

Social Fieldwork Research
Child Participation in Justice Report
Estonia, 2012

FRANET contractor: Institute of Baltic Studies

Authors: Kaldur, K., Karu, M., Meior, M. and Käsper, K.

This document was commissioned under contract as background material for comparative analysis by the European Union Agency for Fundamental Rights (FRA) for the project children and justice. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion.

SOCIAL FIELDWORK RESEARCH
CHILD PARTICIPATION IN JUSTICE REPORT
ESTONIA, 2012

RESEARCH REPORT

Institute of Baltic Studies

Tartu 2015

Research: Social Fieldwork Research, Child Participation in Justice Report, Estonia, 2012

Authors: Kristjan Kaldur (Institute of Baltic Studies)
Marre Karu (PRAXIS Center for Policy Studies)
Marianne Meiorg (Estonian Human Rights Centre)
Kari Käsper (Estonian Human Rights Centre)

FRANET contractor: Institute of Baltic Studies

Commissioned by: European Union Fundamental Rights Agency (FRA)

This country report for Estonia presents the results of the social fieldwork research for the first phase of the FRA [Children and Justice project](#). The report constitutes the background information drawn on by the FRA in order to compile its comparative analysis for the [report on Children and Justice](#). The data for Estonia was gathered in 2012 and the FRA comparative report was published in 2015. The second phase of the study involved interviewing children who have participated in judicial proceedings. The results of this study will be available in 2016.

The information in the country report comes from report prepared under contract by the FRA's research network FRANET. Institute of Baltic Studies is the national focal point for FRANET in Estonia.



Institute of Baltic Studies
Lai 30
51005 Tartu
tel 6999 480
www.ibs.ee

EXECUTIVE SUMMARY

- It is frequently stressed that there is a need for special guidelines on how to behave and act with children during the hearings. Mostly legal professionals were interested in this kind of guidelines, nonetheless this was often mentioned also among social professionals.
- Based on the information collected from the interviews, we can conclude that almost no professional has used Council of Europe (CoE) guidelines as a starting point for developing organisational rules or procedures for child participation in justice proceedings. About two thirds of professionals interviewed had never heard of the CoE guidelines before the interview. Only three interviewees claimed that they were familiar with the CoE guidelines and followed them in their work (by stating that since the guidelines are rather universal, then they overlap and coincide with their own internal rules/procedures or with organisational practices).
- There is a general problem with informing the child: half of the professionals interviewed stressed the fact that if they meet with the child after the pre-trial hearing, they do not know how the child was informed, and therefore, cannot assess how much information has been given to the child about the proceedings.
- Although legal professionals seemed to evaluate legal proceedings more child-friendly than social professionals, in general, both groups agreed that procedures mostly in court were not child-friendly. Pre-court / pre-trial proceedings were seen generally as child-friendly.
- It was pointed out that the hearing itself is traumatising, whether in court or pre-court proceedings. The interviewees agreed that traumatising could be minimized by trained personnel, by appropriate hearing rooms/location, by considering the child's age and development level and with the support of parents or guardians.
- Social professionals mostly suggested more than others that child-friendly hearing rooms are needed.
- The vast majority of interviewees pointed out that parents usually have the strongest influence over children, usually when informing the child or in the pre-court process. The parents may explain children neutrally what is going to happen, or they may also provide information selectively for parent's own benefit, or manipulate children. Thus, as a result, parents can help to go through the process, but they may also hinder the process, depending on the particular case. This relates both to civil and criminal proceedings. Educating parents in this regard can be one of the areas for improvement.
- Among the legal professionals, mostly judges pointed out that the Family Law Act (*Perekonnaseadus*) is interpreted quite differently in different courts. This means, that the law does not specify who has to be or can be present at child hearings, and therefore this is left in the judges' discretion, which is why different individual practices have developed.
- Among all professionals, it became clear that special trainings were needed. Some interviewees had never been trained regarding children in justice proceedings, and thus felt uncertain about their actions when dealing with children.

- Interviewees also commented upon communication problems between officials and other parties in justice proceedings. For example, better communication was needed between the child and person conducting the hearing. Usually they saw training as a solution to these issues.
- Post-trial proceeding (e.g. counselling) seems to be problematic issue. Regular post-trial child counselling was mentioned in the interviews very seldom, however, this concern was also raised in civil justice focus group.
- One contradictory point among the interviewed sample was related to the persons involved in the proceedings. One cannot make clear patterns based on professional groups or on their backgrounds among respondents, however it was mentioned by some interviewees that it is better for the child if fewer people are involved in the process. It may be traumatizing and confusing when unknown persons ask something that makes the child feel uncomfortable. Some professionals also found that if many persons are dealing with the same problem, it is wasting resources. On the other hand, some professionals wanted to see more persons involved in the proceedings (e.g. mainly lawyers and child protection specialists).

Table of Contents

Executive summary	4
1. Background.....	7
1.1. Research Methodology.....	7
1.2. Sample.....	8
1.3. Legal context.....	9
2. Findings	12
2.1. Right to be heard.....	12
2.2. Right to information.....	23
2.3. Training and co-operation of professionals	30
2.4. Horizontal issues	32
2.5. Council of Europe Guidelines.....	34
3. Conclusions	36
3.1. Overarching issues.....	36
3.2. Research	37
3.3. Any other issues not covered in previous sections	38
Annexes.....	39

1. Background

1.1. Research Methodology

During the fieldwork, the Estonian team has followed the methodological framework provided by FRA. Based on the sampling criteria set out in FRA guidelines, the initial list of participants for the interviews was compiled by the social fieldwork expert Ms Marre Karu. The members of the Estonian research team who were going to conduct the interviews further updated the preliminary interview list. Updating the list and finding additional interviewees was done through search on relevant websites, e-mail enquiries and contacting relevant institutions (local government offices, NGOs, courts and law offices etc) as well as by phone in order to find out which persons qualify best for the interviews. The information about the interviewees (name, position, institution and comments on the selection, interview time and location) was shared and regularly updated among the members of the research team in an online table during the whole fieldwork period.

The recruitment of interviewees was mainly done through e-mail correspondence. If deemed necessary, the interviewee was further contacted by phone to give more information about the research project. Finding interviewees was more difficult among the legal professionals, since there is no publicly available list of legal professionals (judges, prosecutors or lawyers) who have specialised on minors. Therefore, the Estonian Bar Association (*Eesti Advokatuur*) and the Estonian Union of Lawyers (*Juristide Liit*) were contacted for suggestions of potential interviewees. Another minor obstacle was encountered while recruiting interviewees among youth officers from the Estonian Police and Border Guard (*Politsei ja Piirivalveamet, PPA*). Before giving consent to allow their officials to participate in the interviews, PPA requested a very detailed description of the project and its methodology, and asked to submit an official request. However, this issue was solved quickly and PPA granted Estonian research team official permission to carry out the interviews with their officers.

All individual interviews (51) were conducted face-to-face. In most of the cases interviewers visited the interviewee in his/her own place of work. The focus-group interviewees were conducted in the two largest cities of Estonia: criminal justice FG in Tallinn (the capital of Estonia) and civil justice FG in Tartu. All focus-group participants were recruited from the pool of previously interviewed professionals. Based on the interviewer's assessment on the content quality of personal interviews, on the willingness to share information and communicate, the interviewers contacted again these persons who were seen having necessary experience to be shared in focus groups. When recruiting, sampling criteria was also strictly followed for having balance with regard to professional groups (SP, LP), professions and justice fields.

Interviews were analysed and their reporting templates filled by the same persons who conducted the interview. This ensured the best quality for the results, since only the interviewer has a sufficient overview of his/her own interview setting, atmosphere during the interview, level of trust etc. Approximately half of the interviews (25) were transcribed (into Estonian or Russian, depending on the language of the interview), which further helped analysing interviews more thoroughly. Whether by reading and re-reading the transcription or listening to recorded audio of the interview, the templates were filled in. The content was then double-checked by the project manager. In few cases the interviewees were reluctant or cautious to provide clear answers: in one case the interviewee resisted recording the interview at the beginning, but eventually allowed it by commenting that in this case her criticism towards the system will be more subtle; on another case the interviewee felt being interrogated since the questions very too detailed for the liking of the interviewee.

There were 8 interviewers in total on the Estonian research team. This includes 6 women and 2 men, with the nationality of 7 Estonians and 1 Estonian-Russian. Seven are between the ages of 26 and 45 and one person between the age of 18 and 25. The five interviewers, who conducted most of the interviews (42), have extensive long-term experience and very good backgrounds in conducting fieldwork, including carrying out personal in-depth interviews. In terms of their educational backgrounds: the two legal experts have MAs in Law, 1 person has a MA in Comparative Politics, the social fieldwork expert has a PhD in Sociology and one person has an MA in Linguistics. The remaining 9 interviews were carried out by the three research assistants due to geographical proximity between the interviewer and the interviewee, or due to previous contacts between the interviewer and the interviewee. The research assistants have 2-3 years of experience in fieldwork research and have a social research background (one person has BA in Political Science and two persons BA in Sociology).

1.2. Sample

The research sample included 51 persons, 7 of them were male (13%) and 44 female (87%). The ratio between interviewed men and women was 1/7 (7 men and 44 women). This reflects the current situation in Estonia, where a low number of men tend to work in this area. This is especially true among social experts: social workers, victim support specialists, but even among youth officers etc. However, the gender balance is better among legal professionals, such as lawyers and judges.

Forty four professionals were located in urban areas (86%), this includes Tallinn (the capital of Estonia), Tartu, Kohtla-Järve, Narva, Pärnu, Rakvere, Viljandi and Jõhvi. Seven interviews were done in rural areas, including Imavere, Haapsalu, Paide, Rapla, Harku and Tõrva. Professionals can be divided between three age groups: 40 interviewees were between 26 and 45 years old (78%), 10 were between 46 and 65 (20%) and one person was over 65 (2%). 25 interviewees were legal professionals and 26 social professionals. The table 1 below indicates the breakdown by profession within each category and the percentage of all interviewees.

Table 1. **Overview of the sample by profession**

LEGAL SEGMENT (49%)			SOCIAL SEGMENT (51%)		
Prosecutor	3	12%	Psychologist	5	19%
Lawyer	7	28%	Victims Support Staff	8	31%
Judge	8	32%	Social Workers	9	35%
Court Staff	1	4%	NGO Staff	1	4%
Law Enforcement	6	24%	Court Staff	2	8%
			Law Enforcement	1	2%

In the legal segment, the distribution by profession was as follows: prosecutor (1 person), lawyer (5 persons), judge (7 persons), court staff (1 person) and law enforcement official (3 persons). In social segment, the distribution of the sample was as follows: court staff (2 persons), law enforcement official (1 person), NGO staff (1 person), psychologist (3 persons), social workers (9 persons) and staff of victims support organizations (7 persons).

The participants were working in different organisations: in courts (7 persons), law offices (5 persons), prosecutor offices (3 persons), police departments (4 persons), victim support organisations (5 persons) and family and child support centres (3 persons) as well as city or municipality governments and administrations (7 persons). Besides that, the sample included one education centre and one social welfare/child protection centre.

Professionals included in the sample can be distinguished between three main roles based on their work with children: actors, supporting persons and observers. There were 26 actors, 21 of them were working in the legal profession. 11 people were supporting (among them 10 were in a social profession) and 3 were observers (all in a social profession). The rest (11 professionals) were a mix of actors/supporters/observers. Furthermore, the kinds of the cases the participants were dealing with vary.

18 interviewees were engaged with civil or mostly civil cases, 12 worked with both civil and criminal cases, and 22 were primarily in the criminal justice field. The differing perspectives could also be seen in the issues discussed during the interviews. For example, people working mainly in criminal justice fields were discussing principally domestic, school, and sexual abuse and violence issues. In the civil justice field, the main issues were custody and divorce issues and visiting rights.

On average, individual interviews were 77 minutes long, with a range from 42 to 140 minutes. In most of the interviews, the level of confidence was high (in a scale of high-medium-low), in 46 out of 51. In the remaining 5 interviews the level of confidence was medium (4 of them were in the social professionals group). 41 of the interviews which had a high level of confidence had also high level of confidentiality. Altogether, the confidentiality was high in 45 interviews. In 5 interviews the confidentiality was described as medium and in 1 as low. These 6 participants were all in the social professionals group. In most of the interviews, the number of interruptions during the interview was low, all in all in 40 out of the 51. There was a medium number of interruptions in 8 interviews (5 from the legal profession group) and a high amount in 3 interviews (all from the legal profession group).

In addition to these interviews focus groups were also carried out. One was conducted in Tallinn and one in Tartu. The Tallinn focus group interview focused on criminal justice and included 6 participants, 5 women and 1 man, all in the age group of 26 to 45. Except of one person who was working in a social profession as a victim support specialist, all participants worked in a legal profession. Two of them were lawyers; one was a prosecutor; one court staff; and one law enforcement official. The participation and the involvement in the interview were considered high. The Tartu focus group interview was on civil justice issues and consisted of 6 persons. All were women between ages of 26 and 45. Half (3) of them belonged to the legal professionals group as lawyers (2 of them) and as a judge. The social professionals included 2 social workers and one victim support chief specialist. In general, all the participants were involved in the discussion, although the representatives belonging to the legal profession group were somewhat more active than the others. In both focus group interviews, the confidentiality and level of confidence are regarded as high. Focus group on criminal justice lasted for 1 hour and 44 minutes and civil justice focus group for 2 hours and 5 minutes.

