

**Social Fieldwork Research**  
**Child Participation in Justice Report**  
**Spain, 2012**

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## **EXECUTIVE SUMMARY**

The report Child Participation in Justice compiles the analysis and conclusions of the field work carried out through 55 interviews and 1 Focus Group. The main details about our sample are:

- 60 social and legal professionals involved in hearings with minors have participated in the research. 27 are legal professionals and 33 social professionals.
- Many of the professionals interviewed work in the judicial system (27); 15 in the civil field and 18 both in civil and criminal cases.
- The interviews have been conducted at three Autonomous Communities: Andalusia (27), Catalonia (24) and Madrid (9). More women (38) than men (22) have participated in the research.

The research main results reflect the current situation of child participation in Spain.

- Regarding the child's right to be heard, in most of the cases it is the judge who decides if they are the ones to conduct the hearing or if it is the social professional.
- The child's age and their level of maturity are the factors they usually take into account to make this decision.
- In the past few years the role of the social professional has been increased.
- The protocols and methodology used by those professionals allow them to obtain more information while at the same time preventing secondary victimization.
- "Evidence before trial" (Prueba Preconstituida) is being increasingly applied, not only in cases where the minor is a victim of sexual abuse or maltreatment.
- Social Associations carry out more and more hearings which are used as "evidence before trial" every year in cases involving minors as victims of sexual abuse or maltreatment. This prevents secondary victimization caused by the repetition of hearings with different professionals for the same case. Regrettably this repetition of hearings is still common place in the Spanish judicial system when minors are involved.
- One of the biggest differences between civil justice and criminal justice is that in the former hearings take place to guarantee the minor's right to be heard, whereas in the latter hearings are conducted to obtain information that is crucial for the resolution of the case. This influences the different practices used in relation to the child's right to be informed.
- In most civil proceedings younger children receive little information provided by their parents and/or their legal representatives.
- Regarding training, legal professionals lack psychological and sociological training. Also, many of the social workers lack legal training, but this is mitigated by the creation of interdisciplinary teams where legal and social professionals work together.
- We have realized that the three Autonomous Communities in our sample present differences regarding Victims' support services and external services offered by organization specialized on cases of sexual abuse and/or maltreatment.

Finally, it is worth mentioning that most of the professionals interviewed did not know the CoE Guidelines on Child-friendly Justice.

## **1. BACKGROUND**

### **1.1 Research Methodology**

The first thing we did before starting fieldwork was to identify some institutional contacts who would help us find the professionals who met the profile requirements and who would help us contact those professionals. After contacting some state institutions, we managed to gain the collaboration of the Ministry of Justice and of the General Council of the Judiciary through two staff members at those institutions.

For the fieldwork we decided, together with our institutional contacts and FRA's research coordinators, to work on three autonomic regions: Catalonia, Madrid, and Basque country. We chose these regions according to three criteria: easy identification of interviewees, easy access to interviewees, and diversity of judicial proceedings in these regions. Nevertheless, as it is further explained below, we had to change the Basque country for Andalusia Autonomic Community at the end of August because the contacts established there did not turn out as expected.

The next step was to contact judiciary and administrative institutions in those regions to inform them of the research project, ask for their collaboration, and start to identify and contacting the professionals who would form our sample. To this end we contacted:

- Family Courts
- Courts for Violence against Women.
- Social workers specialized on attention to minors.
- Victims' support offices (In those regions where there were any)

We started to see results in the first weeks of July. We then started fieldwork with three teams coordinated by our social expert on qualitative fieldwork research. The team responsible for Catalonia was formed by two field researchers (a sociologist and a biologist). They have conducted the interviews, done the transcriptions from the audio-tapes and elaborated the templates of the interviews from Catalonia. Madrid team was formed by one field researcher (a sociologist). The team responsible for the Basque country was formed by one field researcher (a biologist). The two latter had two supporting staff to do the transcriptions from the audio-tapes and to translate the transcriptions and templates into English.

We could only conduct two interviews in July, even though our identification of contacts was progressing as expected, except for the Basque country where we were lagging behind. The first problem we encountered, which has constituted our biggest obstacle and has originated a delay on fieldwork and the next steps, was that in August judicial institutions are closed for holidays, leaving only summary courts open (Juzgados de Guardia)<sup>1</sup>. This slowed down fieldwork until mid September, since none of the professionals contacted wanted to be interviewed just after their holidays. Thus, we could only conduct three interviews in August.

The second problem we encountered was that last August 21st, Basque country government announced early elections. Our contact in the Basque country Justice Administration pushed us then to the background. We decided then that it would be better to change Basque country region for Andalusia, where it would be easier to conduct the interviews despite having started two months later. Andalusian Judicial and administrative authorities collaboration has proven key to enable us to finish the job with a significant sample of interviews in this region, even though admittedly with some delay due to the change of region we were forced to make half way through the fieldwork.

Another challenge we had to face was that when we had almost a third of the sample interviews we realized that most of them belonged to the group of "legal professionals". This is due to Spanish Judicial system very nature. In Spain, most of services provided by social workers in the area of legal proceedings involving minors are outsourced. That is, these services are provided by organizations (most of them specialized) through agreements signed with the different autonomic administrations. As a consequence we have had to identify those organizations, contact them, inform them about the research project and ask for the collaboration of the professionals providing the services.

Once we managed to achieve that, our sample became more balanced. The unbalance is only kept in Madrid's sample, where we were only able to interview two social workers. This is due mainly to two reasons: the first one is that the social sector is not very well developed in Madrid, that is, they provide little services for minors who are victims or witnesses. The second reason has to do with the

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<sup>1</sup> At every judicial body, the court of first instance which performs the following functions: reception of proceedings related to reports, complaints and other lawsuits which may happen under its watch; and the application of the first proceedings as required. Summary courts are the ones that remain open when all the other courts are closed because it is out of their normal opening hours or because of holidays or festivities.

little interest shown by Public authorities in this community towards the project. We have not even been able to hold a meeting with them to introduce the project.

We have overcome this handicap taking advantage of the ample range of services offered by Andalusia to assist minors who are victims or witnesses, and of the high degree of involvement of public authorities in this region. It is for this reason that we have been able to conduct the highest number of interviews in Andalusia, despite the fact that it was the latest to be incorporated to the research.

Lastly, in this section, we would like to mention two further obstacles we have encountered. The first one is the impossibility to provide interviews from rural areas, despite our efforts to obtain them. In rural areas most of the people involved are legal workers rather than social workers. Most of the social workers working in rural areas are assigned to a court in the big city and travel to villages, when they can, to attend the cases they are asked to. The legal professionals we have contacted in the rural area did not want to participate in the research. The second problem has to do with the organization of the Focus Groups. We have managed to do only one. During the last two months of the fieldwork we have devoted big part of our efforts to arrange Focus Groups, but it has been for nothing. Some of the reasons we have received from the invited professionals for not coming are:

- They can't attend a meeting during their working hours due to the fact that courts are overloaded.
- They don't want to attend to a meeting outside their working hours. Many of them are already forced to work beyond their working hours and were not willing to spend their free time on this project.

There is a situation of labor conflict caused by the government's measures to relieve the economic crisis. During the last year, Justice Servants' personal days have been reduced from 18 a year to 2. They have also stopped receiving their Christmas bonus and have seen their wages cut down by a percentage. This has provoked a situation of labor conflict, sometimes with partial strikes and full strikes, which underlies these professionals' lack of motivation to participate in the Focus Groups.

## 1.2 Sample

We have conducted 55 interviews as part of our fieldwork. Four of those interviews included more than one interviewee: in three of them there were two interviewees and in one there were three interviewees. We have interviewed 60 people in total.

We have organized one Focus Group attended by three people, all of whom had previously participated in individual interviews. A total of 60 professionals have participated in this research.

According to professional groups, 27 of the participants were legal workers and 33 social workers. We have not found any professional belonging to both groups, neither amongst the interviews nor among the people contacted.

According to their occupation our sample includes the following jobs:

- Legal jobs:
  - Lawyers: 8
  - Legal clerks: 6
  - Prosecutors: 5
  - Judges: 4
  - Medical examiners: 2
  - Police officers: 2
- Social jobs:
  - Psychologists: 16
  - Social workers: 16
  - Interpreters: 1

This sample shows that it has been easier to interview social professionals than legal workers. We have found that both judges and public prosecutors have been reluctant to participate in the

research. This may be due to these professions' traditional attitude to isolate themselves from the media and interviews in general. This argument is supported by the fact that it has been easier to interview judges and prosecutors who were at the time of the interview carrying out administrative tasks (even though they all had recent experience in the area under study) than those working actively in courts.

In the legal group many of the jobs are carried out by Law graduates (lawyers, clerks, prosecutors and judges) and, with the exception of lawyers, all of them carry out very specific tasks. Among the lawyers we have interviewed, 3 work at associations working with children involved in legal proceedings, 3 work at Victims' Support Offices, 1 work at family courts, and 1 work in mediation.

The judges, prosecutors and legal clerks interviewed work either at the national or autonomic Justice Administrations.

A larger variety is found among the social jobs: The psychologists: 4 work at associations providing psychological support to children involved in criminal proceedings (3 in sexual abuse, and 1 in a violence against women court), 3 work at Victims' Support Offices, 2 forensic psychologists, 3 at family courts, 2 at criminal courts and 1 works at the Public service for children's protection. Among the social workers: 4 work at the Children's protection service, 3 work at associations providing psychological support to children involved in criminal proceedings, 3 work at Victims' Support Offices, 2 at criminal courts, 2 at Police children's department, 1 at a family court and 1 at the public service for family mediation.

According to the type of Justice, the sample includes:

- Criminal Justice: 27
- Civil Justice: 15
- Both: 18

In Criminal Justice we had the participation of professionals working in cases of sexual abuse, either in court or at the Legal Medicine institutes. In Civil Justice we had the participation of professionals who work at family courts and the public service for the protection of children. The latter do not work in court cases but in administrative cases involving neglected children under administrative tutelage. The professionals who work at both types of justice are those who work at first instance courts and violence against women courts. The Victims' support offices provide services to both types of cases, even though most of the interviews have focused on the services they have provided to cases of criminal justice.

According to gender, the sample is divided into:

- Male: 22
- Female: 38

Men distribution according to age:

- 18-25: 0
- 26-45: 10
- 45-65: 12
- Over 65: 0

Women distribution according to age:

- 18-25: 0
- 26-45: 26
- 45-65: 12
- Over 65: 0

More women than men have participated in our research, 63.33% of women compared with 36.66% of men. This unbalance is due to two reasons:

- Psychological and sociological research suggests that women are more uninhibited when talking about their personal and professional lives. Our experience seems to confirm this fact: women have been more approachable than men.
- Many of the jobs related to judicial proceedings where minors are involved are carried out mostly by women. We have found that, in some jobs, most of the professionals contacted,

nor just the ones interviewed, were women. This is especially true in the case of social jobs. Both at Victims' support Offices and at the different associations providing services in particular cases, most of the contacts and interviewees were women.

Regarding the localization, all the participants worked in big and medium-sized cities. We have found it impossible to interview professionals in small cities (less than 125 mil inhabitants). In this regard, we have attempted to contact professionals working in medium-sized and small cities in Madrid Autonomous community and in Andalusia. In Catalonia we didn't make any contacts in those areas. In Madrid and Andalusia we contacted, with no success, professionals working in the following places:

- Madrid: Parla, Alcorcón, Alcalá de Henares, Getafe, Leganés, Torrejón de Ardoz
- Andalucía: Cazalla, Coria del Río, Morón de la Frontera. We also sent Seville's Dean Judge a letter requesting that he would refer us to some rural courts in Seville.

The contacts established at small cities and rural towns did not turn out positively. We cannot advance any explanation about why this happened. In the case of legal professionals, this is due to the fact that none of the professionals working in rural areas wanted to participate. In the case of social professionals, there are no services of this kind in rural areas, when a criminal case appears (sexual abuse or violence against women) social professionals from the city court and from service associations are called in, if their workload allows them to go.

According to cities and population the sample distribution is thus:

- Madrid (over 3 million): 7
- Mostoles (Madrid, 205 mil): 2
- Barcelona (over 1,5 million): 21
- Seville (700 mil): 15
- Córdoba (325 mil): 3
- Badalona (220 mil): 1
- Huelva (148 mil): 3
- Cadiz (125 mil): 3

Due to this sample distribution and the lack of interviews with professionals working in rural areas, we cannot provide any data regarding conditions of the justice system involving minors in rural areas, nor can we comment on the legal and social differences and similarities between the civil and the criminal fields in big cities and rural areas.

According to Autonomic Regions, the sample distribution is thus:

- Catalonia: 24
- Madrid: 9
- Andalusia: 27

The lesser number of participants from Madrid is due to the difficulties we have encountered to interview social professionals in this region, because there are fewer social services and because of the lack of collaboration by the autonomic administration, responsible for these social services.

Regarding the interviewees' title/ main function the sample distribution is as follows:

- Actor: 35
- Support: 17
- Observer: 6
- Appellations: 1
- Mediation: 1

According to the type of organization the interviewees work at, the sample is distributed thus:

- Autonomic Administrations: 27. These include:
  - Social professionals from services assigned to family and violence against women courts.
  - Legal and social professionals from the Victims' support offices.
  - Professionals working at Legal Medicine institutes.
- Courts: 16. We can find here different professional categories:

- Judges working at courts work for the General Council of the Judiciary.<sup>2</sup>
- Judges carrying out administrative tasks for the Ministry of Justice.
- Prosecutors working for the Ministry of Justice.
- Legal clerks working for the Ministry of Justice.
- Private associations providing services with funding from Autonomic Administrations: 13
- Police officers: 2

The professionals we interviewed work in different areas related to minors, some of the professionals work in more than one area:

- Some professionals work in almost every area involving minors in judicial proceedings. This is the case of judges in first instance courts, some of the prosecutors and the professionals working at Victims' support offices. Our sample includes a total of 2 judges, 3 prosecutors and 10 professionals working at Victims' support offices.
- Sexual abuse and maltreatment. This is the area where more of our sample professionals work, a total of 21 professionals.
- Sexual abuse and maltreatment at Violence against women courts: 7. These courts deal with criminal cases of violence against women and the derived civil proceedings (custody, separation and divorce).
- Custody and Divorce: 13
- Police officers: 2. They are involved in many different areas: sexual abuse, maltreatment, unaccompanied minors, crimes in which either the victim or the criminal are children, etc.
- Minors who are other minors' victims. In addition to the judges and prosecutors and the two police officers, there is a mediator working in this sort of cases.
- There is also a professional from an association who works in different related areas: violence against women, sexual abuse and family conflicts.

In our first qualitative analysis we may conclude that:

- It has been easier to interview social professionals than legal professionals.
- It has been easier to interview women than men.
- Both legal and social professionals complain about the lack of specific training for legal workers about how to work with minors. Most of the legal workers do not believe that this determines the results or has an important impact on the minors because they overcome their lack of training with their experience and willingness to do a good job. Most of the social professionals do believe that this lack of training does have an impact, and this impact is bigger on the minors than in the way the cases are solved.
- Most of the social professionals claim a more important role for their profession in judicial cases in general and in cases where minors are involved in particular. In this regard, many of the interviewed denounce the lack of weight given to their reports by judges in general.
- Most of the interviewees agree that there are no action protocols to regulate minors' rights to be heard and informed.
- Most of the social professionals state that they follow action protocols in their evaluations and reports.
- Most of the social professionals think that, in order to have a more child friendly justice, courts must be granted more material resources (such as adequate children areas), their work must be given more weight within the proceedings and legal professionals must receive adequate training in psychosocial matters related to minors.

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<sup>2</sup> Judges and magistrates are the only members of the judicial power. The General Council of the Judiciary is an autonomous constitutional body that governs the Judicial Power in order to warrant the judges' independence. We include this category to differentiate them from the judges working in administrative positions for the Ministry of Justice. The latter are judges dispensed from the courts who, at the moment of the interview, work in administrative positions for the Ministry of Justice. See:

[www.poderjudicial.es/cgpj/es/Poder\\_Judicial/Consejo\\_General\\_del\\_Poder\\_Judicial/Informacion\\_Institucional/Que\\_es\\_el\\_CGPJ/Mision](http://www.poderjudicial.es/cgpj/es/Poder_Judicial/Consejo_General_del_Poder_Judicial/Informacion_Institucional/Que_es_el_CGPJ/Mision)

- Most of the legal professionals think that, in order to have a more child friendly justice, courts must be granted more material resources and more legislation and rulings guaranteeing minors' rights need to be passed.

