

Social Fieldwork Research
Child Participation in Justice Report
Germany, 2012

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EXECUTIVE SUMMARY

- [1] This is the final summary report of the German fieldwork research commissioned by the European Union Agency for Fundamental Rights in the context of the project “Child Participation in Justice”, focussing on the child-friendliness of criminal justice and civil law procedures as experienced and assessed by adult experts. Unlike in Germany, the term “children” means in the context of this research and according to the UN Convention on the Rights of the Child all minors under the age of 18 years. However, the focus of research was not on children in general but minors as parties in civil law disputes and as victims and witnesses in criminal justice rather than as accused.
- [2] The report summarises the findings from 50 interviews and one focus group discussion conducted from July to December 2012 in eleven of the sixteen German states on a face-to-face basis or via telephone. We are grateful for their trust and for the time they devoted to support this research. 29 of the interviewed experts were legal professionals, namely judges, lawyers, prosecutors or police officers; 22 were social professionals, working as legal counsels, in victims support services, as psychological experts or in youth welfare offices. Two thirds were persons working in the area of civil law and a third of the interviewees work in the field of criminal justice or cover both areas. In demographic terms, the majority of the interviewees were urban female professionals. Though the overwhelming majority of the interviewees were concerned about the issues at stake of this research, only three of them were aware of the Council of Europe Guidelines on child-friendly justice.
- [3] In a strict sense, a right of children to be heard does neither exist in criminal justice nor in the field of civil law. Rather children are obliged to testify in criminal proceedings unless they are personally related to the perpetrator, as any adult witness as well. The only exception is that children under the age of 14 years cannot be forced to testify as they are non-accountable. In family law proceedings judges are, according to case law, obliged to hear children over the age of 3 years, except for “grave reasons” justifying a waiver.
- [4] Most interviewed professionals reported that they see child hearings in both areas of law as very important for the case and the child. The testimony or view of the child is reported in many cases to be decisive for the final verdict. Moreover, the opportunity to be heard is believed by many to empower children, provided hearings are conducted in an appropriate and child-friendly manner.
- [5] In both areas of law major reforms have taken place in the last decade that were meant to improve, among others, the position of children. In criminal justice victims protection made progress, and family law reforms aimed for a better respect of the view of children. However, binding rules how to implement these reforms are only provided by a few case law decisions and guidelines are rare. Thus, the actual practice of child hearings is mainly determined by the discretion of individual judges and other key players as well as the available resources.
- [6] Given the increasing awareness for child-friendly justice plenty of initiatives to improve training, resources and collaboration were found during the research. However, it is not

known how far reaching these initiatives are. The data suggest great regional variations, for instance, in practices to appoint legal counsels for family law proceedings or in the availability of equipment for video hearings or child-friendly rooms. To assess the actual extent of child-friendly hearing practices in the German justice system further empirical research is necessary.

- [7] Most interviewed experts underlined the importance to inform children appropriately about the proceedings and the hearing either for the sake of the children or, in criminal justice, also for the sake of the quality of the testimony. However, in both areas of law it is not guaranteed in any case that adequate information is provided. To inform children is usually left to special services such as legal counsels or psycho-social lawsuit supporters who are not made available on a regular basis. Hence, often parents find themselves in the position to prepare children for hearings though they are not capable to do so in an adequate manner as they are, for example, party in the conflict themselves or lack a basic understanding of the justice system. Moreover, in the area of civil law the appointment of a legal counsel does not necessarily entail the professional provision of information as such services can also be offered by untrained laypersons.

1. BACKGROUND

1.1 Research Methodology

- [8] For the purpose of this study 50 expert interviews were conducted from 12 July to 5 December 2012. Most of the experts were recruited by a call for interviewees which was circulated via umbrella associations and federations of relevant professional groups such as judges, lawyers, legal counsels, prosecutors, social service providers, psychologists and interpreters. The call was sent out to 23 organisations with a request to forward it to their members. Moreover, several existing personal contacts were used to spread the call in a snowball fashion. In addition, selected police departments, public prosecution offices and youth welfare offices were directly contacted to reach experienced public servants who usually need approval of their superiors to be interviewed.
- [9] The feedback was quite good. However, not all targeted groups were similarly responsive to the call for participants. In particular lawyers and legal representatives mainly working in the area of civil law were prepared to support the research, whereas experts working in the area of criminal justice were less accessible. Of mixed success were the direct contacts to public administration: Police departments in two regions approved interviews and named officers. In contrast, public prosecution offices did not respond to our requests, and only one contact to a psychological expert also working for a youth welfare office was established via the formal channel. Eventually, more than 80 potential interviewees were identified but the pool

of interview candidates was biased in several aspects: Women were overrepresented as well as experts working in the area of civil law. Very few people from Eastern Germany responded to the call for interviewees, and around 20 police officers were suggested as interviewees by their departments. In the end, the selection of actual interviewees attempted to achieve a sample as balanced as possible. However, the options for selection were obviously limited for some groups of professionals than for others, given the uneven feedback from the field. About the reasons why certain groups were more accessible than others we can only speculate. Perhaps people who have chosen to work in the area of family law are more concerned about the situation and rights of children than other professionals.

- [10] 24 of the 50 interviews were conducted on a face-to-face basis. Most of the interviewees are located in three regions, namely in Berlin-Brandenburg, Hesse and the in Bavarian capital Munich. The other 26 interviewees are located across Germany. Hence, they have been interviewed on telephone as the tight project schedule did not allow extensive and time-consuming travelling of the researchers. However, no significant differences were noticed between the two types of interviews.
- [11] A serious problem was the organisation of the envisaged four focus groups. Whereas a first focus group in Munich was easily conducted, drawing on the very supportive network of professionals around the so-called “Munich model”, it was impossible to conduct further focus groups in time. Despite engaged professionals who offered to support the organisation of a focus group locally or who were prepared to come to Berlin our efforts failed for several reasons: An attempt to assemble criminal justice professionals engaged in a local project in the North East of Germany for a focus groups failed as judges, prosecutors and police officers were worried that group interview statements could result in challenges on grounds of bias by their interview counterparts in future legal proceedings. Further attempts to invite persons with different regional backgrounds to focus groups in Berlin failed, as it was impossible to recruit a critical mass of professionals for the proposed dates. Thus, only one focus group discussion with five discussants, most of them working in the area of civil law, informed our research.
- [12] The interviews and the focus group discussion were conducted by a team of five researchers: four women and one man aged between the late 20s and early 40s with academic backgrounds in childhood studies and children’s rights, political science, psychology, social work and sociology. The female researchers conducted all interviews; the focus group discussion was moderated by the male researcher. As none of the researchers has a legal background some details might have been overlooked during the conduct and analysis of interviews, e.g. minor gaps between the law in books and the law in practice or statements of interviewees contradicting prevailing doctrines on how they read the law. However, all researchers were aware of the general rules concerning child participation in justice.
- [13] The length of the conducted interviews varies from 45 to 110 minutes, with an average time of 75 minutes. Usually the level of trust and confidentiality was high and interruptions were

rare. Only some law enforcement officials were described as being reluctant to speak freely, and in one case a researcher felt snubbed by a senior female expert during the interview. Participation was also good during the two hours of the focus group discussion indicating a high level of trust in the researcher but more importantly among the discussants who knew each other – with one exception – for many years.

