of intimidation and retaliation and what special protection measures they require.²³ The individual assessment should take into account the personal characteristics of the victim (such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime), the type or nature and the circumstances of the crime (such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed)²⁴.

The individual assessment shall follow, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult and/or a specialised professional.²⁵

Vulnerable persons (suspected or accused) should be promptly identified and recognised as such. Member States should ensure that all competent authorities may have recourse to a medical examination by an independent expert to identify vulnerable persons, and to determine

¹⁶ Article 7 (5, 6) Directive 2016/800/EU; article 22 Directive 2012/29/EU.

¹⁷ Article 7 (5, 6) Directive 2016/800/EU.

¹⁸ Article 7 (7) Directive 2016/800/EU; article 22(6) Directive 2012/29/EU.

¹⁹ Article 7(7) Directive 2016/800/EU; par. 61 Directive 2012/29/EU.

²⁰ Directive 2016/800/EU of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons.

²¹ Article 7 (2) Directive 2016/800/EU.

²² Article 7 (4) Directive 2016/800/EU

²³ Article 22 (1, 4), par. 55 Directive 2012/29/EU.

²⁴ Article 22 (2), par. 56 Directive 2012/29/EU

²⁵ Article 7 (7) Directive 2016/800/EU

the degree of their vulnerability and their specific needs. This expert may give a reasoned opinion on the appropriateness of the measures taken or envisaged against the vulnerable person. Member States should foresee a presumption of vulnerability in particular for persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders, hindering them to understand and effectively participate in the proceedings.²⁶

4. Involvement of parents

Parents or, as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child (art. 18 of the CRC). States must respect the responsibilities, rights and duties of parents or, where applicable the members of the extended family or community as provided by local custom, legal guardians or other persons legally responsible for the child, in a manner consistent with the evolving capacities of the child (art. 5 of the CRC). The State has the responsibility to support parents who need it. Article 18 of the CRC obliges States to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children. States are also obliged to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for the child. To this end, they must take all appropriate legislative and administrative measures (art. 3 and art. 5 of the CRC) (see section 2.2 of the programme’s international legal framework).

In the Related Commentary to the Model Law is emphasized that a multi-disciplinary expertise of professionals can support parents of child victims and witnesses, who are often unfamiliar with the justice process, on how to best assist their children.²⁷

With regard to children in conflict with the law the Committee on the Rights of the Child recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child. The Committee is of the opinion that this involvement shall in general contribute to an effective response to the child’s infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.²⁸ To assess and determine the best interest of the child the participation of the child²⁹ and parents or other persons legally responsible for the child is required, taking into account the evolving capacities of the child³⁰ (see section 2.2 of the programme’s international legal framework).

In order for parents to be able to participate and support their child who is being interviewed within a criminal law procedure, parents need to be informed about the criminal law procedure and the rights of their child. Below provisions on informing parents and on being present during an interview are described.

Informing parents	
Child suspects	Child witnesses/victims
The holder of parental responsibility is provided, as soon as possible, with the information that a child has a right to receive. ³¹ Which is (see also section 6): When children are made aware that they are	From the first contact with the justice process and throughout that process child victim and witnesses, their parents or guardians and legal representatives should be promptly and adequately provided with the information the child witness should receive ⁴⁴ (see

²⁶ Articles 4 and 7 Recommendation 2013/C 378/02

²⁷ UNODC/UNICEF (2009). Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary. New York, 2009, p. 29.

²⁸ Para. 54 UN/CRC/C/GC/No.10.

²⁹ Para. 47, 94 UN/CRC/GC/14

³⁰ Articles 3, 5 and 18 of the CRC; article 7 (7) Directive 2016/800/EU.

³¹ Article 5 (1) Directive 2016/800/EU.

<p>suspects or accused persons in criminal proceedings, they shall be promptly informed about their rights and about general aspects of the conduct of the proceedings.³² This includes:</p> <ul style="list-style-type: none"> - the right to have the holder of parental responsibility informed;³³ - the right to be assisted by a lawyer;³⁴ - the right to protection of privacy;³⁵ - the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings;³⁶ - the right to legal aid.³⁷ <p>At the earliest appropriate stage in the proceedings the suspect or accused child shall be informed about:</p> <ul style="list-style-type: none"> - the right to an individual assessment;³⁸ - the right to medical examination, including the right to medical assistance;³⁹ - the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention;⁴⁰ - the right to be accompanied by the holder of parental responsibility during court hearings;⁴¹ - the right to appear in person at trial;⁴² - the right to effective remedies.⁴³ 	<p>section 6).</p> <p>The child victim and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.⁴⁵</p> <p>In the Model Law it is suggested to include a provision stating that a child victim or witness shall not be required to testify without the knowledge of his or her parents or guardian, unless the parents or the guardian are the alleged perpetrator of the offence committed against the child; the child expresses a concern about being accompanied by his or her parents or guardian; the court deems it not to be in the best interest of the child to be accompanied by his or her parents or guardian.⁴⁶</p>
<p>The information shall be provided to another appropriate adult who is nominated by the child and accepted as such by the competent authority where providing that information to the holder of parental responsibility:</p> <ul style="list-style-type: none"> - would be contrary to the child's best interests; - is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; - could, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings.⁴⁷ 	
<p>Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent</p>	

⁴⁴ Article 20 ECOSOC/RES/2005/20.

