

Social Fieldwork Research
Child Participation in Justice Report
Bulgaria, 2012

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EXECUTIVE SUMMARY

The outcomes of the fieldwork research on participation of children in justice proceedings are:

- The right to be heard is often considered as an obligation by the social workers, investigating authorities, prosecutors and judges in both criminal and civil proceedings. The reason for this is that most of the legal professionals are more interested in the outcomes of the proceedings in the criminal and divorce proceedings. It is mainly in these proceedings in which the children are heard. A few participants mentioned that children are much manipulated by the parents before the hearings in the court and they express their opinions and feelings actually through their non-verbal communication, not with their statements. However, the court takes into account mainly the verbal statements of the children and thus its decisions often are not in the best interests of the children. Children feel very frustrated and embarrassed when they have to testify in criminal abuse cases as they are not protected from re-victimisation and they are heard numerous times only at the pre-trial stage of the proceedings. Criminal investigators, prosecutors and judges are not aware of the Child Protection Act (enforced since 2000) and they do not implement it. Most of them are not aware that child hearings should be carried out in the presence of a social worker and that 'best interest' is a legally defined term.
- The right to information does not seem much respected either. Firstly, there are not any rules and procedures provided in the legislation for the exercise of this right apart from this that the court is obliged to inform the children about the proceedings. Secondly, judges expect social workers to inform the children in practice and the social workers state that parents are the first persons who inform the children about the case and the hearing. However, all interviewed professionals are of the opinion that children should be informed as thus they would not be so embarrassed and frightened during the hearings.
- The majority of the interviewees state that people who work with children are not trained and are not appointed to do only child hearings within their institutions and organisations. This reflects negatively the quality of their work. Coordination and multidisciplinary work when working on children cases between judges, prosecutors, social workers and NGOs is widely lacking. The judges and the prosecutors are not of the opinion that they should work with anyone in a team on children cases and they agree that trainings are useful in general. The child psychologists and psychotherapists are a few in the country and thus the investigators and judges cannot benefit from their knowledge in child psychology. Social workers at the Child Protection Departments think that they need training but generally did not have the chance to benefit from such training in child hearings. The main interest is focused on the way questions should be put to the children and the ways the answers should be interpreted.
- Less than one third of the participants state they are more or less aware of the existence of the CoE Guidelines for child-friendly justice. Only civil attorneys-at-law share that they are aware of the guidelines while on the other hand predominantly criminal judges and prosecutors have that knowledge. It seems that the group of social professionals is reluctant to share how they use the CoE Guidelines although one fourth of all interviewed social professionals state that they are aware of them.

1. BACKGROUND

1.1 Research Methodology

National Context

Several developments in 2012 highlighted concerns about judicial independence as a fundamental prerequisite for access to justice from the perspective of structural issues of Bulgarian judicial branch's set-up as well as the relations between the judiciary and the political sphere. The confrontation between the Bulgarian Judges Association (BJA) and the executive power represented by the Minister of Interior escalated. The minister continued the "series of direct political criticisms of individual judges"¹ including over particular decisions. The BJA represented by its President responded² and called on the Supreme Judicial Council (SJC) to defend the independence of the judiciary. The President of the BJA was dismissed as a judge on disciplinary grounds on 12 July 2012. Judges from different courts and levels of the system protested³, and 180 judges organised a walk-out and called for the resignation of SJC.⁴ Their protest was supported by other legal professions.⁵ This action by the SJC was qualified as politically motivated by members of civil society⁶ and was seen by international observers as one that puts judicial independence "in question"⁷ and one that "may involve a misuse of the judicial disciplinary process to remove a judge due to her publicly expressed concerns at government interference with judicial independence".⁸ Also in 2012 the five year term of office of the Supreme Judicial Council (SJC) elapsed and a new Council was to be appointed by 26 September 2012. In advance of this, a coalition of twelve rule of law and human rights NGOs (including the Bulgarian Judges Association) proposed to the Ministry of Justice a concept paper on the necessary reforms of the SJC and the governance of the judicial branch.⁹ The goals of the concept paper were to:

¹ European Commission (2012) *Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism*, Brussels, 18 July 2012, p. 6, available in English at: http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf.

² Bulgaria, Bulgarian Judges Association, *Position of the general assembly of the BJA, 26-27 January 2012*, on the occasion of naming a special police operation with the name of a judge, available in English at: www.judgesbg.org/data/document_downloads/247/Opinion_General_Assembly_27012012.doc.

³ Bulgaria, see the letters from judges from Vratsa (first instance): www.judgesbg.org/?m=10&id2=303; Blagoevgrad (several courts from the region) www.judgesbg.org/?m=10&id2=292, The Supreme Court of Cassation www.dnevnik.bg/bulgaria/2012/07/12/1864643_vks_v_deklaracia_uvolnenieto_na_todorova_prilicha_na/.

⁴ Bulgaria, *Dnevnik*, 13 July 2012, available in Bulgarian at: www.dnevnik.bg/bulgaria/2012/07/13/1864774_sudii_advokati_i_grajdani_protestiraha_sreshtu/.

⁵ Bulgaria, Supreme Bar Council, *Declaration for Support of the Protests against the removal of judge Miroslava Todorova*, 13 July 2012, available in Bulgarian at: www.vas.bg/Pages/News/Default.aspx?eventid=26420; Association of Prosecutors, *Statement for Support of the Protests against the removal of judge Miroslava Todorova*, 13 July 2012, available in Bulgarian at: <http://legalworld.bg/show.php?storyid=27306>.

⁶ Bulgaria, "Open Letter": *Judge Todorova's Removal is an Alarming Precedent of Arbitrary Repression* by 10 Human Rights and Rule of Law NGOs of 17 July 2012, available in English at: <http://www.bghelsinki.org/en/news/press/single/open-letter-judge-todorovas-removal-alarming-precedent-arbitrary-repression/>.

⁷ European Commission (2012) *Report from the Commission to the European Parliament and the Council on progress in Bulgaria under the Cooperation and Verification Mechanism*, Brussels, 18 July 2012, p. 6, available in English at: http://ec.europa.eu/cvm/docs/com_2012_411_en.pdf.

⁸ International Commission of Jurists, Public Statement, *ICJ raises concern at dismissal of judge Todorova*, August 2012, available in English at: <http://documents.icj.org/BulgariaTodorovastmt270812.pdf>.

⁹ Bulgaria, *Concept Paper for Amendments in the Judicial System Act*, approved by the General Assembly of the Bulgarian Judges Association and 10 NGOs in January 2012, available in Bulgarian at: [www.bili-bg.org/cdir/bili-bg.org/files/izmenenia_na_ZSV_fin_\(1\)_fin.pdf](http://www.bili-bg.org/cdir/bili-bg.org/files/izmenenia_na_ZSV_fin_(1)_fin.pdf) and in English at: www.bili-bg.org/cdir/bili-bg.org/files/Amendments_to_SJC_EN-2-20.09-.pdf. The Concept was introduced to the Ministry of Justice on 14 February 2012, see www.bili-bg.org/86/news_item.html.

- eliminate structural factors limiting judicial independence;
- create guarantees for responsibility and transparency in administering judiciary;
- increase democratic participation of judges and prosecutors in decision-making in the judiciary.
-

In doing so the concept was intended to address a number of longstanding international and domestic criticisms¹⁰ on the structure of the Bulgarian judicial branch and bring it in full compliance with applicable international standards in the ambit of Article 6 of the ECHR.¹¹

However, the minister of justice rejected the majority of the proposals put forward in the concept paper and introduced to Parliament only the ones relating to the procedure of electing the members of the SJC. Eventually, Parliament adopted in their original form only the rules on the election of the parliamentary quota providing for the first time for collection and publication of substantial information on every nominee, extended duration of the procedure allowing for public reaction and a public hearing of the candidates. Rejecting the calls for introducing a direct vote by the judges and prosecutors for their representatives in the SJC, Parliament essentially preserved the previous system of an indirect vote by delegates.¹² On the conditions of work of judges as an element of their independence the central problem is the lack of management of workload of judges resulting in significant imbalances with judges in the Sofia District Court (first instance) hearing on average of 82.47 cases per month each, whereas the national median per month per judge is 38.74 and there are regional courts with as little as 9.13 cases per judge per month (Malko Tarnovo).¹³ This data¹⁴ shows two problems: one is that judges that work at the most loaded courts are objectively prevented from rendering efficient¹⁵ justice meeting the standards of the due care; the other is that the existence of courts with such drastically smaller workload¹⁶ demonstrates that the resources of the judiciary are not used and governed efficiently.

¹⁰ European Commission's recommendation in its July 2012 CVM Report on Bulgaria to "Establish proposals for a reform of the Supreme Judicial Council, the Supreme Cassation Prosecution Office and the Prosecution in general regarding structures, legal attributions, composition, appointments and internal organisation" (p. 8) http://ec.europa.eu/cvm/docs/com_2011_459_en.pdf; reiterated by the February Report (see p. 4) http://ec.europa.eu/cvm/docs/com_2012_57_en.pdf; See also Opinion no. 515/2009 (CDL-AD(2009)011) of the Venice Commission, pp. 3-4 and footnote no. 2 citing previous opinions: www.venice.coe.int/docs/2009/CDL-AD%282009%29011-e.pdf.

¹¹ Resolution № 1730 (2010) of the Parliamentary Assembly of the Council of Europe (§7.2.2.): <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1730.htm>; Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe: <https://wcd.coe.int/ViewDoc.jsp?id=376859&Site=CM>; Opinion No.12 (2009) of the Consultative Council of the European judges: <https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE%282009%29012&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

¹² Bulgaria, Judicial System Act (*Закон за съдебната система*), 3 July 2012, Art. 20 and 21. However, the duration of the process for the judicial quota was extended allowing for greater transparency.

¹³ Bulgaria, Supreme Judicial Council (2012) *Analytical Report of the Statistical Data on Workload in the Courts of Republic of Bulgaria for 2011*, pp. 3-4, available in Bulgarian at: www.justice.bg/bg/decisions/2012-pril/pr13-29.03.2012%20t.46.pdf.

¹⁴ The report provides only quantitative data and no qualitative assessment of the actual complexity and time-consumption per case. However, it is safe to say that the courts with the greatest workload also get the more complex matters as they are in the biggest cities.

¹⁵ Bulgaria, Supreme Judicial Council (2012) *Analytical Report of the Statistical Data on Workload in the Courts of Republic of Bulgaria for 2011*, pp. 3-4, available in Bulgarian at: www.justice.bg/bg/decisions/2012-pril/pr13-29.03.2012%20t.46.pdf. The report shows that in Sofia the monthly workload exceeds the ability of the judges to process cases on time by 25%.

¹⁶ Bulgaria, Supreme Judicial Council (2012) *Analytical Report of the Statistical Data on Workload in the Courts of Republic of Bulgaria for 2011*, p. 3, available in Bulgarian at: www.justice.bg/bg/decisions/2012-pril/pr13-29.03.2012%20t.46.pdf. The report estimates that up to 25% of all first instance courts are with minimal load.

Having in mind this national context the fieldwork about participation of children in justice proceedings in Bulgaria was carried out by two persons – one interviewer/moderator of the focus groups and one social fieldwork researcher who participated in the selection of the interviewees, the sending of the invitations to them, the filling in the majority of the templates as well as the summarizing of the outcomes of the fieldwork research. The latter researcher was not present at any of the interviews done under the project but after hearing the recording of each interview she discussed with the interviewer the specific situation of the interview, the specific features of the interviewee and the way the interview was done.

The selection of the interviewees was done by using several criteria. Judges were selected in two ways – either because of their court decisions (by which the fieldwork researchers could estimate that they deal with certain court cases involving children) or by asking the chairperson of the concrete court to point out judges who have the richest experience with child hearings. Prosecutors and investigators were selected by the chairpersons of the Prosecution Offices and the Regional Police Departments upon requests by the researchers. Attorneys-at-law were selected based on their experience with NGOs providing services to victims of domestic violence and trafficking. Social workers at the Child Protection Departments were selected by the directors of the Departments using the criteria ‘richest experience in child hearings’ upon requests by the researchers. The executive director of the Social Assistance Agency (to which the system of Child Protection Departments is subordinated) was also asked for permission for the interviews. Psychologists and psychotherapists were selected because of their experience in working with NGOs providing services to victims of domestic violence and crimes. The information about the NGOs in the country was received by the Bulgarian Gender Research Foundation and ANIMUS. The idea in the selection of social professionals was to find out such in the regions where the judges and prosecutors work so that both perspectives on the same issues are researched. Letters were also sent to the NGOs (regional representatives of the Social Activities and Practices Institute) that set up ‘blue rooms’ for child hearings. Invitations for interviews were sent to around 70 people. The interviewer spent 700 minutes on the phone to negotiate about the time and the place of the interviews. Most of the interviews took place in the workplace of the interviewees; a few took place in cafés or restaurants and by Skype or telephone.

The difficulties in convincing the legal professionals to be interviewed were mostly related to the vacation season and the judicial system crisis in Bulgaria. The interviewer had to be very flexible in arranging the interviews in different cities and regions. The difficulties with some social workers at the Child Protection Departments were that they feared and felt like being examined during the interviews. This might be explained with their big workload, the big turnover within the system and the strong hierarchy model in which the Child Protection Departments function.