Regarding the environment in which the interviews were conducted, data about the length of the interview reflect that:

- Average length: 1 hour and 15 minutes
- Maximum length: 2 hours and 4 minutes.
- Minimum length: 28 minutes

Regarding the level of trust:

- High: 45 interviews
- Medium: 9 interviews
- Low: 1 interview

Regarding confidentiality:

- High: 31
- Medium: 24
- Low: 0

And regarding the level of interruptions:

- High: 3
- Medium: 2
- Low: 50

The Focus Group was carried out in a friendly atmosphere, with no conflicts, but with a limited variety of opinions. The trust level was high, the confidentiality of the room medium, the level of interruptions medium and the level of participation was also medium.

### 1.3 Legal Context

The Spanish general judiciary structure is described on chapter 26 of *Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial* (Organic Act 6/1985, of 5 July 1985, on the Judiciary).<sup>3</sup>

The Spanish procedural legislation provides a judicial structure that comprehends several types of Courts that deal with children, depending on the issue. There are specialized courts in the criminal jurisdiction and in the civil jurisdiction. And there are other general Courts and Appellate Courts that also deal with children.

It is important to point out that in any proceeding (criminal or civil) which directly or indirectly affects a child, the Public Prosecutor has to intervene to protect the child's rights and interests. Therefore, no ruling can be made by any Judge or Court without hearing the Public Prosecutor.

#### *Civil*

In the Civil Jurisdiction, there are the 'Family Courts' (*Juzgados de Familia*). These Family Courts are First Instance Courts located in each Spanish province, which deal with several issues that affect children, such as proceedings regarding divorce, filiation, paternity, maternity, custody, guardianship, capacity, which indirectly affect children. These Family Courts also deal with specific issues regarding children, such as administrative protection measures for children, the consent in adoption proceedings (section 748 of the Civil Proceedings Act)<sup>4</sup>.

Other specialized courts, 'Courts on Violence against Women', deal with civil cases about custody and guardianship, or other civil aspects affecting children involved in cases of violence against women.

Besides these specialized courts, First Instance Courts can deal indirectly with issues concerning children, such as heritage proceedings.

<sup>3</sup> Spain (1985), Organic Act 6/1985 of 5 July 1985 on the Judiciary (*Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*), available at: [www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-1985-12666](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-1985-12666) (All hyperlinks were accessed on 21 May 2012).

<sup>4</sup> Spain (2000a), Act 1/2000 of 7 January on Civil Proceedings (*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*, available at: [www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2000-323](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2000-323)

### *Criminal*

In criminal justice there are no courts specialized solely on minors. 'Courts on Violence against Women' deal also with cases involving minors affected by violence against women.

On top of that, the rest of the Criminal Courts can deal with criminal offences against children.

### Child's best interest

In order to determine which 'the child's best interest' is, we have to look at their needs and their rights, and take into account the child's opinion, their wishes and aspirations, and their individuality within the family and social environment. This follows from section 9 of the *Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor* (Organic Act 1/1996, of 15 January 1996, on the Legal Protection of Minors)<sup>5</sup> which establishes the child's right to be heard in any administrative or judicial proceeding that could lead to a decision affecting their personal, familiar or social environment.

According to sections 2 and 11.2 of the above mentioned legislation, the child's best interest is one of the core principles of any administrative or judicial action involving children (under the legal age of 18 years).

Section 2 establishes that in the application of the Law the child's best interest will prevail over any other interest involved. This provision is complemented by sections 3, 4, 5, 6, 7, 8 and 9, which establish the rights of children.

There are no differences between criminal and civil justice regarding this issue.

### Right to be heard

#### *Criminal*

There is no specific minimum age required to be heard during criminal proceedings, according to section 409 of the Criminal Procedure Act.<sup>6</sup> Instead, the criteria are maturity and veracity, which is to be decided by the Court using the assessment by a technical team of psychologists. Therefore, in the final analysis, it is the Judge who decides whether a child can be heard during a criminal proceeding. In practice, the presence of the children within the criminal justice is required only when it is considered strictly necessary, for instance when they are the only witness of the crime (especially in case of rapes). On top of that, the lack of rules and procedures about how to hear children leave to the judge the decision. Usually, when the children are aged 12 or more, judges tend to hear them because there is the assumption that they are mature enough to understand and reply to judges' questions.

In order to define maturity, which is an undetermined concept, it is necessary to ask the opinion of Technical Teams, which help the Administration and the Court in order to decide about the maturity of the child. In this sense, section 9 of Organic Act 1/1996 foresees that the child's right to be heard will be exercised according to their level of maturity.

Both maturity and child's best interest are, in the final analysis, decided by the Judges in each proceeding, based on the report of the technical team of psychologists and their own judgment. Therefore, even if the psychologists do not agree, the Judge can decide that the child is mature enough to be interviewed in a proceeding. Some psychologists are critical about this power invested on the judge to determine the child's maturity overruling their reports, because judges have little specific training on this matter. Furthermore, as a consequence of the vague definition of maturity in the legislation, sometimes we may find contradictory data amongst interviewees about the age at which it is compulsory to grant the child's right to be heard.

Technical teams are used in cases concerning very young children, such as children from 3 to 12 years old. Their participation however will always depend on the circumstances of each case and on

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<sup>5</sup> Spain (1996), Organic Act 1/1996, of 15 January 1996, on the Legal Protection of Minors (*Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor*), available at: [www.boe.es/boe/dias/1996/01/17/pdfs/A01225-01238.pdf](http://www.boe.es/boe/dias/1996/01/17/pdfs/A01225-01238.pdf)

<sup>6</sup> Spain (2000a), Royal Decree of 14 September 1882 laying down the Criminal Proceedings Act (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), available at: [www.boe.es/aeboe/consultas/bases\\_datos/doc.php?id=BOE-A-2000-323](http://www.boe.es/aeboe/consultas/bases_datos/doc.php?id=BOE-A-2000-323)

the decision of the Court, because current Spanish legislation does not establish more specific rules. Yet in the final analysis, it is always for the Judge himself to decide, as has been established by the Supreme Court in its ruling of 17 June 2008,<sup>7</sup> also quoted by Circular 3/2009 of the General Prosecutor's Office.<sup>8</sup>

There is no difference of treatment between children as victims or witnesses. In the Spanish legal system, we may not forget that the victim is often also a witness, this applies to both criminal and civil proceedings.

#### *Civil*

In the civil field, the general rule is that children have to be heard if they are mature enough, according to section 9 of Organic Act 1/1996, of 15 January 1996, on the Legal Protection of Minors, and section 361 of Civil Proceedings Act 1/2000, of 7 January. Therefore, this condition has to be established in each case. This general rule is based on the right of every child to be heard, provided in Organic Act 1/1996.

Section 361 of Civil Proceedings Act 1/2000 of 7 January establishes that children under 14-year-old can be interviewed as witnesses if they are mature enough to understand, acknowledge and make a deposition with veracity.

Section 770.4 of Civil Proceedings Act 1/2000, concerning the civil proceedings regarding divorce, establishes that children over 12 years old or under this age if they have enough judgment, could be heard through the 'exploration of the child', with all the guarantees for the child interviewed.

In practice, many judges hear minors under 12-year-old because they consider the proceedings are important enough for those minors' lives for them to be heard.

#### Exploration of the child

With regard to the right to be heard and how this right is implemented in practice, both section 777 of Civil Proceedings Act 1/2000, of 7 January 2000, and sections 433, 448, 455, 707, 713 and 731bis of the *Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal* (Royal Decree of 14 September 1882 laying down the Criminal Proceedings Act), establish the 'exploration of the child'.

Both the Civil Proceedings Act and the Criminal Proceedings Act establish that examination should be performed only by the Judge and the Public Prosecutor. They can be assisted by a technical team of psychologists in order to evaluate the child's maturity, and to rephrase – if necessary – the questions formulated by the Judge and the Public Prosecutor.

The law defines child's statements as "Evidence existing before trial" (Prueba Preconstituida), in order to avoid secondary victimization. The 'exploration' of the child takes place in a closed deposition room with only the child and the psychologists, without other people present. In another room, next to the deposition room, the Judge, the Public Prosecutor and the other lawyers involved in the proceeding are present. The Public Prosecutor and the other lawyers can ask questions, and the Judge can ask questions himself. Any question has to be previously admitted by the Judge; once approved, all the questions will have to be addressed to the child by the technical team of psychologists, who will rephrase and ask these questions in the most proper way. The child's interview is considered as complete evidence, meaning it will not be necessary to interview the child again during the trial.

As we will see later on, the concept of "Evidence existing before trial" is not always applied, since its application is at the judge's discretion. In the past few years its application has been increased in cases of sexual abuse. Many of the professionals interviewed advocate for a more generalized implementation and for a clearer definition of its obligatory nature, regardless the judge's criteria.

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<sup>7</sup> Spain, Supreme Court (*Tribunal Supremo*), STS 517/2008, 17 June 2008.

<sup>8</sup> Spain, General Prosecutor's Office (*Fiscalía General del Estado*), Circular 3/2009 of 10 November 2009 on the protection of child victims and child witnesses (*Circular 3/2009 sobre Protección de los Menores y las Víctimas*).

### Right to be informed

Regarding the right to be informed, there are no specific provisions on who, where, when and how to inform the child about legal proceedings, neither in civil nor in criminal justice. Here we find one of the loopholes detected in this research. Since there is a lack of definition in the legislation about how to implement this child's right, in many instances it is not implemented at all, or it is deficiently implemented.

### Autonomous Community legislation

All the above mentioned legislation, like the Civil and Criminal Proceedings Acts, are binding at national level. Autonomous Communities have not developed any legislation or regulation related to the proceedings subject of the research. Regional legislation refers mainly to general issues on children protection.

### Changes or developments in the legislation

Only 21 of the interviewees mention changes or developments in the legislation. 14 of them are legal professionals and the remaining 7 social workers. Nevertheless the majority of the interviewees manifest the need for legal changes that guarantee more effectively child's rights in the legal system. The interviewees highlight that the last legal reform of the penal code was passed in 2009, compelling professionals to give more information to victims in general, not only to underage victims.

Only six of the interviewees mention the draft Victims' Statute under elaboration by the Ministry of Justice<sup>9</sup>. The Statute envisages a social care and legal system which provides greater protection for particularly vulnerable victims: children, people with disabilities, victims of sex crimes, of human trafficking, of terrorism, of violence against women, of large disasters with numerous victims.

Only one of the interviewees mentions the announcement by the Ministry of Justice, on 11<sup>th</sup> October, of the Draft of the Criminal Code Reform Act. Among other measures, this Draft includes the transposition of the measures contained in the European Directive to combat the abuse and sexual exploitation of children and child pornography. Thus, the new text considers the following an offence: "any sexual contact with children under the age of thirteen, and up to the age of sixteen will be considered sexual abuse when there is deceit or abuse of a position of trust, authority or influence."<sup>10</sup>

Finally we need to mention that some of the interviewees mention Memorandum 3/2009 of 10 November 2009 on the protection of child victims and child witnesses by the Public Prosecutors. This memorandum instruct about the treatment of children who are victims or witnesses in judicial proceedings. It tackles issues such as children's statements at the pre-trial stage; it advises, as long as possible, to apply the Evidence Before Trial to children's declarations; analyzes the guarantees applicable to children's testimonies in oral proceedings; it provides general guidelines for interviews and for the evaluation of children's statements and it analyzes children's hearings in cases of nullity, separation and divorce. This memorandum is framed under the Public Prosecutor's actions as the highest guarantor of the child's best interest. Nevertheless, the interviewees who mention this memorandum regret that these guidelines are not always observed by the actors involved in children's hearings.

"There is a non-mandatory regulation, a circular dating from 2009 issued by the Attorney General's Office that establishes how testimony should be taken from children who are witnesses or victims. It establishes what should ideally be done, but as it is not compulsory, it is not applied."

## **2. FINDINGS**

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<sup>9</sup> Available at: [www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceestatutovictimadeldelito.htm](http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceestatutovictimadeldelito.htm)

<sup>10</sup> Available at: [www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceanteprojectodelcp.htm](http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/111012-enlaceanteprojectodelcp.htm)

## 2.1 Right to be heard

In criminal as well as in civil justice hearings, judges have a high degree of freedom, so that they have the authority to decide if, in which way, by whom and which precautions have to be taken in order to hear children.

In general it must be said that regardless the geographical situation all profiles of interviewees declared that they have a children friendly approach, based for instance on paying attention to the way they speak, how they wear, the presence of sheets, pencils or puppets. When psychologists or social workers intervene, special rooms or adapted physical settings like small chairs and round tables are present as well a wider variety of toys in line with the children's ages they are used to hear.

These facilities can be used before the case is shifted to the justice like in the UFAM (Functional Unit for abused children, Unidad funcional de abusos a menores UFAM in Spanish) in Barcelona, or during the pre-trial hearings and they can be outsourced like the Foundation Márgenes y Vínculos whose facilities in Sevilla and Cadiz encompass the respective provinces, physically outside the court like the EATAF covering the province of Barcelona (Technical advice team in the family domain, Equipo de asesoramiento técnico en el ámbito de la familia in Spanish) or within the courts like the EAT criminal (technical advice team, Equipo de Asistencia Técnica in Spanish) in Catalonia and Servicio de Atención a las Víctimas (SAVA) in Cadiz, Cordoba and Sevilla. In Catalonia the very service is called Oficina de Atención a las Víctima (OAV).

In this line, the only difference between Autonomous Communities is that in Andalusia it is noticeable the presence of external organisations that are responsible for dealing with children hearings or assist them, while in Catalonia all interventions are covered by the public administration. Hearings' duration may be very different, spanning from 5-10 minutes for the hearings made by judges within civil proceedings to almost 120 minutes for the hearings made by psychologists or forensic doctors within the criminal justice.

All experts who touched the matter agree that children are free to do not reply to questions, even if this occurs in very few cases and it can be indicative of the adults' influence and of an intent to hide evidences. In some cases children's parents may decide not to let them to be heard, for instance during the pre-trial phase when the prosecutor wants to hear them. It could be very risky because, especially in the criminal domain, parents can be prosecuted for concealing information and judges can send a forensic doctor to state if children are actually in the condition to be heard or not. In other words, children cannot decide about whether to attend the hearing or not, as they are obliged to be present regardless they are victims or witnesses. In one case, a forensic doctor charged with a hearing contacted the judge and convinced him/her to cancel it as he considered that it was going to be scarcely useful and to re-victimise the child, but it is just a rare exception.

Regarding psychically disabled children there is a general conviction among social professionals that these children should never be interviewed also because the information they can provide is not balanced with the stress they have to cope with. Interviewees do not refer to specific procedures rather to adapting physical settings and setting the hearing on the basis of the children's needs.

Concerning children's gender, interviewees do not highlight relevant differences about the way they are heard and treated. No noticeable differences can be either detected between witnesses and victims, as much depends on the importance of the evidences children can provide.

If we exclude very short hearings, like those made by judges in civil justice and trial hearings in criminal justice, in the rest of cases, children are always allowed having a break, eating something or in some cases to resume hearings in another day.

Depending on the phase of the proceeding in which children are involved, hearings can be done in the following situations:

- a. When professionals related to the justice system become aware of a potential crime, like doctors, social workers or psychologists. This is also the case of law enforcement authorities.
- b. In the pre-trial phase, when the intervention of psychologists is more likely to take place and evidences have to be found for the launching of the procedure.

- c. In the trial phase, when the children are heard during the trial hearing with the presence of all the involved parts and the justice professionals. These kinds of hearings only take place within the criminal domain.
- d. After the court decision, when professionals are charged of the children's follow-up, as is the case for forensic doctors, who are charged with monitoring the children's recovery.

Children's hearings usually start outside the justice system and may involve a wide range of professionals, on the basis of the interviews being done with the professionals working in hospitals, in police children units, in sheltered homes, foundations, internal procedures or practices have been pinpointed.

Concerning **hospitals**, children who seem to be victims of violence can be heard and visited very soon after the crime, in a number of Catalan public health centres where the forensic doctor is assisted by another doctor of the same health centre.