³² Article 4 (1) Directive 2016/800/EU.

³³ Article 4 (1)(a)(i), 5 Directive 2016/800/EU.

³⁴ Article 4 (1)(a)(ii), 6 Directive 2016/800/EU.

³⁵ Article 4 (1)(a)(iii), 14 Directive 2016/800/EU.

³⁶ Article 4 (1)(a)(iv), 15 (4) Directive 2016/800/EU.

³⁷ Article 4 (1)(a)(v), 18 Directive 2016/800/EU.

³⁸ Article 4 (1)(b)(i), 7 Directive 2016/800/EU.

³⁹ Article 4 (1)(b)(ii), 8 Directive 2016/800/EU.

⁴⁰ Article 4 (1)(b)(iii), 10, 11 Directive 2016/800/EU.

⁴¹ Article 4 (1)(b)(iv), 15 (1) Directive 2016/800/EU.

⁴² Article 4 (1)(b)(v), 16 Directive 2016/800/EU.

⁴³ Article 4 (1)(b)(vi), 19 Directive 2016/800/EU.

⁴⁵ Article 1(2) Directive 2012/29/EU.

⁴⁶ Article 20 (5) Model Law on Justice in Matters involving Child Victims and Witnesses of Crime. UNODC/UNICEF (2009).

⁴⁷ Article 5 (2) Directive 2016/800/EU.

authority shall, taking into account the child's best interests, designate, and provide the information to another person. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children.⁴⁸

Presence of parents during an interview	
Child suspects	Child witnesses/victims
<p>Every child alleged as or accused of having infringed the penal law has the guarantee to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.⁴⁹</p> <p>Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defence of the child or be involved in the decision-making process. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child, to limit, restrict or exclude the presence of the parents from the proceedings.⁵⁰</p>	<p>Professionals should develop and implement measures to make it easier for children to testify or give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:</p> <ul style="list-style-type: none"> - Support persons, including appropriate family members, to accompany the child during testimony; - Where appropriate, to appoint guardians to protect the child's legal interests.⁵¹
<p>The child being questioned must be able to request the presence of his/her parent(s) during questioning.⁵²</p>	
<p>The child shall have the right to be accompanied by the holder of parental responsibility during court hearings in which they are involved.⁵³</p>	
<p>Children shall have the right to be accompanied by the holder of parental responsibility, or by another appropriate adult during stages of the proceedings other than court hearings at which the child is present where the competent authority considers that: (a) it is in the child's best interests to be accompanied by that person; and (b) the presence of that person will not prejudice the criminal proceedings.⁵⁴</p>	<p>Child victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary.⁵⁵</p> <p>States shall take the necessary measures to ensure that the child victim of sexual exploitation or sexual abuse may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made</p>

⁴⁸ Article 5 (2) Directive 2016/800/EU.

⁴⁹ Article 40(2)(b)(iii) CRC.

⁵⁰ Para. 53 UN/CRC/C/GC/No.10.

⁵¹ Article 25 ECOSOC/RES/2005/20.

⁵² Para. 58 UN/CRC/C/GC/No.10.

⁵³ Article 15 (1) Directive 2016/800/EU.

⁵⁴ Article 15 (4) Directive 2016/800/EU.

⁵⁵ Article 20 Directive 2012/29/EU.

	to the contrary in respect of that person. ⁵⁶
The legal representative or an appropriate adult who is nominated by the vulnerable person or by the competent authorities to assist that person should be present at the police station and during court hearings. ⁵⁷	

5. Involvement of (different sector) professionals

Other professionals can be present during an interview or play a part in the preparation or aftermath of the interview. Below we offer relevant legal provisions regarding lawyers, interpreters and other professionals.

Lawyer	
Child suspects	Child witnesses/victims
Every child alleged as or accused of having infringed the penal law has the guarantee to have legal or other appropriate assistance in the preparation and presentation of his or her defence. ⁵⁸	Where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility. ⁶²
Children who are suspects or accused persons in criminal proceedings have the right to access to a lawyer ⁵⁹ , or other appropriate representative ⁶⁰ .	States shall ensure that child victims of sexual exploitation or sexual abuse have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings. ⁶³
The Committee states that in the decision-making process legal or other appropriate assistance must be present. This presence should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police. ⁶¹	
Children shall have access to a lawyer before they are questioned by the police or by another law enforcement or judicial authority. ⁶⁴	
The presence of the legal or other appropriate assistance in the decision-making process should not be limited to the trial before the court or other judicial body, but also applies to all other stages of the process, beginning with the interviewing (interrogation) of the child by the police. ⁶⁵	
Member States shall ensure that children are assisted by a lawyer when they are questioned, and the lawyer shall be able to participate effectively during questioning. ⁶⁶	
A decision to proceed questioning in the	

⁵⁶ Article 35(1)(f) Lanzarote Convention.