- [14] With a few exceptions each researcher analysed the interviews respectively the focus group that she or he had conducted and completed the reporting templates according to the guidelines of the Fundamental Rights Agency (FRA). For the final synthesis all reporting templates were aggregated and the resulting corpus of overall findings was qualitatively analysed by two researchers of the team.

1.2 Sample

- [15] As four of the five focus group discussants were also interviewed face-to-face, in total 51 experts were heard in the course of the fieldwork. Though the interviews were held with respondents from across Germany; local field work clusters were the major cities of Berlin (11 interviews) and Munich (8). Nine interviews were held in North Rhine Westphalia, Germany's largest state. In Hesse and Lower Saxony eight experts were interviewed each. One or two interviews each were conducted in Hamburg, Saarland, Rhineland Palatine, and in the Eastern German states Brandenburg, Thuringia and Mecklenburg Western Pomerania. No voices were heard from five German states and only very few from Eastern Germany.
- [16] Among them 29 experts were counted as "legal professionals": 15 independent lawyers, eight district court judges, one judge at a higher regional court, one public prosecutor and four police officers from Berlin and the neighbouring state Brandenburg. The other 22 experts were counted as "social professionals": 15 people supporting minors as legal counsels or as victims' assistants – most of them trained in social work –, six psychological experts, and one unit leader of a youth welfare office.
- [17] Two thirds of the sample are persons who work in the area of civil law. As family judges (8 interviewees), independent lawyers (11), legal counsels (9), forensic psychologists (4) or youth welfare office staff (1) they are involved in legal proceedings related to family disputes such as custody battles, conflicts over visitation rights etc. The legal counsels (*Verfahrensbeistände*) work as freelance professionals who are mandated by judges to assist minors. Most of them are members of the Federal Working Group of Legal Counsels (*Bundesarbeitsgemeinschaft Verfahrensbeistandschaft* – BAG) that offers guidelines and training. Three of the four psychologists work as freelancer; one of them has founded a private association pooling more than 50 forensic consultants in the south of Germany.
- [18] A dozen of the interviewed experts work in the field of criminal justice. As police officers (4), public prosecutor (1), district court judge (1), independent lawyer (1), counsels

(*Ergänzungspfleger*) and victims' supporters (4) or psychologist (1) they play their particular roles in criminal justice proceedings. Two of the police officers work with a special focus on sexual violence, abuse of minors and domestic violence and one with a focus on youth delinquency. The four experts who are active as counsels and victims' supporters work for different non-profit child and witness protection organisations with a focus on cases of sexual abuse and domestic violence.

- [19] The other six experts – four lawyers, one counsel and one psychologist – are active in both the field of civil law and criminal justice. Whereas the lawyers and the counsel work as independent professionals, the psychologist is a managing director of a private institute pooling more than 40 forensic psychologists in a major city.
- [20] Most of the interviewees are directly involved in hearings or interrogations of children either as persons in charge (judges, prosecutors, police officers, psychological experts) or as close observers and assistants (social workers, counsels and incidental action lawyers). The group that is most “remote” to child hearings are family law lawyers (10 interviewees). As they are not present during child hearings in family courts they could only report how they experience children before and after the trials.
- [21] Some groups of professionals have more insights into the social context of children than other groups. In particular the social workers assisting children as witnesses or parties in legal proceedings usually are in close contact with parents and other persons of trust. In addition, social workers often accompany children through all stages of legal proceedings and even the follow-up. Thus, they are in a much better position to assess how the whole procedure affects children than other groups of professionals who only experience children in a particular stage of the procedure such as police officers. On the other hand, social workers come only into play in difficult cases of severe crimes or complicated family disputes. Thus, their intimate insights do not cover the “average” proceeding.
- [22] In demographic terms, the majority of the interviewees are urban female professionals aged between 45 and 65 years: Two thirds of the 51 interviewed experts live and work in major cities with more than 100,000 inhabitants, three quarters of the experts are women, and two thirds are 45 years or older but not yet retired. Only one interviewee is older than 65 years, 13 are younger than 45 years but none younger than 25 years.
- [23] Women outnumber men in all professional groups covered by the research. This bias of the sample is most significant for lawyers as 14 of the 15 interviewed experts are women. With 11 female counsels and victims' supporters the gender bias is also significant for this group of professionals. In contrast, the sample is most balanced for the group of judges: five female judges and four male judges were interviewed. If the significant share of women does reflect a higher representation of female experts working in the field of research or if women felt more addressed by the call for participation is unknown. However, at least from the group of

family lawyers it is known that women outnumber men.¹ In addition, it is remarkable that the overwhelming majority of the interviewees was quite empathetic with minors who are facing courts and, thus, very interested in the issues at stake.

1.3 Legal context

[24] Though, potentially, all courts might be concerned with children as parties or witnesses most cases where children participate in legal proceedings are family law matters dealt with by special branches of the civil courts and matters of criminal justice dealt with by criminal courts. Both civil courts and criminal courts belong to the ordinary jurisdiction (*ordentliche Gerichtsbarkeit*) with individual judges taking most of the decisions in the first instances and chambers taking collective decisions in higher instances. Exceptions from this general rule are lay judges courts (*Schöffengerichte*), composed of one professional judge and two lay judges, and grand criminal chambers of regional courts (*Große Strafkammern der Landgerichte*), composed of three professional judges and two lay judges. These types of courts administer criminal justice in the first instance in cases of more serious crime.

Civil law

[25] Besides the Code of Civil Procedure (*Zivilprozessordnung – ZPO*), the main legal source for regulating legal proceedings in the special civil courts is the Family Affairs Proceedings Act (*Gesetz über das Verfahren in Familiensachen – FamFG*), that has replaced the Act on Matters of Non-Contentious Jurisdiction (*Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit – FGG*) in 2009 as part of a major reform of family law. These special courts, called family courts (*Familiengerichte*) were established in 1976. Since the reform of 2009, that was called a “true revolution” by an interviewed judge, all proceedings related to disputes around divorce and separation, to adoption and the prevention of violence are held in integrated ‘major family courts’.

[26] In cases of ‘childhood issues’, including custody, visitation rights, surrender of children, guardianship, legal representation and custodial commitment, the court is, according to § 159 FamFG, obliged to hear all children over the age of 14 years, and younger children whose interests, personal ties or child’s view are of significant importance for the decision, or if other relevant reasons exist. Only for “serious reasons” a judge may waive hearing an affected child. The child has to be informed about the issue, the progress, and about the possible outcome of a proceeding in an appropriate manner. The court decides on how to organise the hearing.

