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Obtaining the Child Testimony in the Criminal Proceedings

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ABSTRACT

Children fall under the special category of vulnerable witnesses. Children's vulnerability is the reason that we must approach obtaining the child's testimony in the criminal proceedings with special attention. It is important to take the child's testimony as soon as possible and to avoid the repetition of interrogation. The criminal proceedings law and the juvenile court law enable children interrogation through the professional person without the presence of other parties in the procedure and enable the recording of such interrogation by audio-video link which considerably diminish the secondary victimization. The professionals who obtain the testimony must be well acquainted with children's psychological development. Knowledge of psychological development is of major importance in order to make the quality arrangements for interrogation and to interrogate the child and to achieve positive social contact between the examiner and the examinee and it is also of great importance for the credibility evaluation of the child's testimony. The adequate way of children interrogation will enable the child to say the correct information and to recognize the perpetrator. The forensic interview is well elaborated and child adapted technique of interrogation. Respecting the rules of forensic interview will enable the child's testimony on court to be relevant evidence.

Key words: child, witness, psychological development of children, taking child's testimony, credibility of the child's testimony

Introduction

Incentive for elaboration of this theme, we get from the longstanding attachment with children problems. The need to protect children in their growth and development against various forms of neglect and abuse, which we have encountered within the institutions or families of children's accommodation, are the topic of this study. Taking the legal aspect of this matter led us to a completely new dimension of protection needs, including protection of the children welfare in the legal system. During our work, we were unpleasantly surprised knowing to what extent children are exposed to violence within the legal system, which should fully defend the rights and interests of children. Surprising to us was the possibility of manipulation with children by parties in crimi-

nal proceedings^{1,2}. Most difficult to understand is the manipulation with children by their parents in order to earn for themselves an obvious benefit. But when the child experiences a specific traumatic experience caused by the perpetrator of the crime, it is necessary at least to prevent, that the legal system intensifies the trauma. Adults should be responsible to maintain child's dignity in the legal system, since we were not able to preserve it by timely preventing the contact of the child with the criminal offense. This short report will show that the legislator is aware, in various provisions related to the witness's protection and interrogation modus, when it comes to children's rights. The Republic of Croatia by accepting the Convention of Children Rights and respect-

ing it when making laws has shown that the child is recognized as an equal member of the community. In our work we try to emphasize the psychological moment of child approach and the method of conversation as well as the characteristics of child development that are considered crucial to the conversation in order to properly interpret the child's statements³⁻⁵.

Case report

This case is analyzed, considering the methods of statements obtaining for the criminal prosecution of perpetrators. The criminal case selected for analysis is from the Zagreb County Court and elaborates the testimony of a raped girl through the process of discovering, proving of the crime, and her deposition in a court of law via audio-video conference. The victim of this criminal act was a girl of eleven and a half years, an excellent elementary school pupil of the sixth grade who lives in harmonious family relations with her brother, mother and father. Following time events we notice that the victim, immediately after the violent action went home to his mother and told her the whole event. The girl was taken to the Department of Gynecology and Obstetrics, where she was admitted the same day. There, she told the doctor the whole event and was subjected to forensic evaluation consisted in hair, nails and blood sampling, vaginal, anal and oral swab. She was transported to the Children's Hospital where she repeats to the doctor what happened and is medically cared for. The first contact with a female official, if we exclude the doctors, was at the same evening. Female police officer conducted the interview in the official premises of the Children's Hospital. It is not visible in the records of witch professional education level the officer was and is she familiar with children's cognitive development. From the criminal record is clear that the girl described a very precisely the route from school to home where the crime happened. She described the event with great precision and certainty with possible deviations of about ten minutes. She noticed the color of the buildings and peoples appearance. She described the hair of three boys who had particularly carved in her memory, their constitution and clothes they wear. The girl describes in detail the attacker approach from behind, his violent clothes removing, his threatening words and the smell of that person. She described the act of rape. She was not able to see the face of the attacker, but she described his hair, jacket, pants, the tobacco smell and »something sour like a lemon«. She defined his speech as Zagreb dialect. The fourth talk on the same topic, or fifth, taking in to consideration that she told the story to her mother, took place the next day in the apartment with the girl's mother's presence, conducted by the same police officer from the previous night. Time and duration of the conversation is not noted in the record. Reading the record of the last conversation with the girl we could notice that the girl was more calm but we can feel the emotions flushing out. She describes in detail the events of the entire day. The girl begins to notice external

events such as the church bells, and the exact position of the young people by which she passed. She observes the properties of the environment in which she was approached by the attacker and describes two silver containers, a pile of garbage, the hole in the ground and the fence of the orchard.