Differences between the groups of professionals are fairly distinguishable from the nature of the content of their interviews. Legal professionals tended to describe the process itself, rather than the impact on the child, while social professionals were more worried about the child's mental wellbeing and other related psycho-social problems. A third category can also be distinguished in the sample, one of psychologists. As a rule they did not seem to be very well aware of the whole process, but were more knowledgeable about how children were mentally affected. Psychologists also emphasized more than the others that trainings, supervisions and education was needed by all officials and social personnel working with children in justice proceedings.

1.3. Legal context

1.3.1. The national judiciary structure and courts

There are no specialised courts for youth or family law, which means that cases involving minors are heard by all courts. The general structure of judiciary consists of three instances: administrative courts (*halduskohus*) and county courts (*maakohus*), which hear civil, criminal and misdemeanour matters are the

first instance courts, and Supreme Court (*Riigikohus*). Judgments from the first instance courts can be appealed to the circuit courts (*ringkonnakohus*). The Supreme Court is the highest court and gives judgments on cassation appeals.

To compensate for the lack of separate family courts or courts dealing with minors, judges and prosecutors are provided with specialised training on how to conduct proceedings that involve minors.

1.3.2. Civil proceedings

Legal professionals interviewed were adequately informed of the laws and regulations guiding child hearings, and the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) was quoted specifically as the basis for child hearings in half of the interviews. Where explicitly not quoted, legal professionals correctly identified the age limits set out by the Code - a minor who is at least 10 years of age must be heard by the court in family law cases, whereas if found necessary, the court can hear younger children as well (§ 5521). The right of a minor, who is at least 14 years old, to petition in matters pertaining to his or her person, was mentioned by only two interviewees. The Family Law Act (*Perekonnaseadus*) was cited by one interviewee as setting the principle that all procedures involving minor should always be based on the child's best interests. All legal professionals underlined that the law does not specify who has to be or can be present at child hearings, and therefore this is left in the judges' discretion, and different individual practices have developed (as a rule, only the judge and child are present; in addition, all interviewed judges have the practice of excluding parents from the hearings, as the presence of parents may influence the child, who might not feel free to express his/her true feeling). All interviewees failed to mention the Code of Civil Procedure (§5521 (1)) provision that allows the involvement of a psychiatrist, psychologist or social worker or any other person that the child or his/her legal representative does not object to, in family law related hearings. Furthermore, none of the interviewees mentions the practice of involving social professionals in civil proceedings. The same provision also stipulates that children can be heard in an environment familiar to them (at schools, kindergartens), which is not specifically mentioned by the interviewees as a legal right, but usually mentioned as a common practice. Additionally, one quarter of the legal professionals interviewed mentioned that judges can appoint a state legal representative to present and defend the child's interests in the court room.

All interviewees accurately report that there are no laws regulating how children should be informed in civil proceedings. The responsibility to inform and prepare children for hearings is placed on legal guardians. As a general practice, legal professionals introduce and explain the proceedings to children upon meeting them; this is done in a manner deemed appropriate with their age and level of development. As for legal elements, only three interviewees mentioned the Family Law Act being revised, and one interviewee noted ongoing work on the Child Protection Act (*Eesti Vabariigi lastekaitse seadus*) by the Ministry of Social Affairs (*Sotsiaalministeerium*). Since all changes to these laws are still in progress, the interviewees could not comment on possible future developments.

As for legal developments, half of the legal professionals in civil proceedings mentioned some kind of an ongoing reform. Reforms to the Child Protection Act and work on a new law – Family Reconciliation Act (*Perelepituse seadus*) – procedure was mentioned once, whereas three interviewees mentioned changes to the Family Law Act. A quarter of the social professionals interviewed were aware of the ongoing reforms and legal developments. The planned new Child Protection Act was mentioned by three professionals, whereas only one mentioned the planned Family Reconciliation.

1.3.3. Criminal proceedings

Legal professionals working in criminal law were best informed of all interviewees, with all participants quoting the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), §70 in particular was highlighted as laying out the principles for child hearings. All professionals also identified correctly regulations guiding child hearings, underlining that there is no minimum age limit set, but all children can be heard in criminal proceedings.

Interviewees were aware that investigators conducting child hearings in pre-trial hearings are required to have special training to work with children (otherwise, it is mandatory to include a child protection services official, social worker, pedagogue or a psychologist in the hearing). Since there is no minimum age limit, the decision if a child is capable of comprehending the proceedings and testifying remains with the investigator, although, if necessary experts can be included to give an assessment on the child in question. Most interviewees also pointed out that children have the right to refuse testifying against close family members, an option which, according to the interviewees, is seldom used.

It was stressed that since 2011, the laws governing child hearings have been amended to allow videotaping of child hearings (§ 70(3)). The reforms aimed to limit the stress caused to children when called to court for testimony, since video-taped hearings can be used as evidence in court. The professionals, however, noted that the suspect has the right to pose his/her own questions to the witnesses, which may necessitate additional hearings. In addition, witnesses are required to watch the recording after their hearing §150(2), which the investigators have found to be a stressful and negative practice. When explaining the trial-stage of criminal procedures, judges pointed out that child witnesses cannot be cross-examined in court, but all questions are asked through the judge. Additionally they underlined that in order to protect children, court hearings can be declared closed to all third persons.

Since the Code of Criminal Procedure does not specify how, when or to what extent children have to be informed of proceedings, the general provisions of the Code are applied to children, which states that witnesses and victims have to be informed of their rights and obligations. Interviewees unanimously stated that the first information about hearings is given to children by their parents, except if the parents are suspects, in which case first contact is made through school (pedagogue or psychologist). The investigators interviewed explained that children are informed of the case and proceedings at the beginning of hearings, and if the hearing is video-taped, children are notified of this. Some prosecutors also mentioned that they inform children under the age of 15 that they should speak the truth (from the age of 15 starts criminal liability).

Legal professionals appeared to be quite well informed of the legal developments in the field. Approximately half of the interviewees mentioned some kind of reforms or planned reforms. One interviewee mentioned the European Union directive being transposed into Estonian law (concerning child pornography), other interviewees mentioned planned changes to the Child Protection Act. One interviewee also noted on ongoing work on guidelines concerning close relationship violence (set of guidelines on how to work with children who have suffered violence by a close family member). Social professionals were less informed in terms of ongoing legal developments. Only a quarter of professionals were aware of ongoing changes to laws and regulations, and the new Child Protection Act was identified as the only major change in legal framework. Overall, legal professionals working in criminal law appeared to be best informed of ongoing reforms, whereas social professionals were considerably less aware of possible future changes in laws and regulations.

2. Findings

2.1. Right to be heard

2.1.1. Right to be heard in the criminal justice field

The interviews conducted with legal and social professionals working in criminal proceedings involving children focused on minors in the roles of victims and witnesses. The only reference to children in the role of suspects was made when noting that the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) foresaw the same treatment and process for all children regardless of their role in the proceedings. Primarily the interviewees discussed sexual and domestic abuse cases, while other types of criminal cases were significantly less mentioned during the interviews.

As noted, the Code of Criminal Procedure is the basis for all criminal proceedings involving children. All of the interviewed legal professionals were aware of the laws regulating pre-trial and trial hearings of minors. However, social professionals knew less about the specific laws regulating child hearings - only one social professional mentioned the Code of Criminal Procedure. Psychologists and victim support specialists working outside the legal framework could not mention any regulations that guide their work. Rather, they rely on scientific methods, which are shared among practitioners, as well as social work methods and professional experience. It is also important to note that throughout criminal proceedings social professionals are more involved in the initial pre-trial stage, and overall have a secondary role to legal professionals who are seen as the gatekeepers in all stages.

Overall the interviewees found that both the pre-trial and trial process intimidated and traumatized children, and the goal of relevant laws and regulations is seen as to limit the stress caused by the investigation and hearing procedure. Although laws set age limits and age is used to define how and to what extent children of a certain age have to be protected, the professionals involved (both legal and social) underline that more often than not the age of a minor is of secondary importance, whereas the personality and the level of development, but also the skills and professionalism of the investigator, have a more important role in how well a child cooperates during an investigation and in the trial stage. Additionally, both social professionals and investigators stressed four main factors that influence minors during these procedures: the language used, the setting (rooms), the people present and the nature of the case. Judges and prosecutors, as actors who come into the process at a later stage and for a more limited time, did not underline these factors specifically but alluded to these aspects. For example, both prosecutors and judges expressed concern over the physical arrangements of courtrooms and the effect these official-looking rooms have on children.

All professionals emphasised that it is important to assess the mental level and development of the child at the beginning of the investigation hearing, and address the child appropriately. Asking too complicated questions, using professional jargon or talking to a teenager like she/he were a child are three factors that can lead to mistrust and unsuccessful hearings. In addition, the appearance of investigators was considered important, and investigators explained that they do not wear uniforms to child hearings. Furthermore, as children are often scared of strangers, both investigators and social professionals made a particular point of introducing themselves to the children before the hearing in order to establish a trusting, open relationship with the child. As a good practice, one of the legal professionals described meeting children a day or two before the hearing, introducing the child to the building, rooms and colleagues working in the police department, all this to create a trusting relationship with the child and to ensure productive hearing process. Even though not widely practiced, introduction to rooms and people involved was suggested by a number of social professionals as a practice that should be encouraged. This element of creating a trust relationship and introducing themselves to the child was not mentioned by judges, which in part may explain the intimidating nature of court hearings.

Pre-trial investigation usually takes place in the Police and Border Guard Board's (*Politsei- ja Piirivalveamet, PPA*) offices that are specially furnished for child hearings. As a rule the rooms include toys for children to play with, anatomical dolls that can be used for collecting evidence and video recorders for taping child hearings for later use in court. Three interviewees noted the lack of special rooms for hearing children in the local police offices. In these instances hearings take place in ordinary investigation rooms or investigators' offices. All three interviewees found it necessary to have a special room designed for child hearings. However, there are measures taken to make hearings more child-friendly, such as a separate entrance for especially traumatised children at the back of the building of Tartumaa Victim Support Center (*Tartumaa Ohvriabikeskus*).

Pre-trial hearings usually include only the investigator and the child in question (social professionals can also be included). However, it is preferred to have a specially trained professional to conduct the hearing, as one of the interviewees stressed, *"If an officer lacks this special training, the specialist mentioned before [social professionals] has to be present, and this is actually completely wrong, because it disturbs achieving good contact with the child. A small child will not talk about her sexual abuse to two adults as easily as to only one"*.

Parents are not allowed to be present if the case pertains to domestic abuse or sexual abuse cases as they distract and also can influence the child and his/her testimony. As one of the legal professionals explains, *"Parents are definitely not included in the hearings if it's obvious that the parent has not acted in the best interests of the child. This is because, to be clear, in sexual abuse cases, approximately 80 per cent of the cases where the father or step father has been the abuser, then the mother doesn't side with the child, but instead starts accusing the child"*. Exceptions are made when children refuse to cooperate without the presence of the parent and when it is certain that the child has not been harmed/abused by the parent (this exception has been mentioned in two separate interviews, in both cases, mothers were allowed to stay in the room although they were instructed not to ask any questions from the child). In addition, one victim support person reported that she/he had been allowed to remain with the child for the duration of the hearing, as she/he was the child's trust person, and the child refused to testify without his/her presence. A social professional also mentioned one case as a good practice where a lawyer visiting a shelter to interview the child, allowed the child's friend to be present, so as to help the victim feel at ease. Therefore, although there are rules on how to conduct child hearings, they are flexible enough to accommodate children's wishes and needs. Overall, the child-friendliness of investigation was attributed both by social professionals as well as investigators to the skills and professionalism of the investigator in charge of the case. Social professionals, if included, are often attributed secondary supportive roles, as they are often only in the room to monitor the child. Although by law prosecutors are allowed to be present in pre-trial hearings, this is seldom in practice. Only one interviewee mentioned the presence of a prosecutor in a pre-trial hearing.

The length of the hearing depends on the case and on the child. The younger the child, the shorter the hearing (approximately 15-20 minutes). Among older children the hearing lasts usually from 30 minutes to one hour.

According to the interviewees, none of the courtrooms in Estonia have rooms specifically designed for child hearings. Therefore, if a child is called to court, the hearing takes place in official courtrooms, which are deemed to be intimidating and stressful for children, not only because of the physical appearance of the room but also because of the large number of people involved and present at the hearing, which children might find intimidating. The appearance of courtrooms further reinforces the negative emotions children associate with court hearings. As a legal professional explains, *"Child will get another trauma when he or she has to go to hearing again. Usually child is already overcoming the situation and trauma, time has passed, and then the case gets finally to court and all starts over again. This is horribly complicated"*. Almost all interviewees specifically underlined the need for separate and special rooms at court houses where child hearings could

take place. None of the interviewees viewed court room hearings as a positive experience for children; rather, if at all possible this should be avoided. In addition both social professionals and legal professionals agreed that specially equipped and furnished child friendly rooms in police stations are a great example of how proceedings have become more child friendly. Although all interviewees noted that considerable improvements have been achieved over the last decade, more can be done, one legal professional mentioned Children's Houses. The interviewee stressed that this would be a very welcome step forward in protecting children and their rights as the building (developed by the Norwegian government) would allow children to be heard in special and separate buildings – judges can go and question children in the rooms provided in the house and the questioning would be broadcasted to the courtroom.

To protect children in the trial stage, the names of the children involved are not published on the court's website and only name initials are used. The court sessions can be declared closed either for the entire length of the proceeding or for the time child is heard. Closed session means that only legal representatives, legal guardians, and a social professional can remain in the room, and media is not allowed to attend the court session. In more serious cases, restraining orders can be used, so as to protect children from possible harm.