¹ According to a recent study of the Soldan Institute 58% of specialist family lawyers are women, whereas for all other specialist lawyers women’s share is only around 20%.
<http://www.soldaninstitut.de/index.php?id=2876> [Download: 28 January 2013]

- [27] If necessary for exercising her or his interests, the court shall appoint a legal counsel (*Verfahrensbeistand*) (§ 158 FamFG). The law deems the appointment of a counsel necessary in particular if and when the interest of the child are conflicting significantly with the interest of his or her parents, when custody is at stake, when visitation rights might become significantly limited, or when the child might be surrendered. The counsel's role is to inform the child about the proceedings, be present at the child hearing except the child decides against it, assess and determine the child's interest and represent this interest in court. In addition, courts may task counsels to talk with parents and other persons close to the child and to participate in moderating the dispute. Professional counsels are paid for each case with 350 Euro respectively with 550 Euro, if they are also commissioned to contact parents and others.
- [28] According to § 164 FamFG, children shall be informed about the final decision if aged over 14 years, except for cases when this might cause negative effects for their development, education or health.
- [29] Given the recent "revolution" brought by the Family Affairs Proceedings Act, further major reforms are not in sight. One interviewee pointed out that the new Federal Child Protection Act (*Bundeskinderschutzgesetz – BkiSchG*) adopted on 22 December 2011 encompasses an amendment of the Social Code (*Sozialgesetzbuch – § 55 SozialGB VIII*) regarding the child's right to be heard. Now, she reported, the child can co-decide on the selection of staff, if a legal custodian from the child's protection services staff is to be appointed. Implementation of this new provision is at an early stage.

Criminal justice

- [30] The participation of minors as victimised or common witnesses in criminal justice is mainly regulated by the Code of Criminal Procedure (*Strafprozessordnung - StPO*). Unlike in civil law there is no right to be heard for minors in criminal justice. Rather they are usually obliged to testify as well as adults during criminal investigations (§§ 161a StPO) and during the main trial in court (§ 48 StPO). They may even become subjects of physical examination when this is deemed being necessary for the collection of evidence (§ 81c StPO). German law does not prescribe an age threshold under which children cannot be interrogated. Rather this is decided on a case-by-case basis. However, children under the age of 14 years cannot be forced to attend a hearing.
- [31] Exceptions from these general rules are made in the case that witnesses are close relatives of the accused and are therefore entitled to refuse giving evidence, or if minors lack the "intellectual maturity" to understand their right to refuse giving evidence (§ 52 StPO). In the latter case minors may only be interrogated provided that they are prepared to testify and if their legal representative gives his or her approval. In case that legal representatives are suspects themselves, a counsel (*Ergänzungspfleger*) may be appointed by a custody court to represent the child in this particular issue, or full custody may be transferred to a guardian

(*Vormund*). For decades, witnesses were only provided with information about their right to refuse giving evidence, according to §§ 52 and 55 StPO, that has to be provided in advance of any hearing.

- [32] Since the revision of criminal justice by the Fourth Criminal Law Reform Act (*Viertes Strafrechtsreformgesetz*) of 1973, several exceptional safeguards aim to protect minor witnesses in criminal proceedings: As a general rule, only judges – neither the prosecutor nor the defense lawyer – may interrogate minors in court during the main trial (§ 241a StPO) and they cannot put minors on oath (§ 60 StPO). If and when minors are interrogated, the accused (§ 247 StPO) and the general public (§ 172 Court Constitution Act - *Gerichtsverfassungsgesetz*) may be excluded from the court room. Until 2009 these safeguards were only meant to protect children and youth under the age of 16 years (now it is up to 18 years).
- [33] As the role and protection of victims (as witnesses) in criminal proceedings gained attention in the 1980s, several reforms have mitigated the strict rules for criminal procedure also applying to minors.² Rights to support of witnesses and victims and rights to information have been strengthened by the Victims Protection Act (*Opferschutzgesetz*) of 1986 and the by the two Victims' Rights Reform Acts (*Erstes und Zweites Opferrechtsreformgesetz*) of 2004 and 2009: Now explicitly, witnesses may be assisted during hearings by a lawyer (*Zeugenbeistand*); if witnesses deserve special protection and need assistance to exercise their rights they have to be provided with a lawyer to be paid by the state (§ 68b StPO). In addition, victims may engage a lawyer representing their interests (*Opferbeistand*) throughout the proceedings, and hearings of victims can be attended by a person of trust (*Vertrauensperson*), as, for example, a sibling or social worker, already during criminal investigation (§ 406f StPO). The scope for incidental action (*Nebenklage*) has been widened, and since 2009 victims are entitled to take incidental action to pursue their interests in all cases of crimes that have caused severe consequences (§ 397 StPO). Victims of severe crime against life and health can even hire an incidental action lawyer paid by the state (§ 397a StPO). On request, all victims have to be informed about the final court decision or about a suspension of the case (§ 406d StPO). Enhanced rights to information are granted to victims taking incidental action, as they have to be informed automatically about the final verdict and have access to proceeding files. Victims in general have to be informed about their special rights, including the option to request psycho-social lawsuit support, “as early as possible, regularly in written form and, as far as possible, in reasonable language” (§ 406h StPO).
- [34] Whereas the first relevant amendment of the Code of Criminal Procedure by the Victims Protection Act did hardly consider the protection of minors in particular, later initiatives refocused on the situation of minor witnesses: The Witness Protection Act (*Zeugenschutzgesetz*) of 1998 prescribed the regular video recording of interrogations of

² For a good overview of the development of victims protection legislation see: Joachim Herrmann (2010): Die Entwicklung des Opferschutzes im deutschen Strafrecht und Strafprozessrecht. Eine unendliche Geschichte. In: *Zeitschrift für Internationale Strafrechtsdogmatik*, 3/2010, pp. 236-245.

witnesses younger than 16 years who were injured by a crime (§ 58a StPO). The screening of such footage in court was allowed as substitute of a public hearing in cases of abuse, sexual and other serious violence against victims younger than 16 years to avoid multiple hearings (§ 255a StPO). In addition, video hearings of witnesses in remote rooms being live-broadcasted to the other parties in court were authorised for criminal investigation (§ 168e StPO) and for the main trial (§ 247a StPO) to avoid witnesses being harmed by contact with the accused or the public. Whereas the video hearings during criminal investigation mean the co-presence of the witness and investigator in the same room, the legislator chose the “English model” of an interrogation of a distant witness by the judge, being present in the court room, for the main trial procedure.³