The focus group participants were all interviewed in advance but one (psychologist). They were selected among the professionals with richest experience and with different perspectives on child hearings. Both focus groups were interesting for each of the participants who exchanged their contact details for future cooperation.

The interviewer is at 45, has university degree in law and in clinical social work. She used to be a judge for five years and has been working as a practicing lawyer for ten years (within and outside human rights NGOs). With a few exceptions the majority of the interviewees were not aware of her background and experience.

The interviewer and the social fieldwork researcher were in constant every-day contact and filling in the templates started in July by discussing certain details about each interview between them. While

mainly the social fieldwork researcher heard all recordings of the interviews twice and filled in the templates she discussed them with the interviewer in details.

1.2 Sample

During the period 1 July-2 October 2012 52 interviews have been carried out. The focus groups took place on 17 (the civil one) and on 18 (the criminal one) October 2012 in the office of the Bulgarian Helsinki Committee.

- **Field of expertise and education of the participants**

Out of 52 interviewees 14 are only criminal experts, 21 are criminal and civil, 17 are only civil experts; 24 are legal professionals and 28 are social professionals.

Twenty-five of the participants have university degree in law (apart from all judges, prosecutors, attorneys-at-law one social worker had also university degree in law). Of the social professionals 14 have university degree in social pedagogy or social work, 7 have university degree in psychology, 1 has university degree in psychiatry, 1 has university degree in engineering, 1 has university degree in international tourism, 1 has university degree in nursing and in clinical social work, 1 has university degree in family therapy, 1 has university degree in psychotherapy and 1 has university degree in business administration.

- **Profession**

Out of 24 legal professionals 6 are attorneys-at-law, 11 are judges, 5 are prosecutors and 2 are investigators. Out of the 28 social professionals 16 are social workers (2 of them are directors of social service provider), 7 are psychologists, 3 are psychotherapists (2 of them are chairpersons of NGOs), 1 is inspector at the Child Pedagogical Unit and 1 is psychiatrist (chairperson of an NGO).

- **Gender**

Out of all 52 interviewees 9 are male and 43 are female.

- **Age**

Forty of the interviewees are at ages in the range 26-45, and 12 are between 46-64 years old.

- **Distribution of the interviewees in regions**

The fieldwork was carried out in 13 cities in Bulgaria. Two are in Central Northern Bulgaria, five - in North Eastern Bulgaria, three – in South and South Eastern Bulgaria and three - in Western Bulgaria.

- **Title/job**

Ten judges work at District and Regional courts, one – at Appellate Court, five prosecutors work at District and Regional Prosecution Offices, one investigator and one inspector work at Child Pedagogical Unit at a Police Department and one investigator works at Investigation Office. All six attorneys-at-law consult NGOs that set up services for victims of domestic violence and other abuse over women and children. They also have their own practices. Out of the social professionals five psychologists work at NGOs as well as the psychiatrist and one of the psychotherapists; five social workers work at Facilities for social services for children and families (service provider) and two of them are directors of the facilities; eleven social workers work at Child Protection Departments.

It should be noted that with three exceptions (among social workers) all interviewees were qualified to practice what they actually work. At least one third of all participants have more than one title and role – for example one of the psychotherapists is trained to work with adults and children, had university degrees in psychology and psychotherapy and is also an expert appointed by the court in

criminal cases; the psychiatrist is also a chairperson of an NGO; the interviewee who finished nursing and clinical social work is also a chair of an NGO. Some of the attorneys-at-law dealing with domestic violence and abuse had finished trainings in psychology and concrete techniques for working with victims. Those who are highly qualified had usually experience with trainings abroad. They share that they have problems in implementation of what they have learned as they 'speak different professional language' which is not understood by the judges, the police, the prosecutors and the social workers.

- **Role in the proceedings**

All interviewees but the attorneys-at-law are actors during the child hearings. The social workers, the psychologists and some attorneys-at-law also prepare children for child hearings.

- **Participation in interviews and focus groups**

Out of all 52 interviewees 14 participated also in the focus groups and one psychologist who was not interviewed also participated in the focus groups. In the focus group for civil professionals participated three attorneys-at-law, one judge, three psychologists and one social worker. In the focus group for criminal professionals – three judges, two psychologists, one psychotherapist and one social worker.

- **Issues**

All 35 interviewees (14 professionals in only criminal and 21 professionals in criminal and civil proceedings) have experience with sexual and other abuse against children. All 38 interviewees (17 professionals in only civil and 21 professionals in criminal and civil proceedings) have experience with custody, divorce and domestic violence cases.

The atmosphere of the interviews

The total amount of time spent on interviews was around 70 hours. Most of the interviewees actually talked to the interviewer before and after the recording about organisational issues, gave examples of other kinds of work with children, and other problems in legislation and guidelines. The length of 49 interviews is over an hour. The shortest interview is 32 minutes and the longest is 2 hours and 23 minutes. The average length of an interview is 75 minutes. In some interviews, especially with social workers, there were several interruptions during the interview.

The level of confidence and confidentiality among the social workers was also lower than among legal professionals and psychologists. At least five social workers at Child Protection Departments were very embarrassed to be interviewed and felt like they are examined during the interviews. The rest of the participants showed medium to high level of confidence and confidentiality.

The professionals in the criminal issues tend to talk shorter than the civil ones and rarely give examples without being especially invited to. The psychologists, the psychotherapists and some attorneys were the participants with whom the longest interviews were carried out. They always gave examples as well as the social workers do. For some of the interviewees, especially those who are chairs of NGOs or service providers, it was hard to focus only on the questions of the interviewer and their interviews were hardest for processing afterwards. Most of the legal professionals were more interested in the outcomes of the proceedings and not that much in the perceptions or the feelings of the children during the hearings. While the psychologists, the psychotherapists and the social workers seem to be more concerned about the secondary trauma of the hearings and often are not aware of the outcomes at all.

The participants in the civil focus group were eight with even distribution of social and legal experts. The criminal focus group had seven participants – three legal and four social professionals. Both focus groups were very interesting for the participants and they freely shared their experiences and

were interested to learn about good practices from their colleagues. Most of the participants did not know each other in advance. Social workers from Child Protection Departments although invited did not participate in any of the focus groups. Both focus groups lasted for two hours.

During the civil focus group key issue was the practice of the judge who has been carrying out child hearings in child-friendly environment for years without any specific legal provisions for this. The other participants were pleasantly surprised and would like to learn more about this practice to be able to multiply it in their cities. In the criminal focus group central issues were the use of 'blue room' for child hearings and the use of social service provider to prepare the children for the hearings so that they are not re-victimised. It was an interesting difference as in the first focus group it was the judge who explained her good practice although she performs it with the help of a service provider while in the second group the service providers presented their practices to judges. The common outcome of both focus groups is that the judicial system is not very much aware of the organisation and functioning of the social services system and the child protection system, the latter being very much influenced by NGOs and their initiatives and practices.

1.3 Legal Context

In Bulgaria the judiciary structure corresponds approximately to the administrative division of districts and regions.¹⁷ There are 28 administrative courts, 28 regional courts (with civil and criminal panels in each of them) and 113 district courts (with civil and criminal panels (or judges) in each of them). There are no specialized courts or chambers dealing specifically with areas related to children apart from family chambers or judges (within the civil panels in district and regional courts) which deal only with family issues including parental rights over the children in case of divorce.

The interviewed civil judges, attorneys-at-law and a few social workers mention the rules and procedures for child hearings as they are provided for in the Child Protection Act. The provisions of Art.15 of the Child Protection Act regulate the participation of children in both administrative and court (civil and criminal) proceedings. It provides that in each court proceeding (civil and criminal) related to child protection, where children's rights and interests are involved, it is obligatory that any child over the age of ten is heard, unless this hearing damages the interests of that child.¹⁸ When a child has not yet reached the age of ten, he/she may be heard and his/her opinion taken into consideration, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.¹⁹

Adolescent children (at the age 14 to 18) participate in civil proceedings personally but with the consent of their parents/legal guardians.²⁰ If they initiate divorce cases (in which they are spouses) they may participate without the consent of the parents/legal guardians.²¹ Minor children (below the age of 14) are represented in civil proceedings by their parents/legal guardians.²²

The Child Protection Act provides for protection of the child through ensuring the most effective procedures and conditions to protect the best interests of the child.²³ The best interest of the child

¹⁷ Bulgaria, Judiciary Act (*Закон за съдебната власт*) (7.08.2007), Art. 62, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135560660>.

¹⁸ Bulgaria, Child Protection Act [CPA] (*Закон за закрила на детето*) (13.05.2000), Art. 15, para. 1, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2134925825>.

¹⁹ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 2.

²⁰ Bulgaria, Civil Procedure Code (*Граждански процесуален кодекс*) (1.03.2008), Art..28, para.2, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135558368>.

²¹ Bulgaria, Civil Procedure Code (1.03.2008), Art. 319.

²² Bulgaria, Civil Procedure Code (1.03.2008), Art.28, para.4.

²³ Bulgaria, Child Protection Act, (13.05.2000), Art. 3, item 3.

is an assessment of: wishes and feelings of the child; physical, mental and emotional needs of the child; the age, the gender, the past and other characteristics of the child; the danger or the damage caused to the child or the possibility such damage to be caused; the ability of the parents to take care of the child; the consequences which will take place for the child when the circumstances change and other circumstances relevant to the child.²⁴ Less than eight interviewees mentioned that this provision exists and they were all civil professionals. None of the criminal professionals pointed out that 'best interest' is a legally defined term.

Although some interviewees mentioned Art. 15 of the Child Protection Act, none of the judges explained that before hearing the child, the court should ensure provision of the information necessary to help the child form his/her opinions, and should inform the child of the possible consequences of his/her wishes or, opinions, and of each decision of the court.²⁵ This, however, was perceived by social workers and psychologists and some attorneys as their own obligation. The interviewees were unanimous that there are no provisions in the legislation about the person, the location, the time, the way in which the court should provide information to the child. In practice, the judges just check at the beginning of the hearings whether the children know the reason for the hearing.

In all cases, the hearing and the consultation of the child should be carried out in an appropriate for his/her age environment and in the presence of a social worker from the Social Assistance Department at the permanent address of the child, and where necessary - in the presence of another specialist.²⁶ The court orders the hearing to be held in the presence of the parent, guardian or other person close to the child, unless this does not correspond to the interests of the child.²⁷ The hearings with children are conducted by the judge in the presence of a social worker. All civil judges and social workers report that this is the practice too. However, criminal judges, prosecutors, investigators and social workers and psychologists who work on child hearings in criminal proceedings do not state that this provision is implemented in practice.

According to the civil judges and social workers in each child case the court must notify the Social Assistance Department (SAD) at the current address of the child. This notification must contain information about the subject of the proceedings, the parties, the task of the SAD and the deadline for its implementation.²⁸ The notification must be issued at least 14 days prior to the hearing. The SAD appoints a representative, who presents a statement or report if he/she is not able to be present at the hearing.²⁹ The report contains information about family situation of the child, relationships with the parents, material living conditions, attendance to school and healthcare issues.³⁰ The statement/report helps the judge to interview the child and to have information from an independent body about the interests of the child in the concrete situation. To prepare the statement/report the social workers visit the home of the child and collect information about the child's situation from the family, the teachers and the general practitioner.³¹ The SAD might

²⁴ Bulgaria, Child Protection Act, (13.05.2000), Additional Provisions, para.1, item 5 (20.02.2009).

²⁵ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 3.

²⁶ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 4 (18.04.2003).

²⁷ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 5 (9.05.2006).

²⁸ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 6 (9.05.2006).

²⁹ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 6 (9.05.2006).

³⁰ Bulgaria, Regulations for Implementation of the Child Protection Act (*Правилник за прилагане за Закона за закрила на детето*), (25.07.2003), Art.14 (adopted on 17.11.2006), available at: <http://www.lex.bg/bg/laws/ldoc/2135469520>.

³¹ Bulgaria, Regulations for Implementation of the Child Protection Act, (25.07.2003), Art.14 (adopted on 17.11.2006).

represent the child in cases regulated in the legislation.³² The child has the right to legal aid and the right to appeal in all proceedings related to his/her interests and rights.³³ All these provisions were mentioned as procedure by the interviewed social workers and civil judges.

When a case of a child at risk is being dealt with, the social workers at the relevant Social Assistance Department are informed. They carry out risk assessment and propose suitable measures for the child's protection. Risk assessment is not regulated by legislation as a duty of the social workers, but the State Agency for Child Protection reports that social workers were trained in 2004 to assess risk in cases of children who suffered violence or abuse, and methodological materials on risk assessment have been sent to all Child Protection Departments.³⁴

In case of divorce proceedings the court (the judge) hears the children under the conditions of Art.15 of the Child Protection Act, takes the opinion of the Social Assistance Department (which is part of the standard request) and if appropriate, hears also other relevant persons. If the parents were alienated from the children an expert psychologist is also heard.³⁵ In case of adoption the child is heard by the court in order to give consent if he/she is over the age of 14.³⁶ In case of custody the child to be placed under custody is heard by the custody authority under the conditions of Art.15 of the Child Protection Act and the opinion of the Social Assistance Department is also taken into consideration.³⁷ The adolescent children (at the age 14 to 18) may initiate cases for application of protection measures in case of domestic violence then they are victims.³⁸ Minor children can do this through their parents/guardians.³⁹ If the child is with disability the initiation of a domestic violence case is done by the director of the Social Assistance Department at the place of residence.⁴⁰ In all cases in which children's interests and rights are involved the Social Assistance Department (SAD) participates. In cases where the parents are abusers, apart from the social workers from the SAD, a special representative (attorney-at-law) is appointed as this is the case where there is a conflict of interests between the parents and the child.