Five interviewees mentioned the use of video conferencing in trial hearings in Tartu and one in Jõhvi so as to limit stress caused to children by being in intimidating court rooms and seeing the suspect. The interviewees deemed this to be a helpful practice that could be used more often. Other practices of protecting children in court rooms includes placing a screen between the suspect and the child to visually separate them. Another way of mitigating the effect the suspect may have on the child is suggested by social professionals: a parent or a social worker physically standing between the suspect and the child.

In the courtroom, the role of a child professional remains rather passive. Social professionals in particular underlined that they are not consulted by judges in court room hearings. Social professionals have expressed the wish and drawn attention to the fact that judges should actively use social professionals help in court rooms, and not exclude them, as children often need a support person in the court room. Interestingly, based on the interviews, it was clear that judges would like to have more knowledge and training on how to conduct child hearings, but are perceived by social workers as reluctant to make use of the social professionals' knowledge and skills during the hearings.

Throughout the interviews, children were described as victims and witnesses interchangeably, and both social and legal professionals stressed the need to protect children equally, despite their role in proceedings. Although question about gender of children was asked, none of the interviewees found gender to be an influencing factor in proceedings. In the interviewees' opinion all children are treated equally, and gender does not affect proceedings.

As for language issues, most legal professionals had experience with Russian-speaking children, and noted that courts have Russian translators who can assist during the trial, even though, as it was mentioned on a number of occasions, most judges speak and understand Russian. In pre-trial hearing stage, investigators noted that they prefer not to include a translator and investigators who can speak Russian are assigned to the case where the child speaks Russian. In the latter case, it was explained that including a translator would complicate the hearing process and would not allow for more direct and personal contact. There are also sign-language interpreters available, if necessary. No other languages or ethnic backgrounds were mentioned.

Most interviewees had limited experience with special needs children, although investigators explained that a specialist is included in hearings involving children with speech impairments. Investigators also noted that a family member, such as sister, or a support person could be included in the hearing so as to help to understand the child. In three cases it was mentioned that investigation rooms were not wheelchair accessible, in which case, an alternative room was used. If possible, instead of asking children to come to the police station, investigators visit children instead. One interviewee mentioned that children who live at

orphanage, are usually heard at their place of living since it can be difficult to find people to accompany children to the police station or organize transportation for children. Thus the investigators have tried to make the process easier by going to children's homes, and taking their equipment with them (e.g. anatomical dolls, video cameras). In addition, in the focus group interview all professionals agreed that the flexibility of child hearing laws is the strength of the Estonian system - if necessary, investigators can take their equipment with them and go to the child, if investigator feels that a social professional should be included in the hearing, they can include psychologist to help with the case. Furthermore, one of the focus group participants mentioned that if a child wants to participate in court trial and testify in the court room, children have been given this opportunity. Therefore, the laws are flexible enough to take into account children's personal situation and their will.

All professionals acknowledged that criminal proceedings are overall a stressful experience for children. Therefore, it is surprising that only two victim support specialists and one investigator mentioned the post-trial stage, where they recommended that the victims and the victims' families seek counselling. In one case, a judge mentioned that investigators and other legal professionals involved in criminal cases should also receive counselling due to the very demanding and difficult nature of their work. It seems that the focus is more on the pre-trial and trial periods, whereas the follow-up post-trial does not receive appropriate attention.

On the whole both legal as well as social professionals unanimously agreed that pre-trial investigation and trial processes are stressful experiences, where children are asked to re-tell their traumatic experiences. Therefore, all interviewees underlined the importance of the professional work of all involved specialists, which can potentially limit and alleviate the negative factors children may experience in the process. In particular, children's perception of the police as a penalising organisation was listed as a potential source of stress. A number of social professionals pointed out that children felt uncomfortable testifying when the assaulter is a close family member, as children perceive this as betraying their loved one. At the same time, legal professionals agree that the proceedings have become more child friendly, *"All professionals involved [in proceedings] from different professions have become decidedly more professional. This has happened, let's say, over the last seven years"*.

Although there was an undisputed belief that child hearings are important, this was explained in two different ways. The first and more widely-mentioned reasoning was based on the assumption that when children are the victims they are the source of information, as children are often the only witnesses. As a legal professional argues, *"In cases of sexual offences, the child's testimony may in fact be the only evidence. And then it is of course of major weight. Well, and as a rule children are not interrogated in vain or just in case, so their testimony is given relatively high importance"*. Therefore, children's testimonies are the source of important information; video recordings in particular were considered very helpful, as this allows prosecutors and judges to see the body language and emotion of the child in question. Interviewees who supported this opinion were also more likely to assert that if possible and if other evidence is available, children should be spared from the experience of being involved in criminal proceedings and being subjected to a formal hearing. The second and less common reasoning relied on the argument that children, being full members of the community, have the right to be heard. Interviewees supporting this argument also pointed out that talking about their experiences, although difficult, may have a therapeutic effect for the child. In all cases, the interviewees found child hearings and testimonies to be very important and stressed that they are taken as seriously as that of any adult. Therefore no discrimination based on the age of the witness was revealed. Examples of both reasoning were found in both legal and social professionals' interviews and cannot be attributed to specifically one group.

Both legal and social professionals, investigators and victim support personnel in particular, pointed to the progress that has been made over the last years in building rooms at police offices specially designed for child hearings that include toys, anatomical dolls as well as recording devices, which allow for less stressful

hearing processes. However, some police departments are still lacking these rooms. The practice of video-taping the hearings is mentioned as another positive example, since it means that children can sometimes be spared from appearing in court. As a negative aspect and room for improvement, investigators pointed out that children are required to watch their testimonies, which three investigators found unnecessary and traumatizing. One legal professional expressed the opinion that children should not be required to re-watch their recorded testimonies, and suggests this requirement should be abandoned. In addition, legal professionals found the requirement to create written minutes of recorded testimonies to be a waste of resources. Investigators and prosecutors also mentioned that the police had child protection departments and that investigators can specialize in child-related crimes, which means they have special training, and ensures that only those who are truly motivated work in this area. Specialization and special training allows investigators to hear children without the presence of additional specialists, whose attendance may intimidate children, again helping to make the pre-trial process more professional and less stressful for children.

Judges, prosecutors and focus group participants pointed out that judges should have the option to specialize in child-related law or of family law, so as to allow special training for judges who currently are found to be lacking in child-hearing skills. This system would also allow to solve another problem noted by some interviewees – that of unqualified lawyers who do not know how to approach children or are reluctant or uninterested in working with children.

In addition, a number of legal professionals suggested having special courts for family and children/youth related court cases, as this would allow faster proceedings, child friendlier rooms and atmosphere, as well as quicker solutions to pressing problems. Shortening the time children are compelled to be part of criminal proceedings also limits the stress caused to them. Youth/family law courts also would allow specialised professionals do their work more efficiently.

Although the overall assessment of social workers' qualifications and professionalism was high, professionals from smaller towns and rural areas pointed out that social workers could benefit from more training and experience. At the same time, all social professionals agreed that police investigators that have received special training and are specialised in crimes relating to children, are very professional in their work. Both social and legal professionals noted that the right of qualified police officers to hear children without the presence of social workers is a positive step towards better questioning practices. As noted previously, the only criticism that social professionals made was in relation to court hearings, where social workers or psychologist should be consulted more often to ensure more child-friendly atmosphere.

As a rule, all professionals stressed the need to protect children regardless of the children's role in the proceedings. Interestingly, both social and legal professionals understood the need to protect children not so much from physical harm (for this restraining orders were suggested), but rather the protection of children's mental wellbeing was stressed throughout the interviews. Both groups mentioned courtroom hearings as damaging or harming, whereas pre-trial hearings received more positive comments. To this end, special rooms in police stations have considerably helped the situation, whereas courts have been more reluctant to change and accommodate children and their needs.

Police officers specialised in crimes against children are seen as a positive example, and some professionals expressed the hope that courts and judges would follow the example.

Although overall legal and social professionals agree where the problematic aspects lie, social professionals, child protection officials and victim support specialists in particular, emphasised that the judges unwillingness to use their help in court room hearings can damage and harm children. Social professionals considered this to be unprofessional behaviour in the judges' part and would like to have a more prominent role in court hearings (e.g. be consulted on what kind of questions lawyers can ask from children, be allowed to be physically next to the children for encouragement).

2.1.2. Right to be heard in the civil justice field

In civil justice proceedings, the majority of professionals interviewed in Estonia supported the importance of the right of child to be heard. The process of hearing a child was seen as a very important instrument for the outcome of the proceeding as children's opinions always deserve to be heard. This opinion was prevalent among majority of the professionals interviewed. On the other hand, hearing a child was also seen important because explaining and expressing his/her thoughts can have a therapeutic effect on children. This means that in civil cases (but also in criminal cases, see paragraph 2.1.1. above) the possibility to speak out or to communicate the feelings itself has a relaxing and problem-solving effect on a child.

However, as an overall assessment of the practices of child hearing, the majority of interviewees hold the opinion that whereas a child's opinion must be heard, their views do not always have a direct effect on the outcome of the proceeding. Respondents argued that decisions of the cases couldn't be based *only* on the child hearings, although they prove valuable in situations where parents provide conflicting information. Approximately half of the professionals in the civil justice field expressed some caution when considering child opinion as "pure facts". In this regard, a clear pattern emerged from the interviews that besides hearing a child, also the "*objective truth*", "*real*" or "*true opinion*" of the child must be identified. Or, as it was ironically said by one of the professionals "*The children's opinions are taken little into account, because adults always know what is better for the children*". Examples from custody cases were given where a child chooses the father as his/her parent to stay with, primarily because the father has a new car, big house or has bought the child a new computer. It was also mentioned several times that during the hearings children speak emotionally, so that they may say one thing but mean something else. Therefore for the best of the child, the ways of asking and the skills of the persons who are conducting the interviews are of utmost importance, and this was clearly reflected among most of the interviewees.¹ As a result in civil justice proceedings, the opinion of children is heard and taken into account, but quite often it is not the main argument when deciding the case.

In Estonia, there are no general or universal rules applicable to all specialists for conducting child hearings. The lack of special rules or manuals was brought up by at least two thirds of the interviewed professionals. The only rules applying to child hearings mentioned by approximately half of the interviewees related to the age of the children (e.g. if the child is younger than 14, then he or she is not expected to speak the truth; the child is not expected to give evidences against one's close relatives; in cases of custody, a child who is at least 7 years old has to be heard by the court, in other disputes regarding guardianship a 10-year-old child has to be heard; the child does not have a right to decline the call to be heard by the judge etc.).² This awareness was much higher among legal professionals than among social professionals. Only one sixth of the interviewed social professionals had some knowledge of the questionnaire developed by the Estonian Ministry of Social Affairs (*Sotsiaalministeerium*) for evaluating children and the family (*Lapse ja perekonna hindamise juhend*).³ However only some interviewees indicated that this manual is actively in use. One lawyer stated that the manual is: "[...] *so long and do not work out in practice at all. Nobody pays any attention to it because it takes up so much time and then [name] has drawn up a shorter [version] so that*

¹ As it was emphasised in three interviews, one cannot ask directly with which parent the child prefers to stay with. Instead, the question should be asked more subtly. For instance, asking how the child names a parent's partner living with them, or making up situations to see whether the child understands the difference between "father" and "uncle Martin".

² The judges rely on the case law set by the Estonian Supreme Court (*Riigikohus*) and the Code of Civil Procedure (*Kriminaalseadustik*), which however does not stipulate any special regulations or procedures for child hearings.

³ Estonian Ministry of Social Affairs (2009) "Lapse ja perekonna hindamine" ("Guide for child and family assessment").

the [assessment] could work, because otherwise there are no rules and decisions are made based on personal experience. Everybody does this. This is the greatest problem. The courts, the child protection officials, it is no secret; also the child's lawyers".

Child hearings are thus carried out and depend much on the education and previous professional experience of the specialist, also on the "common sense", on the procedures which have emerged from the practice and are developed with time, as well as from the special training on how to conduct child hearings. In a few cases, organisations have also developed their own, internal rules for the hearings. The main conclusion can be drawn that there are some rules that are known by all the professionals regarding *when* to conduct hearings and *whom* to inform in case there is a need to hear a child. Whereas rules on *how* to conduct the hearings with children (either pre-court or in court) are almost non-existent and the skills and knowledge come mainly from the personal practices and professional experience of the specialist involved. In court it is up to the judge's preferences how to hear a child (who can be present during the hearing etc), and thus the practices may vary from one court to another.

However, in focus group the participants also pointed out that especially among judges or lawyers the ability to conduct child hearings very largely and often depend on personality. As noted by one of the participant's in civil justice focus group: *"Let me put it straight - I feel that the first thing I need to look at is who is the judge and who is the lawyer, that is what determines the amount of work I need to put in, if I need to do the job of the child's lawyer, because he is not competent enough or he just does not want to, maybe he's not paid enough, whatever. And then there's the judge - if I must bring forth some applications or will the judge himself be active. A pure lottery."*

In civil justice proceedings, the hearing of a child takes place usually in a neutral ground or in places familiar to the child. It was generally agreed among the interviewed professionals that if possible, the children should be heard outside the city government office or courtroom. This was explained by the overall fear of courts among Estonian people and by the intimidating feel of the courtroom, especially for children. In majority of the cases interviewees mentioned that the judge's rooms are not set up well for hearing children nor do the courts have special rooms for children. However, a social worker shared an experience in a focus group interview where the child was heard alone in the courtroom, *"sadly, in October there was an instance where a 10-year old's hearing was held without the parent present, even I was kicked out - and there he was, alone in the big room, the judge behind his large table."*

In practice, depending on the age of the child, the hearings take place at home (when the child is very young), at the office of the child protection worker or victim support specialist (when the child is already older), or at the courthouse (usually not in the courtroom but at the office of the judge).⁴ In some organisations there is a special room for hearing a child, however in most of the cases the child is being heard at the same office where the specialist her/himself is working – a standard office with a comfortable sitting place in the corner, some drawings on the walls and toys at the table. Visiting and hearing a child in a school or kindergarten environment is also used quite frequently (mentioned approx. in 1/5 of the interviews), because this helps to avoid direct manipulation by the parents.