- [35] The Second Victims’ Rights Reform Act of 2009 increased the age limits for the several mechanisms protecting minor witnesses, aiming to meet international standards. The age of 18 rather than 16 years was made the new threshold under which “children” are granted special protection in criminal proceedings. However, an amendment of § 58a StPO also included the rule that video recordings of interrogations should be limited to cases where necessary for the sake of “interests deserving protection”. Thus, the legislator responded to the reluctant implementation of the Victims Protection Act provisions due to the technical and personal extra efforts and the privacy infringement by video recording.
- [36] Additional provisions relevant for child hearings can be found in the not strictly binding Guidelines for Criminal Procedure and Penalty Procedure (*Richtlinien für das Strafverfahren und das Bußgeldverfahren – RiStBV*), an internal administrative directive. § 19 RiStBV comprises principles for the child-friendliness of the hearing of children and youths: multiple hearings before the main trial are to be avoided; video hearings are to be conducted „if possible“; it shall be taken care for the presence of a person of trust; early hearings by an investigating judge are recommended before the opening of the main trial; in doubt of credibility persons close to the minor shall be interviewed, and, possibly, a psychological assessment is to be mandated.⁴ Finally, hearings may be governed by a non-binding Uniform Recommendation for the Protection of Child (Victim) Witnesses in Criminal Proceedings (*Bundeseinheitliche Handreichung zum Schutz kindlicher (Opfer-)Zeugen im Strafverfahren*) that was published by the Federal Ministry of Justice in 2000.
- [37] Asked for relevant reforms on the horizon, a few interviewees mentioned the European Commission’s proposal for a Directive Establishing Minimum Standards on the Rights, Protection and Support of Victims of Crime which was expected to have tremendous impact. Furthermore, the Act Strengthening the Rights of Victims of Sexual Abuse (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs – StORMG*) tabled by the Federal Government in summer 2011 was passed by the Federal Parliament on 14 March 2013. Among

³ For details see: Maike Scheumer (2007): *Videovernehmung kindlicher Zeugen. Zur Praxis des Zeugenschutzgesetzes*. Göttingen: Universitätsverlag Göttingen.

⁴ Except the credibility assessment, all listed provisions apply only to minors (aged under 18 years) according to para 2 of § 19 RiStBV.

others, it prescribes standards for the qualification of judges hearing minor victims of sexual abuse and strengthen efforts to avoid multiple hearings.⁵

2. FINDINGS

2.1 *Hearing children in legal proceedings*

2.1.1 Children as witnesses in the field of criminal justice

- [38] Given the limited number of interviewees from the area of criminal law, the insights gained into the way of how minors are currently heard as witnesses in Germany are fragmentary. Relevant voices were only heard from eight German states, most of them from Berlin. In no state representatives from all relevant professional groups could be interviewed. In Berlin, for example, the research team could talk to police officers, a lawyer and social professionals, but was missing the perspective of judges and prosecutors, whereas in all other states only one or two professionals were heard. Hence, neither a detailed mapping of regional variations was possible nor the detailed collection of information about all stages of criminal procedure.
- [39] The first contact with the criminal justice system is usually the police. They receive complaints and reports by victims, witnesses, or parents of victimised minors. According to police officers from Berlin and Brandenburg, the current procedure is described as follows: Once, a report is received by the police – depending upon the severity of the crime, either by the on guard duty in uniform (*Wach- und Wechseldienst*) or by the permanent criminal service in plain clothes (*Kriminaldauerdienst*) – the case is assigned to an investigator, usually within three days. If and when minors report crimes themselves they have to answer basic questions referring to the reported incident. However, usually parents report incidents; then the police turn to children only in case that they need a description of an offender. In a second stage, minor witnesses are summoned by the investigator to a formal hearing by a letter to their parents or legal representative as soon as possible, preferably within four weeks.
- [40] As a general rule children are questioned at the police. Present during the hearing at the police are the police investigator, often parents or counsels, an interpreter – if necessary –, and sometimes other persons of trust such as siblings or a social worker for victims support. A few officers reported that children aged over 14 years can decide whether their parent shall attend the hearing or not. To avoid parents' interference, officers place them in the 'backstage' of the hearing room or even ask them to wait outside. However, as parents of young children need to agree with the hearing officers have to maintain a cooperative

⁵ Bundesministerium der Justiz: Pressemitteilung – Durchbruch für die Opfer sexueller Gewalt. http://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2013/20130313_Durchbruch_fuer_die_Opfer_sexualisierter_Gewalt.html (Download: 10 April 2013). At the time of writing the act was not published officially in the Federal Law Journal but the bill is available at Deutscher Bundestag: Drucksache 17/6261, 22 June 2011.

atmosphere. Also one social worker accompanying victims as “person of trust” for the purpose of psycho-social lawsuit support reported that the police fears influence and, thus, prefers to keep them outside. For all hearings with minors, investigators have to write an “impression memorandum” (*Eindrucksvermerk*), noting the general context of the hearing and the child’s reactions in particular.

- [41] Whereas hearings of young children were reported by police officers in the region of Berlin-Brandenburg taking no longer than 30 minutes, hearings with youths⁶ may even take up to 90 minutes. In contrast, a social worker from a rural area in the north of Germany reported that she has even witnessed hearings that have taken five hours. In some cases hearings are interrupted when children lose concentration and a new date is scheduled. As children under the age of 14 years cannot be charged if they provide false testimony, investigators usually write their report from memory in these cases. However, one special investigator, examining cases of sexual abuse, said that she takes the minutes verbatim by computer and, hence, prepares children by explaining that she will not always look at them and need to interrupt the hearing for transcribing the child’s statements. If children are over 14 years old, the police officers type their minutes during the hearing – in some cases rarely available typists do this job. At the end of the hearing youth witnesses have to sign the minutes. One police officer from Brandenburg complained about a recent order to produce written minutes immediately, as this hinders her from paying full attention to child witnesses as she could do before.
- [42] Only one police officer, investigating youth crime in Berlin, reported that a special room equipped with children’s books and toys is available in his station for police hearings of children under the age of 14 years. The other Berlin police officer in charge of investigating sexual abuse reported the existence of an extra child-friendly room for video hearings which is, however, only used if and when an investigating judge comes to the station to video-hear children. In addition, a child-friendly waiting room exists which is used by her for child hearings on an occasional basis. The two officers from Brandenburg and a social worker from Mecklenburg Western Pomerania said that no such rooms are available in their regions, and plans to furnish such a room were quit due to the lack of resources. None of the officers reported using special materials during hearings.
- [43] Most officers reported to conduct hearings at home or in school only in rare cases. As the journey costs extra-time and laptops for taking minutes are not always available they and their colleagues prefer to summon witnesses to the police station. However, an officer from Brandenburg, investigating “crimes against life and health”, said that she often asks parents which place they would recommend for the hearing.
- [44] All officers who also investigate serious crimes affecting children said that they can – and often do – recommend waiving a police hearing of the victims in such cases. Instead they propose an immediate (video-recorded) hearing by an investigating judge (*Ermittlungsrichter*)

⁶ “Youth” in the context of criminal law refers to minors aged over 14 years.

in accordance with § 58a StPO, which is supposed to be the best protection against multiple hearings as it is less contestable as evidence than a police hearing. Practices seem to differ slightly: One officer said to recommend video hearings on a regular basis; another officer does only suggest this measure in very serious cases and if the victims are under 10 to 12 years old. However, all police officers agreed that very young children, aged less than three or four years should not be heard. Nonetheless, they remembered a few cases when even three-year-old children were interrogated but stated that this rarely happens nowadays as attitudes have changed.