The criminal judges, prosecutors and investigators mention only the procedures and rules of the Criminal Procedure Code. It does not specifically provide for child-sensitive procedures other than interrogation of witnesses. Minor witnesses are interrogated by police investigation officer in the presence of a pedagogue/psychologist, and where necessary their parents or guardians are also present.⁴¹ Adolescent witnesses are also interrogated in the presence of such persons if the relevant authority (police/investigators/court) finds it necessary.⁴² Parents, guardians, psychologists and teachers may ask questions if this is permitted by the interrogating body (police, investigation authorities or court).⁴³

³² Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 7 (18.04.2003).

³³ Bulgaria, Child Protection Act, (13.05.2000), Art. 15, para. 8 (18.04.2003).

³⁴ Bulgaria, *Government second report for implementation of the UN Convention of the Rights of the Child to the UN Committee on the Rights of the Child*, (4.07.2007), p. 41, para. 177-178, available at: <http://www2.ohchr.org/english/bodies/crc/crcs48.htm>, (accessed on 14.05.2012).

³⁵ Bulgaria, Family Code (1.10.2009), Art.59, para.6.

³⁶ Bulgaria, Family Code (1.10.2009), Art. 89, para.1, item 4 and Art.91.

³⁷ Bulgaria, Family Code (1.10.2009), Art. 155, para.3.

³⁸ Bulgaria, Protection from Domestic Violence Act (*Закон за защита от домашно насилие*) (29.03.2005), Art.8, para.1. (22.12.2009), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135501151>.

³⁹ Bulgaria, Protection from Domestic Violence Act (29.03.2005), Art.8, para.2. (22.12.2009).

⁴⁰ Bulgaria, Protection from Domestic Violence Act (29.03.2005), Art.8, para.4. (22.12.2009).

⁴¹ Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*) (29.04.2006), Art. 140, para. 1, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135512224>.

⁴² Bulgaria, Criminal Procedure Code (29.04.2006), Art. 140, para. 2.

⁴³ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 140, para. 3.

According to the Criminal Procedure Code⁴⁴ legal representation in court may be provided by parents and grandparents. In cases where a conflict of interests exists between a victim who is minor or adolescent and his/her parents or legal guardian, the respective body appoints a special representative – a lawyer.⁴⁵ There is no specific training (provided for in legislation or in practice) for lawyers representing children, including child victims or witnesses.

All but around 8-10 interviewees were not aware of any legislative changes in the field of child hearings. Some of them mentioned that they were aware that a new draft of Child Protection Act and a new draft of the Criminal Procedure Code are elaborated but they were not informed what happened with these efforts. Neither had they been aware whether the new drafts contain any provisions regarding the child hearings. Only one of the interviewees mentioned that draft provisions for child hearings were elaborated and submitted to the Ministry of Justice by the Social Activities and Practices Institute. This was strange as at least five of the interviewees are directly subordinated to the institute and despite this they were not aware of the elaboration of the rules by the institute.

2. FINDINGS

2.1 Right to be heard

2.1.1 Right to be heard in criminal justice

Current practices

Out of 52 interviewees 35 had some experience with child hearings in criminal proceedings. The majority of them mention always sexual and other physical abuse and trafficking as examples from their experience. Social workers at the Child Protection Departments and psychologists (working at NGOs or community-based services) state that when they have such signals or referrals to work with abused children they inform the prosecution offices and the police. They also mention the *Coordination mechanism for work with abused children* elaborated and adopted by the State Agency for Child Protection under which police, prosecutors, investigators, social workers at the Child Protection Departments, service providing NGOs, Regional Inspectorate on Education, Regional Department on Healthcare should work together on each abused child's case. However, social workers and psychologists stated that this is hardly implemented mainly because of lack of understanding and the unwillingness within the police and the prosecution offices to work on these cases. Some social workers reported that although they inform the investigating authorities about sexual abuse cases no action was undertaken by them. Here is an example of this practice:

I had a case in which the proceedings did not reach the court at all. I had a 14-year-old girl who was taken by a car to another neighbourhood, was given drugs and was sexually abused and prepared to prostitute in the streets. At one of the team meetings with representatives of the institutions (police and prosecutors) I was told that 'she was 14 years old, took drugs voluntarily, made sex voluntarily, hence there is no sexual abuse'. That is why it is very hard for us to work.

When an abused child's case is referred to social workers by the police or the court there are several ways of working on it. Some social workers submit social reports on the case upon a request by the court and prepare the child for the child hearings. If a social report is not requested the social workers are only present at the child hearing if they are informed about it. A third group of social

⁴⁴ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 91, para. 2.

⁴⁵ Bulgaria, Criminal Procedure Code (29.04.2006), Art. 101, para. 1.

workers mention that they are not notified about such hearings at all as the investigating authorities or the court do not inform them. Among the interviewed criminal judges, prosecutors and investigators a few mentioned that social workers are present at court child hearings. They seem to be unaware of the Child Protection Act which obliges all authorities to hear the children over the age of 10 and mention only the procedure provided for in the Criminal Procedure Code where only the parents and a psychologist/pedagogue should be present at child hearings. They all state that they implement this procedure and that parents and psychologist/pedagogue are always present at child hearings of minor children and that they also apply the same rules for adolescent children although the law allows them to decide whether a psychologist/pedagogue should be present or not. The majority of the judges and prosecutors also state that the capacity of the child to testify is assessed by a psychologist before a hearing is appointed.

At least half of the cases mentioned by the interviewees with experience in criminal cases were regarding children under the age of 10 who were victims of sexual abuse. Then it is up to the investigating authority or the court to decide whether to hear the child or not. As in most of the sexual abuse cases the child is the only and thus the key witness (and a victim) he/she is heard regardless of the age.

According to attorneys-at-law, social workers, psychotherapists and psychologists children are heard several times during the pre-trial proceedings and once during the trial proceedings. They all consider this as traumatising for the child and state that in the typical case no protection measures are taken for the child. A key issue in this regard, discussed in the interviews and the focus group, was the possibility a child hearing during the pre-trial proceedings to be carried out before a judge as in this way multiple hearings during the pre-trial and trial proceedings can be avoided. However, the reasons for the few cases in which this provision of the Criminal Procedure Code is implemented left unknown. The application of this provision is especially needed in trafficking in human beings cases and sexual abuse cases. Apart from the multiple hearings the problem with these proceedings is that they are very slow. Some judges and psychologists mentioned that in some cases because of the multiple hearings during the pre-trial proceedings the children victims refuse to testify during the trial proceedings or refuse to confirm their testimonies given during the pre-trial proceedings. The length of child hearings during the pre-trial proceedings (20 minutes to 2 hours) tends to be bigger than in the trial proceedings – 10-15 minutes.

During the pre-trial proceedings the children are either heard in the office of the investigating policeman or in a 'blue room' if such is available in the city. The offices of the investigating policemen are small and usually several people work in them. No child-friendly environment is available there. The prosecutors who monitor the work of the policemen and instruct them stated that a safeguard for the interests and rights of the child during these hearings is the presence of the psychologist/pedagogue and the parents. They all are supposed to relax the child and interpret the questions to the child, if needed. However, the psychologist/pedagogue who is present at these hearings is a person who works permanently at the Police Department which raises the issue of his/her capacity to spare the child during the hearing.

Two NGO psychologists who assisted children during child hearings at the police (as well as some prosecutors, judges and social workers) found that the way the investigating policemen behave and

put questions to children is very often inappropriate and misleading and definitely traumatises the child. Here is how one psychologist described this practice:

When I have been present, the main idea was to help the child in some way so as not to feel re-traumatised by everything he/she has to tell one more time. Usually, when I have participated I have tried to change the questions of the investigating officers, so that these do not sound as accusations to the child or create a sense of guilt in them. The questions are usually formulated as 'What were you doing at that time' or 'Why did you not call?' These are some of the frequently asked questions which lead to a traumatic experience for the child because he/she feels as if he/she has failed to do what was necessary..... In such cases the children often refuse to continue talking or give up their testimony so far. Such questions are being asked many times and their purpose is not so much to receive information but to confuse the child – at least this is what happens in reality. This happens very often with the children – at some point they can no longer stand the pressure.

A social worker in another town explained that policemen do not behave appropriately even in the 'blue room':

I have a recent case, one from yesterday. Despite the fact that the hearing was in the 'blue room', the child did not feel well; especially the younger child. This is because some pressure was used. The policemen have this approach of theirs which is too different. No matter how hard they try to spare the trauma, they lack the skill. They have not been trained to do this. I personally think that the hearing can be conducted only by someone trained to do this, with support from the judge.

The interviewees mentioned a few cases in which the perpetrator/accused person is present during the child hearings carried out by the investigating policeman. So it seems that this is avoided in the majority of the cases.

A positive practice in this regard is the initiative to set up 'blue rooms' for child hearings. They are special rooms, located usually in buildings where the Social Activities and Practices Institute developed community-based services for children and families at risk and later the service has been run by the municipality (Shumen, Pazardzhik). At least half of the interviewees with experience in criminal cases mentioned that they are aware of the existence of 'blue rooms' but only 6-7 had had real experience with them – social workers who work at four 'blue rooms' in the country, a judge, three prosecutors and a psychologist. The 'blue room' is divided into two by a reflecting glass. In one part of the room only the child and the psychologist/social worker trained to perform child hearings stay as a rule (although different practices are applied obviously – sometimes the social workers at the CPD, the policeman or the judge are also there). The furniture and the colours of the walls are of a child room and toys, drawing materials and children books are available there. The other part of the room, behind the reflecting glass, is equipped with computer, microphones, headphones and video and audio-recording devices. The people who are present there usually are the investigating policemen and/or the judge, the secretary who is typing the minutes (the protocol), the attorneys-at-law, the parents, sometimes the prosecutor and the social worker at the Child Protection Department (if he/she is informed which does not happen often).

Before the hearing the questions are discussed by the psychologist/social worker who is with the child and the investigating policeman/judge who is leading the hearing. Then the psychologist/social

worker with the child prepares the child. The aim of the preparation is to see whether the child recognises 'true' and 'false' and to be informed that he/she has to reply honestly. The child is informed who is behind the reflecting glass. The investigating policeman or the judge put the questions on the microphone but the child does not hear them (although a judge stated that she is with the child in the child's room and not behind the glass). The psychologist/social worker interprets the questions after hearing them in the headphone and puts them to the child. Everyone who is behind the glass can hear the replies and monitor the non-verbal communication of the child also.

Although the 'blue room' sounds as a good practice, the interviewees who have experience with it mentioned firstly different rules about using it and secondly, different opinions about its effectiveness. The good sides of this practice are that the environment and the way the child hearing is performed is sparing for the child and that it is highly likely that the child would not be heard again after he/she is heard in the 'blue room'.

However, one social worker shared that she was involved in a hearing in a 'blue room' of a child who was sexually abused by her grandfather. The child was first heard by the policeman in private, then by the psychologist who had to prepare her for the hearing and then again by the policeman in the 'blue room'. But the audio recording device did not work during the last hearing. So the next day the girl was heard again by the investigator in another room. Another social worker who was present at a child hearing in the 'blue room' explained that in one of her cases the investigating policeman was with the social worker in the child's room while hearing the child and not behind the glass. This made the child feel embarrassed.

A prosecutor explained that she was not impressed by the way a child hearing was performed in the 'blue room' as the psychologist who was supposed to assist the child was not able to cope when the child got upset and cried at the beginning, she was embarrassed herself as she was monitored by other participants. The interviewee states that the 'blue room' hearing that happened the day before the interview was of a 5-years-old child. She found that this hearing was not less stressful for the child than the hearing in the court room. She repeats several times that the hearings should be done by lawyers and not by psychologists as the psychologists do not understand what evidence should be gathered and it is hard to explain to them.

This was extremely difficult for me and for the investigating policeman, as well. We were together and for us this was a big stress. I think, by the way, that the hearing in the 'blue room' is not less stressful for the child. Each concrete case is important. The truth is that if the child's mother had not been there the fact that a psychologist and a pedagogue were there would not have helped.