In many cases (in Tartu, Tallinn and in Pärnu) judges have conducted hearings of children in shopping centres, at playgrounds, schools or kindergartens. There is, however, conflicting evidence on this matter, because according to some interviewed lawyers and as discussed in focus group, in civil cases judges always went to see the child outside the court, while others indicated that children usually are heard in court (in the judge's room). Interviewed judges themselves did not always present consistent statements in this

⁴ There was only one case reported among the interviews when the judge visited child at home. Generally homes are avoided as they do not provide a neutral space for hearings.

regard. While one judge commented that he/she never hears children at home or at the kindergarten since they are not neutral environments, others were more flexible. Visiting children in neutral places is mostly considered as a good practice among professionals, since it helps children to alleviate the fear which derives from hearing him/her in unfamiliar and sometimes authoritarian (i.e. courthouse, police department) setting.

People attending the hearings were mostly child protection specialist or victim support specialist, and when cases went to court, also judge and lawyer. In pre-hearing, conversations were carried out only with a child protection specialist, victim support specialist or psychologist being present. Usually the parents are not attending the hearing (or observation when the child is too young), however, in most of the cases the parent's consent is taken and the parents are informed about the hearing. In some instances specialists make home visits repeatedly to see the child with both parents separately. In most of the cases described in the interviews, the child was heard before the case went to court, and if the case was taken to court, the child doesn't have to be heard again there (but if the judge demands it, then child has to appear for a hearing in the court). The role of the child protection specialists in the hearing process is not only to hear the children, but also to mediate the conflict between the parents for example in cases of custody rights. If the parents cannot agree on the custody, then the child protection specialists start collecting data and materials to be submitted to the court: this involves hearing the child, visiting both homes and formulating the opinion for the court. Sometimes it also includes technical work such as collecting necessary signatures that all parties agree on the process (hearing etc.). As the child protection specialists wish to see the child with both parents separately, they usually make more than one house visit.

When the case goes to court, e.g. in custody disputes, the child protection specialist is usually present. Some interviews also mentioned that there were two child protection specialists involved in the proceeding. These were cases where the parents lived in different local governments so two child protection specialists were involved: one from the mother's and the other from the father's local government. Sometimes a special child's representative is involved in court, whose duty is to consider the wishes of the child and not to advocate for either parent. Usually the hearings conducted by judge are done alone with the child.

Child hearings in pre-court proceedings last from 15 minutes to two hours. In most cases described by interviewees, the hearing takes less than one hour. If it lasts longer, breaks every 30 minutes are seen as necessary (depending on the age and maturity of the child). Hearings in court last for 15-30 minutes. It was also emphasised that it is of utmost importance to listen to a child only once.⁵ Even though most of the professionals emphasised that the children should be spared as much as possible from lengthy and tiring hearings, then the current average length of the hearings (approximately one hour +/- half an hour) did not seem to be problematic among most professionals. It was also pointed out as a concern in civil justice focus group, both among social and legal professionals, that children are sometimes heard/questioned by too many people (e.g. by four or five persons). As a consequence, she/he may get tired or even upset when the next persons comes and asks the same or similar questions all over again. Lack of rules of how and what kind of questions should be asked during the hearing was pointed out by one lawyer as a one factor behind this kind of situation.⁶

⁵ In civil justice focus group, one participant proposed a good practice from Norway, which helps to avoid hearing a child many times or by different specialists. In Norway there is a system of observation rooms, where a family comes in for two hours to present their daily routine: just like a normal family, they play, do something with the child. Then it is possible to observe how the family deals with one-another and develop an opinion based on that.

⁶ However, in some cases the interviewees pointed out that the workload of police, juvenile police and prosecutors is very hard, therefore setting up some kind of rules would make things more difficult and slower - instead of making more rules, more man-hours are needed (e.g. hiring more people instead of making more rules).

With respect to background variables such as different age groups, the interviewees tended to have similar views regarding the child participation in hearings. Approximately half of the interviewees pointed out that there is a big difference when speaking with a five, 10 or 15 year old child. Methods applied to older age groups may not work on younger age groups, and vice versa. Some respondents further added that age might not always be the determining factor, since the maturity levels of children also tend to vary greatly – with some 10 years old's one can discuss issues similarly as to grownups.⁷ However, the skills, knowledge and experience of the persons who are conducting the hearing are seen as very important, because from time to time, the interviewees themselves have to fall to 5-years old level to 'reach' the child –such as by drawing or playing games.

There is rather limited experience with special needs children among the interviewed professionals. Approximately one fifth of the professionals shared their experience on this area. In these cases, the disability is usually taken into account when hearing a child. Most child support specialists noted that if there is an intellectual development problem or psychiatric problem, relevant specialists (psychologist, support person, sign language interpreter, teacher accustomed with the child etc.) would be involved at a very early stage in the process. In a few cases and in smaller towns it was noted that since there are no elevators in the building, physically disabled children are not heard at the designated areas, but in other rooms at the first floor.

Three interviewees raised a concern that "visible disability" (e.g. wheelchair) and medical certificates are easy to be taken into account when conducting hearings, however there have been cases of children with psychological trauma that should have received special treatment because of their special needs, but which has not been the case since these "hidden" needs are not so easily understood by a specialist. This has led to negative consequences, such as the child 'shutting down' during the hearing and not answering questions. The lack of skills and knowledge to handle these cases adequately and the uncertainty whether the specialists involved in the case can realize if the child has special needs or not, was also raised in civil justice focus group by one judge.

Another frequently named background variable is the language of a child. In the Estonian context, the majority of cases that are conducted in a language other than Estonian are with Russian-speaking children. In most of these cases an interpreter is used or the professionals themselves have been able to communicate with the child in his/her mother tongue.⁸

Considering these three main background variables together – age, disability and language of the child – it can be concluded that although there are no major obstacles for handling these different types of cases of children with different background (i.e. their background is taken into account, based on the experience of the professional), there are also no special rules or guidelines available and in use. An individual approach is used based on the specialist's own better judgement. In the words of one social worker "*it would be reasonable to have some kind of principles of it for those who have no preparation for it. But it must be case-specific, child's peculiarity, of his/her age. Every child is a person, what might work with one child may not work with the other.*"

The interviewees' assessment of the impact of the hearing and proceeding on the child was somewhat ambiguous. There seems to be general agreement among most of the professionals that while hearings are important, the process is always stressful for the child. Some cases include their own specifics that can leave

⁷ It should also be mentioned that the age of 14 is an important milestone after which one cannot give custody rights without child's preferences.

⁸ It was stressed by a psychologist who works in the city with a majority of Russian-speaking population, that if an interpreter is to be used (e.g. for translating the psychologist) it is very important that the interpreter is able to replicate (almost imitate) the tone and voice of the psychologist.

a child feeling guilty (for example divorces),⁹ or put a child into a position where they must choose between parents (i.e. custody issues). Children often feel loyalty to both parents and do not want to betray either of them. This is similar to domestic violence cases where the child feels her/himself as a traitor (see above in paragraph 2.1.1.). Proceedings have their impact on the child's emotional state, as explained by some interviewees, and if the events of the proceeding have been traumatic, this may leave emotional scars on the child for the rest of their life.

In order to mitigate these sentiments, a majority of the interviewees shared the opinion that a child must leave the hearing emotionally stable and in a good mood. Good practices as shared by the interviewees are to explain to a child the process and what is going to happen next and to make the child understand that he/she is not "the bad one" in the proceeding. When the process ends in a court room, then one should ease the fear of court by describing the judge as an ordinary person and explain to the child that information given by him/her will not harm him/her later. Another example of good practices was brought in the example of a child-friendly judge, who meets children usually outside the courtroom in a friendlier environment.

Good practices for conducting the hearing were usually recommendations to always keep in mind the age and the development of a given child. Also, using drawing or playing with toys to get to know each other and create mutual trust have all been suggested by the interviewees. With older children the connection could be made when speaking about favourite movies, future jobs etc. Two judges mentioned using Skype video-conferences or internet options to hear children who are abroad.

There were several areas for improvement identified by the interviewees. It was mentioned in two separate interviews in two different cities (in Tartu and Pärnu) by child protection specialists that their own child protection specialists have to deal with almost everything (with very different issues), whereas in Tallinn the specialists can specialise in cases – one child protection specialist is dealing with custody issues, other deals with school issues etc. However, Tallinn child protection specialists claimed they also have to deal with all kinds of cases with no specialisation.¹⁰ It was quite common notion among the social professionals that the system of social services is overloaded with cases (especially in bigger cities such as Tallinn, Tartu, Pärnu) and there is a lack of specialists working in the field, however, it did not come out from the interviewees as if it influences the quality of services offered regarding the children.

Majority of social professionals have participated in trainings (see more in paragraph 2.3.) and received trainings on different areas (child development etc.). However, most commonly it was stressed the need for a comprehensive training on children's participation in hearings: how children's developmental aspects, psychology and legal aspects can be taken into account and how to address them, and how to deal with children with mental or physical disabilities. Also the need for courses focusing on the changes in the legislation was emphasised among social professionals, among legal professionals this need was not so relevant. It was also pointed out in civil justice focus group that trainings that both legal and social professionals can attend together would be very useful and beneficial.

The specialisation issue was also discussed in the civil justice focus group, where the participants saw it as a problem that there are no requirements for experience or education for the lawyers to represent a child in court. There is a list of lawyers who are willing to offer state legal assistance, and it was argued by the

⁹ Or cases, where divorcing parents try to "split" children, which was viewed by one interviewee as an especially damaging experience for a child.

¹⁰ It was explained that the latter allows one specialist to deal with a case from the beginning till the end and also provides specialists experience in all areas allowing also substituting each other in case of a need.

participants that it is relatively random who represents the child.¹¹ The system chooses lawyers automatically, in the sequence and in principle "who is next on the list". However, as some participants pointed out during the discussion, those lawyers to whom the system offers a case, may not have any previous experience in the family matters (or not much overall experience in general). Earlier there was specialization to a certain degree and lawyers were chosen by judge according to their experiences and skills to work with children.

Another potential area for improvement relates to the overall competence of different parties present in child hearings. In a few cases it was mentioned that the parent's lawyers do not always focus on the well-being of the child, but only represent the parents' interests. In another case the victim support specialist shared the disappointment over the court decision for giving out 50-50 custody rights to both parents, which in the view of the interviewee was due to fact that one parent had a better lawyer than the other: *"The court decided that the child will live with either parent over a week. I think that court decided so because the mother had a better lawyer. I take it as child abuse. We do not have a right to appeal"*. The lack of empathy by some judges and therefore unfriendliness towards a child in the proceeding was mentioned also in other interviews.

The interviews with professionals in the civil justice field revealed some interesting issues, which due to the lack of supporting material from other interviews remained open or ambiguous. However, these statements may deserve further examination:

- parent's separations are getting more unpleasant than before;
- divorces and custody cases have been increasing in recent years (mentioned by two respondents);

2.1.3. Concluding assessments on the right to be heard

Both in the civil and criminal justice fields, a large majority of the professionals regard hearing a child very important. It is also similarly stated among both groups of professionals in both justice fields that pre-court and court process can be very intimidating and traumatising for the child. Therefore, the child must be heard as minimally as possible. However, in the criminal justice field, the child's right to be heard is more often explained by the need that sometimes the child is the only witness in the case, and thus, a valuable source of information. On the other hand, there were some views, mostly among social professionals and in civil justice field, that children's views are not always considered solely decisive elements in the process, because they may not be objective as the only source of "truth", depending on the age and maturity of the children.

As a common understanding, all interviewees pointed out that children should be spared of going to court.¹² In civil and criminal justice fields and among most of the professionals, Estonian courtrooms are seen as intimidating for the children.

Both in criminal and civil justice, legal professionals are more aware of the laws and rules regulating hearings, especially in the criminal justice field. Within civil justice, most professionals conclude that there are no explicit rules or procedures to follow of how to conduct the hearings, and if there are, they are not followed in practice. In this regard, both in the criminal and civil justice field, professionals tend to put

¹¹ This system is operating since 2007. There have been also some minor discussion and suggestions (among lawyers in the Bar) regarding the change in a system, that in the family proceedings not every lawyer could deal with these cases, but only those with certain training. The only drawback would be that there would be many lawyers who say they want to do that, but they are not able to service them all.

¹² One judge even brought out the idea of having a special group of experts who would decide if the child physically has to go to court or not.

great emphasis on a persons' skills and previous experience when conducting hearings. With regard to background variables, age is almost always taken into account when conducting the hearing, however in both fields the professionals argue that child's maturity, not only age, must be considered. Other main variables are language and disabilities, which are normally solved without any problems. The main challenge in both fields is related to the lack of wheelchair accessibility to some hearing locations. In rural areas (and in most of the courts also in urban areas), there are no special rooms for hearing children which is problematic because courtrooms are considered to be intimidating in both fields. In criminal justice, the rooms for hearing children are usually separate rooms, when compared to civil justice, where children are heard in various places such as the corner of the office of the respective professional (e.g. child protection specialist, psychologist), and in school or at home. Hearing children in school or at home relates to both justice fields.