⁵⁷ Article 10 Recommendation 2013/C 378/02.

⁵⁸ Article 40(2)(b)(ii) CRC.

⁵⁹ Article 40 (2)(b)(iii) CRC; article 6 (1, 2) Directive 2016/800/EU.

⁶⁰ Para. 58 UN/CRC/C/GC/No.10.

⁶¹ Para. 52 UN/CRC/C/GC/No.10.

⁶² Article 24 (1)(c) Directive 2012/29/EU.

⁶³ Article 31 (3) Lanzarote Convention.

⁶⁴ Article 6 (3)(a), (4)(a) Directive 2016/800/EU.

⁶⁵ Article 40 (2)(b)(iii) CRC; Paras 52, 58 UN/CRC/C/GC/No.10.

⁶⁶ Article 6 (4)(b) Directive 2016/800/EU.

absence of a lawyer in exceptional circumstances and only at the pre-trial stage, may be taken only on a case-by-case basis, either by a judicial authority, or by another competent authority on condition that the decision can be submitted to judicial review. ⁶⁷	
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Interpreter	
Child suspects	Child witnesses/victims
Every child in conflict with the law shall have the free assistance of an interpreter if the child cannot understand or speak the language used. ⁶⁸ This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. ⁶⁹	States shall ensure that child victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings. ⁷⁰

Other professionals	
Child suspects	Child witnesses/victims
A child shall have the right to be accompanied by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings: (a) would be contrary to the child's best interests; (b) is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or (c) would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings. Where the child has not nominated another appropriate adult, or where the adult that has been nominated by the child is not acceptable to the competent authority, the competent authority shall, taking into account the child's best interests, designate another person to accompany the child. That person may also be the representative of an authority or of another institution responsible for the protection or welfare of children. ⁷¹	In criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family. ⁷² States shall provide for the possibility for the judicial authorities to appoint a special representative for the child victim of sexual exploitation or sexual abuse when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim. ⁷³
	Professionals should develop and implement measures to make it easier for children to testify or

⁶⁷ Article 6 (8) Directive 2016/800/EU.

⁶⁸ Article 40 (2)(b)(vi) CRC.

⁶⁹ Para 62 UN/CRC/C/GC/No.10.

⁷⁰ Article 7 Directive 2012/29/EU.

⁷¹ Article 15 (2) Directive 2016/800/EU.

⁷² Article 24 (1)(b) Directive 2012/29/EU.

⁷³ Article 31(4) Lanzarote Convention.

	<p>give evidence to improve communication and understanding at the pre-trial and trial stages. These measures may include:</p> <ul style="list-style-type: none"> - Child victim and witness specialists to address the child's special needs; - Support persons, including specialists to accompany the child during testimony; - Where appropriate, to appoint guardians to protect the child's legal interests.⁷⁴
	<p>Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.⁷⁵</p>
	<p>A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case.⁷⁶</p>
	<p>Children should be protected, as far as possible, against images or information that could be harmful to their welfare. In deciding on disclosure of possibly harmful images or information to the child, the judge should seek advice from other professionals, such as psychologists and social workers.⁷⁷</p>

6. Preparation and information

In order for a child to be able to take part in an interview in the best possible way her or she needs to be carefully prepared and receive the necessary information on the interview and the criminal law procedure.

Preparing for the interview	
The individual assessment shall be carried out at the earliest appropriate stage of the proceedings. ⁷⁸ (see section 3)	
Child suspects	Child witnesses/victims
The results of the medical examination shall be taken into account when determining the capacity of the child to be subject to questioning. ⁷⁹	
Every child alleged as or accused of having infringed the penal law has the guarantee to have legal or other appropriate assistance in the preparation and presentation of his or her defence. ⁸⁰ CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it	

⁷⁴ Article 25 ECOSOC/RES/2005/20.

⁷⁵ Article 3(3) Directive 2012/29/EU.

⁷⁶ Article 17 Child-friendly justice guidelines.

⁷⁷ Article 60 Child-friendly justice guidelines.

⁷⁸ Article 7 (5, 6) Directive 2016/800/EU; article 22 Directive 2012/29/EU

⁷⁹ Article 8 (2) Directive 2016/800/EU

⁸⁰ Article 40(2)(b)(ii) CRC

<p>must be appropriate. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The Committee recommends the State parties provide as much as possible for adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance is possible (e.g. social worker), but that person must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.⁸¹</p> <p>As required by article 14 (3)(b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistance, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC).⁸²</p>	
	<p>Professionals should approach child victims and witnesses with sensitivity, so that they: (b) Provide certainty about the process, including providing child victims and witnesses with clear expectations as to what to expect in the process, with as much certainty as possible. The child's participation in hearings and trials should be planned ahead of time and every effort should be made to ensure continuity in the relationships between children and the professionals in contact with them throughout the process.⁸³</p>
	<p>Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by:</p> <ul style="list-style-type: none"> - Ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process, their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process; - Giving due regard to the child's views and concerns and, if they are unable to accommodate them, explain the reasons to the child.⁸⁴
	<p>States shall protect child victims of sexual exploitation or sexual abuse, including their special needs as victims, during the criminal proceedings by enabling them to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and</p>

⁸¹ Para. 49 UN/CRC/C/GC/No. 10.