In terms of the rules for the use of these rooms by the courts and the police, again there are discrepancies. In some cities there are agreements between all authorities who might need to use the room and the service provider who provides the room and the trained staff. In other cities no agreements were mentioned but it seems that regardless of the existence of agreements actually a few child hearings take place in the 'blue rooms' compared to those that take place in a regular court room even when a 'blue room' is set up in the city. The social workers who assist the children during the child hearings in the 'blue room' explained the preparation phase also in different ways although they were trained the same way by the Social Activities and Practices Institute. The practice obviously also varies from city to city. In some cities and some cases the investigating

policeman/judge or the social workers at the CPD are allowed to stay in the child's room while in others only the child and the assisting professional are in it. In some cities the assisting professional shows the room to the child and explains about the hearing in several meetings before the hearing, while in other cities the child sees the room for the first time during the hearing and the preparation consists only of checking the child's language (especially about parts of the body by using a toy) and whether the child recognises 'true' and 'false'. The assisting social workers seem to be insecure and not able to influence the investigating authorities or the judges in terms of the timeframe for preparation of the child.

A serious issue, raised during the focus group and also some interviews with judges and prosecutor, is the lack of legal provisions regarding the 'blue rooms' which results in different and inconsistent practices and unfortunately, in some cases to re-traumatising of the children. Currently the 'blue rooms' seem to be used mainly in criminal cases, when children victims are below 10 and when the child hearings take place during the pre-trial proceedings. The interviewees could not explain whether there is such a rule or this is the practice so far.

If the judges decide that there is sufficient evidence gathered during the pre-trial proceedings to make the decision the children are not heard. They are not heard either when the psychological assessment (which is obligatory appointed before the hearing) states that the child does not have the capacity to testify or that the hearing would seriously traumatise the child.

Child hearings in the court take place in regular court rooms and no special materials are used in them. Some of the interviewed judges sit next to the child, without toga and talk to the child in a friendly manner and easy-to-understand language for 10-15 minutes. Some even carry out the child hearings in their offices when the cases are hard. Other judges as well as social workers, psychologists and attorneys-at-law mention that the majority of the child hearings take place in the court room, while the judge sits at his/her desk, with toga and looks stern. A court secretary types the minutes of the hearings. The parents/social workers at the CPD stay next to the child. The perpetrator/accused person and his/her attorneys-at-law are also present in front of the court room and in it which traumatises the child. All judges and prosecutors explain that this is unavoidable as otherwise the rights of the accused person would be violated and this is a serious procedural violation which can lead to unlawfulness of the verdict.

A few of the interviewees mention any specific characteristics of the children – child with intellectual disability, children from social care institutions, children who do not know Bulgarian (Turks and Roma). However, they did not mention any special measures to be taken to ensure the participation of the children and their protection during the hearings.

- **Overall assessment of practices with regard to impact on child and proceedings**

Most of the legal professionals underline that child hearings are very important for the outcomes of the proceedings as children often are the only and key witness in cases of sexual abuse and physical abuse (being also victims of them). Some social workers, psychologists and psychotherapists and some judges mention that child hearings are important for the child as thus the child realises that

he/she is important for someone who can help the child. Most of the psychologists and judges think that child hearings in court are traumatising and should be avoided.

The judges, prosecutors and investigators in criminal cases explained how strict the Bulgarian criminal legislation is and how they strictly implement it while the social workers and the psychologists are more interested in the Child Protection Act and the rights of the children in the criminal proceedings. It was very clearly stated that legal and social professionals have completely different aims in child hearings. Social professionals are not that much interested in the evidence gathered in the case and revealing the truth so that the perpetrator is punished. They are rather concerned about the mental, emotional and intellectual development of the child after the abuse and are more interested in sparing ways for carrying out child hearings. A psychologist explained this:

My objective is to preserve the child as much as possible. The truth comes second. It is important that the truth comes out, yes, but not at the cost of a broken child.

While judges, prosecutors and investigators are all interested in proving the guilt of the perpetrator and punishing him/her and consider this to be in the best interest of the child. These partly opposing positions result in trauma for the child and inconsistent practice of punishing the perpetrators. Most of the criminal judges, prosecutors and investigators are not aware of the Child Protection Act provisions in terms of child hearings and do not know what the role of the social workers at the CPD is. They tend to trust much more and to overestimate the psychologists/pedagogues who work at the police departments and who facilitate the child hearings. A very disturbing tendency is that prosecutors and investigators tend to refuse to investigate the majority of the signals for sexual and physical abuse against children according to social workers and psychologists working directly with children.

Older female and male judges tend to treat the children victims as their own and to be more careful when they hear them. They also tend to see more clearly the deficiencies in the criminal legislation especially in terms of multiple child hearings during the pre-trial proceedings and the risk that the child would refuse to testify and refuse to confirm the testimonies given during the pre-trial proceedings.

All judges, prosecutors and investigators seem interested only in implementing the legislation and not that much in the other actors in child hearings and the condition of the child. While social workers at the CPD usually work on a wide range of children issues, wide range of cases (from abuse cases to adoption, from placement in institutions to foster families) and have different functions and thus they talk about all circumstances in the child's life (parents, school, relationships, living conditions) and were interested in sparing the child's trauma. However, they were unaware of the Criminal Procedure Code and lack legal knowledge, in general, which stresses them often. So the impression is that legal and social professionals have totally different perspectives on child hearings and the lack of regular communication between them results in violations of the children's rights.

According to all interviewees who participated in child hearings during criminal proceedings the majority of the children feel stressed, afraid and upset during the hearings. For reducing the stress prosecutors, judges and investigators rely on the psychologist/pedagogue who participates in them. However, neither he/she (being part of the police system), nor the special representative (who is a

lawyer at the local Bar Association) can perform the role of an independent defender of child's rights and interests during the hearings (when the child's rights are in conflict with his/her parents' rights).

2.1.2 Right to be heard in civil justice

Out of 52 interviewees 38 have some experience with child hearings in civil proceedings. They all mention divorce and custody cases as well as domestic violence cases. A few mention also placement in institutions cases. All legal professionals showed some awareness of the rules under Art.15 of the Child Protection Act. The social workers and the psychologists were not able to point out the exact legal provisions and usually when asked about the procedures started explaining their own experience.

According to most of the interviewees child hearings are appointed in custody and in divorce proceedings only if there is a conflict between the parents for the custody rights. In domestic violence cases the judges are more careful and do not appoint child hearings if they have sufficient evidence from other sources about the violence. The assessment of the maturity of the child is mentioned very rarely by the interviewees.

The main question in divorce and custody cases is with whom the child would like to live after the divorce. Some interviewees (judges, social workers and psychologists) explain that the question about the choice between the parents is not put directly to the child. Other interviewees state the opposite and underline how this traumatises the children. Only a few psychologists mention that they monitor the non-verbal communication signs of the child as they show his/her real opinion. The majority of the interviewees of all professions trust the statements of the child and are of the opinion that they correspond to child's real thoughts, feelings and opinions. In placement in institutions cases the practice of appointment of child hearings varies - some judges do not appoint child hearings in the majority of the cases as either the children are under the age of 10 or the hearings would not have any effect for the outcomes of the proceedings as placement in institution is the last resort measure which is applied only when all other options are exhausted. In these cases even if the children are of the opinion that they would not like to live in institution they would have no choice. Some social workers explain that children are heard in these cases regularly. Children with intellectual or mental disabilities are also often regarded as children who should not be heard as they cannot provide reliable information.

The attorneys-at-law and the judges as well as some psychologists pointed out that social workers at the CPD are supposed to protect the interests of the children during the child hearings but their presence is formal. The interesting nuance here is that even the legal provision providing for their participation states that they should be 'present' and does not focus on actual 'participation'. Most of the social workers do not intervene in the court's work during the hearings. A few mentioned that they tried to stop frustrating or misleading questions put by the judge. Also a few social workers said that they stated in their social reports (submitted to the court prior to the hearings) that the hearings would be extremely traumatising for the child and should be avoided but the judges did not take into consideration this recommendation. The most disturbing finding (although related more to the right to information) is that the majority of the social workers inform the children for the hearings although they are not aware of the legal procedures and the practices of child hearings. This should have even more stressful effect on the children as they are prepared for something and another thing happens in the court.

The practices of child hearings vary from judge to judge. Some judges take off their togas and /or sit next to the child and try to predispose the child with questions about school, friends and pleasant experiences. The only extraordinary positive practice is of a judge who carries out her child hearings only on Fridays (at least since 2006) and in a child's room, outside the court, in a Facility for social

services for children and families. She also issues referrals to preparation of the children for these hearings to the Child Protection Departments which is also located in the same building. However, the majority of the judges, described by other interviewees, do not take any special measures to provide child-friendly environment for the children although most of them seem to be careful and affectionate when they hear children. Most of the interviewees (social workers) mention the soft tone, easy-to-understand language and nice attitude of the judges towards the children.

Most of the hearings take place in a regular court room (in rare cases in the judge's office) only in the presence of a social worker from the CPDs, the judge and the court secretary. Some interviewees mention that the parents and their attorneys-at-law are also present in divorce and custody cases and that this decision is within the discretion of the judge. There used to be a child's room at the Family Department of the District Court in Sofia but it seems to be used rarely for unknown reasons.

The practice with the presence and the role of the social workers is different – the same social worker who prepared the child and is aware of his/her case might be present at the court room (in the smaller cities) while in bigger cities it could be that social workers are not present but just submit a social report or the social worker who prepared the report and the one who is present at the hearings can be different. The social reports contain data collected during the research with the parents, relatives, teachers and personal doctors of the children and the children themselves. According to the social workers, in the majority of the cases they meet the child several times before the hearings to build trust relationship with him/her and to learn more from the child about the family situation and relationships. One of the problems shared by some of the social workers is that they cannot predict when and whether the hearings would take place and that they lack sufficient time for preparation of the reports.

The biggest problem shared by the psychologists and attorneys-at-law is the way some judges (and prosecutors) put questions to the children. They have examples with questions in custody/divorce and domestic violence cases like 'do you love your mother?', "with whom you would like to live?", "is it true that your mother did not come for your last birthday?". The children are asked sometimes to describe what exactly happens at home and here the attorneys-at-law and the psychologists underline that children feel guilt, are put in the situation of conflict of loyalty and feel the pressure of being the person who should solve a family problem.

The children are only sometimes aware that their statements are recorded and will be read to the parties after the hearings. Here a problem underlined by the attorneys-at-law is that the minutes/the protocols from the hearings do not correspond exactly to the conversation that took place between the judge and the child. They cannot see the questions the judge put in them but only the answers of the child retold by the judge and typed by the secretary. Audio-recording is available only in some court rooms and none of the interviewees mentioned to have had experience with hearing the recording from a child hearing.

The majority of the psychologists and the attorneys also state that children are manipulated by one of the parents to state whatever is favourable for the parent. Judges explain that they can recognise when the smaller children are manipulated as then he/she would speak with sentences learned by heart. This is why they ask mixed questions about everyday life of the child and questions about the family life to avoid the child's untrue statements. In domestic violence cases the children and their parents (one of whom is the violator) wait together in front of the court room and there are many possibilities for manipulation immediately before the hearings. Then rarely the social workers protect the children from it or the attorneys-at-law try to place the children waiting in administrative offices in the court to avoid the child meeting with the violator.

This is why a few attorneys-at-law and psychologists mentioned that an independent person needs to protect the interests and the rights of the child during the proceedings when his/her parents are involved as parties in them. Social workers at the CPD are considered as such persons under the law but they obviously cannot be independent being officials at a state authority and without any legal background. Some attorneys-at-law mention that in some cities the social workers are biased and take the side of one of the parents when working on a child's case and somehow 'forget' about the child. Besides many of the interviewees mention that CPDs are understaffed and this results in excessive workload which is an obstacle for social workers to be active and effective in protecting the rights of the children during the child hearings.

In cases when a conflict of interests between the rights of the child and the rights of his/her legal representative (the parent) is at stake a special representative is appointed by the court. The representative is a lawyer, member of the local Bar Association, without any special training to work with children. The judges consider this appointment as a protection measure but social workers do not mention any special measures taken by this representative in favour of the children during the proceedings at which they were present. Sometimes the representative does not even meet the child before the hearing but only reads the case file.

All interviewees state that children feel embarrassed, stressed and afraid of the hearings, especially when they are at the age of 10-11 or younger. As one of the judges put it – it is like going to the dentist –one cannot be prepared for it unless he/she experiences it.

Most of the interviewees think that statements of the children during the hearings influence the court's decision in divorce and custody cases.

2.1.3 Concluding assessment on right to be heard

The overall impression from the statements of the interviewees is that the right of the child to be heard is not considered that much as a right but rather as a source of evidence/valuable information for both criminal and civil proceedings and thus it is rather an obligation in practice.