Hearings in neutral places were usually mentioned in relation with legal professionals (judges, prosecutors, lawyers), who from time to time use the possibility to hear the child out on neutral territory (for example in shopping malls). However, some judges do not use these methods, and therefore there are no certain rules that for example in Tallinn the hearings take place this way and in Tartu that way. Cases where judges have gone to hear children out in neutral territory were mentioned in Tallinn, Tartu, Pärnu. In general, this tendency is viewed as positive and good practice among most of the professionals who have mentioned this issue.

Problematic in both areas is the post-trial stage of the proceedings, for example counselling. This was rarely mentioned in both fields. Despite the fact, that most of the professionals consider hearings to be stressful if not very negative experience for the child.

One of the main changes related with child hearing since year 2011 is that whereas previously a psychologist or victims support specialist could carry out questioning in sexual abuse cases with a police officer present, now this approach is forbidden. Now, a police officer with special training must perform the hearing, but for example psychologist *can* be present (previously he/she *had* to). It was caused by a change in law that a child psychologist is not an investigator – he/she cannot do such procedures. However, in practice the investigators still ask psychologist or victim support specialists to provide expert opinion on the matter. The opinions on this change are mixed – some social professionals saw it necessary children to have, besides the prosecutor or investigator who is conducting the hearing, a possibility to have someone next to him/her during the hearing who can provide psychological support if needed. Some legal professionals however were on the opinion, that the fewer people are involved in the process of hearing, the better for the children.

2.2. Right to information

2.2.1. Right to be informed in the criminal justice field

Clear pattern emerges with the legal professionals performing an active role in informing children in the pre-trial and trial stages of criminal procedures. There was a considerable overlap among the social professionals working in criminal and civil proceedings, and their role in both types of proceedings can be said to be the same – provide psychological support to children and help legal professionals in their work – social professionals assist legal professionals in establishing trusting relationship with children and thereby enable legal professionals to gather reliable information and testimonies. Social professionals perform a number of supporting roles in different stages of proceedings, and can be involved from the very first stages (when a child contacts a victim support professional for help) to the very last (present at court hearings for monitoring, providing information about counselling post-trial). Half of the professionals interviewed stressed the fact that if they meet with the child after the pre-trial hearing, they do not know

how the child was informed, and therefore, cannot assess how much information has been given to the child about the proceedings.

Legal professionals (investigators in particular) emerge as the active participants in informing children in the initial stages of criminal proceedings (pre-trial investigation), whereas prosecutors are responsible for informing children in the trial stage. Judges, in general, are not included in the process of informing children.

Most legal professionals referred to the Code of Criminal Procedure (*Kriminaalmenetluse seadustik*) as the legal basis for rules on informing participants in legal procedures. According to the interviewees, the law does not foresee any special treatment for children, and same rules apply for minors and adults. However, all interviewees directly involved in informing children underlined the fact that since the law does not specify how children have to be informed, general practices have evolved over time, and they can differ to a certain extent from one region to another and depend on the individual investigators involved in criminal cases. A number of legal professional noted that the minimal number of regulations gives specialists flexibility, and is preferable to rigid rules as this allows the practices to be adapted to each individual case and take into account the children's specific circumstances.

Depending on how the police gets involved in the criminal case in the first place, the first people coming into contact with the child may be victim support persons, school councillor/psychologist, child protection service or victim support specialist. Once in pre-trial, first information about the procedure is given by the investigator, who, as a rule, also informs the legal guardians of the child, which can be done via phone, email or letter. It is the legal guardian who then informs the child of the hearing. Stressing that informing children is a vital part of proceedings, a legal professional argued, "*I have asked parents to inform their children why they are coming to this building, because I feel that for a child, it is worst if they don't understand what is going on, when shel/he is taken to some building and is told that you are going to meet with a stranger*".

Informing children is a delicate matter, especially if one of the parents is the suspect, in which case it is better to inform the child directly and not inform the parents. It is possible to have a pre-trial hearing without notifying the legal guardian. In such a case, the invitation to come to hearing is delivered to the child with the help of school psychologist or social pedagogue. Social professionals also noted that there have been cases in which legal guardians, when they were informed, try to influence children by either intimidating or trying to buy them off with gifts, or even try to prevent children from testifying. There have been cases where parents were informed too early, before it had been made clear if the parent(s) was (were) a possible suspect, serious negative consequences followed, where the parent tried to convince the child not to testify. Therefore, informing is done is sensitive matter and depends on each individual case. Thus, the way recommended to limit the information given to legal guardians before pre-trial hearings in situations like this.

The general practice is that the investigator informs children verbally of their procedural rights and that they are not obliged to testify against their close relatives. Depending on the case and the investigator, social professionals can be included in the process of informing. Children over the age of 14 are also warned against giving false testimony; younger children are simply explained that they should not lie to the investigators. All professionals emphasised the practice of explaining children not to lie. Both legal and social professionals stressed that information should be given in a way that is in accordance with the level of development of a child (which does not necessarily depend on the age of the child). Informing should be done in a friendly manner using simple language, and the child should be made to understand the importance and significance of the hearing. As a possible way of improving the process, it was noted that there could be a separate professional, or allow social professionals to act as someone who takes time to explain the rules and procedures to children, go through all the necessary information and answer questions in an understandable manner. Roundtable discussion also noted on a possible practice from

Germany, where there is a separate specialist working in court who introduces children to the court room and helps children familiarise themselves with and understand the rules of proceedings.

If the hearing is videotaped, children are informed and explained why it is being recorded and who has the right to see it. Social professionals also mentioned that children need assurance that they are doing the right thing, as they often feel uncertain when testifying (especially against another family member). In addition, the roundtable discussions revealed that more should be done to assure children that their secrets (details of their life they deem embarrassing) do not get out, that their friends at school will not find out - children need to know they can trust the investigator/ police officer.

In the pre-trial stage, informing usually takes place in the same room as the hearing, although some investigators referred to their practice of meeting children in neutral familiar places first and only then asking them to come to the hearing room. There are no materials (brochures etc) that could be used for informing children, although a number of social professionals stressed the need for special materials targeted for children. In particular, both legal and social professionals emphasised that they would like to be able to use audio-visual aids (such as cartoons) and written materials (such as booklets that could be given to children who can take them home). After the hearing, younger children are informed of the evolving process through their parents. If a child is deemed old enough, he/she can be informed over the phone or via e-mail.

The prosecutors noted that in the trial stage they try to inform children of the procedure by telling them who is involved and why they are being asked to come to a court. Prosecutors usually try to meet a child prior to going to the courtroom, to explain who is present at the hearing and show the rooms themselves. One interviewee also mentioned that she/he had made videotape explaining the courtroom hearing in case she/he cannot meet with a child in advance. However, a court translator noted that in the trial stage, a child is read his/her rights in court in a complicated and confusing manner that may intimidate the child. Overall, all legal professionals acknowledged the need to familiarize children with the physical setting where the hearing takes place, and the people involved. All professionals highlighted that if children are not given enough information and they do not understand what is going on, children become scared, which leads to problems in cooperation and communication. Therefore, one way to guarantee a child friendly and productive hearing is to make sure children fully understand and comprehend what the procedures are and know the people involved.

Both legal and social professionals agreed that children have to be given adequate information and that even very young children are capable of comprehending the rules and the importance of their testimonies. Professionals agreed that younger children do not need to understand the fine legal details, but rather the general process and their role in it. Although children with special needs may need additional help, the investigators remarked that they have used the help of social professionals that has led to successful hearings. None of the interviewees reported a case where they have failed to inform children appropriately or an instance where children were incapable of understanding the situation.

Interviewees agreed that the manner in which children are informed can affect both the child's perception, and by extension, the outcome of the case. Most professionals found that the more information and explanation that is given to children, the better they cooperate. Informed children are more motivated and therefore more likely to give accurate answers and descriptions. Often, if a child understands that she/he can help with a case, she/he is even happy to help and feels useful. Children can see themselves as heroes who help the police by testifying and helping to protect other children.. Therefore, a hearing does not

necessarily have to be a traumatizing experience, if children are informed and helped to see their role in a positive manner.¹³

Victim support specialists do not have an active role in informing children. Since children often bond with victim support specialists, the police investigators have allowed the specialists remain with children for the duration of questioning, and even allowed them to accompany children to court. If victim support specialist becomes a kind of a support person for the child, they can be present at informing and help with informing children rules and proceeding. Victim support specialists assessed their working relationship with the police to be positive and productive, but they were somewhat critical of the ability of some of the police officers to act appropriately in delicate situations. Legal professionals made little reference to victim support, but appeared to see it as a positive practice, as it allows children to bond and find a support person, someone who is with the child throughout the proceeding (unlike other professionals who are usually just present in one stage of the entire process).

Victim support specialists also play a role post-trial, when they inform children and their guardians of counselling and psychological help that they have the right to access.

Overall, informing children is seen as a vital part of the criminal procedure, although it is supported by different arguments. On the one hand, legal experts highlighted the right of a child as a victim or witness to be informed of his/her rights and obligations according to the Code of Criminal Procedure. In addition, it was pointed out that if children are not able to grasp the essence of the proceedings, their testimonies cannot be deemed completely valid. On the other hand, social professionals underscored children's psychological and emotional need to understand the surrounding, so as not to be traumatized by the uncertainty and the unfamiliar. One common worry expressed by both legal as well as social professionals is the lack of materials that could be used for informing children (e.g. explanatory cartoons or booklets).

2.2.2. Right to be informed in the civil justice field

In civil justice cases, the majority of the respondents stated that there are no written rules or procedures about how children are informed about the process. This was stated by most of the social professionals; among legal professionals, one fourth of the respondents expressed the same opinion. Three fourth of the legal professionals mentioned the Code of Civil Procedure (*Karistusseadustik*) that provides the rules for informing the participants in civil proceedings and stipulates that a child must be informed of the proceedings and of the possible solutions/consequences of the proceedings in a proper manner and in accordance with the child's maturity and capacity to understand. However, it remained unclear from the interviews whether and how often this act is followed in practice in civil justice field. It was commented by one interviewed judge that the same legislation also stipulates that the child should be sent the court decision, however, but he/she had not encountered in his/her practice this provision being fulfilled, and thus, children are usually not sent the decision.

Most (four fifth) of the interviewees also said that there are no special materials used when informing children. However, in one interview a child protection specialist mentioned that parents are handed special material provided by the Estonian Union for Child Welfare (*Eesti Lastekaitseliit*). The material is called "To help families in case of divorce and separation" (*"Abiks perele lahutuse ja lahkumineku puhul"*, 2007), which is a 26-pages long booklet providing advice and guidance on how to speak about the divorce to children, how children in different ages may respond to divorce and how to behave as a parent in a new situation.

¹³ Whether hearing is traumatizing or not (usually it is always traumatizing with varying degrees) depends very much on the case. Under this statement it is understood that when the child is inferred that he/she is doing well and his/her engagement is beneficial for the process, then he/she cooperates more and thus the traumatisation can be mitigated.

Another example was given by a lawyer, who suggested that child protection specialists and children themselves use the website of the Children Ombudsman (*Lasteombudsman*), which is useful, child-friendly and explains how proceedings work.¹⁴

In most cases informing of a child was done with the help of parents or through a parent the child is living with, whether by written invitation, phone call or e-mail (this is done by the social worker, judge or the lawyer). In this communication parents are explained why the child is invited to the hearing and what is going to happen. After that parents inform the child as well as explain the procedure to the child. However, some social workers explained that occasionally the informing takes also place directly, for example via phone, but nearly always informing parents beforehand. In some cases mentioned by social workers and by one judge, the informing is done without any prior information given to parents in order to avoid manipulation by the parents. For example, in civil justice focus group, participants brought examples of manipulating parent's teaching child to "*scream, trample around and say that I don't want to see you*" when the father comes to the kindergarten; or of parents who organise doctor's note which confirms that "*child became sick while visiting his father*".

It was argued by one lawyer that not only parents, but sometimes children themselves can manipulate the proceeding, such as in custody cases, when they realise that: "*they are like a prize for a mother or a prize for a father. And which one of them overbids, then his/her prize I will be. This is an accident of the long lasting court disputes that the children become little manipulators. And if they start to act manipulatively, extort one or other thing from the parents, ask some favours and so on, then it is clear that they have understood perfectly what is going on. And in that sense it would be much better if the parents could solve their disagreements without court proceedings and without that during the court proceedings their children turn into little evil manipulators. But that has happened. Not always of course*".

Approximately one fifth of the interviewees maintained that informing a child *has to be* the sole responsibility of the parents themselves because everything starts from home. It was assumed that parents are usually knowledgeable enough to explain the situation to children. However, one of the main areas for improvement regarding informing a child is related exactly to parents. Four interviewees (social worker, family therapist, and two judges) argued that parents do not understand the rules of court procedures entirely and that their information about the court proceeding might be biased, which may affect the child's perception of the court proceeding. For example, it was argued by one of the judges that one of the main problems with the current system is that parents are responsible for informing a child in early stages of the proceedings, but as a consequence, they may influence (or manipulate) the child. This is because there are limited ways that a child can access objective information. For the same reason another judge explained about arranging "surprise hearings", where he/she has gone to schools or kindergartens without previously notifying the parents to inform and hear the child. This issue was also discussed in focus group, whilst in these cases when the child protection specialist, judge etc want to hear children in school without notifying the parent, teachers help is used to fix the date. These surprise visits have been done to pre-empt parents influencing the child, and to get an understanding of the real situation without any disturbance of the parents. However, it was noted that since it is very important to give prior information to children about the hearing then usually it is not a good idea to have surprise visits and hearings. Because parents have an important supporting role to play by preparing the child mentally and ensuring the child's of his/her safety during the process.