Hospitals can host children's units especially thought for assisting very young victims. This is the case of a children's hospital where paediatricians collaborate with psychologists and deal with children aged from 0 to 5 years old. Psychologists use a special technique based on repeated hearings in a very short period, even if the way the child is heard depends on the level of confidence that there is with the professionals and on an approach focused on understanding how she/he is. For these reasons, at the beginning, very general questions are asked and free play is encouraged because it allows the professionals to detect any existing trauma.

In case of potential sexual abuses, a Foundation may receive cases from public prosecutors and depending on the result of the hearings, complaints will be made or not.

As for **Police children units**, they represent the main entry door into the justice system, so that they deal with a wide range of cases. The majority of the policepersons of the Barcelona unit have a relevant experience and all of them have attended specific training. Both aspects are functional to finely tune the hearings on the basis of the child's needs. There is not a set of rules to follow for the hearings, as it is rather a matter of adapting to each situation.

"It is about adapting to the child. We try to understand the kind of child we are dealing with, we try to understand his/her profile, if he/she is more or less introverted"

Finally there is the case of **sheltered homes**, where professionals take care of all aspects related to the children, and because of this also of crimes they may have suffered from. For this reason, professionals help children to be prepared for being heard during the pre-trial and trial hearings and they also intervene after these moments in order to assess how the person is feeling, to know what he/she thinks about it because the justice system pay very little attention to victims after the proceeding ends.

"Of course, for the judge, the public prosecutor and the lawyers it's all over when the trial ends, but there are other consequences for the girl. This is the reason why we need to work with her before and after."

Only in the case of a children's hospital, special physical setting are taken into account, as the children sit at a small round table and they play with a social worker. Many toys are present.

### **2.1.1 Right to be heard in criminal justice**

First of all, it must be said that the presence of the children within the criminal justice is required only when it is considered strictly necessary, for instance when they are the only witness of the crime (especially in case of rapes).

During the pre-trial phase, the lack of rules and procedures about how to hear children lead judges to decide if, in which way, by whom and which precautions have to be taken in order to hear children. The decision is mainly taken on the basis of the children's background, being the age and their involvement the main aspects.

Usually, when the children are aged 12 or more, judges tend to hear them because there is the assumption that they are mature enough to understand and reply to judges' questions. One social worker has not agreed with this assumption as he considers that when children are aged 13 or more

they are very involved with aspects related to their sexual identity or with feelings of guiltiness, which may make modify their declaration. At the same time, this age threshold is legally relevant because from this age onwards a child can give his/her consent for sexual relations also with people aged over 18, for this reason, sexual abuses substantially change depending on the child being over or under this age.

The judge together with the public prosecutor, who is charged to protect the children, meet them in the judge's office or within the courtroom, nevertheless, regardless of the place, professionals do not wear their gown and they tend to use a language in line with the children's background. In most cases, judges do not require the presence of the clerk, although it is a common requirement that he/she has to be present. This decision is based on the need to avoid making feel the children uncomfortable by the presence of more adults than strictly necessary.

Nevertheless, depending on the case and when it is really necessary, other persons may be involved during the pre trial phase like lawyers, psychologists, as well as the children's legal representatives (who have always to accompany the children to the hearing) and the prosecuted person. When the prosecuted person is present during the children's hearing, the law forbids the visual contact with the victim/witness.

Hearings made by judges and prosecutors are not recorded, just a report is issued.

The use of the videoconference is another practice ranking high, because it prevents that the children may see the prosecuted person and at the same time it allows to save time to judges, lawyers and parts. The recording and the storage in a safe server is made through the ARCONTE system, implemented by the Spanish Ministry of Justice.

When the children are aged less than 12 and have suffered from crimes i.e. against the sexual freedom, they are particularly affected by the situation and they are not considered mature enough but as they can provide fundamental information, judges decide to charge professionals specialised in dealing with children and meeting legal requirements, like psychologists, social workers, or professionals working in external organisations, like associations or foundations that collaborate with the courts. It is not just a matter of making the justice more children friendly but also of obtaining better information:

“From the psycho-social point of view, in our team we are convinced that this practice (the hearing conducted by psychologists) is good because it avoids victimisation, it allows the child to be heard in a milieu that respects his/her emotional dimension,(summing up), a favourable situation. Moreover, concerning the court, this practice enormously improves the quality of the child's declaration, and this is what interests the judge.”

When social experts take the testimony this is done via pre-trial evidence obtained by a psychologist or a social worker specialised in children. If the right conditions are met, the hearing is recorded and reconstituted. This means that the children do not have to attend the trial hearing and questions may be asked to the psychologist who rephrases and asks them. This is one of the most relevant aspects of the criminal justice as it allows avoiding further hearings and thanks to this, also avoiding the children's re-victimisation. Pre-trial hearings can be reconstituted only when all involved parts are present and can ask additional questions always through the professionals, the experts duly hear the children asking open-ended questions and when there are the technologic means for recording them, like video cameras and secured servers for storing the recording (ARCONTE system).

When the hearing is made by psychologists and/or social workers questions are asked only by them, but can come from the judge, the public prosecutor or the defendant's lawyer. All of them must be present but they are never seen by the child because a screen or another method is used to ensure that the child and the defendant or defendants never see one another. Another person is present at the pre trial hearing is the clerk of the court, who is responsible for recording the proceeding.

When pre-trial hearings are directly made by judges or public prosecutors, psychologists can attend them, especially when they have to submit the results of previous hearings they made, but the questions are asked by the very judge, public prosecutors or the defendant's lawyer.

Once the hearing has finished, the judge can require more specific cognitive tests, for instance if children suffer from some mental disorder or if they tend to invent facts. Tests take place with the **only presence of the psychologists and are not stressful at all as they only consist of talking with the children**, play with them or asking them to tell a story. Concerning the duration, they last 3-4 hours during 2 days.

During the pre-trial phase, children can be heard also by forensic doctors who are charged to evaluate possible physical consequences or to verify if the children are in the condition to be heard by the judge. The hearing starts with the anamnesis during which the doctor asks about the children's medical history, if they suffered from some health problem or some illness and what is the reason why they are there.

Depending on the capacity to understand and to declare, the forensic doctor tries to adapt the information to provide, to explain why the child is there and what is going to happen. In very early ages, parents are those who answer the questions but from 12 years onwards they know the situation quite well. Forensic doctors may try to break the ice and speak a bit with the child and some toys or coloured pencils may be helpful to relax him/her and to establish confidence.

Later, a physical exploration takes place and there is no need of asking questions because the forensic doctor only considers the injuries and the sequels. In fact, in case of foreign children not speaking Spanish, the presence of an interpreter is only allowed in the phase of the hearing.

Children are also heard during the very trial hearing. This occurs when the hearing has not been re-constituted or when the trial judge does not recognise its validity, for instance when the lawyer of the prosecuted person was not present<sup>11</sup>, or if he/she simply considers that the children must be present because he/she wants to directly hear all the involved parts.

Before children are heard during the pre-trial or the trial hearing, they may rely on the intervention of facilities aimed at assisting them and their families like the Office of Victim Assistance<sup>12</sup> (*Oficina de Atención a la victim de delitos OAV*, in Spanish), or external institutions, like foundations. They are only present in provincial capitals, their tasks may vary (for instance in the Madrid Community they provide more limited services) and they need to be requested by the parents of the victim.

Their main objectives are to advice and prepare the children for court proceedings, for this reason they can contact the psychologist who possibly had previously heard them and their families and suggest which measures have to be adopted in order to protect the children during the trial hearing. In addition, if valuable information comes out during the previous hearings, they will inform the judge and the prosecutor.

Victim Assistance professionals may also accompany the children during the trial hearing as well and they are attentive to assist and protect the children during this stage, for instance they can rephrase questions that the children do not understand.

The law allows the judges to choose which protective measures have to be adopted<sup>13</sup>, a protective screen can be set in order to separate the child from the defendant, witnesses and other people involved. When judges do not ask for the screen, police persons can place themselves next to the children and avoid the visual contact with parts. Nevertheless when this contact is supposed to do

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<sup>11</sup>The presence of the lawyer of the prosecuted person is a crucial aspect that may lead or not to consider the reconstituted hearing. The criminal law states that the lawyer must be informed of when the pre-trial hearing has been scheduled but he/she is not obliged to attend. On the basis of a restrictive interpretation, if lawyer was not present during the pre trial hearing, trial judges may not consider the hearing valid, and they require the presence of the children also during the trial hearing.

<sup>12</sup> Spain (1995), Act 35/1995 of 11 December on Support and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom (*Ley 35/1995, de 11 de Diciembre, de Ayuda y Asistencia a las Víctimas de Delitos Violentos y contra la Libertad Sexual*), available at: [www.boe.es/boe/dias/1995/12/12/pdfs/A35576-35581.pdf](http://www.boe.es/boe/dias/1995/12/12/pdfs/A35576-35581.pdf)

<sup>13</sup>Sections 448 and 707 of the Criminal Proceedings Act establish that the deposition of child witnesses shall be carried out avoiding the visual confrontation with the defendant, using any technical means to make this possible.

not affect the children, protective tools are not used <sup>14</sup>. Before the trial hearing starts, the judge provides information to the clerk about these courtroom settings.

Two interviewees reported that when children are involved in trial hearings, they are closed hearings.

At the trial hearing, the judge, the public prosecutor and at least the defence lawyer will always be present; in addition the child's legal representatives and the prosecuted person(s) are present as well. In case of need, a translator can be required and at the judge's discretion, the clerk of the court may or may not be present. Depending on the complexity of the case, trial hearings can last 20 minutes, when children have to simply confirm what they said during the pre-trial hearings or more than one hour when several witnesses and victims must be heard.

The trial hearing starts with the prosecutor reading the rights and duties and subsequently reporting the reason why the child is there. Then, the victim or the witness is required to swear an oath and they start to answer the questions asked by the public prosecutor and the defendant's lawyer. If the judge considers that the latter put the children under pressure, he/she intervenes obliging to rephrase the questions. A judge explained that in some extreme cases he wrote a complaint letter to the lawyers' bar for complaining about the lack of sensitivity of some lawyers when children are heard.

When victim and offender are both children and the crime was not particularly relevant and repeated, there is the possibility to avoid the trial hearing and to rely on a mediation service. A prosecutor stresses that it has a pedagogical relevance as the decision is shifted from an external person, the judge, to the involved parts who have to find an agreement.

After the trial hearing, children may attend further hearings, although only in a few cases like the visits to the forensic doctor who has to follow-up potential physical sequels as during the visit also a part about the anamnesis is present or the association ADIMA that is charged with setting the therapeutic treatment, for abused children.

Finally, after a variable period, the victim's parents receive a letter from the court containing the court decision

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

As it is obvious, Interviewees consider that if the children are the only witness and there are not other evidences, they have a fundamental role in the proceeding. In addition, another important variable stressed by many experts is the children's age, the more aged they are, the more judges considered their declaration as believable.

When their contribution is less relevant, i.e. as one of several witnesses, some experts consider that their participation in a hearing is not worth the pressure and the stress they may experience.

This state of anxiety and tension is considered very usual among children and it is amplified by the court environment, which is considered scarcely children-friendly, even before the hearing takes place

“In a court, what makes feel the children uncomfortable is the coldness, the depersonalization, children being treated as adults, making them stay in an environment that they do not understand”

Having in mind the two moments in which children may be heard, that is, pre-trial and trial hearings, it must be said that in the first case much more attention is paid to set up children-friendly conditions (see good practice), so that, even if they are very stressed when they attend the hearing, it becomes a moment in which the child can recover himself/herself:

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<sup>14</sup>Sections 455 and 713 of the Criminal Proceedings Act prohibit any confrontation between a witness or the defendant with a child witness, unless the Judge decides to permit this sort of confrontation, on the condition that this confrontation does not represent any harm to the child.

“In case of children victims, generally, they feel vented, like they had lift a heavy burden, like they had delivered something that harm them and they have to be no more preoccupied about, because, now, are adults who deal with it. This is the emotion they have”

In the second case, the trial hearing is considered much more stressful, because many elements there can harm the children. The presence of the prosecuted person (that in cases of gender violence are the parents), the possible questions asked by the lawyer, which are not always friendly, the fact of having to explain delicate issues to unknown people, the use of unclear expressions, the presence of a visible microphone, are just some aspects that may harm the children and contribute to their secondary victimization.

#### Comparative assessment of practices by professional groups

Legal professionals are more and more aware of their lack of skills and tools for duly hearing children. In this regard, a prosecutor said:

“Despite you wanting to talk to them in a language that they understand, taking off your robe and sitting down with them, trying to play at something... the prosecutors are not prepared, we are not psychologists, we don’t know how our questions could affect that child”

Many social experts agree on this analysis, because the professional skills that legal experts have do not allow them to properly interact with children:

“I think that they are not even trained. What it cannot be said is that the specialisation comes with the experience... we are currently calling “professionals” many people who are not. (Skills) recycling and information do not exist.”

Concerning especially trained professionals, who are usually those belong to the social domain, judges, prosecutors and police persons highly rely on them, especially when the children are in early ages and/or very affected by the crime they suffered from. Their point of view may be crucial as they may be asked to assess if the contents of the hearing are believable, or to obtain the most valuable information from the children without harming them

#### Comparative assessment of practices by any other background variables and roles of interviewees

At regional level are, two relevant differences have been detected:

- a) In relation to the activity of the Offices for the Victim Assistance. While in the Autonomous Communities of Andalusia and Catalonia, they have a relevant role also in assisting children, in the case of the Autonomous Community of Madrid, they are less developed.

In Andalucía, it is noticeable the presence of external organisations that are responsible for dealing with children hearings or assist them, while in Catalonia all interventions are covered by the public administration.

#### Good practices on individual and structural level

Among good practices within the criminal domain, there is worth mentioning the interventions of the EAT Criminal (technical advice team, Equipo de Asistencia Técnica in Spanish) that hears children in the Autonomous Community of Catalonia.

It usually deals with crimes against sexual freedom and violence and it intervenes during the pre-trial phase when the judge considers that its intervention should be helpful either because of the child’s early age (starting from 3-4 years old) and/or because of very delicate situations.

In particular EAT helps judges in two basic aspects, 1) to obtain solid, free from external contaminations and high quality declarations, and 2) to provide evidences of the child saying the truth:

“Then, what the judge wants to know is “May I believe this child?” Because, very often he/she is the only witness the judge has.”

Its experience is particularly meaningful mainly for two reasons: the special room used and the techniques used during the hearing.

Concerning the environment, there is a special room used only for the hearings. It is a clear room, whose settings have been studied: a round table where the psychologists and the child sit, and a unidirectional mirror along the whole wall beyond which the judge and the parts hear the child.

As for the techniques used, four stages can be identified. At the beginning, general questions are asked, like "what about the summer?", "With whom are you used to play?" and little by little questions are more and more focused on the potentially criminal facts. Then, when the child is ready to explain these facts, psychologists give the whole prominence to him/her and they say that they are very interested and that they wish that the child explains himself/herself as best as possible. After this, professionals start asking questions for highlighting possible criminal responsibilities. Finally before the end, the judge can ask more questions or authorise lawyers' questions, which will be always asked using the EAT's techniques.

For instance, they analyse the credibility of the witness through the *criteria-based content analysis* (CBCA). It is based on a set of items that have to be considered and evaluated. On the basis of these items being considered, the declaration is considered reliable or not.

In addition, the presence of two professionals instead of merely one is due to the complexity of the task as well as to the high number of persons who are attending the hearing. Psychologists have clearly defined tasks, one of them is asking questions and conducting the hearing, the second one acts as a support as well as an observer. Their collaboration is aimed at preventing any complication and at respecting the rules of the reconstituted hearing.

### Areas of improvement

Interviewees highlighted many elements to be improved and they are in relation to four areas: facilities, training, procedures and global improvements.

#### Facilities

- Family courts should be present everywhere and not just in the provincial capitals as they have professionals more aware about how to deal with children than in other courts.
- Courts should be equipped with special rooms allowing children friendly hearings. Usually children are heard within the courtroom or the judge's office, two places that was not conceived for hearing children.
- Forensic teams should have more human and financial resources. They tend to focus their attention mainly on the physical exploration and little on the anamnesis. Ideally forensic doctors should be accompanied by experts in dealing with children, but they have limited funding and few psychologists in their staff.