- The first argument in this respect is that no child-friendly environment is set up to facilitate the child to express his/her real thoughts, views and feelings. Of all aspects of child-friendly environment the interviewees who work directly with children (psychologists and social workers) underline the need of training of everyone who participates in child hearings with an accent on the ways in which one puts questions to children and the way he/she interprets the answers.
- The second argument for the perception of the right to be heard as an actual obligation of the child is that most of the professionals underline that child hearings are important as they influence the outcomes of the proceedings – in criminal proceedings because the children are often the only and key witnesses and in civil proceedings because their perceptions of the family life are important for the judge to make the decision about the custody rights.
- The third argument is that social workers who prepare the children for the child hearings do not mention that they inform the child that he/she may refuse to be heard. This right is perceived only as a parent's right being the legal representative of the child. So children are not heard only if the parents do not give consent for this. The social workers perceive their duty to prepare the children for child hearings as a duty to inform the children about the setting, the questions and the obligation of the child to reply to the questions.
- The fourth argument for the misinterpretation of the right of the child to be heard is that obviously in the majority of the cases (criminal and civil) the child's rights are in conflict with the parents' rights and in these cases special representatives are appointed if the judge or

the investigator decide so. But there is no evidence from the interviews that special representatives are actually able to protect the best interests and rights of the children. This is why some of the interviewees pointed out the need of an independent trust person who would be trained to work with children and would play this role in the proceedings. In cases when a special representative is not appointed the social workers at the CPD are expected to play this role. However, although they should be present at all child hearings, they are not informed about the hearings in criminal proceedings as the legal professionals do not implement the Child Protection Act. At these hearings the psychologist/pedagogue is expected to play part of this role. However, neither the social workers, nor the psychologists/pedagogues are independent as they are subordinated to the CPDs or to the police. And neither the social workers, nor the psychologists/pedagogues are trained sufficiently to protect the interests/rights of the child during the proceedings.

- The good practices in the implementation of the right to be heard are: the careful attitude and measures taken personally by some civil judges to hear children in their offices or in a child room in the building of service providers and the practice parents to be invited to leave the room when the child hearings take place. The challenging issues for both civil and criminal proceedings are: the lack of measures for protection of the children victims or witnesses of domestic violence, sexual abuse and trafficking due to the fact that they are heard in the presence of the perpetrators; the manipulation by the parents before the hearings; the passive presence of social workers from the Child Protection Departments during the hearings; the sceptical attitude among the different professionals – judges/prosecutors/investigating policemen and social workers, psychologists and judges and social workers and psychologists; the lack of interpretation of non-verbal communication of the children; the lack of independent trust person for the child during the hearings.

The majority of the interviewees consider child hearings as a positive development in Bulgarian legislation and practice. They also often stated that child's views and opinions are important as they help the child believe that he/she is important for someone and that there is someone who can help him/her. However, the majority of the child hearings the interviewees talked about obviously did not take place in a child-friendly manner and environment.

2.2 Right to information

2.2.1 Right to information in criminal justice

All 28 social professionals who were interviewed have experience with informing children for child hearings. However, the 11 social workers at the CPD work with the children on assessment of the needs, research in their families and research with teachers and doctors while the psychologists work more on the trauma of the child in a therapeutic way. The attorneys-at-law also participate in informing the children although this rather happens through informing their parents.

According to the Child Protection Act the court is obliged to inform the children about their rights during the child hearings. However, none of the interviewed judges and the other professional who are present at child hearings mentioned that judges inform the children for the hearings the way it is provided for in the Child Protection Act. An independent psychotherapist states that there are some especially negative practices in this regard when children are only asked to tell the truth and are not informed about the consequences of their testimonies:

Children are surprised to hear that they have rights. As to the legal provision saying that the child has to be informed about the consequences of his/her testimony, frankly speaking, I cannot recall a single

case of someone explaining it in the court room normally. In a way that is understandable for the child and corresponds the truth. The judge often tells the child: "You have to tell the truth, the whole truth and you shouldn't be hiding anything, because this is a place to tell the truth". Such statement sounds scary, very threatening. And the judge has no intention to intimidate the child; judges simply don't know how a child perceives such statement being in the court room for the first or second time. As a matter of fact the child is entitled not to tell the whole truth. The child is entitled to share the part of the truth he/she wants to. Yes, the child is supposed not to lie but he/she is not obliged to tell the whole truth. This is something they fail to explain to the child. Or another statement: "You tell me the truth and I'll convict him/her". When this statement is made the child literally freezes. This represents such a burden for the child... And such a statement of the judge is often well intended. Right, but this is not the way to put it.

The criminal judges and prosecutors replied when asked about informing the child that they implement the provisions in the Criminal Procedure Code which are related to the rights of witnesses and victims. So they inform the parents of the children about their rights during the proceedings. To the adolescent children they explain that they need to hear the truth from the children during the hearings and warn them about their liability. The minor children are not informed in this way by the judges and they receive information from the parents or the psychologists/pedagogues who are present at the hearings.

Some children who are heard in criminal proceedings are informed by social workers at the CPD and psychologists/social workers at service providers who work with the children before the hearings. Here there are different practices depending on the cities, the existence of service providers, the agreements between different institutions like investigation offices, courts, CPDs and service providers for provision of the social service called 'preparation for child hearings'. Although this service is not legally provided it obviously is offered by some service providers in practice and is provided in some cases to children victims and witnesses if the children are referred to it by the social workers at the CPD. Only three interviewees mentioned that children might be referred to it directly by the court or the investigator. However, estimations about the consistency and the regularity of the application of these practices cannot be done. The content of this service also varies from region to region. Where a 'blue room' exists the preparation includes showing the room to the child and checking his/her vocabulary, his/her notion of 'true' and 'false'. In regions where a 'blue room' does not exist the preparation includes explanations about the case, the roles and positions of the participants, the way the room for child hearing would look like. It also includes calming down the child and building trust relationships with the child.

According to all interviewees the age of the child is essential when it comes to informing them - younger children are less likely to understand verbal information and older children can be informed only in a conversation. This is why for younger children in some regions and by some social workers and psychologists children books are used to show them the atmosphere of the hearing. However, firstly these books are not available in most of the places where people were interviewed and secondly, they are translated Polish books which do not show exactly the atmosphere in the Bulgarian courts. Such books do not exist to inform the children about the hearings at the police. The even more disturbing finding is that some social workers/psychologists use these books for informing the children, but the hearings take place actually in a 'blue room' for which no books or pictures are available. So actually the children are prepared for a certain setting and participants and are heard in completely different setting and participants.

Informing the children usually takes place in the child rooms at the CPDs (if the social workers are notified about the hearings which is obviously not the common practice) or at the service providers.

The majority of these rooms are at least equipped with some colourful furniture and materials, toys, children books and drawing materials.

As most of the criminal judges, prosecutors and investigators do not implement the Child Protection Act, they do not inform the social workers about child hearings in children abuse cases and thus children heard in criminal proceedings cannot benefit from informing or preparation for the hearings. However, if the social workers know in advance about the case (when they identified the abuse themselves) and the hearing they are present at the hearing and they prepare the child for it. But in fact, it seems that from the point of view of the judges, prosecutors and investigators children generally are not informed about the proceedings but behave calmly because of the skills of the psychologist/pedagogue who is present at the hearing under the Criminal Procedure Code. The psychologist/pedagogue sometimes meets the child in advance to talk to him/her but there is not any rule for this. As only one such pedagogue was interviewed, it is difficult to estimate whether these meetings take place on regular basis or not and what their effect is.

The most disturbing fact is that the child meets the perpetrator and is heard in his/her presence. From what the interviewees stated it was unclear whether someone informs the child about this fact in advance and how, if yes. The other disturbing fact is that interviewees were unanimous that children are heard several times during the pre-trial proceedings and at least once in the trial proceedings and whether the child is informed about each hearing and how, by whom and where was also left unclear as the interviewees participate only in some stages of the proceedings and were not able to talk about the whole process. This is so because judges can only see what was typed during the pre-trial proceedings, investigators and policemen and prosecutors could speak only about the pre-trial proceedings if they participate there, social workers and NGO psychologists can only talk about their participation at pre-trial or trial proceedings (which is rare), attorneys-at-law are the only connecting participant but they are not aware of what happens during the hearings as they are not allowed to be present there.

2.2.2 Right to information in civil justice

Out of all 28 interviewed social professionals who are involved in informing the children at least the half were involved in informing the children about divorce, custody and domestic violence proceedings. Social workers at the CPD first meet the parents to get an impression about the family relationships/conflicts and to explain to the parents what the role of the social workers in child hearings is. Then they ask the parents to bring the children so that the children can be informed about the hearing. In the majority of the cases the social workers first ask the children whether they know about the case and if so, what they know exactly. Then they decide how to explain to the particular child about the hearing. The social workers talk to the children in private, usually in a child room at the CPD. They tell the children that even after the divorce the parents would continue to love them and try to inform the children why the divorce or the custody case has to take place and what child's role is in it. Then they explain to the children about the setting of the court room, the roles and appearance of the participants, the role of the child during the hearing, the questions the court might put and give details about the date and the place where the hearing would be carried out. The younger children are informed by the social workers or the psychologists by playing, drawing and using picture books (if such are available). This practice is applied mainly by professionals who work at service providers and not at Child Protection Department. The older children are informed only verbally.

The main aim of informing the children is to calm down the child and make him/her not feel guilty for the family conflict. Interviewed social workers and psychologists explain that they try to tell the children that nothing scary would happen in the court. The difference is that while the social

workers explain to the child that they have to talk to the judge, the psychologists are more careful in explaining that the child might tell the judge only what he/she would like to and may refuse to talk. One interviewee (independent psychotherapist) stresses especially upon the importance of preparing the child to not answer questions which make him/her feel confused, guilty and bad. She points out several times that the questions about whom the child loves more in divorce cases are a bad practice and show the lack of training of the judges.

Both social workers and psychologists explain that most of these children fear of child hearings as they feel guilt and think that the solution of the family problems is their responsibility. A psychologist explained this in the following way:

In fact, the very thought that they will provide this information makes them experience the burden of deciding the situation. And when there are too many interventions towards them, this traumatises them a lot and becomes a burden. In general their daily life is also disrupted because they have to bear guilt and responsibility which should be borne by people of age.

The social workers underline that parents are often very preoccupied with their conflict and feelings and do not pay much attention to the needs of the children. A social worker described this condition in the following way:

Parents think that we are here to protect their interests. They are so obsessed with their negative emotions and thoughts that they forget about the child. And sometimes it is very hard to draw them away from their feelings; they feel affected by the needs of the child.

Some parents inform their children themselves about the divorce or the custody cases, others do not. Again, most of the participants mention that children are much manipulated before the hearings and that they feel stressed and embarrassed because of this during the hearings. Sometimes the parents insist that the children are abused by the other parent only to punish him/her. In domestic violence cases the children are informed the same way as in divorce and custody cases. If the children seem much stressed some social workers refer them to receive psychological help at the NGOs providing services before the hearings.

Most of the judges in civil cases seem to apply more humane approach to children than the criminal ones. The best practice in this regard was a judge who refers the children for informing to the Child Protection Department and the children are informed and heard in the same child's room at the CPD.

Usually the judges check whether the child is informed about the hearing and children seem well informed according to the judges. Besides they know more about the child's situation and can predispose the children easily because of the social reports they often request from the social workers at the CPDs. However, the psychologists and the attorneys-at-law stated that children are not spared in these proceedings.

According to most of the interviewees who provide information the children understand it and feel calmer and more open to speak when they are provided information. This condition also influences positively the outcomes of the proceedings as in divorce and custody cases child's statements are taken into serious account.

2.2.3 Concluding assessment on right to information

The right to information of the children seems to be a very much underestimated right. First, it seems that none of the judges implements the duty for informing the children under the Child

Protection Act. The striking finding of the research was that a great number of the interviewees who have experience with it state when asked about the ways they inform the children that they ask the children what they know about the situation and the case first. Then the professionals decide how to inform the children afterwards. In most of the cases they state that the children know from their parents about the divorce or the custody proceedings. So the professionals have to only inform the children about the court, the roles of the participants and how the hearing would take place.

According to all interviewees the age of the children is essential when it comes to informing them as younger children are less likely to understand verbal information and older children can be informed only in a conversation. This is why for younger children in some regions and by some social workers and psychologists (mainly those who work at service providing NGOs) children books are used to show to them the atmosphere of the hearing. However, firstly these books are not available in most of the places where people were interviewed and secondly, they are translated Polish books which do not show exactly the atmosphere in the Bulgarian courts. Such books do not exist to inform the children about the hearings at the police. The even more disturbing finding is that some social workers/psychologists use these books for informing the children, but the hearings take place in a 'blue room' for which no books or pictures are available. So actually the children are prepared for a certain setting and participants and are heard in completely different setting and participants.

Informing the children usually happens in the child rooms at the CPDs or the service providers. The majority of these rooms are at least equipped with some colourful furniture and materials, toys, children books and drawing materials. The good practice is that some NGOs in some regions provide the service 'preparing the child for child hearing' and they try to inform the child the best way they can for the hearings if the children are referred to them.

The most important conclusions about informing the children are: the people who should inform the children under the law do not do that; those who inform the children in practice perform this function in various ways (as this is not a rule but a different practice) and inform the children either of practices they are aware of and can make the children feel secure or of practices they are not aware of and make them insecure.

Informing the children in both criminal and civil proceedings is disputable and is an area of improvement. It seems that informing does not happen in a way to ensure the active participation of the children in a sensible way. It also seems that detailed and mandatory for all procedures for informing the children should be adopted to equalize the opportunities of all children to be full participants in the proceedings in all regions and in all proceedings in the country. The current situation results in child-unfriendly proceedings.