⁸² Para. 50 UN/CRC/C/GC/No. 10.

⁸³ Article 30 ECOSOC/RES/2005/20

⁸⁴ Article 21 ECOSOC/RES/2005/20

	considered; providing them with appropriate support services so that their rights and interests are duly presented and taken into account. ⁸⁵
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The right to information of the child	
Child suspects	Child witnesses/victims
<p>Information from the first contact Every child alleged as or accused of having infringed the penal law has the guarantee to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians.⁸⁶</p> <p>When children are made aware that they are suspects or accused persons in criminal proceedings, they shall be promptly informed about their rights and about general aspects of the conduct of the proceedings.⁸⁷ This includes:</p> <ul style="list-style-type: none"> - the right to have the holder of parental responsibility informed;⁸⁸ - the right to be assisted by a lawyer;⁸⁹ - the right to protection of privacy;⁹⁰ - the right to be accompanied by the holder of parental responsibility during stages of the proceedings other than court hearings;⁹¹ - the right to legal aid.⁹² <p>At the earliest appropriate stage in the proceedings the suspect or accused child shall be informed about:</p> <ul style="list-style-type: none"> - the right to an individual assessment;⁹³ - the right to medical examination, including the right to medical assistance;⁹⁴ - the right to limitation of deprivation of liberty and to the use of alternative measures, including the right to periodic review of detention;⁹⁵ - the right to be accompanied by the holder of parental responsibility during court hearings;⁹⁶ - the right to appear in person at trial;⁹⁷ - the right to effective remedies.⁹⁸ <p>Vulnerable persons and, if necessary, their legal representative or an appropriate adult should be</p>	<p>Information from the first contact States shall ensure that child victims of sexual exploitation or sexual abuse have access (as from their first contact with the competent authorities) to information on relevant judicial and administrative proceedings.¹⁰⁰</p> <p>States shall protect child victims of sexual exploitation or sexual abuse, including their special needs as victims, during the criminal proceedings by informing them of their rights and the services at their disposal and (unless they do not wish to receive such information), the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases; ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively.¹⁰¹</p> <p>From the first contact with the justice process and throughout that process child victims and witnesses should be promptly and adequately informed of:</p> <ul style="list-style-type: none"> - The availability of health, psychological, social and other relevant services as well as the means of accessing such services along with legal or other advice or representation, compensation and emergency financial support, where applicable; - The procedures for the adult and juvenile criminal justice process, including the role of child victims and witnesses, the importance, timing and manner of testimony, and ways in which “questioning” will be conducted during the investigation and trial; - The existing support mechanisms for the child when making a complaint and participating in the investigation and court proceedings; - The specific places and times of hearings and other

⁸⁵ Article 31 (1)(c)(d) Lanzarote Convention.

⁸⁶ Article 40 (2)(b)(ii) CRC.

⁸⁷ Article 4 (1) Directive 2016/800/EU.

⁸⁸ Article 4 (1)(a)(i), 5 Directive 2016/800/EU.

⁸⁹ Article 4 (1)(a)(ii), 6 Directive 2016/800/EU.

⁹⁰ Article 4 (1)(a)(iii), 14 Directive 2016/800/EU.

⁹¹ Article 4 (1)(a)(iv), 15 (4) Directive 2016/800/EU.

⁹² Article 4 (1)(a)(v), 18 Directive 2016/800/EU.

⁹³ Article 4 (1)(b)(i), 7 Directive 2016/800/EU.

⁹⁴ Article 4 (1)(b)(ii), 8 Directive 2016/800/EU.

⁹⁵ Article 4 (1)(b)(iii), 10, 11 Directive 2016/800/EU.

⁹⁶ Article 4 (1)(b)(iv), 15 (1) Directive 2016/800/EU.

⁹⁷ Article 4 (1)(b)(v), 16 Directive 2016/800/EU.

⁹⁸ Article 4 (1)(b)(vi), 19 Directive 2016/800/EU.

informed of the specific procedural rights referred to in this Recommendation, in particular those relating to the right to information, the right to medical assistance, the right to a lawyer, the respect of privacy and, where appropriate, the rights related to pre-trial detention.⁹⁹

relevant events;

- The availability of protective measures;
- The existing mechanisms for review of decisions affecting child victims and witnesses;
- The relevant rights for child victims and witnesses pursuant to the Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.¹⁰²

- to the extent feasible and appropriate, of: (a) The progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case; (b) The existing opportunities to obtain reparation from the offender or from the State through the justice process, through alternative civil proceedings or through other processes.¹⁰³

States shall ensure that child victims are offered the following information, without unnecessary delay, from their first contact with a competent authority:

- (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- (c) how and under what conditions they can obtain protection, including protection measures;
- (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- (e) how and under what conditions they can access compensation;
- (f) how and under what conditions they are entitled to interpretation and translation;
- (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- (h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- (i) the contact details for communications about their case;
- (j) the available restorative justice services;
- (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.¹⁰⁴

¹⁰⁰ Article 31 (2) Lanzarote Convention.