#### Training

- All professionals involved in children hearings should be trained about how to deal with a child. Many social professionals consider that just the experience is not enough.

#### Procedures

- Reconstituted proof should be adopted as a standard, in this way no child would have to attend a trial hearing that can produce harmful and stressing situations.
- The use of videoconference should be extended, because it allows children to avoid long trips for reaching the courts and prevent the contact with the prosecuted persons.
- Children should be heard only when strictly necessary.
- Coordination among professionals should be improved, in this way the number of hearings that a child has to deal with will diminish.
- Delays between the crime, the hearing and the court decision should be reduced
- A protocol about how to hear children should be set up. The experience of hearing children shows that some practices are promising and other should be abandoned. For this reason

- A protocol for taking care of the children when they are in the court should be set up, because the current legislation allows that judges enjoy a wide discretion about how, when, by whom, the children is heard.

#### Global improvements

- To realise in every case what the child best interest is and to fulfil it also through the justice interventions and decisions.

#### Ambivalent, open and challenging issues

Following to the previous section, the two more challenging issues are the reduction of the number of hearings and the possibility to reconstitute all pre-trial hearings. In the first case, depending on the way the crime is detected and the professionals involved, the children may have to explain many times what they suffered with the consequence of suffering a secondary victimisation and to modifying the declaration on the basis of the adults' reaction. Concerning the reconstituted proof, it represents a win-win opportunity because it allows the children to not attend the trial hearing and at the same time the hearing ensures that all the legal guarantees are met as well as the most complete and relevant information is obtained.

In addition, there are other aspects to consider: the courts facilities that need to be improved (especially for allowing the presence of disabled people) and adapted to children needs. Thirdly it is necessary a wider sensitivity for preventing difficult situations like the contact between the children and the perpetrator before the trial hearing. Finally, a professional explained that it is important to visibilise children victims, because currently there is a very limited attention to what may happen to children in the family domain, and rapes within the very family are silenced. In the past, the same situation was to be found in the case of domestic violence, nevertheless strong awareness-raising campaigns and tuned laws have given good results and this probably should also be the case for children.

### **2.1.2 Right to be heard in civil justice**

#### General context, different practices

In Spain, children's hearings in the civil justice never take place during the contradictory part of the proceedings. More in detail, children can be heard during the pre-trial and the trial phases; in this case their declaration is taken the day before or after. The following situations can be found regarding child hearings in civil procedures:

- a) Child hearings conducted by social professionals, typically a psychologist, only rarely a social worker (only one case found). This practice has been found to be quite common in Barcelona, where judges tend to transfer pre-trial hearings to social professionals especially in the case of under-12 years old, in Madrid or in Huelva where they have to assess about the children's' maturity or the veracity of their testimony.
- b) Child hearings conducted by judges with or without the presence of a social professional, who in addition may not be allowed by the judge to play any real role.
- c) Children heard by a social professional and afterwards by a judge in the case that the report issued by the social professional in question does not seem rich or clear enough for the judge or he/she wants all the same to hear the child.
- d) Very exceptional cases, when children can initially be heard at a school by a teacher or at a police station by a police agent (we have found only one case gathering both circumstances).

As there is not any true set of rules to approach child hearings or to ensure a child-friendly environment in civil procedures, many things depend on the professional skills and goodwill of those conducting the hearings, which is especially true in the case of judges. In this regard, whilst social professionals consider themselves as trained and concerned enough to be really child-friendly and to know how to deal with children due to their training and profiles, they believe that judges are not, an opinion that has been shared by one lawyer.

This being the case, the need for a set of rules seems more than necessary for judges not to feel such at liberty, despite the fact that many judges seem to be quite sensitive to children's needs.

Judges and legal professionals in general do not however have such a view of their work not being quite optimal because although generally recognising their lack of training in dealing with children they say that applying common sense and sensitiveness is enough as a way to guide themselves in these matters.

In this regard, it is our assessment that social professionals have a broader concept than judges and legal professionals in general of what child-friendliness encompass. In this regard, in the majority of the interviews held with social professionals there is some mention of toys/sweets/round tables and small chairs to make the atmosphere easier for children, whilst in the case of judges, only one mentions having sweets and colour felt tip pens at hand and another one having child drawings on the walls of his office and a teddy bear.

Hearings conducted by judges have also the problem that they are held either at their office or at the courtroom, which are both scarcely child-friendly places. Many judges mention, however:

- a) Asking initially the children about their interests, hobbies, etc., to make things more relaxing for them
- b) Wearing informal dressing.

A number of social professionals are more categorical and state that only social professionals should conduct child hearings, a view also shared by one of the lawyers interviewed, or at least that when they are conducted by judges a social professional is present. They are also of the opinion that children should never be heard at courtrooms.

There is also a general view among social professionals that the hearings conducted by them are not only more child-friendly but also more effective than those conducted by judges. This view is also shared by one official prosecutor.

As not all hearings are conducted by social professionals, this is probably the reason for a number of these professionals to state that child hearings should not be so frequent, this meaning that it is not always necessary to hear a child because, in addition, according to them, children's views are not always given a prominent weight by judges, depending on the role of the children as merely part of the proceedings or witness, or as victims, and also on the existence of other proofs, so that practically only when the weight of their evidence cannot be equalled by other parties, their words are given the due credit. Moreover, social professionals are more aware than legal professionals of the harm that may be brought to a child, who is already in the middle of a conflictive situation, by interviewing him/her, especially when they are heard more than once.

It is also interesting to notice that there is not a single interview when legal professionals have shown themselves critical with the work done by social professionals whilst the majority of social professionals are critical with the work done by legal professionals, this also being the case of one judge.

There are also differences regarding the size of the locality in the case of hearings conducted by judges. In big cities there are family courts whose judges usually have a greater knowledge and sensitiveness on how to deal with children, which is not the case of smaller localities where such specialisation does not exist and judges must deal with all sorts of cases, offences and crimes.

#### *Types of cases and role of children.*

The great majority of the cases relate to divorce or separation and custody in whose context children are usually part of the proceedings or witnesses.

There are also a few cases (5) dealing with unprotected or abandoned children.

There are also a few cases related to sexual or domestic abuses when children are the witnesses or victims.

In civil procedures, the law sets up that in family proceedings children must obligatorily be heard from 12 years old onwards. Hearings with younger children are up to the judge's criterion, this being one of the issues in which they feel at liberty to decide.

### *People involved.*

In hearings conducted by a judge, the people usually involved are the judge, the official prosecutor and the clerk. Although quite rarely, lawyers may also be present as well as a social professional.

In hearings conducted by a social professional, it is typically a psychologist, who may be accompanied or not by a social worker. In cases of gender violence one of the parents (the mother) may be also present to support emotionally the child.

Parents are not allowed to be present in cases of separation, divorce and custody in order not to influence the children or to make them feel more strained, although of course parents may have influenced and strained their children before the hearing.

### *Children's background.*

In case of foreign children, the majority of the interviewees mention resorting to an interpreter when they do not have a good command of the official languages. Mention has also been made in a few cases (2) to making access easier to courts for children in wheelchairs. Regarding psychically disabled children and children with mental health problems as well there is a general conviction among social professionals that these children should never be interviewed.

In the case of foreign children, not only linguistic problems should be considered in terms of adaptation, but also cultural differences, which some of the (social) professionals interviewed have also mentioned.

Some of the interviewees (3) state never having dealt with children with special needs.

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

There is a general view that every case is different although child hearings are regarded as quite important.

Some of the social professionals interviewed (3) have, however, stressed that child hearings are important not because they have a great influence on the case's outcome but rather to allow them to express their feelings or to detect whether they have been harmed.

As it is obvious, social professionals are those generally more sceptical regarding the weight given to children's words and their influence on the cases because legal professionals are more bound to justify their decision to hear children on the basis of the decision they have to make although they ultimately may not to grant too much weight to their words, particularly if there are other proofs to consider.

As it is also obvious, the impact of child hearings on the case's outcome also depends very much on their role as part of the proceedings, witnesses or victims, being lower in the two first cases which are also the most usual in civil procedures.

A number of the interviewees declare themselves unable to answer how child hearings influence on the proceedings because they are not informed by judges (social professionals) or because they are not skilled enough (clerks).

### Comparative assessment of practices by professional groups

When social professionals conduct child hearings, the vulnerability of children is always taken into account: they are never pressed, they are never felt responsible for their words as they are made aware that their evidence is not usually the single one, and efforts are made to relax the environment with the presence of toys or games, round tables, etc., and the decrease of formalisms.

When legal professionals conduct child hearings, this procedure is not a standard one and to begin with, the place where they are carried out it is less friendly: the courtroom itself or the judge's office. Moreover, judges' questions or the way to question children are not always appropriate or the most appropriate both to achieve the information wished or to harm the children as little as possible.

In addition, and as it has been stated, social professionals consider themselves as trained and concerned enough to be really child-friendly and to know how to deal with children due to their training and profiles, whilst they believe that judges are not, an opinion that has been shared by one lawyer.

Judges and legal professionals in general do not however have such a view of their work not being quite optimal because although generally recognising their lack of training in dealing with children they say that applying common sense and sensitiveness is enough as a way to guide themselves in these matters.

In this regard, it is our assessment that social professionals have a broader concept than judges and legal professionals in general of what child-friendliness encompass.

At the same time, it is to be noticed that the opposite case does not happen, that is, there is not a single interview when legal professionals have shown themselves critical with the work done by social professionals.

The management of the Offices for Support to Victims of Crimes (*Oficinas de Asistencia a las Víctimas de Delitos, OAVs*) is the responsibility of regional governments having the Spanish government made use of the power to "set up management agreements entrusted with the Autonomous Communities and local Corporations".<sup>15</sup> We have only found Victims' support offices in two out of the three Autonomous Communities in our research: Andalusia and Catalonia. In Andalusia they are called Servicio de Atención a las Víctimas (SAVA) and there is an office at every one of the eight capital cities. In Catalonia they are called Oficina de Atención a las Víctimas (OAVs). These offices are staffed by interdisciplinary teams: lawyers, psychologists, and social workers.

#### Comparative assessment of practices by any other background variables and roles of interviewees

This issue is so scarcely mentioned by the interviewees that no comparative assessment is possible.

#### Good practices on individual and structural levels

Three experts of the civil domain made references to the EATAF team (Technical advice team in the family domain, Equip d'assessorament tècnic en l'àmbit de família in Catalan), a facility present in the main cities of Catalonia. As the meaning of the acronym evidences, it consists of a service addressed to families, not simply to children, when divorces and separations occur.

This service is particularly relevant mainly for two reasons:

- if a child is heard by them, then it is quite likely that the judge would not require further declarations in children's unfriendly situations like in the judge's office.
- The way EATAF professionals deal with any child, trying to adapt themselves to each personal situation related to how children are informed, how they are taken care of and choosing the best criteria for doing it, for instance hearing them in their school.

Two interviewees explain that the decision to hear the children is taken especially when the parents' explanations are confused or divergent and only the children can provide the information to understand the situation, or when the judge requires the hearing. On the contrary, if parents provide enough information, the EATAF disregards the child's hearing.

When EATAF professionals have to decide if a child has to be heard or not a previous analysis is always made and parents, teachers, trainers, family members and health professionals are interviewed not only for deciding if hearing the child or not, but also because it allows to better understand how the child is and to better hear him/her.

Several toys are available in the waiting room as well as in the hearing room and in both cases small tables and chairs are present.

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<sup>15</sup> Ministerio de Justicia, available at: [www.mjusticia.gob.es/cs/Satellite/es/1288774766880/EstructuraOrganica.html](http://www.mjusticia.gob.es/cs/Satellite/es/1288774766880/EstructuraOrganica.html)

When the hearing starts, the first message given to the child is that he/she does not have to decide with which parent he/she wants to live with. This information relaxes the child because it is very common that children think they have to take this decision. Afterwards, some questions about the child's life are asked. They are useful for understanding the child's cognitive capacities and in order to be sure about the information provided in more candent issues. Children are free not to declare and when this happens, professionals have to state it in the report addressed to the judge.

In order to complete the information collected during the hearing, professionals can conduct psychological tests like psychometric or projective ones.

Concerning ages, they usually hear children aged between 12 and 17 years old, this is also due to the fact that in civil justice, starting from 12, children have the right to be heard. Younger children between 5 and 11 years old are also heard, but when this occurs, the aim is first of all to understand their maturity and language skills, their capacity to deal with the hearing and to hear their versions of the facts involved.

In some cases, EATAF professionals decide to set a previous session, called "interaction sessions", where both parents are present and the professional observes what the interaction between the child and the parents is.

Hearings can be made in schools too, especially when the child has some emotional difficulties and needs to stay in a cosy and relaxing environment.

#### Areas of improvement

First of all, the legal professionals interviewed have the common feeling that things have quite improved over recent years and that the Spanish judicial system is more child-friendly than it was before. Although not expressing their opinion about whether such progress is real, the social professionals interviewed generally consider that the Spanish judicial system is not adequately child-friendly yet.

There are a number of improvements that can be linked together. Social professionals generally consider that children are heard too many times, which has two negative effects: the risk of secondary victimisation and the risk that their stories, repeated so many times, lose freshness and therefore credibility before the judge. This second risk is even increased in the context of the long delays the Spanish judicial system is characterised by: with the passing of time, accurate remembrance of facts decreases, particularly if these facts were traumatic for a child.

In addition, the stagnation of the Spanish judicial system makes that less traumatic ways of hearing children as videoconferences are little used.

Finally, there is also the impression among a number of social professionals that judges do not always pay the due attention to children's words and that they are not skilled enough to know how to address to them and correctly interpret their words.

Therefore, as a way of conclusion, children hearings should be less frequent, and also made as short as possible, than they are now and ideally a given child should only be interviewed once by the most skilled professionals, but even in this case child hearings should be limited to those strictly necessary. Tools as videoconferences should be more frequently used when a given child has to be interviewed more than once, while judges and legal professionals in general should be more trained in how to deal with children. Delays should also be shortened.

The need to decrease the use of child hearings, which is quite commonly felt among social professionals, has also been shared by one lawyer and one judge.

Court-appointed lawyers do not give any information; what is more, they sometimes meet the child the same day of the trial for a few minutes before it is held, just enough time to exchange some information.

#### *Other improvements mentioned*

- The creation of a protocol on how to conduct child hearings by judges to reduce the current risk of great divergences: This measure has only been mentioned by three interviewees, which we assess as surprising.
- A more frequent use of reconstituted proof (mentioned by four interviewees).
- The creation of a specialised unit dealing with family issues in all the courts (mentioned by four of the legal professionals interviewed).
- The creation of a room adapted to children in all courts (mentioned by one professional).
- A general improvement mentioned by both legal and social professionals is that children are clearly informed that their words will not be responsible for the decision taken by the judge in order to help them to feel less strained.

#### Ambivalent, open and challenging issues

For us there is some contradiction between the fact of considering child hearings in civil proceedings as not really decisive with a view to the proceeding's outcome and the general consideration, among legal professionals, that they need to be conducted all the same. One judge, however, has certainly stated that child hearings should only be conducted when they are fully justified, whilst in Barcelona it has been found that most of the judges tend to rely on social professionals to hear children.

Recording or not the hearings appears as a controversial issue. For some of the interviewees this is a positive measure because it may avoid that a child is repeatedly interviewed; for other interviewees it is a bad practice because the recording may be used by parents against each other and against the child who has declared in favour of one or of the other.

#### **2.1.3 Concluding assessment on right to be heard**

In order to allow the information across civil and criminal justice to be more understandable and comparable, the following resuming table has been created.