2.3 Training and co-operation of professionals

The two groups of participants, civil and criminal, do not show big discrepancies with regard to trainings. Less than half of the interviewees have received any kind of training. At least ten interviewees said that they are not aware of any training related to child hearings - four of them working only in the civil justice field and three in the criminal.

While more than half of the interviewed social professionals have been trained this is not the case with the group of the legal professionals as only one fourth of them have benefited from a training or specialisation. A great number of those who have received any training have participated in a training covering specific justice issues such as abuse, crisis intervention and support of victims,

coping with stress situations of vulnerable people and domestic violence. Others took part in trainings related to procedures and methods (such as hearings/interviewing/case management).

Overlapping opinion is that it is important for the smooth working process the right individuals with the proper motivation to be selected and trained. As a psychologist from a NGO said:

It's important to have trainings, it's highly important, but they should be aimed at the persons who are directly engaged with the issues they are being trained for. Because in reality, at least during my first years here, there have been trainings, but certain people attend them and others do the work.

It looks as though Social Activities and Practices Institute (SAPI) trainings are the most widespread and specifically concerning the child hearing topic. In 2012 social professionals from Plovdiv, Pazardzhik and Shumen working in both civil and criminal justice fields have personally attended trainings organised by the SAPI. One civil lawyer and one criminal judge also have taken part in a SAPI training. They were trained specifically how to carry out child hearings. Participants report that varying from training to training district and regional judges, prosecutors, investigators and policemen, social workers from CPD also took part in the same trainings of SAPI. The trainings took place within five days and covered topics about legal proceedings, guidelines of the hearing in the 'blue room', methods and approaches for interviewing children. Other social professionals from Ruse, Novi Pazar, Vidin and Pazardzhik also mentioned SAPI trainings but have not participated in them. The positive outcome of the training has been highly estimated by third parties: a psychologist from a NGO states that he and his colleagues rely very much on the assistance of their colleagues who are trained to hear children in the 'blue rooms' from the SAPI. After the training, according to one of the interviewee, the experts start speaking in the 'same language' and applying equal criteria for success.

Lots of participants working in the civil or both civil and criminal justice fields do mention that they personally are interested in receiving special training in child hearings. A social worker from Child Protection Department shares she would participate in trainings for child hearings as she does not feel prepared for this matter and 90% of what she does is just intuition. She has all materials for provision of information from trainings, keeps them and uses paintings of the participants in the court room and their roles to show to children. Another social worker explains that she wants these trainings to include practical examples which can show the steps of the hearing, provided by psychologists. A social worker from Child Protection Department (CPD) is of the opinion that especially trained people within the CPD have to deal with the different children cases:

I have been working at this position for five years already but it was different in the beginning. We used to have fewer cases and somehow we managed. Now I think everything has to be slightly more specialised so that people can become better professionals in a particular area and work primarily in it. The opposite does not benefit the children the way it should. So it is best if there are people who are particularly trained to do this. I am talking about us as social workers.

The majority of the interviewees working in the civil or both civil and criminal justice field consider it important training for all experts working with children to take place periodically so that people who hear children to be prepared in order hearings to be improved. A trainer of young practicing legal professionals thinks that trainings about child hearings are obligatory as in this way reliance on

intuition and life experience of the professional would be avoided. At least five interviewees do mention on first place among other participants that judges are undertrained.

As regards social workers, at least two participants mention that although trainings are available, they lack motivation due to - on first place - workload. This results in bad practices. A social worker from a CPD is willing to quit her job. She explains her disappointment with the bad organization of work at the CPD and the inconsistency in it:

The things are growing harsher day after day. There are new responsibilities that are imposed upon us, requiring from us to be close to being parents of all these children. Barely somebody would stand the pressure here. And here the turnover is too big. Every new person who comes has a different approach towards the children, he/she has a different view and understanding of the work that should be performed... the things do not work effectively. For example, if a year ago we had a case for something ... and some colleague (or I) worked with the child, consequently, if some time after that a new colleague has a new subpoena and new case with the same child, he/she goes and presents the information in a different way. The child might be confused, or it might not be confused.

Another important issue mentioned by some of the interviewed social professionals is the lack of supervision of the people working with children stressing out its importance in terms of workload and the risk of burn out. A psychologist with own practice on both civil and criminal cases feels very involved and repeats many times that social workers are not trained in child psychology and are not properly supervised:

But these are good and decent people, they want to be supervised and they pay for supervision out of their pockets, no reimbursement. Supervision means that you discuss a case with a more experienced professional in order to find the way forward and see what can be done. This should be made someone's responsibility – in terms of provision and payment; or at least a kind of training for these people can be provided. They handle enormous workload, they have shamefully low salaries, and if they want to do less harm, they have to pay out of their low salaries in order to verify their performance and in that way also prevent themselves from having a burnout.

Lots of the interviewees working in both civil and criminal justice fields give as an example for multidisciplinary work the meetings under the *Coordination mechanism for work with abused children*. When a signal of abused child is received at the Child Protection Departments, the team is gathered and a plan is drafted to assess the risk at which the child lives. Then 24 hours later the team is gathered again to review the plan. In the meantime research with teachers, doctors, parents is done. All members of the team might visit the location where the abuse act happened and they might discuss together what in the best interest of the child is. During the preliminary meetings the professionals decide who to lead the hearing and what the roles of the others would be. If abuse act is identified a signal can be submitted to the prosecution office or the police. The rule is that the team should work till the case is closed and the risk is overcome. The practice shows that the team works till a protection measure is applied and then only the Child Protection Departments continue to work on the case.

Some of the social professionals are satisfied with the work of the team under the coordination mechanism. But many of the social professionals seem to be more or less disappointed. Some of the shortcomings noted by interviewees are due to lack of cooperation between some of the

institutions: prosecutors are not present during the meetings, police does not inform CPD for a filed complain or gives self-contradictory information about what exactly their powers are; social services do not follow up the cases and work only with documents, not with people.

The overall impression is that the multidisciplinary work depends on the personal relationships between the stakeholders and on the personalities of the team members. Sometimes even the people involved in it may disturb its work because of their discrepancies, lack of expertise or ability to work in a team. A psychologist in a NGO in a small town explains:

However, we again get to the point of who knows who in the respective institutions, even to the personal partnerships between the people representing the institutions. I could not say that these good practices will take place if we follow the regular procedure. You cannot be sure whether the abuser will know the social workers or will be friends with one of the police officers in town. It is then that we face the most difficult cases. We have come into serious confrontation with the institutions because of this. On such occasions we have gone as far as to take measures outside the country, against the state which obviously violates its own legislation.

Some of the participant share experience with agreements signed between all authorities involved in children cases.

2.3.1 Training and co-operation of professionals in the criminal justice field

At least eight interviewees have taken part in child hearings trainings organised by different organisations, such as the Social Activities and Practices Institute, the Judges Union in Bulgaria, ANIMUS, Open door - Pleven.

Two of the interviewed criminal judges report taking part in trainings for child hearings. A good feedback is given for a judge who has already been trained:

The judge who conducted the interrogation had attended a training in the methodology I told you about and the judge really dealt with the situation quite well, in the sense that all necessary steps were followed.

One of the interviewed who has organised such training expressed her regret that just a few judges managed to participate fully:

To be honest I was very disappointed as they were very nice, intelligent people but they did not really participate actively in the training. But at the same time this fact made me think that they are very tired, their workload is big and they have burnt out as a result of the big number of cases they work upon. So I realised that with this workload the requirement to be sensitive is difficult to achieve. One of the reasons for the lack of good communication between the court and the children is the fact that magistrates do not want to be involved emotionally in these cases, especially in the severe cases when the children are victims.

Positive remarks have been made by two criminal magistrates. A judge thinks that all prosecutors, investigating policemen and judges should be competent to deal with cases of crimes against children as this would raise the trust in the justice system and the justice in general:

We should not allow a case to fail as a result of the incompetence and lack of experience of investigators, prosecutors, investigating policemen and/or judges or law enforcing bodies in general, while it could have been solved by an experienced professional. At some point people get disappointed by the justice system. Where is the problem - the problem is the lack of training of these officials, of us, of the state. This lies in our competence.

A prosecutor who although untrained finds that trainings on how to work with children are very important and should be organised. He also thinks that university education is not sufficient to prepare legal professionals for child hearings.

Two criminal judges think the opposite way. One does not like seminars and trainings and the other considers them pointless until the Criminal Procedure Code is not amended to allow sparing child hearings. They both believe that judges who are also parents do not need any training as they could rely on their parental instinct.

Some of the social professionals state that multidisciplinary work is very rarely used in child hearings both at the pre-trial or the trial stage. The majority of the interviewees do not refer to such cases and have not participated or witnessed any multidisciplinary work.

Exceptional examples of multidisciplinary work in child hearing have been mentioned by few of the interviewees. One example is when the child is heard in a 'blue room'. A social worker responsible for interviewing children in the 'blue room' emphasizes how important the preliminary preparation and synchronizing the work of the different participants is. She explains that it is crucial to plan in details the hearing – the time when the child is supposed to come, the person with whom the child would come, the ways in which the meeting between the child and the perpetrator can be avoided, the persons who would put questions, the persons who would support the child during the hearing.

Another approach is applied where no 'blue room' is available. In this case the judge orders a social service to be provided to the child who is going to be heard in order a psychologist to prepare the child for the hearing. The psychologist also supports the child in the court room.

Only one criminal judge uses multidisciplinary approach in child hearings where social worker, psychologist and the judge participate and work together. The same judge also consults with experts about the psychological condition of the child in order to decide on appointment of child hearings.

Sometimes I order the experts' opinion first; I do not summon the child as witness. Then I consult the experts whether the hearing of the child may cause any traumatic consequences for him/her. If the experts tell me that the child is not psychologically prepared, I do not conduct a hearing.

However, the majority of the criminal judges consider multidisciplinary team work to be impossible in the criminal proceedings. A reason for that is the distance the judge has to keep as a guarantee for his/her objectivity and independence. Expert psychologists are appointed by the judges but they are heard more like experts than professionals who can assist the judge to carry out the child hearing.

2.3.2 Training and co-operation of professionals in the civil justice field

Some attorneys-at-law (consulting NGOs) stated that they have passed trainings in work with children, with victims, with people at risk. However, they think that this does not help them in the

court room as the judges do not understand them. A civil lawyer who has received much psychological training says she feels very lonely when she tries to explain child psychology to judges, prosecutors, social workers, etc. in her practice:

The more trainings I get, the worse I feel in court room as the others do not understand me.

Although untrained, all interviewed civil judges share interest in child hearing trainings. However, according to some of them it would be best if specialised children courts are set up for the sake of effectiveness and quality of the case proceedings.

According to civil legal and social professionals, in general, multidisciplinary teams are not formed to work on children cases. Some social professionals and attorneys-at-law work in multidisciplinary teams within the NGOs or community-based services with the police and the Child Protection Departments on certain children abuse cases. However, they do not seem satisfied with the outcomes. One civil attorney-at-law (working at a NGO) explains that there are some services/structures that cooperate with others on certain occasions but this is not a common practice and the information exchange is in one direction only. This allows one of the parties to misuse the information.

Interviewed civil judges state that they do not have experience with team work. They are of the opinion that multidisciplinary approach in children cases is not possible and relevant. One of them explains that he is satisfied with his work with Social Assistance Department workers but he does not mention anything about working in a multidisciplinary team on children cases. Another shares her experience with interactions with psychologists who were appointed as experts in court proceedings for assessing child's relationship with each of the parents. Only the judge who carries out child hearings on her own initiative in the building of a service provider and with the assistance of social workers at the Child Protection Department and preparation done by a psychologist at the service provider, actually works in a team but does not recognise this as multidisciplinary work.

Conclusions

The interviewees have taken part in the similar kinds of training regardless the field they work in. Some of those who were trained share that they face problems working with those who are not aware of the specifics of children rights. The majority of the interviewees feel undertrained and express desire to receive training in child hearings. They also consider training of judges, lawyers, prosecutors and experts as crucial as this will allow all these people to talk in the 'same language'. Another conclusion is that social workers' burn-out is not taken into account and they are not trained, supervised and supported sufficiently. Although the majority of the interviewees showed positive attitude towards trainings they did not mention that trainings are available and that they are informed about those that are available regularly.

There is a great deficit in terms of multidisciplinary team work. The coordination mechanism for work with abused children, although widely mentioned and discussed, could be considered more as a case solving mechanism rather than a tool which guarantees the full observance of children rights in the process. Positive practices of multidisciplinary work are rare.

2.4 Horizontal issues

2.4.1 Discrimination

The issues about possible discrimination were not much discussed by the interviewees as the majority of them were of the opinion that they treat the children 'equally'. According to them this is the right position when dealing with children. However, it turned out that the majority of the interviewees have no experience with children with disabilities, migrant children or children from minority ethnic background.