It is visible a difference from the first deposition by the fact that in the first statement she described the attack and most of his technical characteristics, and the venue of the event was not a priority. She was focused on the attacker's voice who she believes that it can recognize at any time, she describes a lot more conversation or monologue of the attacker. Can we conclude, if we compare the first interview that was conducted after the violence with the conversation led the next day, it's better for the victim to »sleep over« and then be confronted with the testimony? It is difficult to conclude this from just one example, but it is evident that the statement given the next day is more detailed and in our opinion valuable evidence for criminal proceedings⁶. The next step was the testimony on the court of law. This testimony takes place 4 months after the attack, lasts more than two and a half hours. Based on the order of the Judge for Youth, a testimony was realized via a video link, and recorded on tape. In further reading of the trial record becomes evident that the interrogator was a special educator, so a professional. Inevitably the question opens of why it was decided to record the testimony so long after the event but not immediately on the first or second interview, and why only now the girl was interrogated by a qualified person^{7,8}. After all the previous interrogations and examinations only at the end emerges the need to be sensitive to the victim, keep in mind her age, personality characteristics and the necessity to avoid harmful effects on the child's education and development, what the law prescribes. Reading the girl's testimony we observed that the testimony was very poor, without the description of the environment or people she met, and even the act of violence was very poorly described. The testimony starts saying: »I no longer remember the date or month; I know it was Thursday...« What has this statement, while others do not have is the guilt and consequences. The victim stated that all would be well if the mother had no guests, so that she could pick her up as it usually does. She says that the mother would hear her scream if she had no guests. Now when she describes the abuser she compares his height and weight with mother's physical appearance. Further alleges that she ceased to learn, that in everyone sees the attacker, speaks about the psychological help and that everyone knows her problem because the police told in the school what happened. The Court record gives no important information, namely, what were and how were the questions to the girl asked. It states only who asked the question to the girl in the way to make a note in the record such as »on special counsel request« or »at the special request of the judge for adolescents.«. In this case, no clear justification for examination via a video link or recording on tape, was found. The decision of the judge to support

this way of interrogation seems to be a justification for previous inhumane proceeding with the girl by applying a more humane approach during the trial.

The question is why the interview with the girl, especially the first one, presumably the most traumatic one, was not conducted by an expert in child problems and development^{1,4,5}? Why the testimony was not immediately recorded to be credible evidence in court, sparing the child from further psychological trauma? How is possible not to record the questions asked to the child? From the questions could be possible in the later analysis by experts to determine whether a child could understand a question, or of what kind were those questions. Why the beginning time and the end time of the conversation was not recorded, but on the court. The most complete discussions were taken before the trial, and from the example is evident that until the trial passed 4 months and that the testimony of the child is very short and incomplete. We must agree that it is not insignificant whether the conversation started by coming to the hospital at 21 hours or, for example, at 24 hours. It's not insignificant for how long the conversation continued. The record of the first interview was printed on 4 pages. The question is whether the testimony of the child took 10–15 minutes, or it is possible that the conversation lasted for 5 hours? It is important to know whether the testimony was »drawn« from the child by asking him sub-questions in order to remember the sequence of actions. It is important for the victim and perpetrator, and in the interest of justice, what exactly happened in those conversations, but from this method of writing records we can not know. We learned that the written record of the accused lawyer is not real. In fact, the victim of a criminal offense as well as all participants who were questioned at the police station on the occasion of a criminal offense, were questioned by several police officers. The investigating judge performed the selection of evidences and all materials from the investigation and excluded those not relevant for the case on the criminal court. It is evident that the way to examine this child did not go in favor of the protection of his rights in the proceedings. Also, the child was exposed to unnecessary trauma by repeated investigations.