¹⁰¹ Article 31 (1)(a)(b) Lanzarote Convention.

⁹⁹ Article 9 Recommendation 2013/C 378/02.

¹⁰² Article 19 ECOSOC/RES/2005/20.

¹⁰³ Article 20 ECOSOC/RES/2005/20.

¹⁰⁴ Article 3(2) Directive 2012/29/EU

	<p>Child victims have the right to receive information about their case, including:</p> <ul style="list-style-type: none"> - a decision not to proceed with or end an investigation or not to prosecute the offender. - time and place of the trial, and the nature of the charges against the offender. - any final judgment in a trial. - information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification. - when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention (unless there is an identified risk of harm to the offender which would result from the notification). Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.¹⁰⁵
<p>Upon deprivation of liberty the child shall be informed about the right to specific treatment during deprivation of liberty.¹⁰⁶</p>	
<p>The information shall be given in writing, orally, or both, in simple and accessible language, and the information given is noted, using the recording procedure in accordance with national law.¹⁰⁷</p> <p>Persons with disabilities should receive upon request information concerning their procedural rights in a format accessible to them.¹⁰⁸</p>	<p>All interactions should take place in a language that the child uses and understands.¹⁰⁹</p> <p>Member States shall take appropriate measures to assist child victims to understand any necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.¹¹⁰</p> <p>States shall ensure that the information given to child victims of sexual exploitation or sexual abuse is provided in a manner adapted to their age and maturity and in a language that they can understand.¹¹¹</p>

7. Interview method, setting and expertise

In this section we describe legal provisions to protect children on the interview method that is being used, the setting of the interview and the required expertise of the professionals involved.

Interview method

¹⁰⁵ Article 6 Directive 2012/29/EU.

¹⁰⁶ Article 4 (1)(c), 12 Directive 2016/800/EU.

¹⁰⁷ Article 4 (2) Directive 2016/800/EU.

¹⁰⁸ Article 8 Recommendation 2013/C 378/02.

¹⁰⁹ Article 14 ECOSOC/RES/2005/20.

¹¹⁰ Article 3 Directive 2012/29/EU.

¹¹¹ Article 31(6) Lanzarote Convention.

States are encouraged to promote research into all aspects of child-friendly justice, including child-sensitive interviewing techniques and dissemination of information and training on such techniques. ¹¹²	
Interview protocols that take into account different stages of the child's development should be designed and implemented to underpin the validity of children's evidence. These should avoid leading questions and thereby enhance reliability. ¹¹³	
Child suspects	Child witnesses/victims
The right to be heard (article 12 of the CRC) is fundamental for a fair trial for a child alleged as, accused of, or recognized as having infringed the penal law. The child has the right to be heard directly and not only through a representative or an appropriate body if it is in his or her best interests. This right must be fully observed at all stages of the process, starting with pretrial stage when the child has the right to remain silent, as well as the right to be heard by the police, the prosecutor and the investigating judge. ¹¹⁴	<p>Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process, including by ensuring that child victims and witnesses are enabled to express freely and in their own manner their views and concerns regarding their involvement in the justice process their concerns regarding safety in relation to the accused, the manner in which they prefer to provide testimony and their feelings about the conclusions of the process.¹¹⁵</p> <p>States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.¹¹⁶</p> <p>Victims of sexual exploitation and sexual abuse shall be enabled to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered.¹¹⁷</p> <p>In the Model Law it is suggested to include an article stating: A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.¹¹⁸</p>
Every child alleged as or accused of having infringed the penal law shall not be compelled to give testimony or to confess guilt. ¹¹⁹ - There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term "compelled" should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true. That may become even more likely if rewards are promised such as: "You can	<p>Professionals should approach child victims and witnesses with sensitivity, so that they: (d) Use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child's testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child's testimony.¹²²</p> <p>All interactions, including interviews, should take place in a language that the child uses and understands.¹²³</p>

¹¹² Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, V (a), p. 33.

¹¹³ Article 71 Child-friendly justice guidelines, Council of Europe.

¹¹⁴ Para. 44 UN/CRC/C/GC/No. 10.

¹¹⁵ Article 21 (b) ECOSOC/RES/2005/20.

¹¹⁶ Article 10 (1) Directive 2012/29/EU.

¹¹⁷ Article 31(1)(c) Lanzarote Convention.

¹¹⁸ Article 2 (6) Model Law on Justice in Matters involving Child Victims and Witnesses of Crime. UNODC/UNICEF (2009).

¹¹⁹ Article 40 (2)(b)(iv) CRC.