**Table1. Differences and commonalities between civil and criminal hearings**

<b>Items</b>	<b>Civil</b>	<b>criminal</b>
Role of children	Involved parts	Mainly witnesses or victims
Minimum age threshold (judge's hearings)	Around 12	Usually around 12
Minimum age threshold (social hearings)	Around 5	Around 3-4
Participation in the trial hearing	Never	It depends on judge's criteria
Presence of parents or legal repr. during the hearing	Never	Allowed
Repeated hearings within the justice system	Few	It depends but they could be many
Relevance given by judge to the declaration	Additional information/right to be heard	In some cases fundamental, always relevant
Ways to avoid the children's hearings	The information may be replaced by hearing other informed people (i.e. teachers)	The information may be irreplaceable (only witness)
Judge's trained in children's hearings	A few	A few
Degree of judges' autonomy of about how to set up hearings	High	High

Duration of (pre-trial) hearings made by judges	5-15 minutes	It depends, sometimes more than 1 hour
Duration of hearings made by social professionals	30-50 minutes	45-120 minutes
Children's origin	Considered but different interpretations exist	Considered but different interpretations exist

Another aspect to consider is the weight given to social professionals. Even if the children's position in civil and criminal proceedings is very different (in the first case they are substantially involved parts while in the second they are mainly victims or witnesses), it is worth noticing a general tendency to charging the hearings to psychologists, social workers and doctors.

If the focus of the analysis is shifted from the fixed image of the commonalities and differences on to the trends, it must be said that the justice system has improved in the way children are heard and in the attention paid to their necessities:

“During my career I have noticed major changes in this respect, namely that previously child hearings were simply considered a formality of the proceedings, and this is no longer the case”

Nevertheless, much remain to be done and in both domains improvements are quite similar, including the training of all professionals, making facilities more children friendly, introducing protocols for improving interventions and ensuring the achievement of the children's best interest.

## 2.2 Right to information

### 2.2.1 Right to information in criminal justice

#### Current Practices

The Section 5 of Organic Act 1/1996, of 15 January 1996, on the Legal Protection of Minors,<sup>16</sup> establishes the right of the child to be informed, but there is no specific provision on who, where, when and how to inform the child about legal proceedings.

Our interviewees' descriptions of their own practice corroborate this normative vagueness. Most of the professionals working in criminal proceedings declare that there are no established norms or procedures about how to inform. As a consequence there is a wide variety of actuations described.

A large proportion of the interviewees, both in the legal and in the social areas, state that minors are not informed at the courts, or if they are, the information is inadequate. Furthermore, our analysis reveals that there are big differences between the way information is given by social and legal workers. There are just two groups of professionals implementing protocols: the Victims' support offices and the associations providing psychosocial support to minors who are victims of sexual abuse or maltreatment.

Victims' support offices in Andalusia and Catalonia have protocols on how to inform minors based on the preparation and accompaniment of the minor throughout the process; they first inform, advise and prepare the child's parents. Before going into the courtroom, the minor goes to one of their offices where one of the professionals working there will meet the child and accompany them. Minors are prepared being informed about why they need to go to court, who is going to be there, and what sort of questions they are going to be asked. They are also shown the court facilities before the hearing.

Associations providing psychosocial support, implement a psychological approach protocol when informing the minor. This protocol includes: contextualization, difficulties assessment, information

<sup>16</sup> Spain (1996), Organic Act 1/1996, of 15 January 1996, on the Legal Protection of Minors (*Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor*), available at: [www.boe.es/boe/dias/1996/01/17/pdfs/A01225-01238.pdf](http://www.boe.es/boe/dias/1996/01/17/pdfs/A01225-01238.pdf)

adapted to the proceedings, techniques, anxiety prevention, role-play and follow up. (For more information, see below the section “Good practices on individual and structural levels”).

*Informative actions carried out described by legal professionals working on criminal proceedings*

Since there is no specific legislation about how to proceed, every court see to this right differently. In many courts at the three autonomic communities under study, some general information is provided at the beginning of the proceedings through their parents, guardians or legal tutors. Five interviewees (3 prosecutors, 1 judge and 1 legal clerk) declare that the first information is provided via a written notice. This is common practice at courts. A summons letter is sent including a statement with the child’s rights, both as victims, witnesses or interested party. In Catalonia this information is provided in Spanish and Catalan. This general information about rights is a legal text difficult to understand by people with no knowledge of the law. Both the parents and the minors can ask for further information or any explanation they may need by going to the court or by phoning them. Sometimes it is the prosecutor who provides the explanation, some other times the person welcoming the family to the court.

We can distinguish two types of hearings:

- Hearings with the judge and the prosecutor.
- Hearings with any of the technical teams involved in the proceedings:
  - Police department
  - Forensic (Doctors and psychologists from the Forensic institute or from hospitals)

Hearings with a judge and a prosecutor take place at the pre-trial examination and at the oral proceedings. The judge and the prosecutor are compelled to inform the minor the first time they interview him or her. The information is usually provided by the judge, who is also the one asking most of the questions.

“So it is important to give this information to the child and to the parents to, because sometimes they come with some dramatic fantasies, for instance they think that the pre-trial hearing is the trial hearing.”

Most of the interviewees contend that the information given depends on the minor’s age. If they are very young, there is little or no information. If the judge considers that the minor is mature, more information is given. That “maturity” age is not specified by the law. Some say that when the child is over 14. Some others say it is from the age of 12. In any case, minors of 14 and over must be given specific information about the consequences of their declarations, because if they provide false information they could be prosecuted. They are also informed they are under no obligation to declare against their parents or other relatives up to a second degree relation.

According to one of the participants in the Focus Group, this right is contemplated in the Criminal Procedure Act.<sup>17</sup> He contends that younger children are unable to understand this concept and therefore cannot be informed about it. He adds that there is a sentence by the Supreme Court of Justice supporting this approach<sup>18</sup>.

An interpreter working at hearings where foreign minors are involved, states that the sort of information translated is just a declaration of rights and duties and a summary of the facts explaining why the minor has to be heard.

Most of the interviewees apply the following criteria to inform the minor:

- The information given to the minor is short. The younger the minor, the shorter the information.
- More information is provided if the minor asks for it.

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<sup>17</sup> Spain (1882), Royal Decree of September 14, 1882 for approving the Criminal Procedure Act (*Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*), available at: [www.boe.es/buscar/act.php?id=BOE-A-1882-6036](http://www.boe.es/buscar/act.php?id=BOE-A-1882-6036)

<sup>18</sup> Resolution 1061/2009, Supreme Court, Criminal Chamber, Madrid. Available at: <http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=4970739&links=%221039/2009%22&optimize=20091126&publicinterface=true>

- They try to explain things in plain language, adapted to the minor's age.
- They try to make the minor understand that they are going to be asked questions but they do not need to answer if they do not wish to.
- They try to create a comfortable atmosphere at the beginning.

Not many courts have child-friendly rooms for those hearings. They usually take place at the judge's office. In some other cases, it takes place at the court room. None of the professionals uses any supporting material to give the information.

Some professionals declare that there is no difference on the information provided depending on whether the minor is a victim, a witness or an interested party.

Most of the actors involved in this type of hearings think the information they provide is adequate. Most of the interviewees think that the way legal professionals provide information is based on experience rather than training. Social professionals think that the way the information is conveyed is based on subjective criteria and not always provided in the best possible way. At some courts, according to some of those professionals, no information is provided.

Regarding hearings with the technical teams we can distinguish:

- Hearings carried out before the hearing with the judge and prosecutor:
  - At the Police station
  - At the forensic institute or hospitals
  - by psycho-social teams to evaluate and determine the child's credibility
- Hearings at the request of the judge once he or she has heard the child.

Two police officers describe the protocol they follow, even though they declare that it is not up to them to inform the minor.

"... It consists of a procedure that we always follow with victims; in this way, they know that they have the right to claim for the damages, to participate in the proceedings, to receive the corresponding compensations."

The way the information is conveyed is based upon the child's personality and not on the type of crime. The parents or guardians are always present. First they try to calm the minor down to create the best conditions for the hearing. Information is provided verbally, using simple, convincing understandable language. Some strategies to make the child feel fully aware, safe and important are employed. They are told that they will have no further contact with the criminals. No supporting material is used. It is worth mentioning that officers at units specialized on minors receive special training about how to inform the minor and how to carry out the hearing.

Nevertheless, this is not the case with most of the Police hearings. Most complaints are lodged at normal Police stations where the first hearing takes place. They follow no protocols for giving information, there are no child-friendly spaces and the minimum conditions of confidentiality are not met.

Regarding hearings with a forensic team, two doctors from two different autonomic regions describe similar practices. These hearings are carried out at the beginning of some criminal proceedings, when the minor lodge a sexual abuse complaint or maltreatment, or during proceedings at the judge's request.

Both interviewees contend that they are not responsible for informing the minor. They agree that minors referred to them lack information. Interviewee states that in many occasions the minor goes "from one place to another without being fully aware". Both state that they inform the minor if he or she asks them to.

#### *Informative actions described by social professionals*

In general terms, social professionals are more detailed about how they inform minors. Many of them follow a pre-established protocol. The information they provide focuses on the minor's understanding of legal proceedings in general and of the proceedings they are involved in. They bring justice closer to the minor making the legal system more child-friendly. They are very critical of

the content of the information provided as well as the way this information is conveyed by judges and prosecutors. Some state openly that minors are not informed at courts.

We can distinguish different types of hearings in criminal proceedings where these professionals are involved.

- Hearings with the court's psycho-social teams.
  - at courts of violence against women
  - at the Technical Advice Team (EAT)
  - at the Technical Assistance Service about Mediation (SMAT)
  - at the Forensic institute
- Hearings at the Victims' support office.
- Hearings at other associations dealing with minors
- Other hearings: we include here hearings by some social professionals at specialized police units.

These professionals are not responsible for informing the minor, but, as it is the case for legal workers, before starting the hearing they usually inform the minor, sometimes as a positive first contact strategy.

The two professionals working at the courts for violence against women state that the information is sent to the parents by mail together with the summons. Before the hearing, they ask the parents or guardian what information they have given the minor in order to determine the minor's pre-conceived ideas. Then, during the hearing, they inform the minor, in a language accessible to them, about why their presence is required. Their aim is to prevent anxiety in the minor, to lessen their worries and to make him or her as comfortable as possible. There is no particular difference if the minor is a victim, a witness or an interested party.

The psychologists at Technical Advice Team (EAT) in Barcelona are responsible for informing the parents and the minor. This is done just before starting the hearing in a small office or at the waiting room where there some toys. The type of information and the way this information is conveyed will put the child more or less at ease and this will result in better or worse hearings. Many of these hearings are conducted via video-conference or through a double-sided mirror. The interviewees agree that it is best to give little information about who is on the other side of the mirror. If the minor asks, some information is given, but always in a limited way and according to the child's context.

Like judges and prosecutors, they inform the minor about their rights.

The way the minor is informed does not change depending on whether they are victims of witnesses, because in the interviewees' opinion, the minor is a witness in both instances.

Two professionals from the Technical Advice Team (EAT), responsible for informing the minors, state that the minors get their first information from their parents. The parents receive a written notice together with the summoning letter. This is the same information the judge will give the child just before the hearing. In their opinion, minors who are victims generally do not receive any information and are not fully aware of what is going to happen.

A psychologist from the Forensic Institute (IML) declares that the IML does not inform the children. Some of the minors have been informed by their parents, the courts or other social institutions. Some others get to the IML with no information. In his opinion, there is a lack of protocols to give information. If the minor asks, they inform them.

Victims' support offices are there to inform victims, including minors. This is a service regulated by Act 35/1995, of 11 December, aid and assistance to victims of violent crimes and sexual freedom was enacted (*Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*).<sup>19</sup> The management of the Offices for Support to Victims of Crimes (*Oficinas de Asistencia a las Víctimas de Delitos, OAV*) is the responsibility of regional

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<sup>19</sup> Spain (1995), Act 35/1995 of 11 December 1995 on Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom (*Ley 35/1995, de 11 de diciembre, de Ayuda y Asistencia a las Víctimas de Delitos Violentos y Contra la Libertad Sexual*). BOE 12 December 1995. Available at: [www.boe.es/boe/dias/1995/12/12/pdfs/A35576-35581.pdf](http://www.boe.es/boe/dias/1995/12/12/pdfs/A35576-35581.pdf)

governments having the Spanish government used the ability to "set up management agreements entrusted with the Autonomous Communities and local Corporations".<sup>20</sup> We have only found Victims' support offices in two out of the three Autonomous Communities in our research: Andalusia and Catalonia. In Andalusia they are called Servicio de Atención a las Víctimas (SAVA) and there is an office at every one of the eight cities. In Catalonia they are called Oficina de Atención a las Víctimas (OAV). These offices are staffed by interdisciplinary teams: lawyers, psychologists, and social workers.

Minors get to these offices referred by the judge, any of the professionals from the courts, or by their own initiative. They can get there at the beginning of the proceeding or at any other stage. These offices' main task is to guide, inform and accompany victims through all the judicial process. There are well established protocols to provide information. We consider their work an example of good practice and it is further discussed in the section on Good Practice below.

Hearings held at Associations dealing with minors are regulated under Act 35/1995, of 11 December, aid and assistance to victims of violent crimes and sexual freedom was enacted. However, neither the Act nor the Royal Act 738/1997 approving the regulations of the Law<sup>21</sup> develop procedures for welfare assistance. Some Autonomous Communities provide this type of services, particularly to support minors who are victims of sexual abuse or maltreatment. In general, though, this service is provided by private enterprises (associations, foundations or NGOs) independent from the courts and staffed by interdisciplinary teams: lawyers, psychologists and social workers. We have interviewed professionals from those associations in two Autonomous Communities: Andalusia and Catalonia.

These associations are specialized on credibility tests and Evidence before trial, and minors are referred to them by the judge or some of the social public institutions involved in the detection of minors who are victims of sexual abuse or maltreatment. They can be referred at the beginning of the proceedings or at any other stage. Professionals at these associations work to achieve that minors are referred at the beginning in order to avoid a long sequence of hearings and the secondary victimization that results from this repetition of hearings.

One of these professionals' tasks is to inform the minor. We have also consider the way they convey the information a good practice and it is further discussed on the Good Practice section.

Lastly, the two social professionals who participate in hearings at Catalonia's Autonomous Police state that they are not qualified to provide information. The practices they describe in this area are the same as the practice at courts. The parents or guardians receive a written notice about the proceedings and available services and, once at the hearing, they inform the minor verbally using a comprehensible language adapted to the child. They do not describe any sort of actuation protocol.

#### *Types of cases and role of children*

Many of the interviewees work in different types of cases involving children. The majority of them work in all types of cases (16): First instance judges (3); prosecutors (4); Victims' support offices (9).

A majority of cases are related to sexual abuse or physical maltreatment (14): forensic (3), Specialized associations (6), Technical Advice Team (2), Protected house (2), UFAM (1).

There are also a few cases in which children are victims or witnesses of violence against women (6): legal clerks (4), psycho-social teams (2).

Finally, there are 4 cases related to all types of complaints lodged by minors at the Police (4) and an interpreter who works in any case involving minors who are not fluent in Spanish.

#### *People involved*

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<sup>20</sup> Ministerio de Justicia, available at: [www.mjusticia.gob.es/cs/Satellite/es/1288774766880/EstructuraOrganica.html](http://www.mjusticia.gob.es/cs/Satellite/es/1288774766880/EstructuraOrganica.html)

<sup>21</sup> Spain (1997), Royal Decree 738/1997, of 23 May 23, by on the Regulation of Aid and Assistance to Victims of Violent Crimes and Against Sexual Freedom (*Real Decreto 738/1997, de 23 de mayo por el que se aprueba el Reglamento de Ayudas a Víctimas de Delitos Violentos y contra la Libertad Sexual*). BOE 27 May 1997. Available at: [www.boe.es/boe/dias/1997/05/27/pdfs/A16244-16265.pdf](http://www.boe.es/boe/dias/1997/05/27/pdfs/A16244-16265.pdf)

There are many people involved in providing information due to the normative vagueness about who is to inform. Almost all the professionals involved in hearings provide some information. This way, minors who are subjected to different hearings (with the police, the forensic team, the judge and prosecutor, with the court psycho-social team, or with external associations) receive different pieces of information at every one of these hearings. In many occasions there is a lack of general information about how the judicial system works in the proceedings minors are involved in. The first information provided by the courts is a written notice sent to the parents or guardians. They are to inform their children, but they do not always do so or do it inappropriately. In the hearing with the judge, only the judge and the prosecutor are present. Sometimes the judge may decide that representatives from the interested parties be present, but only as observers. In the hearings with the psycho-social teams situations vary. In many occasions the professionals inform in the presence of parents or guardians who also participate in the information process. In other occasions only the professionals and the minor are present.