The role of grandparents was mentioned only in some interviews. It was told that sometimes grandparents are those who may inform the child the best (most neutrally), especially when it involves custody issues

¹⁴ Available at: <http://lasteombudsman.ee/en/welcome>

between both parents where mother and father tend to "forget" their roles and responsibilities as parents. Grandparents are also consulted by some legal professionals (e.g. lawyers, judges) in order to get the widest understanding of the case. One legal professional has stressed that grandparents can have important roles before, during and after the hearings – when the parents are too busy with the legal proceedings and their own problems, grandparents are often the ones that take care and have time for the child.

Informing the child is usually done before the hearing. In court proceedings, at the beginning of each hearing some judges always inform children about the proceeding, about the parents' positions, of possible legal implications and outcomes. As described in section 2.1.2. this is done in a child-friendly manner (by taking into account their age and maturity level).¹⁵

Despite the lack of written rules or procedures among some professional groups of how to inform the child, the majority of the respondents stressed the importance of a child's right to be informed. However, informing must be done carefully, so that the child feels safe and secure. The child must also be told what the consequences are, and there should be someone to help to process this information together with the child (and if necessary ask the child to reflect what has been said). Some social professionals indicated that informing a child helps to build trust, thus the child would be more open during the process. Legal professionals regarded informing the child important especially in cases where proceedings lead to a major change in the child's life (e.g. custody cases). It was also mentioned that as a result of not informing the child about the roles of him/herself, the judge or other parties in the proceeding judicial procedures could become complicated for a judge.

Half of the interviewed legal professionals (mainly judges and lawyers) hold the opinion that it is possible to inform also quite young children of the proceedings. Thus it is possible to make them understand why the proceeding and their own opinion are important. However, some legal professionals in civil justice maintained the view that children under the age of 10-14 are often incapable of grasping the fine legal details, and therefore, they should not be burdened with unnecessary legal jargon. Two lawyers mentioned the same idea that usually the child is not notified about everything what is in the files of the proceeding. The interviewees maintained that sometimes the materials of the procedure contain compromising facts (for example information about the disagreement between parents concerning the child), and this may influence a child against one or the other parent. As one lawyer puts it: "*The child has to have some information, but it needs to be in certain dosages*". It was further commented by another lawyer that in civil proceedings, there is no real need to give children information on the specifics of the dispute. The idea that information must be kept short, general as possible and not in overly formal language was mentioned by two thirds of the legal professionals. In sum, informing the child was seen very important, but not always should it be done in detail revealing all aspect of the case.

The assessments of the impact of informing on the proceeding are relatively ambiguous. One third of the respondents within both professional groups (e.g. social workers and two lawyers) argued that it was very difficult to assess the direct impact of informing. Another third saw informing a child having some effect on the proceeding due to the increased trust and lowered sense of fear. Some respondents however (among them two judges) argued that informing does not influence the child's testimony and therefore the outcome of the proceeding is not substantially influenced.

Good practices of informing a child were brought out by two social workers, who explained that children are usually afraid of going to the court and afraid of the court proceeding. The role of the social worker in these cases should be to ease the fear and clarify that the hearing is just an ordinary conversation, it is not

¹⁵ As pointed out by one social professional, then informing a child is not common practice in Estonian child protection system. The child protection specialist is not a partner for a family.

going to happen in a courtroom but in the office of the judge. The fear can be soothed by for example telling that the judge does not wear "black ugly clothes", he/she looks "exactly like a human", he/she is an ordinary person like everybody else and he/she is just going to talk with the child, ask how he/she is doing.

2.2.3. Concluding assessments on right to information

In both, the civil and criminal justice fields, there are no specific rules which regulate informing children. No specific materials were mentioned regarding the informing, although some professionals found it necessary to have them. Informing the child is usually done through the parents or legal guardians, with investigators (in criminal justice) or social workers (in civil justice) usually contacting them. However, it was stressed both by social and legal professionals that in many cases mothers/fathers are not always competent and adequate (parents) in these situations which concern their children, and thus, the neutrality of information provided by them to children should not always be taken as granted. Sometimes (in both justice fields) informing is done also directly in order to avoid prior manipulation by the parents. In case the informing is done by professionals, it is usually carried out in the same room as the hearing. Especially in criminal proceedings, the involvement of psychologist during the whole process was seen necessary by both professional groups. It was considered also very crucial among both social and legal professionals that in order to make the information understandable to the child, the official needs to be able to "descend" to the level of children. This means explaining the information according to the age and maturity of the child.

Basic background variables are considered similarly when conducting the hearings: age, maturity, disability, language etc. are usually taken into account. In both justice fields, most of the professionals tended to agree that children usually understand what is going to happen and there are usually no major problems with informing the child. In focus group discussion it was agreed by majority of the participants that the children are usually treated equally no matter their language, gender, habits, colour of skin, disability etc., and there are no major problems with the access to justice. However, it was also emphasised that in few cases the children with problems may be "hidden" from the justice for some time, this means, that the social worker or other professional does not bring the issue up for the proceeding right away. It was noted that this relates to the lack of sufficient training or experience among some professionals.

However, there are also some contradicting points among the sample. Some respondents stressed the importance of better informing a child before and during the proceedings (it was not characteristic to one group of interviewees in any of the justice fields). Yet there were interviewees who thought that children should not know what exactly is going on at the exact moment, because it stresses them unnecessarily. It is however possible that respondents were thinking of different types of information, since their professional background and cases were not the same. All in all, in the civil justice field, legal professionals tended to be slightly more cautious and emphasized the value of very short, concise and simple information about the process, informing the child in the right "doses". While in criminal justice field, most professionals found that the more information and explanation is given to children, the better they cooperate. However, the importance of informing the child in general was seen very important among majority of the respondents, both legal and social professionals.

As a good practice and lesson to be learn, it was mentioned by one judge that in Germany there is a special person working at the court who only specialises on the preparation of children and introduces as well as explains them before the trial the courthouse and the process itself.

Another good practices of reducing the fear of children before court and trial is to "lift" the children up to the role of hero, to explain that thanks to him/her potential victims in the future will be fewer, that thanks to his/her courage to attend the trial even some lives can be saved etc. This can be done by the psychologist.

2.3. Training and co-operation of professionals

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

Overall, social professionals regarded trainings as useful and necessary. They assessed that there are enough trainings available that help their work. However, a number of interviewees noted that some specific issues, such as work with special needs children are not well covered with available training courses. Almost all social professionals had received interdisciplinary trainings on legal aspects of hearings and children's rights. Also, interviewees that worked in the public sector were more likely to point out that they participated in trainings and courses on regular basis. Courses and trainings were mainly organized by NGOs (e.g. by Estonian Union for Children Welfare and the Human Rights Centre), the Police and Border Guard Board (*Politsei- ja Piirivalveamet*) and courts. Most of the interviewees failed to specify the length of the trainings they had been involved in, and did not specify the topics of the courses (whether they were for example interdisciplinary).

Cooperation between different professionals was assessed as good and supporting each other, with only two social professionals being critical by saying that the cooperation was insufficient. According to one psychologist, psychologists meet on a monthly basis to share experiences and best practices, additionally, they are often asked to roundtables with different organisations. Other professionals did not specify in which format they meet and discuss topics, however, it could be inferred from their comments that this happens in unstructured, informal settings. Interpersonal relations were deemed very important, and informal and formal networking (e.g. while working on a case) was seen as a vital part in helping specialists gather knowhow and share best practices. Often the most valued professionals are those most experienced specialists, who are known to be reliable. One of the interviewee argues that high turnover of staff (fluctuation of labour) undermines the quality of work and notes, *"I think that it's bad when people change jobs too often, and when an excellent specialist, that I'm used to rely on, starts working somewhere else and is replaced by a new person, who is completely new to the job"*. In focus group, participants pointed out that since the Estonian police resources are limited, the resignation of even one trained specialist can be "catastrophic"; furthermore, since the pay levels that Estonian police can offer is low, it is difficult to find new people to work with difficult subjects like crimes against children. In addition, it was suggested that new professionals could work with a mentor, an advisor who could assist and help them in becoming more experienced and developing professional networks.

Legal professionals assessed the level and variety of trainings offered to be satisfactory. Most legal professionals mentioned attending courses on a regular basis (usually a couple of times a year), and usually organised by the Police and Border Control Board (*Politsei- ja Piirivalveamet*), and the Estonian Academy of Security Sciences (*Sisekaitseakadeemia*). Lack of finances was also mentioned, especially in the context of having foreign specialists offer trainings in Estonia. It must be noted, however, that these were seen to be very helpful, such as a 3-day course on video recording of child hearings offered by a specialist from the UK that was mentioned by all child protection officers, and was very highly valued (they use learnt techniques in everyday work). Judges and prosecutors also mentioned courses organised by the Supreme Court (*Riigikohus*), which were mostly on psychology and developmental psychology. Judges also mentioned longer trainings (approximately three weeks) on best practices that took place in Iceland and Germany. As a rule the laws protecting children are already in place in Estonia, but there is much to be learned on how to interact with and hear children, and professionals are keen to learn from experiences and best practices in other countries. In addition, it should be emphasised that in terms of the quality of work and child-friendliness of proceedings, both legal and social professionals stressed that to a large degree it depends on the personalities of specialists involved, and remained sceptical on whether necessary skills can be just learned. As one legal professional comments, *"Maybe some training is really needed here. Because – well I have three children, I lean on my experience with them, but if a young man, who has just entered this work, goes and conducts the same hearings, I don't think he has anything to lean on, whether he will*

make it and if he understands at all what he must do, because there are no guidelines". Professionals remained sceptical on the effectiveness on trainings since *"you can't teach tolerance and empathy. Person either has or does not have it"*.

Cooperation between different professionals was found to be good and efficient by all interviewees. The professionals noted that there is no tradition of roundtables, an exception to this was city of Tartu, where roundtable discussions were organised every two months gathering all officials that work on domestic violence and crimes against children (social workers, police investigators, prosecutors, even representatives from child wards). As with social professionals, legal professionals underlined the importance of interpersonal relationships, informal networking, and stressed that outside Tallinn, the number of people working in the same cities, towns and districts is small enough that everyone is acquainted with each other.

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

Most professionals in the civil justice field have participated in trainings. The types of trainings, amount and frequency as well as focus and quality of the trainings varied (see more in table 3 in Annex 3). Almost half of the interviewees in civil justice had participated in child-related and legal trainings. Also, some had participated in trainings where procedural and methodical aspects were discussed. Child-related trainings often included topics such as child well-being and child development. In legal trainings most often children's rights and amendments to the Family Law Act (*Perekonnaseadus*) were discussed. Interviewees had also participated in trainings where motivating and interviewing a child was taught. Only a few interviewees had participated in trainings on psychological or justice issues.

The amount, frequency and duration of trainings vary to a great extent. On average interviewees in the civil justice field had participated in 2 to 4 trainings. However, few respondents had not participated in any training while others continuously took part in on-going programmes and participated in several trainings every year. Most often these trainings lasted from one to three days, but also longer training programmes exist which last from half a year to multiple-year programmes, where trainings are held few days every month. It was noted many times that numerous trainings are offered, but not consistently throughout the year.

At large, professionals in civil justice were satisfied with the quality of information received from trainings and said that they have used the acquired information in their work. Most useful trainings were considered those where people who have a lot of work related experience combine theory with their experiences and expertise. On the other hand, trainings where lecturers "only read out their PowerPoint slides" were often considered a waste of time. The effectiveness of trainings lasting only a few days was also questioned by a few interviewees; however, the overall opinion remained very positive. Interviewees had not participated in interdisciplinary trainings but they expressed a serious need for that. Most commonly they stressed the need for a comprehensive training on children's participation in hearings: where children's developmental aspects, psychology and legal aspects are taken into account and how to address them, and how to deal with children with mental or physical disabilities.

In addition to trainings that are sometimes organised for different groups of experts together (legal and social professionals) and where networking is important part of the training, other forms of cooperation activities take place. In some places in Estonia (mentioned in Tallinn, Tartu and Kohtla-Järve interviews) these types of regular roundtables and gatherings are held, mostly once a month. Overall, cooperation between colleagues and different people involved in cases is considered good or very good.

However, about one fourth of interviewees pointed to serious flaws in multi-sector cooperation. The biggest flaw with cooperation was considered to be the fact that it is based on personal relationships rather than institutional partnerships. Thus, in many cases cooperation depends a lot on people's personalities,

which is especially big problem for newcomers who do not have established relationships with other specialists working in the field. Another problem was also raised: professionals working on the same case do not meet or cooperate before the hearing. It was explained that everyone works on one's own and often information is not shared or it is done only minimally. Need for cooperation between different parties involved in child hearings was emphasised on many occasions, because, as explained by one interviewee: *“these people should get together not only in trainings but also in other situations. So that they could exchange their experiences, if nothing more.”*

2.3.3. Concluding assessments on training and cooperation of professionals

Interviewees noticed changes within the last few years in both training and cooperation possibilities. It was explained that due to the financial recession the budget for trainings has been cut and in many cases participation in trainings depends on whether they are free of charge for the participant. It was suggested by some respondents that 3% of the annual budget for social workers should be spent on trainings and attending courses (as is the case for teachers in Estonia). Interviewees agreed that there are many possibilities for participating in trainings and one can learn something new every time.

In terms of cooperation possibilities between different professionals it was stated that it has improved a lot, but there is still much room for improvement. It was explained that people have found ways to cooperate in order to produce better results: in many cases there are well-developed personal relationships as well as networking gatherings of different professionals organised by non-governmental organisations. However, the need for a cooperation plan and formal institutional cooperation network was stressed on numerous occasions.