<p>go home as soon as you have given us the true story”, or lighter sanctions or release are promised.¹²⁰</p> <p>- There must be independent scrutiny of the methods of interrogation to ensure that the evidence is voluntary and not coerced, given the totality of the circumstances, and is reliable. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.¹²¹</p>	<p>States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.¹²⁴</p> <p>States should ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.¹²⁵</p>
<p>States shall ensure that every child alleged as or accused of having infringed the penal law has the guarantee to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.¹²⁶</p>	
<p>The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child.¹²⁷</p>	

Interview setting/requirements

Age and capacities of the child

Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.¹²⁸

Where a *child victim* is to be heard, due account shall be taken of the child's age and maturity.¹²⁹

Interact with respect and dignity

When children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with respect and sensitivity.¹³⁰

The treatment of *child victims and witnesses* should be caring and sensitive taking into account the child's

¹²² Article 40 ECOSOC/RES/2005/20

¹²³ Article 14 ECOSOC/RES/2005/20

¹²⁰ Para. 57 UN/CRC/C/GC/No.10.

¹²¹ Para. 58 UN/CRC/C/GC/No.10.

¹²⁴ Article 3 (2) Directive 2012/29/EU

¹²⁵ Article 31(c) ECOSOC/RES/2005/20.

¹²⁶ Article 40 (2)(b)(iv) CRC.

¹²⁷ Para. 58 UN/CRC/C/GC/No. 10.

¹²⁸ Article 64 Child-friendly justice guidelines, Council of Europe.

¹²⁹ Article 10 lid 1 Directive 2012/29/EU.

¹³⁰ Article 57 Child-friendly justice guidelines, Council of Europe

personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.¹³¹

Limit the number of interviews

For all children: the number of interviews should be as limited as possible and their length should be adapted to the child's age and attention span.¹³²

Special procedures for collection of evidence from *child victims and witnesses* should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording.¹³³

The number of interviews of *child victims* is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation.¹³⁴

States shall take the necessary measures to ensure that the number of interviews for child victims of sexual exploitation or sexual abuse is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings.¹³⁵

Same person conducts repeated interview

When more than one interview is necessary, they should preferably be carried out by the same person, in order to ensure coherence of approach in the best interests of the child.¹³⁶

The measure that all interviews with the child victim are being conducted by the same persons unless this is contrary to the good administration of justice, shall be available during criminal investigations.¹³⁷

States shall take the necessary measures to ensure that the same persons, if possible and where appropriate, conduct all interviews with the child victim of sexual exploitation or sexual abuse.¹³⁸

Audiovisual recording

Interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence.¹³⁹

Vulnerable persons *suspected or accused* are not always able to understand the content of police interviews to which they are subject. In order to avoid any contestation of the content of an interview and thereby undue repetition of questioning, these interviews should be audio-visually recorded.¹⁴⁰

The questioning of *accused or suspected children* by the police or other law enforcement authorities during the criminal proceedings shall be audiovisually recorded where this is proportionate in the circumstances of the case, taking into account whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration. In the absence of audiovisual recording, questioning shall be recorded in another appropriate manner, such as by written minutes which are duly verified.¹⁴¹

Audiovisual statements from children who are *victims or witnesses* should be encouraged, while respecting the right of other parties to contest the content of such statements.¹⁴²

In criminal investigations, all interviews with the *child victim* may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings.¹⁴³

¹³¹ Article 10 ECOSOC/RES/2005/20

¹³² Article 67 Child-friendly justice guidelines, Council of Europe

¹³³ Article 31(a) ECOSOC/RES/2005/20

¹³⁴ Article 20 b Directive 2012/29/EU; article 35 lid 1, e Lanzarote Convention; article 31 lid a ECOSOC RES/2005/20; article 67 Guidelines on child friendly justice; article 20 Directive 2011/93/EU.

¹³⁵ Article 35(1)(e) Lanzarote Convention

¹³⁶ Article 66 Child-friendly justice guidelines, Council of Europe

¹³⁷ Article 23 (2)(c) Directive 2012/29/EU. Zie ook: article 35 lid 1 d Lanzarote Convention; article 66 Guidelines on child friendly justice; article 20 Directive 2011/93/ EU.

¹³⁸ Article 35(1)(d) Lanzarote Convention

¹³⁹ Article 59 Child-friendly justice guidelines, Council of Europe

¹⁴⁰ Article 13 and para. 13 Recommendation 2013/C 378/02.

¹⁴¹ Article 9 Directive 2016/800/EU

¹⁴² Article 65 Child-friendly justice guidelines, Council of Europe

¹⁴³ Article 24 (1)(a) Directive 2012/29/EU; article 50 ECOSOC/RES/1997/30; article 9 Guidelines on child friendly justice.