### *Children's background*

When foreign children are involved an interpreter is called in to provide the information. Most of the interviewees contend that the Children's background is not taken into account. The only consideration is about the child's characteristics and their maturity; in order provide the information in a comprehensible way.

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

It is worth mentioning here that most of the interviewees think that the information provided in criminal cases is more complex than the information provided in civil cases. This is due to the fact that criminal proceedings are more complex, the victims and witnesses' rights are more complex and the consequences are more complex too.

29 out of the 43 interviewees from criminal cases think that children have a good understanding of the information provided, five of them think this depends on how the information is conveyed, twelve think that understanding depends on the child's maturity (the younger they are the more difficult it is for them to understand), some even think that younger children do not understand much. Information provided to younger children is therefore less than the information provided to older children.

The age limit for comprehension varies. Some contend that children under-five understand almost nothing; others think that this is true for children under ten, and others that it is difficult for children under twelve to understand all the information provided. These arguments conform with the scale described by one of the interviewees, who suggests that children's maturity should be divided into three groups: 3/4 years old to 6/7, 6/7 to 12/13 and 12/13 to 16/17. This classification is based on different ways of processing information according to different evolutionary stages, different realities and needs. Up to the age of 12 children should be given only essential information and elaborate only if they ask.

Seven of the interviewees state that children understand the information if it is appropriately conveyed.

Six of the interviewees think that only minimum, basic information should be provided. Two of them think that too much information can be bad for the minor because they would have to face situations that are difficult for their age (such as knowing that their declaration may contribute to their parent's incarceration).

Seven interviewees think that minors have difficulties understanding judicial proceedings due to the use of technical vocabulary difficult to understand even to adults.

Five are openly critical of the way information is provided at the courts because of the use of an excessively technical language. Some of them are legal professionals who play an active role at hearings. One of them contends that information in hearings with children under the age of twelve

should always be provided by social workers, and leave to the judge to inform in cases with children over 12.

Regarding the impact of information on minors, 16 interviewees think that informing the minors adequately has a positive impact on the minors' emotional state. Nine interviewees think that being informed relaxes the minor, others think that it makes them feel safe. Some think that the lack of information makes minors feel anxious.

27 interviewees think information is very important. Only three of them, curiously social workers, mention it is the minor's right to be informed.

Only one of the interviewees thinks that information is not important, neither for the minor nor for the proceedings, and therefore provides very little information.

Most of the interviewees don't comment on the effects of information on the resolution of the cases. Two of them say they don't know because they don't get any information about the sentences. Of those providing an answer, 7 believe that quality information provided adequately has a positive impact on minors' statements because their emotional status is better, they can understand the questions better and provide more trustworthy reliable answers.

Some of the interviewees contend that minors who are not properly informed answer the questions without really understanding them, especially if the language used is not adequate to their age. When the preparation and information process is adequate, minors are more at ease and prepared to tell the judge and the prosecutors that they haven't understood the question.

#### Comparative assessment of practices by professional groups

The biggest difference between legal and social professionals regarding the child's right to be informed is one of focus. Legal professionals focus the information on the formal aspects related to the child's rights and duties, whereas social professionals aim to provide the child with a global understanding of the situation they are living. They are more concerned about obtaining a positive emotional status. This results on benefits for the minor as well as for the resolution of the case. Some of the social interviewees contend that lack of appropriate information and the excess of information sources contribute to the secondary victimization of the minor.

Another difference concerns training. Legal professionals relation with children is based on their experience, whereas many social professionals declare they have specific training in child issues and are better qualified to deal with children of different ages and maturity.

Hearings with the best information services are those conducted outside the courts: at Victims' support centers (SAVA in Andalucía, OAV and EAT in Catalonia) and at other associations providing psycho-social support to victims of sexual abuse and maltreatment (See below "Good practices on individual and structural levels"). They have child-friendly spaces for the hearings and use supporting material and specific techniques to provide information, such as role-play.

This conclusion is corroborated not only by social workers but also by legal workers who appraise the work carried out at those institutions.

The Victims' support centers like SAVA in Andalucía, OAV and EAT in Catalonia, are services provided by the autonomic administration in coordination with the judiciary.

#### Comparative assessment of practices by any other background variables and roles of interviewees

There are no noticeable differences among the interviewees according to role. As we mentioned earlier, the law is not clear about who has to inform, therefore both court departments and external association provide the information and most of the interviewees have an active role in this process.

There aren't any differences regarding gender either. A big part of our sample was women (38 out of 60), but the declarations show no gender difference.

Regarding location, there are important differences between the Autonomic Communities of Catalonia and Andalusia on one hand and Madrid Autonomous community on the other. The former offer specific services, some of them attached to the courts, such as the Victims' support centres, some outsourced, such as the associations providing support to minors who are victims of sexual

abuse of maltreatment. There are no such services in Madrid. These institutions provide the information following scientific criteria and protocols incorporating every case's particularities. Regarding the types of courts, there are no remarkable differences in their practice. There are differences in the way they use the services mentioned above, with courts making profuse use of those institutions aware of the benefits for the child's wellbeing and for the proceedings, and some other courts using them more sparsely. Sometimes it depends on the judge's sensitivity and their access to those services. On other instances it depends on whether the court has its own psychosocial team. This is the case of courts for violence against women where social workers carry out practices more similar to those of judges and prosecutors than to those of social workers at Victims' support offices. In Barcelona, the Technical Advice Team (EAT), assigned to some courts, carry out similar practices to the institutions mentioned above.

#### Good practices on individual and structural levels

We concentrate here on two institutions with similar practices, which according to the interviewees involved, are the best when taking into account the child's right to be informed.

#### *Victims' Support Offices*

In Andalusia they are called Servicio de Atención a las Víctima (SAVA) and Oficinas de Atención a las Víctima (OAV) in Catalonia. These offices deal with any kind of victims, including minors who are involved in criminal or civil proceedings. Victims can access their services on their own, or referred by other people (the judge or prosecutor, the police, servants from the Justice Administration, public social centres, etc.). The teams working with the victim are formed by lawyers, psychologists and social workers.

These offices prepare and accompany the minor through all the proceeding.

Regarding the child's right to information they:

- First talk with the parents alone and inform them about the proceedings they are involved in and their rights.
- Advise the parents to take the child with them only when it is absolutely necessary.
- Guide the parents about how to talk with their child. If the child is affected by the situation of violence he or she has lived, they are referred to the relevant specific service to help them face the problem.
- During the judicial proceeding, they try that the child goes to the SAVA before going to court. They then tell the child about why they need to go to court and what to expect there.  
    "There will be a gentleman who will ask you about what happened to you on that day. Answer if you can remember; if you don't remember, say so"
- Adapt their language to the child's age and maturity bringing the judicial system closer to the child.
- They deal with possible feelings of anxiety or nervousness.
- They visit the deposition room before the hearing.
- During the waiting time, they give the child some material to keep them entertained (drawing material, etc)
- They accompany the minor during the hearing.
- In many of the offices the information is given in one of the rooms. They are not specially adapted to children, but the atmosphere is nicer than in courts.
- Some offices use the handbook "Intervention with Victims of Child Sexual Abuse. How to Face the Trial", explaining the judicial system, what to expect from hearings, and the role of all the actors involved.

#### *Fundación Márgenes y Vínculos*

This Foundation provides psycho-social services to minors who are victims, most of them of sexual abuse or physical maltreatment. Minors are referred to them by the social services who detect the

case or by the court, usually by the judge. Teams are formed by lawyers, psychologists and social workers. They specialized on Evaluation tests, Evidence before trial, and Preparation for the summons. Their actuation protocol includes:

- Contextualization
- Evaluation of difficulties, doubts, fears.
- Formative module: adapted information about the proceedings and the summons.
- Training on techniques to improve remembering and expression to generate exact reliable answers.
- Prevention of anxiety.
- Cognitive restructuring of distorted thoughts (burden of responsibility about results, fear of the aggressor's retaliation, fear not to be believed by the judge or other members of the tribunal, etc.)
- Role- play
- Reinforcement of their role as Justice assistants
- Follow-up

They use a child-friendly room with toys, play area, children material, adapted chairs and tables. They use two types of supporting material: one aiming to aid the minor's account of the alleged facts.

"Toys that do not provide information nor contaminate the child's account - ordinary doss, books on the human body or nature, which they can point to if they find it difficult to talk about something, or puppets, but as an additional tool, as support."

Other material aim to adapt the information about the proceedings: tales about the judicial system, what to expect at hearings and what is the role of the actors involved.

#### Areas of improvement

17 interviewees (13 social professionals and 4 legal) think there is a need to improve the training received by professionals working in judicial proceedings where children are involved. Most think training of all professionals should be improved. 4 legal professionals state that training of legal professionals should be improved.

12 interviewees (10 social workers) contend that the environment should be improved, creating child-friendly spaces, or even carrying out the hearings outside current judicial rooms.

9 interviewees (6 legal professionals) suggest actuation protocols to provide information should be implemented.

Finally, 7 interviewees (6 social workers) contend that the language in which minors are informed should be more accessible to them. They advocate for a limited use of legal terms and for the adaptation of the information to the minor's characteristics.

We would like to mention here a last improvement suggested by a few interviewees related to the publication of child-friendly supporting material to provide information using ICT advantages.

#### Ambivalent, open and challenging issues

The most important conclusion derived from the research is the role of legal and social professionals in future developments on children's involvement in the judicial system, in all areas, not only regarding the child's right to be informed. The most important challenge regarding the right to information is how to combine both groups of professionals' objectives when providing information. On one hand, legal professionals aim to inform the child about their rights and duties as victims, witnesses or interested parties following a legal mandate derived from any victims' fundamental rights. On the other hand, social professionals aim to inform and accompany the child in order to ensure their positive emotional state, to make sure they understand the situation they are involved in, for them to feel safe and calm. A lack of understanding generates nervousness and anxiety on the minor. They aim to lower the level of secondary victimization and to improve the reliability and

quality of the minor's statement. The difficulty resides in the fact that the legal information about their rights and duties is difficult to explain and to understand.

The challenge is to provide information that is adequate to the minor's age and maturity, boosting the minor's positive state and improving the results of the proceedings.

## **2.2.2 Right to information in civil justice**

### Current Practices

As we have already mentioned in this report, we have conducted a total of 31 interviews in the area of Civil jurisdiction. 33 professionals have participated on those interviews. 15 of those professionals work only in the civil area, 8 legal professionals and 7 social workers. 18 of those professionals work both in the civil and criminal fields, 6 legal professionals and 12 social workers.

Most of the professionals working in both areas have focused their declarations on their work in the criminal area, therefore there is less information about the civil area. Most of the cases involving children's access to Justice are found not in the Civil field but in the Criminal field. Whilst the Civil Jurisdiction only deals, indirectly, with children in proceedings regarding divorce, filiation, paternity, maternity, custody, guardianship, administrative protection measures, etc., where children are involved with their parents or other adults responsible, in the Criminal Jurisdiction there are indeed specific Courts, called "Juvenile Courts" (Tribunal de Menores) or the Central Juvenile Court (Juzgado Central de Menores), the issues concern directly the children, because these Courts have to deal with the Criminal responsibility of Children. Furthermore, the rest of the Criminal Courts (including the 'Courts on Violence against Women') can also deal with criminal offences against children.

To sum up, the presence of Children in the Civil field is less frequent and less problematical than in the Criminal field, where Children can be prosecuted as criminally responsible and can also take part as witnesses and victims.

We have interviewed three professionals from the Child Protection Office. Their work is not directly related to judicial proceedings. They take administrative decisions involving neglected children, that is, they submit reports to determine whether the child should be a ward of the administration or should continue with their parents. We have interviewed these professionals because they carry out hearings with minors, even though their work relates to the administrative field rather than the judicial.

Practices described by professionals in the civil field are not very different from those described by professionals from the criminal field, but some considerations need to be made.

As in the criminal field, the first information is provided to the parents in the summons letter. This is as far as the law mandates regarding the right to information. Like in the criminal field, the law does not include protocols about who has to provide the information and how this information should be provided.

Another important issue to be taken into account is that in this type of proceedings, both parents usually have their own lawyer, and the child is often in the middle of their parents' conflict of interest. Sometimes the information they receive from each parent can be biased or even contradictory.

Most of the legal interviewees state that, besides the information provided in the summons letter, the judge usually informs the parents about their rights before the hearing. Two lawyers contend that they also inform the parents before the hearing.

A judge states that, according to the law, prosecutors should inform the minor, but he does not know anyone who does.

Half of the legal professionals state that they provide information, but they specify that they do not go into much detail and the information they provide is short. Two of them, a judge and a prosecutor, contend that, if given plenty of information, the child could take sides, or could be influenced by their parents. Only one of the legal professionals states that he gives information according to the child's situation, age and maturity.

To sum up, half of the legal professionals think that it is up to the parents and the parents' lawyers to inform the child.

"The child's parent must inform him or her of what's happening, what's going to happen, what the rules of the game are."

Before and during the hearing some information about rights is provided, but not much. Some consider that too much information could condition the child's statement. This idea may make that the child's right to be informed be disregarded.

"There are times when children are not informed about their rights because they have already realised that they are there to talk about their problems."

Social professionals state they are not responsible for providing information. A psychologist states that minors lack information and there is nobody there to inform them. Everybody seem to assume that it is up to the parents and their lawyers to inform the child.

"The obvious thing would be for parents to prepare their children, given that they have decided to embark on judicial proceedings and to accept that the children should be seen by a psychosocial team, so they should at least prepare them in advance."

Nevertheless, all provide some information before the hearings. Two of them even use a protocol structured around the following issues:

- Why are they there?
- What the hearing is about.
- How does the hearing work?
- Who can use the information and to what end.

None of the professionals use any supporting material to provide information. Information is usually provided at the same room where the hearing takes place. Most of those rooms are not child-friendly. We have also some rooms decorated with some children material to make them more child-friendly.

The three professionals working at the Child Protection Office (1 legal worker and 2 social workers) contend that they do not follow any protocol.

"There is no information protocol; here each person gives the information as they see fit."

Minors at risk of abandonment are informed after the provisional measures have been taken and before the definitive measures. First they adopt some measures, and then they listen to the child and inform them. Most of the children in this situation receive the information from the staff working at their children shelter and not by the professionals involved in their hearings.

The Child Protection Office does not use supporting material nor do they have child-friendly spaced for hearings.

#### *Types of cases and role of children.*

In civil proceedings all the professionals interviewed work in cases where the child is an interested party in divorce, separation and guardianship proceedings.

Two of the legal professionals who work in both civil and criminal proceedings are assigned to Courts for violence against women. These courts deal with criminal cases and the civil proceedings derived from them (separation, divorce and guardianship). The rest of the interviewees (4) work equally on criminal proceedings where the child's role is that of victim or witness, and in civil proceedings where the child's role is interested party.

All the social workers in the Criminal/civil fields are involved equally on criminal proceedings where children are victims or witnesses and in civil proceedings where the children are interested parties.

As we have already mentioned, these Criminal /civil professionals' statements focus on their work in criminal proceedings, which are a more relevant part of their work.

### *People involved.*

People involved in providing information in civil proceedings are many and none. According to a judge it is the prosecutor's duty to inform the child, but he does not know any who does. In practice there is nobody assuming this task, but all of them provide some information just before the hearing. Almost all the interviewees think it is the parents and their lawyers' responsibility to inform the child. Parents and their lawyers are therefore the main actors when providing information in cases of divorce, separation and guardianship.

### *Children's background.*

The only consideration in this regard is the provision of an interpreter for foreign children.

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

Most of the interviewees think that children understand the information they are given. Only one believes children understand very little or nothing. Three state they check for the child's understanding as they provide the information. Two state that comprehension depends on the child's age and maturity, on the language used, and the child's anxiety level. Three adapt the information they provide to children's characteristics.

Ten interviewees think information have an important impact. Three of them insist that the information provided should be short and basic.

Six interviewees think information have a positive impact on children. Some of the expressions they use include calming, useful, and better for them. There are only three interviewees who mention that information have a positive impact on the hearing: children are more aware of their answers, they express their thoughts better and the hearing is more effective.

Like in the criminal field, most of the interviewees make no reference to any direct effects on the resolution of the cases. Two of them state they have no information about the resolution of cases.