- [45] Practical problems with avoiding hearings by the police were reported due to the lack of time of investigating judges and parents dismissing such proposals as it takes longer time before the hearings can take place. In addition, video technology is not easily available in all regions. Whereas, for example, most police stations and courts of Lower Saxony were reported by the public prosecutor to be equipped with video technology (and child-friendly rooms), police officers from Brandenburg noted that waiting times are significant.⁷
- [46] A prosecutor from Lower Saxony reminded that prosecutors also might hear witnesses. She stressed the benefits of video technology for child hearings as it allows minor witnesses to use non-verbal means of expression by demonstrating situations with puppets, cuddly toys, or drawings and paintings. Nonetheless, the prosecutor noted that video hearings are not frequently used in her region. Throughout the research, the only region for which regular video hearings by investigating judges were reported to happen on a regular basis was Munich: Since the start of a pilot project in 2000 video-recorded hearings are said to be rule in cases of serious crimes to avoid multiple hearings. As one researcher could observe there, the investigating judge and the victim sit and talk in a child-friendly room under the eyes of a camera, whereas the other parties sit in an adjacent room where the scene is displayed on a monitor. Questions and other messages from the parties' room are typed in a computer to be displayed on a monitor in the hearing room where they are picked up by the judge.
- [47] If no video hearing by an investigating judge did take place, whatever the reason, and in all other cases of minor crimes experienced and witnessed by children, it can happen that the prosecutor comes back to the police (and the witnesses) after their conclusion of the investigation to clarify and check testimonial evidence before bringing charges against the suspect. Then the police might re-hear witnesses. This is, as a Berlin police officer investigating youth crime reported, not necessarily a formal procedure and might also be done via telephone.
- [48] Experiences with hearings in court were mainly reported by a judge from Munich and by four social workers who are involved in victims support. The judge from Munich stressed that court

⁷ Though not listing video recording devices but court video conference technology an idea of the significant differences in the availability of video technology in German regions is provided by the table at: http://www.justiz.de/verzeichnis/zwi_videokonferenz/videokonferenzenanlagen.pdf (Download: 15 January 2013)

proceedings with child witnesses are “normal” court proceedings. Though he is bothered of child-friendliness he admitted that the situation is not comparable with the protected setting of video hearings. He points children to the witness assistant centre (*Zeugenberatungsstelle*) of his court, and summons them to appear later in court than the accused. But in common criminal cases – he gave the example of a neighbour who cuffed the child – he usually hears child witnesses in the court room. Although technology is available for video conferencing pursuant with § 247a StPO in his court its deployment was described as a rare exception, and the judge did not remember a case when it was used for the hearing of a child. From Berlin the social workers reported different, though mostly positive experiences with how judges conduct child hearings in court. Many judges leave their seat and come down to the children, undress their robe, and approach them in ways perceived by the interviewees as more or less sensitive. According to one social worker, judges tend to induce the accused to confess in cases of severe crime for the purpose of sparing the child the hearing. In contrast, social professionals from other regions reported that judges even hear minors in cases when offenders confess just to get an impression of the victim, and that they have also experienced hearings where judges created exam-like situations putting additional stress on the minor witnesses. Overall, social workers reported that victims of such severe crimes are usually heard throughout the criminal proceeding four to six times before a final verdict is spoken. Finally, they noted that the duration of proceedings that can take up to four years in worst cases (usually one to two years) is a problem in itself.

- [49] Apart from hearings during criminal investigations and in court, two special forms of hearings were portrayed, on the one hand, by the police officer investigating youth crime and, on the other hand, by the psychological expert. Whereas the police officer reported on the informal interview (*Befragung*), the psychological expert reported on the assessment of credibility (*Glaubwürdigkeitsprüfung*).
- [50] Informal interviews are conducted by the police officer in close cooperation with the lead investigator. For the purpose of these interviews the officers talk to minor witnesses in schools or at home to clarify facts or get background information, often supported by teachers or social workers. Minutes are written from memory. Working in a special unit dedicated to youth crime, he reported to have more time for his interviews than other investigators, which was seen as a comfortable situation with positive effects for the atmosphere of the interviews.
- [51] According to the psychological expert, the assessment of credibility is mandated by judges or prosecutors if one testimony stands against another, mostly in “moderate” crime cases whereas cases of serious crime are usually only decided on the basis of clear and unambiguous evidence. Witnesses do participate on a voluntary basis. An assessment of children is only possible if they are over four or five years old. Usually, a first session starts with the parents present and takes not more than 60 minutes. Sometimes more sessions are

necessary, then mostly without the child's parents. In a nutshell, the aim of the assessment is not to unmask a witness as a liar but to develop a second testimony in a playful context.

- [52] In general, all interviewed experts agreed that the hearing of child witnesses in criminal procedure is very important and often decisive, in particular if other evidence or witnesses are missing, but not very child-friendly. "This is an interrogation. Full stop!" as one social worker proclaimed. The accused were seen as the key persons of criminal procedure whereas witnesses, whether child or adult, were described as extras who are, however, to be treated as cautious as possible. Hearings of children as witnesses were portrayed as an area of tension between the rights of the accused and the rights of the child, and, for those who hear children, between respect for children's rights and the fulfilment of professional duties.

"The testimony of the child is often the only evidence. Therefore, children must be heard. Whether it's in the video-hearing conducted by the judge or at the police. Through the police they often also must see an independent expert. It is also not an exception that they need to be heard several times in court. No one is asked: 'Would you like now or not?'"

- [53] The respondents confirmed that a hearing puts stress on child witnesses and can pose a heavy burden when multiplied in the course of proceedings. However, only few of the interviewees believe that children become re-traumatised by hearings per se. Though reactions of children certainly differ, in particular younger children, aged less twelve years, were often experienced by interviewees as straightforward and being without embarrassment to show their limits. Many noted that a sensitive hearing can also support and strengthen children as it provides them an opportunity to express their personal viewpoint and to contribute to the resolution of the case. Thus, attempts to avoid hearings at all were seen by some respondents as counterproductive. The attitudes of the involved adults were reported to be crucial: the more adults act calm and appear normal the easier a hearing was supposed to be for an affected child. Hence, many of the experts felt that hysterical or too concerned parents have a negative influence and should be kept as distant as possible. Instead neutral persons of trust were seen as positive and helpful, and the strengthening of victims' support and witness assistance was suggested.

- [54] Those who conduct hearings were all well aware of the difficult nature of child hearings, but all were convinced to deliver their best, prepared by training or experience and a good "common sense". Pointing to interpreter services and psychological assistance, they felt fairly well prepared to deal with migrant children and mentally impaired. However, one social worker noted that migrants are often misunderstood despite the involvement of an interpreter. In addition, two social professionals observed that testimony of mentally impaired minors is often questioned as not being credible. Thus, such children are reported to face discrimination, as they usually have to undergo an additional psychological assessment of credibility.