2.4. Horizontal issues

2.4.1. Discrimination

Discrimination based on a child's background is not considered a problem in Estonia, this means both social and legal professionals do not see that the children discriminated due to their special background. It was believed that gender, ethnic background and nationality do not have much influence on proceeding's and their outcome. In cases where the child does not speak Estonian or is unable to speak or hear, a state-provided translator (in most cases for Russian and sign-language) is used and hearings are conducted in the mother tongue of the child. Courthouses are usually equipped with ramps and elevators, so physical disabilities would not impede participation in hearings. However, it was mentioned in several cases, that higher levels of buildings where hearings are conducted are inaccessible with a wheelchair. In some cases, hearings of children are also conducted in other places that are considered more convenient for the child. Only in a few cases it was mentioned that the rights of children with psychological disabilities may not always be considered and, therefore, this group may face some unintended discrimination. It was believed that lack of skills and training of professionals are the main reasons for that.

There were a few cases where the interviewees mentioned cross-border cases. One case was described where the custody rights issue was between the parents from different countries (mother from Estonia, father from Italy). In this case, the father was traumatizing psychologically the mother and she decided to leave back to Estonia together with a child (3 years old). However, Estonian court as well as European Court of Human Rights (ECtHR) decided that this custody rights litigation must be held in Italy. Besides explaining that a lot of time and energy went to translating the materials into English (for the communication with the respective Italian local municipality), the interviewee however did not describe the case in more detail, partly due to the fact of being involved in this case personally.

It was explained that cross-border cases are usually quite difficult to handle, because the rules and the level (quality) of child protection differ from state to state. However, some other professionals see as hindrances to the process not different languages, legal differences or geographical location (since there is a possibility to arrange video hearings) but the problem lays more in the different cultural backgrounds of both sides which makes the hearings harder than usual.

2.4.2. Best interest of the child

It was noted by many interviewees that there is no legal definition to 'best interest of a child'. Therefore, it is in the judge's jurisdiction to determine the definition and extent of it when forming a decision. Some interviewees referred to technical aspects of the proceeding – that it is in the best interests of a child when the proceedings are short, not traumatising, there is only one hearing of the child and actors involved in proceedings are friendly and take children's developmental factors into consideration. Also, as one interviewee stated: *"Ideally, the child won't leave the hearing burdened by any more negative emotions or with a bad impression. This is what we are aiming for."* More than half of the interviewees believed that proceedings in Estonia are child-friendly and decisions made in court take the child's best interests into account. However, there are aspects of proceedings that could be improved: length of proceedings, training of professionals and developing special courts for child-related proceedings. A few respondents had more negative views, as explained by one: *"the legislative proceedings state to spare them [children] as much as possible. To... to carry out the proceeding once. But nobody is interested in sparing the minor in Estonia."*

Some interviewees also believed that the definition of being in the best interest of a child depends on the particular child and a proceeding, and that no specific universal criteria can be distinguished. On the other hand, a few respondents believed that it is in the child's best interest to have both parents living together and taking care of the child. Some also emphasised having safe living and learning conditions that take into account the child's needs, lifestyle and interests.

2.4.3. Potential patterns with regard to differences and similarities in regional, national and international context

In focus group interviews as well as some personal interviews, it was explained that the level of professionalism varies significantly between some urban and rural areas in Estonia. In rural areas, the experience among professionals to deal with different cases is somewhat lower than in bigger cities, however, it was mentioned by some interviewees that professionals and officials make mistakes in their work also in bigger cities, thus one cannot draw so clear distinction in this regard between urban or rural areas or between different regions. It was also commented that in smaller regions (counties), for example the building and establishing of special hearing rooms for children is currently in the process, however, the capabilities of these hearing rooms are not (yet) at the same level as in Tartu or in Tallinn. One interviewee elaborated that the lack of resources and professionalism to handle child related cases in some rural areas may lead to unprofessional officials who cannot help or may even obstruct legal work. Another issue concerning the regional differences was covered in civil justice focus group. It was mentioned that in some counties (e.g. in Ida-Virumaa), due to the lack of some specialists the children are brought to other cities for psychological assistance – e.g. Estonian-speaking children are brought to Tartu and Russian-speaking children are treated in Narva.

Participants in a focus group interview believed that compared to Eastern neighbouring countries, in Estonia the child-friendliness is more emphasized in the proceedings, and as a result this is in general at a higher level. Compared to Scandinavian countries, however, they estimated that Estonia has still a long way to go.¹⁶ As an example, it was brought out that in some countries (e.g. in Lithuania, Iceland) there are special hearing rooms for children also in courthouses, where during the process, when a child is heard by the professional, the hearing is seen on the screen in the courtroom. However, as pointed out in criminal justice focus group, then in Estonia the legislative side of proceedings is well developed regarding the child friendly justice, and the main area of improvement lies in the training of specialists. Estonia was also compared with other countries regarding the informing of children with child-like and easily understandable information materials and brochures for children, which was found to be lacking in Estonia. However, as pointed out in one of the participants in focus group discussion, then Estonian Ministry of Justice is currently preparing this kind of material for the children.

2.5. Council of Europe Guidelines

Not much is known in Estonia about the Council of Europe (CoE) guidelines among professionals working with children in the justice system. About two thirds of professionals interviewed had never heard of the CoE guidelines before the interview. Only six of the professionals were familiar with the guidelines and 10 people had heard of the guidelines before but were only somewhat familiar with them.

Differences between the interviewees can be seen (see table 2 in Annex 3) when comparing professionals working in the civil and criminal justice fields. Both legal and social professionals working in civil justice were more familiar with CoE guidelines than their colleagues working in criminal justice. Differences between legal professionals were noticeable, especially when professionals who were somewhat familiar or had heard of the guidelines were also taken into account. However, it also became apparent that none of the interviewed social professionals working in criminal justice (6 persons) had ever heard or become familiar with the guidelines.

Legal and social professionals who were familiar with the guidelines were divided as follows: twice as many legal professionals (4 persons) as social professionals (2 persons) were familiar with the guidelines. However, when those professionals who were only somehow familiar and had just heard of the guidelines were also taken into account, the differences between legal and social professionals disappeared.

Only three interviewees claimed that they were familiar with the CoE guidelines and followed them in their work. Two interviewees (both child protection specialists) said that they became familiar with the guidelines while writing or preparing for Master's thesis dissertation. One of them explained that their organisation's 'good practice' coincides with the guidelines. The second did not know whether these guidelines were implemented in Estonia, but since the principles are rather general, she/he believed that they are followed even when people are not aware of the specific guidelines. Another interviewee said that she/he was not aware of the CoE guidelines but in their organisation they had developed their own unwritten rules. Interviewees, who had heard of the guidelines but were not familiar with them also did not know whether they were somehow followed or implemented in Estonia. One of them mentioned that if they were to be used in Estonia then all stakeholders ought to agree and have a mutual understanding of concepts related to the topic.

Interviewees, who had not heard about the CoE guidelines prior to the interview had contrasting opinions. Some were surprised that such documents had been compiled and felt uneasy about why this

¹⁶ See also a Norwegian example as brought out in the interviews in paragraph 2.1.1.

information had not been shared with them. Another interviewee asked the interviewer to send the guidelines to him/her so that she/he could familiarise him/herself with them. On the other hand, one interviewee pointed out that since these guidelines are not compulsory she/he did not find them particularly relevant. Another interviewee believed that as long as in Estonia there are no special courts for family related disputes, she/he does not believe in the effectiveness of this kind of thing.

Therefore, based on the information collected from the interviews, one can conclude that almost no professional has used CoE guidelines as a starting point for developing organisational rules or procedures. Those interviewees who claimed they were familiar with the CoE guidelines and followed them in their work, commented that since the guidelines are rather universal, then they overlap and coincide with their own internal rules/procedures or with organisational practices. Therefore, the principles of the Guidelines are taken into account in Estonia, however not always explicitly following the principles or structure as stipulated in the Guidelines. How the Estonian justice proceeding corresponds in detail to the principles of the Guidelines, cannot be derived only from the interviews, but this needs further research also regarding the Estonian legislation.

3. Conclusions

3.1. Overarching issues

From a positive side, most professionals both in civil and criminal justice fields regard hearing a child very important. In criminal justice field, child's right to be heard is more often explained by the need that sometimes the child is the only witness in the case, and thus, a valuable source of information. On the other hand, some social professionals especially in civil justice field argue that children's views are and should not always be considered solely decisive elements in the process, because these statements may not be objective, depending on the age, maturity as well as on the potential manipulation of the child. With regard to background variables, age is almost always taken into account when conducting the hearing, however in both fields professionals argue that child's maturity, not only age, must be considered.

Both in criminal and civil justice field, legal professionals are more aware of the laws and rules regulating hearings, especially in the criminal justice field. Within civil justice, most professionals conclude that there are no explicit rules or procedures to follow of how to conduct the hearings, and if there are, they are not followed in practice. In this regard, both in criminal and civil justice field, professionals tend to put great emphasis on persons' skills and previous experience when conducting hearings.

This also applies to informing a child, however, there are slight differences regarding *how much* information child should receive about the content of the case. Main issues relate with the lack or need for different guidelines or rules of how to conduct child hearings and inform the child. In civil justice field, legal professionals tended to be slightly more cautious and emphasized the value of very short, concise and simple information about the process, informing the child in the right "doses". While in criminal justice field, most professionals found that the more information and explanation is given to children, the better they cooperate. However, the importance of informing the child in general was seen very important among majority of the respondents, both legal and social professionals.

In both, the civil and criminal justice fields, there are no specific rules which regulate informing children. No specific materials have been mentioned during the interviews regarding informing the child, although some professionals found it necessary to have them.

Trainings developing personal experience and skills of professionals are seen therefore especially important and necessary. Both among social and legal professionals, it was noted that judges as well as lawyers should have more training on how to interact with children; social workers, psychologists or child protection specialists on the other hand need more training on the legislation and changes within legislation regarding children. Besides training, the need for more cooperation (e.g. holding regular roundtables) between social and legal professionals was emphasised. Moreover, parents' awareness about the proceeding and role of different parties in the proceeding etc should be increased, because as pointed out by interviewees in some cases parents' cooperation with different parties and thus the quality of the proceeding could be better with the better preparation of parents.¹⁷ This means also counselling (e.g. psychological) the parents during the court procedure if necessary.

The knowledge of CoE guidelines is almost non-existent, and thus, they are not applied (at least not explicitly) by professionals in Estonian justice proceedings. Mutual regulations, principles or guidelines for all professionals who are involved in proceedings related with children is strongly recommended.

Justice proceedings in general are seen as child-friendly, especially in pre-court / pre-trial proceedings. Among both groups of professionals in both justice fields, court proceedings are seen somewhat less child-

¹⁷ In some interviews it was mentioned that the roles and tasks of child protection specialists are rather unknown for some legal professionals, for example in the in the child hearing process.

friendly, due to various reasons: intimidating look of the courtrooms, in many cases due to lack of specialisation (especially among legal professionals)¹⁸ or experience among professionals regarding how to engage with children in court proceedings, by the manipulating parents etc. Insufficient post-trial counselling can be also identified as one of the problematic areas. In some cases, there are no specially equipped (child-friendly) rooms for hearing or informing children, especially in rural areas. For example, in rural areas (and in most courts also in urban areas), there are no special rooms for hearing-informing children which is problematic because courtrooms are considered to be intimidating in both fields. In criminal justice, the rooms for hearing children are usually separate rooms, when compared to civil justice, where children are heard in various places such as the corner of the office of the respective professional (e.g. child protection specialist, psychologist), and in school or at home. Hearing or informing children in school or at home relates to both justice fields.

One of the main changes related with child hearing since year 2011 is that whereas previously a psychologist or victims support specialist could carry out questioning in sexual abuse cases with a police officer present, now this approach is forbidden. Now, a police officer with special training must perform the hearing, but for example psychologist can be present (previously he/she had to). Also, it has been pointed out that the Family Law Act (*Perekonnaseadus*) is interpreted quite differently in different courts. This means, that the law does not specify who has to be or can be present at child hearings, and therefore this is left in the judges' discretion, and therefore different individual practices have developed.

3.2. Research

Approximately half of interviewed professionals regarded conducting research with children feasible. They believed that despite some accessibility and reliability issues (e.g. how much things said by children can be considered trustworthy), a study where children who have been involved in court proceedings can be conducted. However, some had mixed and few negative feelings on whether such a study should be conducted. In this respect, an important difference emerged between legal and social experts. Legal experts were more likely to share the opinion that children should not be traumatised repeatedly by being reminded of past events for research purposes. Social experts, on the other hand, were more positive towards the idea of involving children in the research.

Some interviewees argued that the perspective of children is totally different from that of adults. They said that currently they do not have any feedback from children and this kind of study could be very enlightening. Some interviewees emphasised that one should interview children not only once, but that the longitudinal aspect is important as well – for example speaking with children during the process and afterwards. As the child grows older, she/he gains more understanding of the process, and can retrospectively assess the situation with more insight.

Some interviewees considered that reaching children could turn out to be challenging but many of them suggested several ways of making contact with them. Most social workers mentioned that if necessary, they themselves could help reach out to children, and some of them have even given their initial agreement to help in the future. Also other possibilities for reaching children were suggested: through local child protection specialists, surveys in schools, juvenile committees, camps for victims and facilities for troubled youth and also through children who have already been interviewed. Children at this age usually know very well who and what kind of problems they have, so if trust and first contact is established, they may help to find other children through their own social networks.

¹⁸ In some interviews it was stated that there should be specialised courts - family courts – with specialised judges in this field in order to grant best results of the proceeding related with children.