### Comparative assessment of practices by professional groups

There are no remarkable differences between the two professional groups in the research. As we have already mentioned in previous chapters, both legal and social professionals have similar opinions about their practices to provide information. Most of the professionals, both legal and social, think it is the minor's parents and/or guardians who should inform the minor. In spite of this, both legal and social professionals normally provide some information to the minor at the beginning of the hearing, in most cases they ask the child what they know and complete the information. Many civil justice professionals, both legal and social, contend it is best to provide little information, and that information should be focused on rights and duties.

None of these groups implement standard protocols or regulations, or use child-adapted rooms or support material to provide information.

### Comparative assessment of practices by any other background variables and roles of interviewees

There are no remarkable differences in the assessment of practices according to any of the variables in the research.

### Good practices on individual and structural levels

Interviewees do not mention any Good Practice in the civil field. We have not detected any practice worth considering Good Practice.

### Comparative assessment of practices by professional groups

Both groups carry out similar practices:

- They think it is the parents' responsibility to provide information.
- They provide some information just before the hearing

- They generally don't use any protocol.
- They provide little information because they think it can have a negative impact on the proceeding..

#### Areas of improvement

Six interviewees think that judges and prosecutors should have sociological and psychological training to establish a better relationship with the minor when providing information and at the hearing. Two social workers, who follow information protocols, think that children should only have hearings with social workers. Two legal professionals think legal professionals should improve the language they use to inform minors.

Only three interviewees think there is a need for information protocols. And only two think more information should be provided to parents and children. One interviewee thinks there should be child-friendly spaces. We would like to mention here a proposal by one of the interviewees who think the minor should be considered not an interested party in civil proceedings but a victim.

#### Ambivalent, open and challenging issues

The biggest contradiction derived from the interviews in the civil field is how to combine two opposing arguments:

- To take into account the minor's right to be informed.
- Not to provide too much information which could lead to the minor being more influenced by one or both their parents.

Despite the fact that many consider that information can lead to manipulation by the parents, most agree that it is the parents' responsibility to inform the child. This is a contradiction none of the interviewees seem to be aware of.

The most important open issue for the future is to establish, with legal regulations, who is responsible for informing the minor and how they should convey this information. This is the biggest challenge this sector faces in order to improve children's rights before the Justice system.

### **2.2.3 Concluding assessment on right to information**

Research suggests that there are no established action protocols related to the child's right to information, neither in civil justice nor in criminal justice. There are some action protocols at some services offered in criminal justice and only at two of the three regions under study.

In criminal justice the role of most of the children is that of victims, whereas in civil justice their role is as interested parties.

In civil justice parents and/or legal representatives play actually a more active role in providing information than in criminal justice.

There is no age limit for minors to receive information in criminal or civil justice, but in both fields the information provided varies according to the minor's age: younger children receive less information.

In criminal justice, social workers play a more active role than in civil justice. In criminal justice the responsibility of informing the minor falls in many occasions on those professionals.

Both in criminal justice and in civil justice, legal professionals lack training in topics that could improve the way inform children, particularly on evolutionary psychology.

In criminal justice, information is considered more important than in civil justice. This is due to the fact that in many criminal proceedings, children are victims and their statements have more weight in the sentence. This is why professionals working in this type of hearings pay more attention to the information they provide, because good information generates a good emotional response and better hearings. In civil justice most of the cases involving children deal with separation, divorce and guardianship. In this scenario children's declarations have less weight in the sentence and therefore the information they are given concerns only their rights.

Most of the interviewees from both fields think the judicial system has improved over the past ten years in relation with the treatment of children involved in judicial proceedings. Nevertheless they also think there is a long way ahead to achieve an adequate treatment of minors. Justice should be more child-friendly and children's rights improved.

### **2.3 Training and co-operation of professionals**

Concerning training, a slight majority of interviewees, 33 out of 60, state that they did not attend any training related to children's hearing, 25 replied that they attended some training and two interviewees did not clearly respond which their training background was.

The legal domain is where the highest share of professionals did not attend any training, 20 out of 28, being the civil justice the area where people are the least trained as only 2 out of 9 interviewees have participated in some training. They are followed by the professionals encompassing both civil and criminal areas, where almost none of them attended any training, 5 out of 6. The situation is slightly better within the criminal justice, where the share of non-trained professionals is 8 out of 12. Finally, for the sake of completeness, it must be said that one interviewee of the legal domain did not clearly explain if he/she was trained or not on these issues.

As for the social domain, the situation is quite different as a slight majority of experts, 18 out of 32, declare that they have attended some training about children's participation in justice. Similar results can be found in both types of justice, being 5 civil professionals out of 7 and 8 criminal professional out of 14 those who were trained. In the case of professionals encompassing both areas, 5 out of 11 were trained.

Also in this case, another interviewee does not refer to any previous training on these issues.

As for the details on the training, first of all it must be said that children-related issues are more and more present within curricula for becoming judges or for becoming police persons assigned to a children's unit.

For people already involved in children-related issues, in-service training is available, in the case of judges this training being organised by the judicial power, while in the case of other professionals like public prosecutors, forensic experts, clerks, and so forth, it is organised by the justice departments of autonomous communities. Because of the variety of issues that can be addressed and the crisis, which has further limited the available resources, in many cases professionals have to look for training outside the justice system.

For two of the interviewees, the training they were delivered was not really in line with their expectations because of being mostly based on theoretical and general approaches that did not allow them facing specific issues.

The majority of interviewees do not provide many elements about their training, so that the classification among the defined strands, namely legal matters, social/psychological aspects, specific justice issues, specific child issues, methods/ procedures has mainly been done on the basis of the titles of the very training. This is also the case of the training duration, which has not been specified. Because the interviewees may have attended many training schemes and the contents may include several aspects, the result is that 18 out of 25 trained professionals have participated in two or more kinds of training.

Concerning the type of training, the lion part is represented by social/psychological matters and specific child issues representing 15 choices each out of 45 kinds of training, while legal matters and specific child issues represent a limited share, being 6 choices each. Finally, a residual part is represented by procedures that only were mentioned by 3 interviewees.

Concerning cooperation, the majority of interviewees stress that it is good even though some social professionals would improve the cooperation with legal professionals because, usually, they are not aware of the further steps of the proceeding and the judgement. In addition, some social experts suggest to introduce protocols for making interventions more homogenous and to define how collaboration among professionals has to be set.

### **2.3.1 Training and co-operation of professionals in criminal justice**

In the criminal justice, the presence of children may be crucial as they can be the victims or the only witnesses of a crime and they can be involved in very serious issues like rapes or murders.

This leads to the need to hear the children regardless of their age.

Because this being a very delicate issue, and particularly when the children are aged under 10-12 years old, pre-trial judges mainly charge psychologists with making hearings, who adopt finely tuned techniques, pay attention to children's delicate issues and set the most appropriate hearing environment.

Over the threshold of twelve years old, that is, as more aged the children are more judges consider themselves in the condition to directly hear them during the pre-trial phase. In the opinion of a social worker this is not really suitable because the lack of training about children's hearings that judges experience may conduct them do not considering really important variables like the sexual identity, which may deeply affect children's declarations.

Moreover, children may be required to be heard also during the trial hearing, so that in addition to the stressful situation that the courtroom and the presence of the prosecuted persons suppose for them, they have also to deal with professionals who can rely on their experience and their sensitivity but usually not on any specific training.

As for the trained professionals' breakdown, two legal experts (one judge and one clerk) referred that they attended children-related training and in one case it was only about legal issues. Social experts involved in the criminal justice tend to attend more training courses and a broader range of issues encompassing different types of contents.

Similar trends can be found with civil professionals, where only one legal professional (a legal advisor within a children assistance office) has attended training while in the case of social professionals five attended one or more than one training scheme.

In addition to "traditional" training, new solutions have been reported by some social interviewees, which seem aimed at customising the contents. For instance, two professionals mentioned that they asked experts about their point of view on very specific issues, who advised them about how to deal with a case. In another case, recently recruited psychologists start a 6-month-period training aside a professional (always a psychologist), who will introduce them to the techniques of the hearings and counsel them.

Concerning cooperation, different positions have been detected. The majority, ten respondents, consider that the cooperation is good or very good, in one case a reference being made to a shared protocol for dealing with unaccompanied minors. Cooperation should be improved according to the views of 7 respondents, for instance in the case of the coordination between social and legal professionals (i.e. between children's assistance office and the justice system) and concerning the relation between judges and clerks with lawyers and experts hired by parts. In the first case it has been stressed the lack of information that social professionals experience about how proceedings develops and which court decisions are issued. In the second case it seems rather based on a lack of confidence as lawyers and experts who are hired by parts are not neutral.

Finally professional with legal background reveal a similar situation, based on a majority of them who are satisfied even if in some cases it is said that the relation between social and legal professionals could be improved.

### **2.3.2 Training and co-operation of professionals in civil justice**

At this stage, it must be said that children's hearings, especially roughly until 12 years old, are made only when the opinion they can provide is considered really important, and especially when they are aged 8 or less they tend to be charged to social professionals who are usually duly trained on these issues. Judges have a high degree of reliance on them, because the adoption of psychological techniques and the setting of the facilities allow them to obtain better information as well as to reduce the risk of children's secondary victimisation.

In the case of civil justice, children are usually involved as parts, they do not have to attend the trial hearing and the legislation allows judges to replace their declaration by hearing informed adults, like teachers, trainers or uncles. Despite these reasons, if the judges finally hear them, the hearing lasts around five-fifteen minutes. The above mentioned issues may help to explain why only two legal professionals (one judge and one clerk) out of seven said to have been trained and in only one case, their training was about social/psychological issues (family mediation). As for social professionals, almost all (five out of seven) are trained and they tend to have attended more and more widespread training courses.

Concerning cooperation, a heterogeneous image appears. Among the fourteen civil professionals who provided information, six declared that it is very good even if in one case the response was about the collaboration among the members of the very team. Many other professionals stressed that some improvements are necessary at different levels, namely three professionals miss the presence of a protocol of cooperation that clearly define in which cases and in which ways cooperation has to be set. In addition, one lawyer reported difficulties in obtaining information when children are looked after by the public administration.

In only two cases, interviewees (one social professional and one lawyer), considered the existing cooperation as limited, without providing further details.

Finally the majority of criminal and criminal/civil professionals stressed they were satisfied even if in some cases, the relation between social and legal professionals could be improved.

### **2.3.3 Concluding assessment on training and co-operation of professionals**

Interviewees mainly attended social/psychological matters and specific child issues, even if with substantial differences between legal and social experts.

More in detail, interesting results come out because legal professionals do not only represent the least trained group but also those who attended least categories of trainings being the ratio between the type of training and the number of experts slightly higher than 1 (namely eight persons attended the following types of training: two legal, three social/psychological and three specific child issues).

Concerning professionals in the social domain the ratio between those trained and the types of training raises to 2.2 and it reflects a wider approach to the professional skills they need to improve, especially “soft” skills falling under social/psychological and specific child issues (in particular eighteen persons attended thirty nine types of training, namely: four people trained in legal, twelve in social/ psychological, six in specific justice issues, thirteen in specific child issues and four in methods/procedures).

Interviewees stress a general lack of availability of training about how to hear children, especially offered by the administration.

The majority of interviewees consider that collaboration is good; nevertheless room for improvement has been observed, at systemic as well as at bilateral levels. In the first case the collaboration between social and legal professionals and the lack of protocols for defining the collaboration have been considered key points. In the second case, at bilateral level, lawyers find it difficult collaborating with the public administration, nevertheless one judge and one clerk stressed that collaboration with lawyers or experts hired by parts may be complicated because the latter may do not treat children as well as they should. A residual number of professionals stress a very limited cooperation.

Finally, as for the kind of cooperation, it is mainly based on the exchange of information rather than on participating in a shared protocol (even if this occurs) or on being involved in the same work team.

## **2.4 Horizontal issues**

### **2.4.1 Discrimination**

All interviewees refer that professionals who responded to anti-discrimination questions stressed that children are equally treated and that discrimination does not exist within the children's justice.

"All of them are minors and all of them are treated alike."

Starting from this point, some experts explained that depending on the children's situation, they tend to adapt the environment (i.e. for allowing disabled children to accede) and/or the way to hear the children for making them feel at ease. In case of foreign children who are not proficient neither with Catalan nor with Spanish (very few) it is possible to have interpreters; this example is by far the most reported by interviewees. Some professionals go further, for instance one psychologist and one judge explained that before the hearing they study the children's situation, including their background. Other experts stress the relation between the crime and the setting of the hearing, for instance, or that depending on the crime the children suffered from and by whom, a male or a female expert is charged with the hearing. One interviewee refers that if the children have some kind of disability or if they come from marginalised social groups, greater care is taken with them. Nevertheless, two psychologists are more cautious, because there is always the risk to falling into the self-fulfilling prophecy and to take for granted children's aspects that are not real.

"What you do is combining what you know about his/her origin, with the things that he/she is saying, so you gradually adapt yourself."

Finally there are professionals adopting a "holistic" approach that considers every child different to any other, this meaning that any hearing has to be made in a unique way and that a wide constellation of variables has to be taken into account.

The attention to the child's culture, even if is taken into account, it is not the main driver that affect the experts' approach to children, because there are cultural and religious practices that are in conflict with the law. For instance, two psychologists explain that the Latin American culture tends to justify more violent attitudes towards children than the European culture, while one social worker stresses that Female Genital Mutilation is forbidden even if some Sub-Saharan ethnic groups consider it necessary. In these cases, children need to understand that these practices are not allowed. Having in mind primacy of the law, one interviewee considers that children belonging to other cultures and religions should have the possibility to respect their rights, customs and traditions including special foods and spaces for praying within juvenile and the justice facilities.

#### **2.4.2 Best interest of the child**

First of all, almost all interviewees who responded to questions based on the children's best interest showed to be aware of it, even though a few stressed that it is a general expression that leads to multiple interpretations, which may differ a lot among them. In the reality, the information gathered during the fieldwork research showed the presence of a general consensus about the primacy of children's protection over other priorities. This approach is based on providing safe and comfortable hearings that prevent secondary victimization and avoid emotional and psychological sequels.

A residual approach is based on the prosecutor's definition based on the delivering of justice, the victims have to be compensated for the sufferance they experienced while the perpetrator is to be granted a fair judgment regardless of the result of the proceeding.

Even if a large majority of those who responded to this question consider that the children's best interest is met or largely met by preventing any harm, problem or sequel, some social experts, three, consider that the children best interest is poorly or totally unmet as victims are used as an instrument for providing evidence and it does not matter what happens to them afterwards, nor it does the situation which they are practically obliged to experience to prove the facts assessed.

Another interpretation is provided by one social worker, who considers the children's best interest as the right to be heard, which has to be ensured regardless of the result of the proceeding.

Finally one lawyer explained that children's best interest is a much misused term, which is used to justify everything.

Everything is done for the child's best interest, but it is curious the mistakes are made in order to pursue the child's best interest

#### **2.4.3 Differences and similarities in regional, national, international context**

Having in mind that in Spain there is a complex multilevel system of legislation providing for various types of competences and that both the central legislation and the legislation of each Autonomous Community have assumed duties on child protection and that the corresponding funding may vary a lot, relevant differences exist at such regional levels. Nevertheless, the interviewees provided few evidences about differences and similarities because for the person who raised the matter the lack of exchange of information and practices at regional, national and international levels is just one of the aspects to improve.

Among the few examples to be referred, we mention three, according the local, regional and international context.

- a) In relation to the activity of the Offices for the Victim Assistance. While in the Autonomous Communities of Andalusia and Catalonia, they have a relevant role also in assisting children, in the case of the Autonomous Community of Madrid, they are less developed.
- b) In Andalucía, it is noticeable the presence of external organisations that are responsible for dealing with children hearings or assist them, while in Catalonia all interventions are covered by the public administration.
- c) At provincial level, a police person explained that Barcelona is the only province in Spain that has a children's prosecutor available 24/7. His/her office and bedroom are just aside the children's unit of the Police and he/she can be consulted when particularly relevant cases come out.
- d) At regional level, a prosecutor based in Madrid referred that at her earlier place in Barcelona there was a special playroom for children in which hearings were held with the judge and the prosecutor and where psychological interviews were conducted. In her current position, all professionals are hearing children directly in their offices.
- e) At international level, one psychologist explained that countries like Spain, France or Italy duly hear children in early ages, thanks to the psychologists' involvement, who are able to manage a range of tools that enable them to really understand each case. On the contrary, in countries like Germany, UK and Scandinavian countries, social workers are the only ones who are charged with hearing children, which reduces the prospects of achieving the truth and introduces a tendency to victimhood.