- [55] Police officers believe that pre-trial investigations are less stressful for children than hearings during the main trial, but they admit, on the other hand, that hearings by the police are of less importance for proceedings and can be quite easily challenged by defence lawyers. In

addition, police officers claim that they could improve their work with children with more staff and technology (laptops and video hearing equipment) available. Oddly, only one of the officers mentioned the existence of the internal police guideline on dealing with youth's issues (*Polizeidienstvorschrift 382 – Bearbeitung von Jugendsachen*).

- [56] The Munich model to avoid multiple hearings in cases of serious crimes against life and health by regular pre-trial video hearings is seen as a good practice for a justice as child-friendly as possible by those interviewees who are involved. Also for Berlin, improvements were reported by the social workers as video hearings by the police have become more frequent and child-friendly rooms and training for investigators and have become more common. However, the data suggest that at least in some rural areas child-friendly rooms are not available and video hearings are rarely conducted due to limited resources. Moreover, even from regions where video equipment seems to be common it was reported that video hearings are rarely conducted as they are time-consuming, in particular as the hearing has to be fully transcribed. Looking abroad, several social workers and a lawyer praised the "Austrian model" as very promising practice which prescribes only one hearing by the police and a state-funded psycho-social lawsuit support for all victims of violent crime or sexual abuse. Drawing on the Austrian example, the Ministry of Justice of Mecklenburg Western Pomerania funds a regional project for psycho-social lawsuit support. Thus, to avoid multiple hearings and to strengthen the role of psycho-social lawsuit support were among the most prominent suggestions to make criminal justice more child-friendly.
- [57] Despite valuing efforts and progress made, most social workers complained insufficient training in particular when it comes to easy language and non-verbal communication. One social worker observed that judges tend to believe being well prepared for child hearings if they have children themselves while ignoring the significant difference between their own children and the traumatised children they face in hearings. Thus, social professionals saw room for improvement to deal better with toddlers, mentally impaired and traumatised children. In addition, they mentioned a lack of awareness for the possibilities of victims' protection provided by law and noted that it is often forgotten to point victims to the avenue of incidental action. Better training for legal professionals was also suggested by the prosecutor and a criminal lawyer whereas the judge felt well prepared, partly due to his experience as father of a child. The former even recommended mandatory and standardised training courses as contribution to the implementation of witness protection. All four interviewed police officers reported that they have attended in-house trainings on child hearings in general or even advanced courses on e.g. hearing minor victims of sexual abuse. But it was also said that colleagues who are not specialised and, thus, not specially trained, may encounter problems when dealing with children.

2.1.2 Child hearings in the field of civil law

- [58] In family courts, all children over the age of 14 have to be heard by judges, according to the Family Affairs Proceedings Act. If and under which circumstances younger children are heard

depends on the judges in charge. Most of the interviewed judges reported that they follow case law of the Federal Court, ruling that children over the age of three years have to be heard in custody cases. Otherwise they would risk an appeal if their explanation for waiving a hearing is not deemed to be sufficient. Also, social workers and lawyers reported that hearings of young children in custody cases have become “living practice” for the last years. However, a judge from Berlin acknowledged that he believes this age threshold being too low – a view shared by several other respondents. Thus, he only hears children aged five years and older. In cases around minor issues at stake such as changes of visitation rules, judges reported to hear children not on a regular basis but only under specific conditions. According to a legal counsel working in Hesse, child hearings are common in urban areas but less frequent in rural areas.

- [59] No rules or guidelines inform the actual practice of hearings. Thus, how children are heard in family law proceedings depends upon the individual judge. According to the responding judges hearings usually take place at court but rarely in court rooms. Without wearing their robes they talk to the children in a rather informal atmosphere in their offices or special children rooms, often keeping toys or wax crayons available. However, a judge from Berlin explained that he treats children different depending on their age and does not wear a robe only when hearing children under the age of seven years. A few judges reported to visit children at home, and one legal counsel reported that judges have heard children in her office. Parents or lawyers are not present during hearings. The only persons allowed to be present are legal counsels (*Verfahrensbeistände*) and interpreters, if necessary. Legal counsels and lawyers confirmed that most judges are striving to conduct hearings in a child-friendly manner but they were usually also aware of individual judges who are unable or unwilling to approach children in a particular way. Some legal counsels noted, however, that judges are not well trained for child hearings and reported examples of, for instance, judges raising suggestive questions like: “Do you want to stay with your mom or with your dad?” But compared to earlier days, the overall practice seems to improve, as one psychological expert noted:

“As I began to work in the field I sometimes have experienced gruesome judicial hearings of children. (Laughs). That was not that nice. That has improved significantly, that also male judges know at all how to speak with children.”

- [60] Judges seem to prefer different moments for hearing children. Whereas most of the interviewed judges reported that they hear the children in advance of the formal hearing of the parents, a few others said that they prefer to talk first to the parents and then to the children. Child hearings are usually waived if and when parents reach an agreement. If child hearings take place they are reported to take between 10 to 60 minutes; one judge reported about colleagues who conduct hearings that take up to 120 minutes. According to one legal counsel, hearings are usually tape-recorded and the audio recordings might even be played back in the court room with children’s parents present. However, other interviewees reported that judges can keep the details of child hearings secret and do not have to keep minutes. Thus, it seems that the practice of tape-recording is not very common.

- [61] The existence of child-friendly rooms at courts was reported to differ significantly. Whereas 13 interviewees reported the existence of playrooms, child-friendly waiting rooms or even of a “child house” in courts, eleven interviewees said that they are not aware of such rooms in their area of work. Others were aware of both courts with and without such rooms, or noted that “would-be” child-friendly rooms exist. But no patterns emerged from the accounts of the interviewees. A small district court in a rural area of North Rhine Westphalia was reported having an extraordinary nice playroom whereas major courts in urban areas of the same state were said to lack such facilities; in contrast, major courts in urban agglomerations of other states were reported to be adequately prepared for children unlike smaller courts. However, even in courts where child-friendly rooms exist, judges do not necessarily conduct hearings in these rooms. Several judges and legal counsels reported that children are heard in judges’ offices despite the existence of a playroom.
- [62] Asked whether the personal situation of children is especially considered, it was noted that the basic requirement was guaranteeing the feasibility of a hearing in terms of the availability of interpretation services and the accessibility of the hearing room. Most interviewees stated that migrant children usually do understand and speak German quite well and that interpreters are rarely needed for child hearings. A Bavarian judge admitted that his profession is not very competent in matters of intercultural communication and, has, thus, to rely on legal counsels to bridge cultural and language gaps, and a legal counsel from Berlin noted that judges attempt to appoint counsels with a cultural background similar to that of the children. Nonetheless, he conceded that interpretation always means the filtering of information which poses problems in particular when it comes to psychological issues. None of the respondents could report any particular experiences with hearings of disabled children. One judge said that she would expect the legal counsels to inform the court in advance about any special needs of children.
- [63] In difficult cases that are fought by stubborn parents through the court instances multiple hearings might occur. Then children face regional court senates in higher instances, which means that they are, theoretically, heard simultaneously by three judges. In practice, however, an interviewee reported they she and her colleagues agree in advance who will talk to the child. Then the two other judges observe the hearing and report their impressions ex post. But if this is an exception or a common practice in family courts of higher instances remains unclear. Another regional court judge reported that her senate even waives hearings in tense cases when children were already summoned to court repeatedly due to the uncompromisingness of their parents.
- [64] A special constellation for child hearings was reported for cases that fall under § 210 of the Family Affairs Proceedings Act, namely cases of domestic violence and abuse that fall into the remits of both criminal justice and family courts. According to one family court judge from Munich, usually criminal court judges are the first who hear children in such cases if sexual abuse by a parent is suspected. In these cases, the family court judge reported, as a rule, to