The children with and without disabilities who are placed in institutions are not heard as a rule. The reason for this is because either the children with intellectual and mental disabilities are not perceived as capable witnesses (in criminal cases) or that the hearing cannot contribute to the court's decision in any way as for these children there is not any other chance than to live in institutions. One of the psychologists explains in details how these children were not informed about their next removal and how this traumatises them but not in the context of the hearings. Another psychotherapist shares a good practice of a judge who allowed her to work with a child with intellectual disability during a child hearing in criminal case but this was a positive exception:

Hearing of such child (with disabilities) is totally possible. If a judge realises that the child has special needs, he/she has the right, and they usually do so, to appoint a professional who could assist the hearing. If the judge does not know that a child is impaired, the hearing proceeds the normal way. It depends on the level of impairment. In this particular case the retardation was not severe but still recognisable. The judge had figured out that the testimony of this child is important and it is worth having it in a proper way. He dedicated a whole afternoon time to this case by not scheduling any proceedings after it. This was a hearing that involved games, talking about different things: about the zoo, though the case had nothing to do with the zoo, until the child started to tell the story. But it is easy to manipulate a child with special needs and make it tell us the story we want to hear unless the hearing is run very professionally. The child was brought to the court by both parents who also had special needs. It was evident that no preparation was done whatsoever. The child did not realise where he/she was...

A striking example was the fact that children with intellectual disabilities living in an institution were brought to be heard several times during the winter (-20 Degrees Centigrade) in a case of a sexual abuse perpetrated by one of their teachers. One criminal judge explains about this case. The children were between 5 and 13-years-old. She assesses these hearings as very difficult because the children were different from the children grown up in a family, the contact with them was harder and the interviewee had to ask many questions that were not related to the case to be able to extract the information she needed. She also stated that these children were brought to the court several times during the winter as some of the witnesses did not allow the hearing to take place the first time when it was scheduled.

In the case of these children the hearings were very difficult, even though they were very important. Thanks to their testimonies this man was convicted. There were other evidences as well, but the children's testimonies were the most important, as they represented the children's initial impressions. In this case the hearing was very difficult; these children did not grow up in a family environment. They have been living in a social care institution since their birth. As you know, in these cases the mentality is deformed more or less. The contact was very difficult, it was extremely difficult. I asked random questions which were not related to the case [...]. I approached them as if

they were my own children when I wanted to draw out some information from him/her without his/her understanding.

Another striking example is a case of a sexual abuse against children (living in institution) who offered sexual services for payment and whom the judge did not treat as needing special protection as their mothers prostituted and the children did not feel guilty when heard, thus the perpetrators were not sanctioned with the highest possible punishment.

I have had a similar case with children who were sexually abused. They were from a social care home and in general they were subjected to molestation and copulation. It was unpleasant that the children did not consider themselves as victims in the more narrow sense of the word. They had a distorted feeling for what is lawful and ethical to such a degree that they deemed what had happened to be normal. Because it turned out that their mothers were prostitutes. They had dumped their children in the institution; they used to take them from time to time and children got impressions from their mothers' profession. Only two of the children were under 14 though, while the other two were not. Pursuant to the law, copulation with a person under 14, regardless of his/her consent, is considered a crime. However, those children from the institution did not think that something abnormal had happened to them and we did not sense that they had any remorse. They had done those actions for money and in this way we came upon an odd situation for justice – we had a crime but we did not see the child as distressed..... Nevertheless the full-aged perpetrators received effective verdicts but not the maximum because we had the impression that the affected children did not feel themselves as victims of a crime. They were simply looking for financial reparation and compensation.

Only the interviewees in Plovdiv, Pazardzhik and Pleven mention Roma children as participants in child hearings. All interviewees mention that in case the children need interpretation because he/she does not know the language or has hearing or speech disability interpreters are appointed by the court. However, they mention only a few cases in practice of hiring such interpreters.

Although in some cases there were problems with language barriers, the interviewees did not mention that professional interpreters were involved in the hearings - instead the mothers of the children were used to interpret. An example in this regard is mentioned by an appellate judge who explained how he used the mother as an interpreter in a robbery case. Another example is a sexual abuse case mentioned by a social worker. A social worker at the CPD explains of a case of a sexual abused child at 4 about which the social workers at the CPD were informed three weeks after the abuse happened. So the social workers got into a conflict with the police as the social workers were not notified about the hearing at the police and an assessment was appointed for which the social workers had to assist. The child and the mother did not know Bulgarian. So actually the CPD could not help the child in this case.

Yes, it was a case of sexual abuse. In fact, it was considered sexual abuse even though there was no act involving the child. It happened so that the information reached us late, very late. The information reached us through a letter which arrived on the third week after the incident and, because of this, to some extent we entered into conflict with the police. This was not direct conflict but more or less indirect because we tried to contact the parents of the child. The child was very young – at the age of 4... When the parents came to us, they did so not because we had tried to contact them, but because an expert report had been ordered. No one had told us that such report had been ordered. The hearing had already taken place, without the presence of a social worker from

the Child Protection Department. We had to collect information from the parents who in no way welcomed the fact that they had to speak about what had happened for the third or fourth time. They expected that all the information had already been forwarded to us so that we could do our job. There were other obstacles such as the fact that neither the mother, nor the child spoke Bulgarian. It was some kind of Turkish dialect. That is also why the hearing had to be repeated, and then things did not go well with the expert report as there was no interpreter.

Few interviewees mentioned cases of children victims of trafficking in human beings in which lack of training of professionals working with them resulted in re-victimization of these children.

The fact that most of the legal professionals do not consider hearing children with disabilities and Roma children with the adequate assistance from interpreters and other specialists leads to discrimination against them. Their opinions and views are not heard and considered when making the final decision.

2.4.2 Best interest of the child

'Best interest of the child' seems to be a very unclear term. A few interviewees (mostly social workers and lawyers) knew that such legal definition exists. More or less most of the social workers, psychologists and psychotherapists pointed out that the best interest of the child is the provision of conditions for mental, physical, emotional development of the children and that it is determined for each individual case. They all underline that the first priority is to protect the life and the health of the child.

A striking finding was that criminal judges, prosecutors and investigators are not aware of the term 'best interest of the child' and are of the opinion that punishing the perpetrator of the abuse against the child is in the best interest of the child. Here is how a judge put it:

"Best interest of the child" in what sense? In criminal law the important thing is the truth, the objective truth. For the child it means that if he/she is a victim of crime the perpetrator should be punished."

This obviously leads to grave violation of children's rights as children suffer a lot during the multiple hearings during the pre-trial proceedings and trial proceedings and it is not clear whether the perpetrator would be punished after this suffering.

The civil professionals were more aware of the content of the term 'best interest of the child'. The majority of those interviewees who are aware of the court's decisions were of the opinion that court's decisions are in the best interest of the children.

Some of the interviewees pointed out that the best interest of the child would be respected if certain protection measures are applied by the investigators and judges. One of them is the appointment of special representative of the child when his/her interests are in conflict with the interests of his/her parents. Although such representatives are appointed there is no evidence gathered that they manage to protect the interests of the child. In criminal cases children witnesses could be 'protected' by hiding their identity. Only one interviewee explained about the application of such measure and it was disputable as the identity of the child was actually easily recognisable.

However, here again it should be noted that the lack of independent person who can protect the rights of the child during the proceedings is essential as there is not such a person neither in civil, nor in criminal proceedings.

2.4.3 Differences and similarities in regional, national, international context

Opinions about the best interest of the child varied from judge to judge and social worker to social worker and psychologist. Some thought that material living conditions are decisive, some that the child's opinion does some that the relationships with the parents do. Others did not think of the best interest of the child at all.

2.5 CoE Guidelines

Less than one third of the participants state they are more or less aware of the existence of the CoE Guidelines. Interesting situation occurs in the group of legal professionals. Only lawyers dealing with civil cases share that they are aware of the guidelines while on the other hand predominantly criminal judges and prosecutors have that knowledge. All of them represent about half of all interviewed legal practitioners. The finding that civil judges might not be acquainted with the guidelines corresponds to the views of the interviewed lawyers who say that judges are not very pleased to hear arguments from the guidelines. One of these lawyers points out that the problem stems from the Bulgarian mentality which is different from the European one in terms of respecting children's rights. This statement reveals the overall impression that the majority of the legal and social professionals are not aware of the child-friendly justice requirements of the CoE and do not consider their binding nature.

Thus three civil lawyers express the opinion that the guidelines are not usable and a fourth one - that they are applicable but more measures should be introduced so that they can be used widely. The latter says she quotes them often while another one shares that she uses them when the court opposes to some procedure she requires.

Three of the criminal judges are aware of the guidelines. Two of them explicitly say that they are applicable in Bulgaria but only one of them states that they are obligatory while the other is of the opinion that they are applicable approximately to 80% due to Bulgarian "national specifics" without further specifications what these might be – objective circumstances or subjective prejudices.

Most of the magistrates consider CoE guidelines as valuable. One of the judges points out that they were used as a base for the *Concept for reform in criminal justice for children in Bulgaria*. "In fact these recommendations summarize the best practices in the sphere", says the judge who considers CoE guidelines binding. One prosecutor also finds them very useful and thinks they should be applied although he confesses that he only has a vague knowledge of the guidelines.

As for the reasons why the guidelines are not applied, two of the legal professionals share that the lack of funding prevents the Bulgarian judicial system to fully apply the Guidelines of the Council of Europe. One of them considers it is necessary a global reform in the children legislation to take place while the other sees as a shortcoming the lack of training. The latter points out that the guidelines are not printed or uploaded on any legal website in Bulgaria; thus her colleagues are not aware of them.

It seems that the group of social professionals is reluctant to share how they use the CoE Guidelines although one fourth of all interviewed social professionals state they are aware of them. One of them says her organisation is implementing part of them by setting up special rooms, rules and trained professionals for child hearings. The other expresses the view that they are not applicable in Bulgaria.

Half of the interviewees who confirm they are aware of the guidelines have some kind of special training in child issues. Two of the legal practitioners reveal explicitly this connection by saying they are familiar with the guidelines due to participation in training.

The lack of training and awareness could be illustrated by the ignorance of a police investigator and an inspector at a Child Pedagogical Unit who are aware of the existence of the CoE guidelines. They say they have never read them but the investigator, in particular, believes they are too convoluted and vague to be applied in practice. He knows that they have various recommendations but calls them 'pointless'. On the other hand, both interviewees mentioned that they are interested in concrete, practical measures that will help them in their everyday work.

The overall impression from the interviewees is that the majority of the legal and social professionals are not actually aware of the child-friendly justice requirements of the CoE and do not consider their binding nature. Although some of them state that they are aware of them and said something about them it was because they felt somehow ashamed to state that they are not aware of them. This is hardly recognisable by someone who is not Bulgarian and reads only the statements, translated into English.

3. CONCLUSIONS

3.1 Overarching issues

The most important finding of the research about the parents and relatives involved in the child hearings was the fact that at least half of the interviewees mentioned the manipulation by the parents over the children before the hearings in divorce and custody cases. The direct threatening of the children by the parents immediately before the hearings is also an issue mentioned by the attorneys-at-law and the psychologists. Several interviewees mentioned also that the whole families come to the court in some cases to accompany their relatives for civil cases and this makes the children even more confused.

Nevertheless many of the legal professionals found the justice proceedings as child-friendly while social professionals either found it hard to reply to this question or stated that they are not. Most of the interviewees could not state something clear about the measures taken to ensure the active participation of the children but underlined that the main factor for it is that children feel relaxed during the hearings. The very fact that most of the interviewees do not hear children with disabilities or with different background shows that no measures are taken to ensure even the mere participation of the children in some cases. In cases when children are heard no measures are taken to avoid the manipulation by the parents. A few professionals mentioned that child's views and thoughts actually interest them although their perception was that the child hearings are important as they influence the outcomes of the proceedings – in criminal proceedings because the children are often the only and key witnesses and in civil proceedings because their perceptions of the family life are important for the judge to make the decision about the custody rights.

As to the protection/safety measures from the interviewees' statements it became clear that in the majority of the cases (criminal and civil) the child's rights are in conflict with the parents' rights. According to the legislation in these cases special representatives are to be appointed. But there is no evidence from the interviews that special representatives are actually able to protect the best interests and rights of the children even in cases when they are appointed. This is why some of the interviewees pointed out the need of an independent trust person who would be trained to work with children and would play this role in the proceedings. In cases when a special representative is not appointed the social workers at the CPD are expected to play this role. However, although they should be present at all child hearings, they are not informed about the hearings in criminal proceedings as the legal professionals do not implement the Child Protection Act. At these hearings the psychologist/pedagogue is expected to play part of this role. However, neither the social workers, nor the psychologists/pedagogues are independent as they are subordinated to the CPDs or to the police. And neither the social workers, nor the psychologists/pedagogues are trained sufficiently to protect the interests/rights of the child during the proceedings.

According to all interviewees the age of the children is essential when it comes to hearing and informing them as younger children are less likely to understand verbal information and older children can be informed only in a conversation. The most important conclusions about informing the children are: the people who should inform the children under the law do not do that; those who inform the children in practice perform this function in various ways (as this is not a rule but a different practice) and inform the children either of practices they are aware of and can make the children feel secure or of practices they are not aware of and make them insecure. Informing the children in both criminal and civil proceedings is disputable and is an area of improvement but the interviewees actually did not point this out as a recommendation. It seems that informing does not happen in a way to ensure the active participation of the children in a sensible way. It also seems that detailed and mandatory for all procedures for informing the children should be adopted to equalize the opportunities of all children to be full participants in the proceedings in all regions and in all proceedings in the country.