#### **2.5 CoE Guidelines**

The large majority of interviewees, 45 out of 60, do not have any knowledge of the Council of Europe Guidelines and if we consider that further 9 professionals have only heard about them, we can conclude that 90% of the interviewees have an insufficient knowledge of the above mentioned guidelines.

The remaining 10% of professionals who declare to be familiar with them can be divided into two categories, those who simply know about them, 3 out of 6, and those who do not only know but they also find CoE guidelines useful in their daily work.

More in deep, the least aware category is represented by the social professionals, 29 out of 32 are not aware at all of these guidelines, 2 have a limited knowledge and only 1 states that is familiar with the CoE guidelines. This professional group's breakdown shows that among civil experts there is not a single one who is familiar with such guidelines, only 2 out of 9 heard about them and 7 are not aware at all of them. The situation is quite similar in the case of criminal and criminal/civil experts, who are largely uninformed about COE guidelines, respectively 11 out of 12 and 11 out of 11 do not know of them. Only one professional declared who was familiar with them.

As for the legal professionals, 16 out of 28 are not aware at all, 7 have a limited knowledge and 5 are familiar with the CoE guidelines. This professional group's breakdown evidences that criminal

experts are those who are more informed as 3 out of 13 are familiar with them, 4 have heard about and 6 are not aware. Civil and Civil/criminal professionals share very similar results as respectively 5 out of 8 and 5 out of 7 do not know them, 2 and 1 have heard about and only one for each group is familiar with CoE guidelines.

Such general lack of knowledge of the above mentioned guidelines does not mean that professionals are not engaged in improving children's participation in justice, on the contrary, professionals seem more and more concerned about this aim. The reasons for this growing awareness rest on two complementary aspects. On the one side, there is a growing sensitivity toward children's sufferance that makes professionals more attentive to limiting stressful situations and to ensure their right to be heard. On the other, professionals realise that a more children friendly justice also allows to obtain better and more detailed information.

In addition, it must be said that in the case of the implementation of CoE guidelines, great differences exist among legal and social professionals. Legal professionals, who seem to be more aware, tend to be more convinced than justice is already fairly children friendly. On the contrary, social professionals, who seem less aware of CoE guidelines, tend to consider that, despite improvements, much has to be done in order have a really children friendly justice.

A detailed and balanced assessment is extremely difficult to be made also because their implementation depends on the professionals' sensitivity and specialisation and the availability of suitable facilities; nevertheless many interviewees stressed the growing awareness that the justice system has towards children which make it closer to the CoE guidelines.

### **3. CONCLUSIONS**

#### **3.1 Overarching issues**

The following conclusions refer to the national territory.

- More resources are destined to criminal justice than to civil justice in the Spanish judicial system related o minors.
- Minors can be heard at different stages of the proceedings, from the detection of the crime, until sentence is passed. Nevertheless most of the hearings take place at the preliminary investigation.
- In many cases minors are subjected to a high number of explorations by different professionals (police officers, forensic doctors, social services, judges, psychosocial teams...), this cause the unnecessary secondary victimization of the minor.
- There are no protocols or rules to be followed at hearings regarding the minor's right to be heard and informed.
- Judges take most of the decisions about hearings. They decide whether the hearing will take place with them or with a social professional. In criminal justice they can decide whether the hearing constitutes evidence before trial or not.
- In order to decide, judges take into account the child's age and their level of maturity.
- More and more hearings are conducted by social professionals, both in criminal and civil justice. The protocols and methodology used by those professionals allow them to obtain more information while at the same time preventing secondary victimization
- The majority of the interviewees agree that hearings with social professionals are best option for minors, guaranteeing their rights and preventing secondary victimization.
- In many cases, hearings in civil justice take place to guarantee the child's right to be heard, whereas in criminal justice hearings aim to obtain information crucial for the resolution of the case.
- There is a growing tendency to hear children only when it is absolutely necessary. Sometimes in civil justice only parents are heard. In criminal justice factors like the child's age and credibility may be taken into account.
- Interviewees carry out different anti-discrimination measures, with different approaches.

- The minor's best interest has different interpretations, but there is a general consensus in the child's protection taking prevalence over the child's right to be heard and/or informed.
- Most of the social professionals are better trained than legal professionals.
- Even though in general terms cooperation is good there are some exceptions like the relation with lawyers, the relationship between legal and social professionals and the lack of actuation protocols.

#### *Recommendations drawn from the research*

- Prevent the secondary victimization as a consequence of a high number of explorations.
- Use whenever possible Pre-trial Evidence.
- Reduce the average time between the preliminary investigation and the oral interview.
- Increase the cooperation between social and legal professional to ensure a better treatment of minors both in civil and social proceedings.
- Better and more specific training about how to deal with minors for all professionals involved.
- Installations more child-friendly.
- Design and implementation of protocols to improve interventions.
- Warrants ensuring the child's best interest.

#### *Overall child-friendliness of the proceedings*

- In general, neither criminal nor civil proceedings are child-friendly.
- Most courts don't have specially adapted rooms for conducting hearings with minors. There are only some adapted rooms at some criminal justice courts, mainly when social organizations get involved in cases of sexual abuse of maltreatment.
- In very few cases support materials are used, neither to provide information nor at the hearings when the minor is heard. Explorations where those are used are always criminal cases when the hearing is conducted by social professionals.

#### *Main limitations of findings*

- We haven't been able to analyze the similarities and/or differences between big cities and rural areas due to the difficulties we have encountered to interview professionals working in rural areas.
- Legal professionals' lack of specific training about how to deal with minors may lead to disregarding the child's best interest.
- With some exception, no supporting material is used. Results tend to be better when they are used.
- There is an excessive time between the investigation phase and the oral hearing. This causes a greater secondary victimization of the minors involved.
- Very few professionals have a deep knowledge of the CoE Guidelines on Child-friendly Justice.

#### *References to main changes and future developments.*

- There is a tendency to increase the number of hearings conducted by social professionals and its weight in decision making at the proceedings. Organizations providing support to minors who are victims carry out more and more actuations every year. Nevertheless many social professionals fear that budgetary cuts derived from the crisis might stop or even reverse this tendency.
- The government plans to pass this term a Victim's Statute aiming to establish direct and indirect victims' procedural and extra-procedural rights. This Statute should include the rights of minors who are victims.

- There is a demand for and a tendency to use Evidence Before Trial more and more, especially in cases involving minors who are victims of sexual abuse or maltreatment.

Regarding the three Autonomic communities under study, apart from the general conclusions above we can add that:

- Catalonia and Andalusia have better Victims' Support centers than Madrid. In the case of minors this means that the two first ones ensure a better implementation of the right to be informed, a better accompaniment during the proceedings and a minimization of secondary victimization.
- We have also found that the justice administrations at Catalonia and Andalusia offer external services by organizations specialized on explorations in cases of sexual abuse and/or maltreatment. Those services contribute to a better resolution of the cases and a better treatment of the minors involved.

### 3.2 Research

#### *Feasibility of conducting research with children*

Most of the interviewees (37) think that fieldwork based on interviews with children involved in judicial proceedings as victims, witnesses and/or interested parties is feasible and very interesting. Only 5 interviewees think it would be very difficult to carry out; 3 think it would not be advisable and 4 do not answer.

8 of the 37 interviewees who think it would be interesting, think it should only involve children between 14 and 16 years old.

Interviewees mention two main obstacles. The first one is how to prevent secondary victimization of children. 10 interviewees show concern in this regard and insist that the methodology must take this possible consequence into account to prevent it. Furthermore, there is one interviewee who thinks the research should not be conducted for this reason. Two interviewees think the fieldwork should only include adults (18-20) who have been involved in judicial proceedings as minors.

The second obstacle refers to how to identify and localize the children while respecting their right to data protection. Some of the interviewees suggest possible solutions:

- Ask for the collaboration of judicial institutions. Ask the judges and prosecutors to inform the parents and request their collaboration. 7 interviewees mention this solution to contact the children.
- 4 interviewees suggest that psychosocial teams inform the parents. These teams would include psychosocial teams assigned to courts (family courts, violence against women courts, Victims' support offices, etc.) and the psychosocial teams working at associations providing support to minors who are victims.
- 3 interviewees contend the minors should be approached through their parents. This seems an obvious solution, since in any case parents must authorize any interview with their children. One of the interviewees thinks the parents should be present during the interview.

Two of the interviewees think the interviews should be conducted by psychologists with professional experience dealing with minors.

Regarding the interviews contents, there are different opinions:

- Interviews should focus on the degree of satisfaction and not on the cases' results (3)
- Children should be asked whether the results were what they expected (3)
- They should be asked if they could express their opinions (3)
- They should be asked about how they felt (3)
- They should be asked whether they understood everything (2)
- They should be asked to suggest improvements (2)
- They should be asked whether they were scared (19)
- They should be asked whether they felt comfortable (1)
- They should be asked about the emotional impact (1)

- They should be asked whether they found it useful
- They should be asked whether they found it educational (1)
- They should be asked about what they found harder, what made them feel worse, what they detested the most, what they found most helpful and what they found most disappointing. (1)

#### *Existing research*

The only publication mentioned by some of the interviewees is “Spanish Justice System and Children’s Sexual Abuse in the Family Environment” by Save the Children<sup>22</sup>. The research study was published in September 2012 and analyses the origin and scope of the difficulties found by the alleged victims of these crimes to access appropriate protection and effective judicial protection. To this end, the study focuses on four cases of sexual abuse to children which were discontinued by the judge. They used a methodology based on the documentation of cases. This technique is the one used to investigate the infringement of human rights. The documentation of cases has been carried out by contrasting the testimonies of the children’s guardians with the cases records.

#### *Research gaps*

Possible research gaps mentioned by the interviewees include:

- To take into account the right to confidentiality and the Personal data Protection Act
- To ensure the parents or legal guardians’ authorization if not with their presence.
- Prevent any kind of secondary victimization.

To focus on the children’s feelings and how their right were guaranteed rather than entering into the cases’ details.

### **3.3 Any other issues not covered in previous sections**

Nothing more to add.

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<sup>22</sup> Save the Children (2012) *La Justicia Española frente al abuso sexual infantil en el entorno familiar* (2012), available at: [www.savethechildren.es/docs/Ficheros/553/Informe JUSTICIA\\_ESP\\_ABUSO\\_SEXUAL\\_INFANTIL\\_vOK-2.pdf](http://www.savethechildren.es/docs/Ficheros/553/Informe JUSTICIA_ESP_ABUSO_SEXUAL_INFANTIL_vOK-2.pdf)

## ANNEX

### Documentation

#### Quotes

- "There is a non-mandatory regulation, a circular dating from 2009 issued by the Attorney General's Office that establishes how testimony should be taken from children who are witnesses or victims. It establishes what should ideally be done, but as it is not compulsory, it is not applied."
- "It is about adapting to the child. We try to understand the kind of child we are dealing with, we try to understand his/her profile, if he/she is more or less introverted"
- "Of course, for the judge, the public prosecutor and the lawyers it's all over when the trial ends, but there are other consequences for the girl. This is the reason why we need to work with her before and after."
- "From the psycho-social point of view, in our team we are convinced that this practice (the hearing conducted by psychologists) is good because it avoids victimisation, it allows the child to be heard in a milieu that respects his/her emotional dimension,(summing up), a favourable situation. Moreover, concerning the court, this practice enormously improves the quality of the child's declaration, and this is what interests the judge."
- "In a court, what makes feel the children uncomfortable is the coldness, the depersonalization, children being treated as adults, making them stay in an environment that they do not understand"
- "In case of children victims, generally, they feel vented, like they had lift a heavy burden, like they had delivered something that harm them and they have to be no more preoccupied about, because, now, are adults who deal with it. This is the emotion they have"
- "Despite you wanting to talk to them in a language that they understand, taking off your robe and sitting down with them, trying to play at something... the prosecutors are not prepared, we are not psychologists, we don't know how our questions could affect that child"
- "I think that they are not even trained. What it cannot be said is that the specialisation comes with the experience... we are currently calling "professionals" many people who are not. (Skills) recycling and information do not exist."
- "Then, what the judge wants to know is "May I believe this child?" Because, very often he/she is the only witness the judge has."
- "During my career I have noticed major changes in this respect, namely that previously child hearings were simply considered a formality of the proceedings, and this is no longer the case"
- "So it is important to give this information to the child and to the parents to, because sometimes they come with some dramatic fantasies, for instance they think that the pre-trial hearing is the trial hearing."
- "... It consists of a procedure that we always follow with victims; in this way, they know that they have the right to claim for the damages, to participate in the proceedings, to receive the corresponding compensations."
- "There will be a gentleman who will ask you about what happened to you on that day. Answer if you can remember; if you don't remember, say so"
- "Toys that do not provide information nor contaminate the child's account - ordinary doss, books on the human body or nature, which they can point to if they find it difficult to talk about something, or puppets, but as an additional tool, as support."
- The child's parent must inform him or her of what's happening, what's going to happen and what the rules of the game are."

- “There are times when children are not informed about their rights because they have already realised that they are there to talk about their problems.”
- “The obvious thing would be for parents to prepare their children, given that they have decided to embark on judicial proceedings and to accept that the children should be seen by a psychosocial team, so they should at least prepare them in advance.”
- “There is no information protocol; here each person gives the information as they see fit.”
- “All of them are minors and all of them are treated alike”
- “What you do is combining what you know about his/her origin, with the things that he/she is saying, so you gradually adapt yourself”
- “Everything is done for the child’s best interest, but it is curious the mistaken are made in order to pursue the child’s best interest”

## Resources

### Reports

- Save the Children (2012) *La Justicia Española frente al abuso sexual infantil en el entorno familiar* (2012), available at:  
[www.savethechildren.es/docs/Ficheros/553/Informe JUSTICIA ESP ABUSO SEXUAL INFAN TIL\\_vOK-2.pdf](http://www.savethechildren.es/docs/Ficheros/553/Informe_JUSTICIA_ESP_ABUSO_SEXUAL_INFAN_TIL_vOK-2.pdf)

## Tables

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
<b>Legal</b>	12	15	0	27	13	14	0	27
Criminal	6	7	0	13	7	6	0	13
Civil	4	4	0	8	3	5	0	8
Both areas	2	4	0	6	3	3	0	6
<b>Social</b>	10	23	0	33	25	8	0	33
Criminal	4	10	0	14	11	3	0	14
Civil	1	6	0	7	4	3	0	7
Both areas	5	7	0	12	10	2	0	12
<b>Mixed</b>	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
<b>All professionals</b>	22	38	0	60	38	22	0	60

### Ad CoE guidelines:

Ad CoE guidelines:	Familiarity with Guidelines			
	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	Total
<b>Legal</b>	5	7	16	28
Civil	1	2	5	8
Criminal	3	4	6	13
Both areas	1	1	5	7
<b>Social</b>	1	2	29	32
Civil	0	2	7	9
Criminal	1	0	11	12
Both areas	0	0	11	11
<b>Mixed</b>	0	0	0	0
Civil	0	0	0	0
Criminal	0	0	0	0
Both areas	0	0	0	0
<b>All professionals</b>	6	9	45	60

**Ad training:**

Profession	Training Participation		Total*
	no	yes	
<b>Legal</b>	20	7	28*
<b>Civil</b>	7	2	9
<b>Criminal</b>	7	4	12*
<b>Both areas</b>	6	1	7
<b>Social</b>	13	18	32*
<b>Civil</b>	2	5	7
<b>Criminal</b>	5	8	14*
<b>Both areas</b>	6	5	11
<b>Mixed</b>	0	0	0
<b>Civil</b>	0	0	0
<b>Criminal</b>	0	0	0
<b>Both areas</b>	0	0	0
<b>All professionals</b>	33	25	60*

\* two interviewees do not clearly explained if they were trained or not

Professional Group	Type of Training				
	Legal	Social/ psychological	Specific justice issues	Specific child issues	Methods/ procedures
<b>Legal</b>	2	3	0	2	0
<b>Social</b>	4	12	6	13	3
<b>Mixed</b>	0	0	0	0	0
<b>All professionals</b>	6	15	6	15	3