States shall take the necessary legislative or other measures to ensure that all interviews with the victim of sexual exploitation or sexual abuse or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.¹⁴⁴

Suitable environment

As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.¹⁴⁵

All interactions, including interviews, should take place in a suitable environment that accommodates the special needs of the *child victim and witness*, according to his or her abilities, age, intellectual maturity and evolving capacity.¹⁴⁶

The possibility of taking statements of *child victims and witnesses* in specially designed child-friendly facilities and a child-friendly environment should be examined.¹⁴⁷

Professionals should approach *child victims and witnesses* with sensitivity, so that they: use child-sensitive procedures, including interview rooms designed for children, interdisciplinary services for child victims integrated in the same location, modified court environments that take child witnesses into consideration, recesses during a child’s testimony, hearings scheduled at times of day appropriate to the age and maturity of the child, an appropriate notification system to ensure the child goes to court only when necessary and other appropriate measures to facilitate the child’s testimony.¹⁴⁸

Interviews with the *child victim* shall be carried out in premises designed or adapted for that purpose.¹⁴⁹

States shall take the necessary measures to ensure that interviews with the child victim of sexual exploitation or sexual abuse take place, where necessary, in premises designed or adapted for this purpose.¹⁵⁰

Child suspects	Child witnesses/victims
	Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members. ¹⁵¹
	<p>Avoid direct contact with perpetrator</p> <p>Direct contact, confrontation or interaction between a child victim or witness with alleged perpetrators should, as far as possible, be avoided unless at the request of the child victim. Children should have the opportunity to give evidence in criminal cases without the presence of the alleged perpetrator.¹⁵²</p> <p>Ensure that child victims and witnesses are protected, if compatible with the legal system and with due</p>

¹⁴⁴ Article 35(2) Lanzarote Convention

¹⁴⁵ Article 62 Child-friendly justice guidelines, Council of Europe

¹⁴⁶ Article 14 ECOSOC/RES/2005/20.

¹⁴⁷ Article 74 Child-friendly justice guidelines, Council of Europe.

¹⁴⁸ Article 30(d) ECOSOC/RES/2005/20.

¹⁴⁹ Article 23 lid 2(a) Directive 2012/29/EU; article 35 lid 1 b Lanzarote Convention; article 62 en 74 Guidelines on child friendly justice; article 20 Directive 2011/93/EU; Article 30 ECOSOC/RES/1997/30.

¹⁵⁰ Article 35(1)(b) Lanzarote Convention.

¹⁵¹ Article 18 Directive 2012/29/EU; article 29 ECOSOC/RES/2005/20.

¹⁵² Article 68, 69 Child-friendly justice guidelines, Council of Europe.

	<p>respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided.¹⁵³</p> <p>States shall protect child victims of sexual exploitation or sexual abuse, including their special needs as victims, during the criminal proceedings by ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.¹⁵⁴</p>
	<p>No unjustified delay Interviews of victims shall be conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority.¹⁵⁵</p>
	<p>Interviewer of the same sex All interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.¹⁵⁶</p>
	<p>Avoid unnecessary questioning Measures shall be available to avoid unnecessary questioning during court procedures concerning the victim's private life not related to the criminal offence.¹⁵⁷</p>

Expertise	
<p>The State shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities. The State shall also ensure that these persons have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and report suspicion.¹⁵⁸</p> <p>All professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them. Professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular Vulnerability.¹⁵⁹</p> <p>Interviews of and the gathering of statements from children should, as far as possible, be carried out by trained professionals.¹⁶⁰</p>	
Child suspects	Child witnesses/victims
Law enforcement authorities who handle cases	Professionals should be trained to effectively protect

¹⁵³ Article 31(b) ECOSOC/RES/2005/20.

¹⁵⁴ Article 31 (1)(g) Lanzarote Convention.

¹⁵⁵ Article 20(a) Directive 2012/29/EU; article 35 (1)(a) Lanzarote Convention; article 20 (3)(a) Directive 2011/93/EU.

¹⁵⁶ Article 23 (2)(d) Directive 2012/29/EU.

¹⁵⁷ Article 23 (3)(c) Directive 2012/29/EU.

¹⁵⁸ Article 5 Lanzarote Convention.

¹⁵⁹ Articles 14, 15 Child-friendly justice guidelines, Council of Europe.

¹⁶⁰ Article 64 Child-friendly justice guidelines, Council of Europe.

involving children should receive specific training to a level appropriate to their contact with children with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to the child.¹⁶¹

Police officers, law enforcement and judicial authorities competent in criminal proceedings conducted against vulnerable persons should receive specific training.¹⁶²

Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.¹⁶³

The interpreter should be trained to work with children, because the use and understanding of their mother tongue might be different from that of adults. Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation.¹⁶⁴

Judges and prosecutors who deal with criminal proceedings involving children should have specific competence in that field, effective access to specific training, or both.¹⁶⁵