The majority of the interviewees pointed out as a main recommendation that specialised children courts should be set up to deal only with children cases. The second most mentioned recommendation was that professionals who work with children should be trained and the most important thing to be trained at is the methods and techniques to put questions to the children and to interpret adequately the answers as well as the non-verbal communication signs.

The majority of the interviewees were not aware of planned changes in policies and legislation with regard to child hearings. Only one was aware that minimal standards for child hearings were elaborated by the SAPI and were submitted to the Ministry of Justice and only one other interviewee mentioned that there is a concept paper for new policy in the field of criminal justice for children. Interestingly both participants were social workers, not legal professionals. Some other participants in the research mentioned that new Child Protection Act was elaborated but they were not aware how it could have changed the child hearings situation and were not aware whether it is adopted.

3.2 Research

The majority of the interviewees were not aware of any researches in the field of child hearings. Only two mentioned that the Social Activities and Practices Institute carried out some research but they could not mention any details about it. The majority of the interviewees agreed that a research among children is a good idea and should be done. At least 10 suggested that the sample with the children should consist of half of the children who have experience with child hearings and half of

them should be children without such experience so that children's views and ideas of both groups are compared.

A few interviewees thought that interviewing children would re-victimize them and were against this idea. A few interviewees also suggested that a research among children with experience in child hearings is likely to re-victimize them but this can be avoided if the interviewers are trained and careful. All interviewees stated that parent's consents are needed for carrying out a research among children. Regarding the channels for identifying and accessing the children, there were different suggestions – data about such children to be requested by the Child Protection Departments, by courts, by NGOs providing services to victims of domestic violence and trafficking or by schools. However, data to be requested by courts is the less likely option as the protocols do not reflect fully the statements of the child.

ANNEX

Documentation

Quotes

“I had a case in which the proceedings did not reach the court at all. I had a 14-year-old girl who was taken by a car to another neighbourhood, was given drugs and was sexually abused and prepared to prostitute in the streets. At one of the team meetings with representatives of the institutions (police and prosecutors) I was told that ‘she was 14 years old, took drugs voluntarily, made sex voluntarily, hence there is no sexual abuse’. That is why it is very hard for us to work.”

“When I have been present, the main idea was to help the child in some way so as not to feel re-traumatised by everything he/she has to tell one more time. Usually, when I have participated I have tried to change the questions of the investigating officers, so that these do not sound as accusations to the child or create a sense of guilt in them. The questions are usually formulated as ‘What were you doing at that time’ or ‘Why did you not call?’ These are some of the frequently asked questions which lead to a traumatic experience for the child because he/she feels as if he/she has failed to do what was necessary..... In such cases the children often refuse to continue talking or give up their testimony so far. Such questions are being asked many times and their purpose is not so much to receive information but to confuse the child – at least this is what happens in reality. This happens very often with the children – at some point they can no longer stand the pressure.”

“I have a recent case, one from yesterday. Despite the fact that the hearing was in the ‘blue room’, the child did not feel well; especially the younger child. This is because some pressure was used. The policemen have this approach of theirs which is too different. No matter how hard they try to spare the trauma, they lack the skill. They have not been trained to do this. I personally think that the hearing can be conducted only by someone trained to do this, with support from the judge.”

“This was extremely difficult for me and for the investigating policeman, as well. We were together and for us this was a big stress. I think, by the way, that the hearing in the ‘blue room’ is not less stressful for the child. Each concrete case is important. The truth is that if the child’s mother had not been there the fact that a psychologist and a pedagogue were there would not have helped.”

“My objective is to preserve the child as much as possible. The truth comes second. It is important that the truth comes out, yes, but not at the cost of a broken child.”

“Children are surprised to hear that they have rights. As to the legal provision saying that the child has to be informed about the consequences of his/her testimony, frankly speaking, I cannot recall a single case of someone explaining it in the court room normally. In a way that is understandable for the child and corresponds the truth. The judge often tells the child: “You have to tell the truth, the whole truth and you shouldn’t be hiding anything, because this is a place to tell the truth”. Such statement sounds scary, very threatening. And the judge has no intention to intimidate the child; judges simply don’t know how a child perceives such statement being in the court room for the first or second time. As a matter of fact the child is entitled not to tell the whole truth. The child is entitled to share the part of the truth he/she wants to. Yes, the child is supposed not to lie but he/she is not obliged to tell the whole truth. This is something they fail to explain to the child. Or

another statement: "You tell me the truth and I'll convict him/her". When this statement is made the child literally freezes. This represents such a burden for the child... And such a statement of the judge is often well intended. Right, but this is not the way to put it."

"In fact, the very thought that they will provide this information makes them experience the burden of deciding the situation. And when there are too many interventions towards them, this traumatises them a lot and becomes a burden. In general their daily life is also disrupted because they have to bear guilt and responsibility which should be borne by people of age."

"Parents think that we are here to protect their interests. They are so obsessed with their negative emotions and thoughts that they forget about the child. And sometimes it is very hard to draw them away from their feelings; they feel affected by the needs of the child."

"It's important to have trainings, it's highly important, but they should be aimed at the persons who are directly engaged with the issues they are being trained for. Because in reality, at least during my first years here, there have been trainings, but certain people attend them and others do the work."

"I have been working at this position for five years already but it was different in the beginning. We used to have fewer cases and somehow we managed. Now I think everything has to be slightly more specialised so that people can become better professionals in a particular area and work primarily in it. The opposite does not benefit the children the way it should. So it is best if there are people who are particularly trained to do this. I am talking about us as social workers."

"The things are growing harsher day after day. There are new responsibilities that are imposed upon us, requiring from us to be close to being parents of all these children. Barely somebody would stand the pressure here. And here the turnover is too big. Every new person who comes has a different approach towards the children, he/she has a different view and understanding of the work that should be performed... the things do not work effectively. For example, if a year ago we had a case for something ... and some colleague (or I) worked with the child, consequently, if some time after that a new colleague has a new subpoena and new case with the same child, he/she goes and presents the information in a different way. The child might be confused, or it might not be confused."

"But these are good and decent people, they want to be supervised and they pay for supervision out of their pockets, no reimbursement. Supervision means that you discuss a case with a more experienced professional in order to find the way forward and see what can be done. This should be made someone's responsibility – in terms of provision and payment; or at least a kind of training for these people can be provided. They handle enormous workload, they have shamefully low salaries, and if they want to do less harm, they have to pay out of their low salaries in order to verify their performance and in that way also prevent themselves from having a burnout."

"However, we again get to the point of who knows who in the respective institutions, even to the personal relationships between the people representing the institutions. I could not say that these good practices will take place if we follow the regular procedure."

"It may happen that a person knows the social workers or the abuser is an acquaintance of one of the police officers in the small town. It is then that we face the most difficult cases. We have come

into serious confrontation with the institutions because of this. On such occasions we have gone as far as to take measures outside the country, against the state which obviously violates its own legislation.”

“The judge who conducted the interrogation had attended a training in the methodology I told you about and the judge really dealt with the situation quite well, in the sense that all necessary steps were followed.”

“To be honest I was very disappointed as they were very nice, intelligent people but they did not really participate actively in the training. But at the same time this fact made me think that they are very tired, their workload is big and they have burnt out as a result of the big number of cases they work upon. So I realised that with this workload the requirement to be sensitive is difficult to achieve. One of the reasons for the lack of good communication between the court and the children is the fact that magistrates do not want to be involved emotionally in these cases, especially in the severe cases when the children are victims.”

“We should not allow a case to fail as a result of the incompetence and lack of experience of investigators, prosecutors, investigating policemen and/or judges or law enforcing bodies in general, while it could have been solved by an experienced professional. At some point people get disappointed by the justice system. Where is the problem - the problem is the lack of training of these officials, of us, of the state. This lies in our competence.”

“Sometimes I order the experts’ opinion first; I do not summon the child as witness. Then I consult the experts whether the hearing of the child may cause any traumatic consequences for him/her. If the experts tell me that the child is not psychologically prepared, I do not conduct a hearing.”

“The more trainings I get, the worse I feel in court room as the others do not understand me.”

“Hearing of such child (with disabilities) is totally possible. If a judge realises that the child has special needs, he/she has the right, and they usually do so, to appoint a professional who could assist the hearing. If the judge does not know that a child is impaired, the hearing proceeds the normal way. It depends on the level of impairment. In this particular case the retardation was not severe but still recognisable. The judge had figured out that the testimony of this child is important and it is worth having it in a proper way. He dedicated a whole afternoon time to this case by not scheduling any proceedings after it. This was a hearing that involved games, talking about different things: about the zoo, though the case had nothing to do with the zoo, until the child started to tell the story. But it is easy to manipulate a child with special needs and make it tell us the story we want to hear unless the hearing is run very professionally. The child was brought to the court by both parents who also had special needs. It was evident that no preparation was done whatsoever. The child did not realise where he/she was.”

In the case of these children the hearings were very difficult, even though they were very important. Thanks to their testimonies this man was convicted. There were other evidences as well, but the children’s testimonies were the most important, as they represented the children’s initial impressions. In this case the hearing was very difficult; these children did not grow up in a family environment. They have been living in a social care institution since their birth. As you know, in these cases the mentality is deformed more or less. The contact was very difficult, it was extremely

difficult. I asked random questions which were not related to the case [...]. I approached them as if they were my own children when I wanted to draw out some information from him/her without his/her understanding.

“I have had a similar case with children who were sexually abused. They were from a social care home and in general they were subjected to molestation and copulation. It was unpleasant that the children did not consider themselves as victims in the more narrow sense of the word. They had a distorted feeling for what is lawful and ethical to such a degree that they deemed what had happened to be normal. Because it turned out that their mothers were prostitutes. They had dumped their children in the institution; they used to take them from time to time and children got impressions from their mothers’ profession. Only two of the children were under 14 though, while the other two were not. Pursuant to the law, copulation with a person under 14, regardless of his/her consent, is considered a crime. However, those children from the institution did not think that something abnormal had happened to them and we did not sense that they had any remorse. They had done those actions for money and in this way we came upon an odd situation for justice – we had a crime but we did not see the child as distressed..... Nevertheless the full-aged perpetrators received effective verdicts but not the maximum because we had the impression that the affected children did not feel themselves as victims of a crime. They were simply looking for financial reparation and compensation.”

“Yes, it was a case of sexual abuse. In fact, it was considered sexual abuse even though there was no act involving the child. It happened so that the information reached us late, very late. The information reached us through a letter which arrived on the third week after the incident and, because of this, to some extent we entered into conflict with the police. This was not direct conflict but more or less indirect because we tried to contact the parents of the child. The child was very young – at the age of 4... When the parents came to us, they did so not because we had tried to contact them, but because an expert report had been ordered. No one had told us that such report had been ordered. The hearing had already taken place, without the presence of a social worker from the Child Protection Department. We had to collect information from the parents who in no way welcomed the fact that they had to speak about what had happened for the third or fourth time. They expected that all the information had already been forwarded to us so that we could do our job. There were other obstacles such as the fact that neither the mother, nor the child spoke Bulgarian. It was some kind of Turkish dialect. That is also why the hearing had to be repeated, and then things did not go well with the expert report as there was no interpreter.”

“Best interest of the child” in what sense? In criminal law the important thing is the truth, the objective truth. For the child it means that if he/she is a victim of crime the perpetrator should be punished.”

“In fact these recommendations summarize the best practices in the sphere.”

Tables

Distribution of the interviewed professionals in gender, area of work, location and age groups

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
Legal	8	16	7	17	19	5		24
Criminal	5	6	3	8	7	4		11
Civil	3	6	2	7	8	1		9
Both areas		4	2	2	4			4
Social	1	27	16	12	21	6	1	28
Criminal		2		2	2			2
Civil		3	1	2	2	1		3
Both areas	1	22	15	8	17	5	1	23
Mixed								
Criminal								
Civil								
Both areas								
All professionals	9	43	23	29	40	11	1	52

Distribution of interviewed professionals according to the extent of their familiarity with the CoE guidelines

Ad CoE guidelines:	Familiarity with Guidelines			
	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	Total
Legal	4	7	13	24
Civil	2	3	4	9

Criminal	2	4	5	11
Both areas			4	4
Social	4	3	21	28
Civil	1		2	3
Criminal		2		2
Both areas	3	1	19	23
Mixed				
Civil				
Criminal				
Both areas				
All professionals	8	10	34	52

Distribution of the interviewed professionals according to their participation in trainings

Profession	Training Participation		Total
	No	yes	
Legal	18	6	24
Civil	6	3	9
Criminal	8	3	11
Both areas	4		4
Social	10	18	28
Civil	3		3
Criminal	1	1	2
Both areas	6	17	23
Mixed			
Civil			
Criminal			

Both areas		
All professionals	28	24
		52

Distribution of the interviewed professionals according to the their profession and the type of trainings they participated in

Professional Group	Type of Training				
	Legal	Social/ psychological	Specific justice issues	Specific child issues	Methods/ procedures
Legal	4	3	1		2
Social	1	2	5	4	11
Mixed					
All professionals	5	5	6	4	13