renounce another hearing, although the criminal judge could introduce him to the case. In contrast, he said to be first judge hearing children in cases of domestic violence. He also highlighted the Munich pilot project to avoid multiple hearings by an increased use of video-recording. Whereas the Munich judge seemed to have some experience with such cases of overlapping competencies, a judge from Berlin reported such cases being a rare in his district.

[65] Other participants who can be involved in formal hearings or informal talks with children are legal counsels, lawyers who may represent children over the age of 14 years, psychological experts, mediators and staff from youth welfare offices (*Jugendämter*). Legal counsels can be appointed in difficult family disputes and when cases include domestic violence. As “lawyers of the child”, as they often call themselves, they are appointed by family judges to examine the child’s situation, prepare the child for the hearing, report to the judge and represent the child’s interest throughout the proceeding. Thus, they are involved in child “hearings” in different roles. Firstly, they accompany children to hearings with judges, and, secondly, they talk to children themselves to assess the situation and the child’s view before reporting back to parents and the court. Though neither a special qualification is needed nor do formal rules apply most of the interviewed legal counsels pointed to the guidelines developed and issued by their professional organisation, the Federal Working Association for Legal Counselling (*Bundesarbeitsgemeinschaft Verfahrensbeistandschaft*).

[66] Usually, legal counsels meet children two or three times in advance of a hearing but some also reported that they met children even six times. First contact is often made by an introductory letter sent to the child and a first meeting usually takes place at the child’s home. Most of the interviewed counsels reported to approach children with much patience, acting literally at eye level of the minors. One mentioned, for instance, organising a “candy farewell” to say goodbye after the completion of the proceeding. According to the interviewees their opinion and assessment does play a crucial role. For instance, it might inform the judge’s decision whether to hear a child at all. Some legal counsels noted that their role can become difficult if the child’s view to be represented by them is conflicting with the child’s best interest, for example, when minors want to stay with a violent father.

"I always give effort to ensure that the children will be consulted a few days before the actual court hearing, but a lot of judges consult out of scheduling reasons, virtually at the same time. Then there are all. [...] and that's all quite stressful. If you do it a few days before, it is much more relaxed. So this is more relaxed for the child. So usually I try to apply for it, if the judge does not already do it himself. Does not always work out."

[67] The appointment practice of legal counsels was reported to be differing from region to region but also from judge to judge. Counsels reported that in some regions the “major appointment”, mandating counsels also to get in touch with the social environment of children, is the rule, whereas in other regions even “minor appointments” only mandating contact to the child itself were said to be rare. One district court judge even frankly admitted that he believes legal counsels being quite useless, except for cases when a child is not prepared to talk to him:

“I’m not a friend of these legal counsels, and I think ... it’s really unnecessary. It’s my opinion that it’s my original job anyway to consider the best interest of the child and to include it. And therefore I put emphasis on a detailed child hearing in advance, in a protected environment simply in private, just to start a conversation with the child and filter out its will as far as possible.”

- [68] But other judges were rather positive about involvement of legal counsels and praised in particular their role in informing and preparing children for the court hearing. One interviewee reported that the BAG, the professional organisation of the legal counsels, estimates that in total legal counsels are appointed in 10 to 15 per cent of all cases legal counsels are appointed. One issue discussed by legal counsels themselves as well as by other experts was the lack of standards for the qualification of counsels, and this might be a factor inhibiting them from being involved more frequently.
- [69] Assessments of children by psychological experts are ordered by judges. How to organise these assessments is the sole responsibility of the experts. One psychological expert reported not to hear children but to prefer talking to persons close to the children in order to avoid being influenced by direct encounters. Others rely on meeting children and talking to them, or they play “family board” that allows displaying familiar situations in a game-like setting. Like mediators who aim to promote family dispute resolution, staff of youth welfare offices also might talk to parents and children. The latter aim to assess the situation to report it back to the family court. In this role social workers always need to maintain the difficult balance between their tasks both to support and to control a family for the sake of a child’s well-being, as reported by the head of a regional youth welfare office in the state of Hesse. However, children are not necessarily heard if such interventions take place.
- [70] The opinions about children’s perception of hearings differed significantly. Whereas most interviewees were convinced that hearings are stressful for children in particular due to loyalty conflicts vis-a-vis their parents, others differentiated between types of children, their gender or age, or even noted that studies have shown that the issue of stress is overrated by adults. Boys were reported to be less willing to talk about their emotions than girls, children aged between six and twelve years were described as “would-be healers” of parental conflicts suffering much more than older children, and younger children were suspected to be more susceptible for parental manipulation than teenagers. Other respondents reported about curious and relaxed children who cope quite well with hearings irrespective of their age, but also about an estimated five per cent of children for whom hearings are seen as heavy burden. Both the condition of children and the capacities of judges were seen as factors determining the stress level of hearings. Thus, it was seen as crucial to prepare children adequately for hearings, and in particular to assure them that they do not decide the parental conflict.
- [71] Though many interviewees believe that hearings put stress on children most of them agreed that hearings are important for both the case and the children. In particular hearings of teenagers were seen as decisive for the final verdict as their views were considered being clear and developed whereas assessing the views of younger children was seen as a challenge

as they are likely to be vague or manipulated. However, according to some of the interviewed judges the meaning they give to the hearings differs according to the issues at stake: Whereas they take the view of the child very serious in parental disputes over visitation rights or over the place of residence, the child's view is less decisive in custody cases as children tend to deny real dangers, ignoring their best interest. Nonetheless, most judges (and other professionals) stressed that child hearings are important for them in any case as they provide the opportunity to meet the child whose fate is to be decided. Highly contested among the other groups of professionals was the question how decisive child hearings are for the judges' final verdicts. For example, a psychological expert from Rhineland Palatine stated that child hearings are a mere formality for judges as they usually have made their opinions by studying the files. In contrast, several lawyers claimed that the majority of cases is decided in line with the child's view, and one lawyer explicitly assumed that judges are afraid of taking firm decisions. Other psychological experts and legal counsels noted that their opinions are not less decisive than the children's views as all these elements are components of an overall assessment.