The provision of specific training for lawyers who deal with criminal proceedings involving children shall be promoted.¹⁶⁶

and meet the needs of child victims and witnesses.¹⁶⁷ This training should include: (a) Relevant human rights norms, standards and principles, including the rights of the child; (b) Principles and ethical duties of their office; (c) Signs and symptoms that indicate crimes against children; (d) Crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality; (e) Impact, consequences, including negative physical and psychological effects, and trauma of crimes against children; (f) Special measures and techniques to assist child victims and witnesses in the justice process; (g) Cross-cultural and age-related linguistic, religious, social and gender issues; (h) Appropriate adult-child communication skills; (i) Interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child; (j) Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner; (k) Methods to protect and present evidence and to question child witnesses; (l) Roles of, and methods used by, professionals working with child victims and witnesses.¹⁶⁸

The same topics are mentioned in the Model Law. Three topics have been specified further: (g) Information on *children's developmental stages* as well as cross-cultural and age-related linguistic, ethnic, religious, social and gender issues, *with particular attention to children from disadvantaged groups*, (i) Interview and assessment techniques that minimize *distress or trauma* to children while maximizing the quality of information received from them, *including skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner*.¹⁶⁹

Trained professionals conduct interviews of child victims and child witnesses, examinations and other forms of investigation in a sensitive, respectful and thorough manner.¹⁷⁰

The measure that interviews with child victims are carried out by or through professionals trained for that purpose shall be available.¹⁷¹

States shall take the necessary measures to ensure that interviews with the child victim of sexual

¹⁶¹ Article 20 (1) Directive 2016/800/EU.

¹⁶² Article 17 Recommendation 2013/C 378/02.

¹⁶³ Para. 58 UN/CRC/C/GC/No.10.

¹⁶⁴ Para. 62 UN/CRC/C/GC/No.10.

¹⁶⁵ Article 20 (2) Directive 2016/800/EU.

¹⁶⁶ Article 20 (3) Directive 2016/800/EU.

¹⁶⁷ Article 40 ECOSOC/RES/2005/20.

¹⁶⁸ Article 42 ECOSOC/RES/2005/20.

¹⁶⁹ Article 8 (2)(g)(i) Model Law on Justice in Matters involving Child Victims and Witnesses of Crime. UNODC/UNICEF (2009).

¹⁷⁰ Article 13 ECOSOC/RES/2005/20.

¹⁷¹ Article 23 (2)(b) Directive 2012/29/EU; article 64 Guidelines on child friendly justice.

	exploitation or sexual abuse are carried out by professionals trained for this purpose. ¹⁷²
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8. Privacy

In this section important provisions to safeguard the right to the protection of privacy (article 16 CRC) of child suspects and witnesses who take part in an interview within a criminal law procedure described.

Privacy	
No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of his or her privacy. ¹⁷³	
Child suspects	Child witnesses/victims
<p>States shall ensure that every child alleged as or accused of having infringed the penal law has the guarantee to have his or her privacy fully respected at all stages of the proceedings.¹⁷⁴</p> <p>Records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of child offenders should not be used in adult proceedings in subsequent cases involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance such future sentencing.¹⁷⁵</p>	
<p>Absence of public To protect the privacy of children Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public.¹⁷⁶</p> <p>It is recommended to introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. The verdict/sentence should be pronounced in public at a court session in such a way that the identity of the child is not revealed.¹⁷⁷</p> <p>This rule allows for the presence of experts or other professionals with a special permission of the court. Public hearings in juvenile justice should only be possible in well-defined cases and at the written decision of the court. Such a</p>	<p>Absence of public Measures should be taken to protect child victims and witnesses from undue exposure to the public by, for example excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.¹⁷⁹</p> <p>The following measures shall be available for child victims:</p> <ul style="list-style-type: none"> (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology; (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology; (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and (d) measures allowing a hearing to take place without

¹⁷² Article 35(1)(c) Lanzarote Convention.

¹⁷³ Article 16 CRC.

¹⁷⁴ Article 40(2)(b)(vii) CRC

¹⁷⁵ Para. 66 UN/CRC/C/GC/No. 10.

¹⁷⁶ Article 14 (2) Directive 2016/800/EU.

¹⁷⁷ Para. 66 UN/CRC/C/GC/No.10.

<p>decision should be open for appeal by the child.¹⁷⁸</p>	<p>the presence of the public.¹⁸⁰</p> <p>States shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that the judge may order the hearing to take place without the presence of the public and that the child victim of sexual exploitation or sexual abuse may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.¹⁸¹</p>
<p>Competent authorities should take appropriate measures to protect the privacy, personal integrity and personal data of vulnerable persons, including medical data, throughout the criminal proceedings.¹⁸²</p>	<p>States shall protect child victims of sexual exploitation or sexual abuse, including their special needs as victims, during the criminal proceedings by protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification.¹⁸³</p>

¹⁷⁹ Article 12, 20 ECOSOC/RES/2005/20.

¹⁷⁸ Para. 65 UN/CRC/C/GC/No.10.

¹⁸⁰ Article 23 (3) Directive 2012/20/EU.

¹⁸¹ Article 36(2) Lanzarote Convention.

¹⁸² Article 15 Recommendation 2013/C 378/02.

¹⁸³ Article 31(1)(e) Lanzarote Convention.