Interviewees were cautious about technical aspects of conducting interviews with children. They believed that age and gender should be considered; that it is important to differentiate children on the basis of their part in the proceeding (whether accused, witness or victim); and during planning one should pay attention to whom, where and how the interview takes place. Children's age issue was mentioned numerously, some interviewees suggested that children who are more than 10 years old could only be included in the research. However, it was also mentioned that their development has to be taken account as some 7-year-olds can be much more mature than 14-15-years-olds.

It was considered by some interviewees that the best people to carry out interviews with children are specialists who they had been in contact with during their proceedings. Most importantly though, it was considered that interviewers should have good communication skills with children based upon plenty of experience with children, ability to think like a child and ask questions in many different ways, so that the child would understand. It was also said that making initial contact is the most difficult part and children should be given enough time to give their consent to participate in the research.

Altogether it was considered that there is a major research gap in Estonia in the field of child participation in justice and this kind of research is necessary for improving child-friendliness in court proceedings. One interviewee had intended to conduct a similar research for a dissertation but did not follow through due to capacity reasons. Moreover, in Estonia the Chancellor of Justice (*Õiguskantsler*) has previously involved children in research, so cooperation with this institution is possible since they have already established lines of communication with relevant researchers. Therefore, there is a good opportunity to fill the gap in this research area in Estonia.¹⁹

About half of the interviewees did not refer to any existing research during the interview, including studies, articles or projects. Some only gave a vague and not very specific reference to studies or articles, such as a research by the Ministry of Social Affairs or studies by psychologists in Tallinn University. One project by Tartu Child Support Centre's was mentioned: "Elder sister, elder brother" (*"Vanem õde, vanem vend"*).²⁰

See studies and publications as referenced by the interviewees in Annex 2.

3.3. Any other issues not covered in previous sections

The child protection specialists have been criticized for their skills. As discussed in civil justice focus groups, the opinions that the child protection specialists write to the court after hearing the child are not always very thorough and informative. This was seen a problem especially in rural areas. The child protection specialists in the same focus groups argued, however, that they are given too little time to form their opinion (10-14 days, sometimes 20 days). Their argument is that more time is needed in order to get contact with a child and get an adequate overview of the relations of a child with both parents. This has happened for example with cross-border cases, which are more complicated and unfamiliar areas for the specialists.

There is a plan of developing interdisciplinary diagnostic teams, which would include a psychologist, psychiatrist, social worker and some other specialists. The task of this team is to provide evaluations and expert opinions when needed.

It was brought out as a positive example in the focus group interview that most of the professionals and officials, who engage with children, have become much more professional within the last seven years.

¹⁹ This is relevant also because Estonia is intensively developing juvenile justice and children and youth at risk system, so any further information in this regard would be of highly useful.

²⁰ More information available at: <http://www.tugikeskus.org.ee/vvv6.html> (in Estonian).

ANNEXES

4.1. Documentation

4.1.1. Quotes

"Child will get another trauma when he or she has to go to hearing again. By then, usually the child is already overcoming the situation and trauma, time has passed, and when the case gets finally to the courtroom, all starts over again. This is horribly complicated"

"Parents are definitely not included in the hearings if it's obvious that the parent has not acted in the best interests of the child. This is because, to be clear, for example in sexual abuse cases, approximately 80 per cent of the cases where the father or stepfather has been the abuser, then the mother doesn't necessarily side with the child, but rather starts accusing the child"

"In cases of sexual offence, the child's testimony may in fact be the only evidence. And then it is of course of major weight. Well, and as a rule children are not interrogated in vain or just in case if the testimony is considered of no use, so their testimony is given relatively high importance."

"The children's opinions are taken little into account, because, as the old saying goes, "adults always know what is better for the children"" [stated ironically by the interviewee]

"[The assessment procedure] is so long and does not work in practice at all. Nobody pays any attention to it because it takes so much time and then [name] has drawn up a shorter [version] to assess the child's wellbeing, so that the [assessment] could work, because otherwise there are currently no rules and decisions are based on personal experience. Everybody does this. This is the greatest problem. The courts, the child protection officials, it is no secret: the child's lawyers do it as well."

"All professionals involved [in proceedings] from different professions have become considerably more professional. This has happened, let's say, over the last seven years"

"You can't teach tolerance and empathy. A person either has or does not have it"

"If I see that the child does not want to go to the courthouse, I have argued with the judge till the point that we go home and get the testimony there, but sadly, in October there was an instance where a 10-year old's hearing was held without the parent present, even I was kicked out - and there he was, alone in the big room, with the judge up above him behind his table."

"Let me put it straight - when I get assigned a case, I feel that the first thing I need to look at is who is the judge and who are the lawyers, that is what determines the amount of work I need to put in, whether I need to do the job of the child's lawyer, because he or she is not competent enough or just does not want to do it or maybe is not paid enough, whatever. And then there's the judge - if I must bring forth some applications or will the judge himself be active. It's a lottery."

"It would be reasonable to have some principles in place for those who have not been prepared. But these must be case-specific tailored to child's peculiarity, to his or her age. Every child is an individual, what works with one child may not work with the other."

"The court decided that the child will alternate between the parents on a weekly basis. I think that court decided so because the mother had a better lawyer. I take it as child abuse."

"I have asked parents to inform their children why they are coming to this building, because I feel that for a child, it is the worst if they don't understand what is going on, when he or she is taken to some building and told that you are going to meet up with some stranger"

"I think that it's not good that people change jobs so often, and when an excellent specialist, that I'm used to rely on, starts working somewhere else and is replaced by a new person who is again completely new to the job."

"The child must have some information, but it needs to be dispensed in certain dosage."

"And oftentimes they understand that they are like a prize for the mother or for the father. And which one of them bids higher, so to say, then hers or his prize I shall be. That is the problem with the long lasting court disputes, that the children become little manipulators. And if they start to act manipulatively, extort one or other thing from their parents, ask some favours and so on, then it is clear that they have understood perfectly well what is going on. And in that sense it would be much better if the parents could resolve their disagreements without court proceedings and avoid that during the court proceedings their children turn into little evil manipulators. But that has happened. Not always, of course."

"Maybe some training is really needed here. Because – well, for example I have three children, I can lean on my own experiences with them, but if a young man, who has just taken up his post, goes on to conduct the same hearings, I don't think he has anything to lean on or whether he will understand at all what he must do, because there are no guidelines"

"And all over Estonia...the applicable know-how should be the same. Right now everybody reads laws and interprets them their own way."

"[...] these people should get together not only during training courses but also under other circumstances. So that they could exchange experiences, if nothing more."

"Ideally, the child won't leave the hearing with a bad impression. This is what we aim for."

"The same legislative proceedings ask to spare them as much as possible. To... carry out the proceeding once if at all possible. But nobody is interested in sparing the minors in Estonia. ... "

"It depends on the topics they discuss. In case of sexual offence, well, these matters are difficult for everyone to talk about. The older the child, the more he or she is conscious of the incident, and the more difficult it is to talk about it. But those between, say, the ages of 4 and 6, are very brave and in case of physical violence, not sexual, even demonstrate what has been done to them. But there are children who won't speak a word, no matter what. So, it is very hard for me to draw any general conclusions."

"Children's testimonies are often very straightforward and sincere and well ... I dare to say – even trustworthy. I would say that they have not lied to us. Well, they speak little, but when they do, then they make their point".

"You read the rights so fast that the idea is that no one is supposed to understand them. This holds true for both, adults and children alike."

"Well, so far the youngest has been three years old. She spoke quite a lot, but she was sitting on her mother's lap. A three-year-old child has a limited vocabulary, so during a videotaped hearing you can observe the body language and it can be double-checked on the videotape."

"When they're done, I usually talk to the child for a little while, depending on the needs of the child. So the child would leave here relieved, not afraid of the police. That's it."

"So, when a lawyer writes down that he wants to provide state legal aid [...] And then the offer arrives, first the system checks whether the child has needed a lawyer in the past. If found that it is already the second court case in the family, then the order will automatically be referred to the lawyer who handled the case earlier. And if that's not the case, then it's the first name on that list who gets the case. The first name on that list might be a lawyer two thinks - "Ah, might as well try out something under the civil law", never mind that he's usually been involved in criminal law, but then he'll think he hasn't had enough caseload recently, and he wants more. And then he thinks to himself he'll handle civil procedures for a change, and which cases are the easiest? – [of course] family proceedings, because we all have families and we all have life experience [stating it ironically]. And then, a lawyer might be assigned the case who doesn't even have kids. Essentially, he lacks that specific experience."

4.2. Resources

4.2.1. National research or reports on child-friendly justice

- Estonian Ministry of Social Affairs (2009) "Lapse ja perekonna hindamine" ("Guide for child and family assessment").
- Kask, K. (2009) "Erialaspetsialistide pädevus alaealiste tunnistajate ja kannatanute ülekuulamise kohta kriminaalmenetluses" ("Jurisdiction of Specialists in Hearing of Witnesses and Victims in Criminal Proceedings"), compiled by Estonian Ministry of Justice.
- Kask, K. (2008) "Trying to Improve Child and Young Adult Witnesses' Performance", PhD thesis, University of Leicester.
- Kask, K. (2005) "The Effect of a Standard to Children's Person Descriptions", MA thesis, University of Tartu.
- Laugus, R. (2012) "Lapse ärakuulamine perekonnavaidlustes" ("Hearing child's opinion in family disputes"), Tartu University Faculty of Law in Tallinn. Master dissertation.
- Nauts, K. "Lapse arvamuse ärakuulamine hooldusõigust käsitlevates tsiviilmenetlustes" ("Hearing child's opinion in civil proceedings concerning custody of children"), Presentation in Ministry of Social Affairs training, unpublished.
- Toros, K. (2011) "Lapse heaolu hindamisest Eesti lastekaitsetöö praktikas" ("Assessment of Child Well-being: Child Protection Practice in Estonia"), Institute of Social Work, Tallinn University, Tallinn, Estonia, available at: <http://lastekaitsetoomeetodidpaevaope.blogspot.com/2012/08/lapse-heaolu-hindamisest-esti.html>.
- Valma, K. (2012) "Lapse parima huvi väljaselgitamine tsiviilkohtumenetluses vanematevahelise hooldusõiguse vaidlustes" ("The Identification of The Child's Best Interest During Custody Disputes Between Parents Through Civil Proceedings"), Master dissertation, Institute of Social Work, Tallinn University, Tallinn, Estonia.

4.2.2. Material targeting parents, children and professionals on child-friendly justice

- Estonian Ministry of Social Affairs (2009) "Lapse ja perekonna hindamine" ("Guide for child and family assessment").

4.2.3. Legal references

Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*), RT I, 21.12.2012, 18,
<https://www.riigiteataja.ee/akt/13261659?leiaKehtiv>

The Family Law Act (*Perekonnaseadus*), RT I, 27.06.2012, 12,
<https://www.riigiteataja.ee/akt/13330603?leiaKehtiv>

Child Protection Act (*Eesti Vabariigi lastekaitse seadus*), RT I, 21.03.2011, 50,
<https://www.riigiteataja.ee/akt/1027736?leiaKehtiv>

Code of Criminal Procedure (*Kriminaalmenetluse seadustik*), RT I, 21.12.2012, 10,
<https://www.riigiteataja.ee/akt/782861?leiaKehtiv>

4.3. Tables

Table 4.3.1. **Sample**

PROFESSIONAL GROUP	GENDER		LOCATION		AGE GROUP			TOTAL
	MALE	FEMALE	RURAL/SMALL MUNICIPALITY	URBAN/BIG CITIES	< 45	45-65	> 65	
Legal	5	20	0	25	21	3	1	25
Criminal	2	13	0	15	12	2	1	15
Civil	3	6	0	9	8	1	0	9
Both areas	0	1	0	1	1	0	0	1
Social	2	24	7	19	19	7	0	26
Criminal	0	6	3	3	3	3	0	6
Civil	1	8	3	6	6	3	0	9
Both areas	1	10	1	10	10	1	0	11
Mixed	0	0	0	0	0	0	0	0
Criminal	0	0	0	0	0	0	0	0
Civil	0	0	0	0	0	0	0	0
Both areas	0	0	0	0	0	0	0	0
All professionals	7	44	7	44	40	10	1	51

Table 4.3.2. **CoE guidelines**

PROFESSIONAL GROUP	FAMILIARITY WITH GUIDELINES			TOTAL
	FAMILIAR WITH COE GUIDELINES	JUST HEARD OF THEM/SOMEHOW FAMILIAR	NEVER HEARD/NOT FAMILIAR	
Legal	4	4	17	25
Civil	2	2	5	9
Criminal	2	2	10	14
Both areas	0	0	2	2
Social	2	6	18	26
Civil	1	3	6	10

Criminal	0	0	6	6
Both areas	1	3	6	10
Mixed	0	0	0	0
Civil	0	0	0	0
Criminal	0	0	0	0
Both areas	0	0	0	0
All professionals	6	10	35	51

Table 4.3.3. **Training**

PARTICIPATION IN TRAINING			
PROFESSIONAL GROUP	NO	YES	TOTAL
Legal	1	24	25
Civil	1	8	9
Criminal	0	14	14
Both areas	0	2	2
Social	7	19	26
Civil	2	8	10
Criminal	2	4	6
Both areas	3	7	10
Mixed	0	0	0
Civil	0	0	0
Criminal	0	0	0
Both areas	0	0	0
All professionals	8	43	51

Table 4.3.4. **Training**

PROFESSIONAL GROUP	TYPE OF TRAINING				
	LEGAL	SOCIAL/ PSYCHOLOGICAL	SPECIFIC JUSTICE ISSUES	SPECIFIC CHILD ISSUES	METHODS/ PROCEDURES
Legal	6	4	7	10	15
Social	4	4	1	4	7
Mixed	0	0	0	0	0
All professionals	10	8	8	14	22