Conclusions and Discussion

Obtaining evidence from children is carried out by the same principles regardless in which stage of the criminal proceedings the interview was conducted. Forensic interview for the prosecution and court proceedings is the best, developed and adapted to talk with children. It is adapted to the child to discuss the child's known or child appropriate environment. Time is not limited in forensic interviews, but it adapts to the needs of the child. It was noted that the examiners knowledge on how the child functions on cognitive and social level is very important. Children are at very different levels of development, regardless to the chronological age, and is therefore required an individual approach to each interview. Of

course, every criminal act is specific. The key thing at the beginning of the interview is to gather as more information about the criminal act and the victim that we will interrogate and examine. Planning the interview requests full attention of the examiner in order to prevent the unnecessary repetition of the interview. Guidelines for conducting the interview should not be taken literally, but only as recommendations that apply to most cases. It is important to emphasize the fact that small children can concentrate only for a short time and that their basic needs should be satisfied. It is important to have a feeling when to make a pause and see the poor concentration and over saturation of the child. The researches have shown that the children examined in an appropriate manner, are capable at the age of three years to provide accurate information and identify the perpetrators. The examiner is a key person that with his attitude, character and conduct has the primary responsibility for obtaining reliable testimony. The rules of forensic interview prescribe the recording by audio and video equipment, which is very important to evaluate the credibility of the testimony. Following guidelines by expert-led interviews allows the acceptance of such testimony in court as relevant evidence. The law on Juvenile courts has a provision which leaves the possibility of playing recordings of testimony in the trial, which favors an interview as the relevant forensic evidence.

The methods of testing children were elaborated in many studies of our experts in different disciplines, so we can find many articles about this subject. In Croatia very little is written about how to prepare children prior testifying. The foreign literature gives a lot of attention to this matter. It is necessary to unite experts and their knowledge and write a book or manual in order to compile relevant data to those in need. Lack in protection of children's rights can be seen in practice that seems obsolete and too formalized. We observed a lack of knowledge about children and their development by professionals who come into contact with children, from police officers to judges. We are witnessing the universal distrust in the present society to justice. If we destroy this trust in a small child, we have destroyed the hope that this child as a grownup person will trust the justice system and we threaten the entire social order.

If only one child is treated poorly in court, the parents will be outraged, and will retell their bad experience, and thus the circle of mistrust spreads. Such information will reach the parents whose child will be a potential witness, so parents will not allow the testimony because of what they learned from other people's experience. We find a very bizarre example in the U.S., considered to be the mother of democracy. A child, 10 years old, sexually abused, spent 16 days in the courtroom because of cross examinations. Open approach is required when children are concerned, it is necessary to »open doors« of the police and courts for professionals who are trained to talk with children. It is clear that this approach needs greater funding, but the immense and much more severe consequences, such as to let the perpetrator walks free are

more expensive, and all because we couldn't interrogate adequately a child as a key witness. The child could be so traumatized and stigmatized by the juridical process that his recovery is difficult or impossible. We can only imagine how much will cost the recovery of such child. If the

recovery is not possible, how incalculably we harmed this little creature. The task of adults is to help children to develop into independent and self conscious, healthy persons.

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PRIBAVLJANJE ISKAZA DJECE U KAZNENOM POSTUPKU

SAŽETAK

Djeca spadaju u posebnu kategoriju ranjivih svjedoka. Dječja ranjivost je razlog da s posebnom pozornošću moramo pristupiti pribavljanju iskaza djeteta u kaznenom postupku. Iskaz djeteta važno je uzeti u što ranijoj fazi postupka i valja izbjegavati ponavljanje ispitivanja. Zakon o kaznenom postupku i Zakon o sudovima za mladež omogućava ispitivanje djece putem stručne osobe bez nazočnosti ostalih stranaka u postupku te omogućava snimanje takvog ispitivanja audio-video konferencijom što uvelike smanjuje sekundarnu viktimizaciju. Stručne osobe koje pribavljaju iskaz moraju dobro biti upoznate sa psihološkim razvojem djece. Poznavanje psihološkog razvoja je od ključne važnosti da bi se mogla izvršiti kvalitetna priprema ispitivanja i ispitivanje djeteta, da bi se ostvario pozitivan socijalni kontakt između ispiti-vača i ispitanika, a od velike je važnosti i za ocjenu vjerodostojnosti izjave djeteta. Ispitivanje djece na primjeren način omogućiti će djetetu da iskazuje točne podatke i prepozna počinitelja. Forenzički intervju je dobro razrađena i djetetu prilagođena tehnika ispitivanja. Pridržavanje pravila forenzičkog intervjuja omogućit će da svjedočenje djeteta na sudu bude relevantan dokaz.