- [72] In particular lawyers and legal counsels emphasised the importance of hearings for children as it offers space for participation and active intervention. Thus, children can experience "self-potency" by being heard, as it was described by one legal counsel.

"So for the children it's great to be heard. And nobody really realizes that. But the adults think that it would be bad and the parents are more excited than the child. [...] They feel taken seriously. [...] So the adults always think that children would not notice that a judicial proceeding is under way. This is obviously wrong. They exactly notice what is going on and it is a real relief for them, if they can participate and say something."

- [73] But according to several interviewees, the right to be heard is also at risk to become distorted and transformed into a stressful obligation to contribute when children undergo recurrent hearings in the context of an irreconcilable parental conflict. Thus, several respondents recommended to waive hearings under certain conditions, and a lawyer noted that the lack of real legal representation for children is a key problem when family disputes escalate.

- [74] As the child-friendly atmosphere of the hearing in family courts was seen as crucial by most interviewees suggestions for improvement mainly pointed into this direction. Many interviewees described judges trained for a sensitive conduct and the availability of child-friendly rooms as good practice. However, several respondents claimed that the personal approach is much more important than rooms.

"So the courtrooms are not worse than hospitals or schools, you only have to change the furniture. It depends on the persons who have to do with the children. ... I don't find it that important to have toys in the courtroom. I motivate the children to bring stuff with them. ... It's not crucial for me that there is a changing table for babies in the court, but how these people engage with the children."

- [75] In addition, several respondents mentioned established forms of interdisciplinary local or regional cooperation as in Munich or the Hannover region, and valued the role of legal counsels, calling for an increase of appointment rates.

2.1.3 Concluding assessments on child hearings

- [76] A right of children to be heard in a strict sense does neither exist in criminal justice nor in the field of civil law. Rather children are obliged to testify in criminal proceedings as any adult witness as well. The only exception is that children under the age of 14 years cannot be forced to testify as they are non-accountable. In family law proceedings judges are obliged to hear children except for “grave reasons” justifying a waiver. As none of the interviewees elaborated on cases in which children had refused to be heard it is impossible to assess if the family judges’ obligation to hear children is equivalent with an obligation for the children to contribute.
- [77] Most interviewed professionals see child hearings in both areas of law as very important for the case and the child. The testimony or view of the child is reported in many cases to be decisive for the final verdict. Moreover, the opportunity to be heard is believed by many to empower children, provided hearings are conducted in an appropriate and child-friendly manner.
- [78] In both areas of law major reforms have taken place in the last decade that were meant to improve, among others, the position of children. In criminal justice victims protection made progress, and family law reforms aimed for a better respect of the view of children. However, binding rules how to implement these reforms are only provided by a few case law decisions and guidelines are rare. Thus, the actual practice of child hearings is mainly determined by the discretion of individual judges and other key players as well as the available resources.
- [79] Given the increasing awareness for child-friendly justice plenty of initiatives to improve training, resources and collaboration were found during the research. However, it is not known how far reaching these initiatives are. The data suggest great regional variations, for instance, in practices to appoint legal counsels for family law proceedings or in the availability of equipment for video hearings or child-friendly rooms. To assess the actual extent of child-friendly hearing practices in the German justice system further empirical research is necessary.

2.2 Right to information

2.2.1 Right to be informed in the criminal justice field

- [80] Again, the police as entry point to the criminal justice systems play a crucial role in providing mandatory information to children as victims and witnesses in criminal proceedings. According to the interviewed police officers from Berlin and Brandenburg, they inform children – and usually also parents –, about criminal proceedings in general, about the witness’ rights and obligations, and, if they are victims, about support services and their right to incidental action. If crimes are reported to the police, officers taking down the charges were reported to provide first general information. One interviewed policemen mentioned that they have leaflets available, explaining the rights and obligations of witnesses during

criminal investigation in general. Another female officer mentioned a “victims protection leaflet” (*Opferschutzblatt*) informing about the proceeding and about services available for victims support. As these leaflets are not written for children in particular they are usually only handed to parents or to youth witnesses.

- [81] Before children are heard, the police investigators inform these witnesses about their right to refuse testimony against family members or themselves and tell them that their testimony can result in somebody being punished. Minors aged over 14 years are also informed about their duty to tell the truth, whereas this is not relevant for the younger unaccountable children. In case that police officers face language barriers when taking down charges, informal support is requested from colleagues, teachers, siblings or other persons who are able to translate, or they have to improvise. Interpreters are only appointed for the formal hearing.
- [82] Police officers, the judge, the prosecutor and the psychological expert underlined that they need to act objective and neutral and therefore have to be very cautious when informing witnesses. Thus, they tend to limit the information they give to (child) witnesses and related persons to what is legally necessary and cannot satisfy the curiosity of a child or the parents in all cases. However, all admit that under certain circumstances they provide, for instance, information on victims support facilities, or they give some ideas on the possible progress of proceedings.
- [83] In important role for informing child witnesses about hearings and the legal proceedings is played by legal and social professionals offering support services, namely witness counsels (*Zeugenbeistände*), victims assistants (*Opferbeistände*), incidental action lawyers (*Nebenklagevertreter*), legal counsels (*Ergänzungspfleger*) and social workers for psycho-social lawsuit support (*Psycho-soziale Prozessbegleitung*). Though their functions, competences and backgrounds differ significantly they are all tasked with informing (victim) witnesses about the details of proceedings and the progress of their cases. They prepare child witnesses for hearings, care about administrative procedures, and may assist minor victims’ during hearings at the police or in court. However, only incidental action lawyers are formal parties in trials and have rights to access files on behalf of their clients.
- [84] How information is given to minor witnesses depends on their age. All interviewees confirmed that they chose strategies differing from how they approach youth and adults when they talk to younger children, based on their individual experiences and their actual appraisals of the children. Then they care about easy language, and in particular, strange legal and bureaucratic terms are somehow translated or explained.

“One just has to try to explain that appropriately to the age but this is not predetermined, [it occurs] somehow intuitively. And one looks whether they understood it. I make it that way that I let them explain it to me again, in [their] own words, [checking] whether they actually can repeat it or not.”

- [85] Some lawyers and social workers reported to use the brochure “I Have Rights” (*Ich habe Rechte*) produced by the Federal Ministry of Justice a few years for minors who were victimised and thus have to testify as witness in a criminal proceeding. However, as specific information material for minors is rare parents were mentioned by several of the interviewees playing a decisive role for informing and preparing younger children. Several of the witness supporters reported that they use toys and draw to illustrate the situation in court, and explain the persons who will be present and their distinct roles. Some also visit the court building with their clients and “say hello” to the judge in advance of the main trial. One witness counsel, a lawyer, even said that she draws when talking to 17-year-olds, simply to still the youth’s fears.
- [86] The interviewees agreed that children usually understand information if customised. According to one social worker, also mentally impaired were reported to understand information if provided in easy language. Therefore witness support and parents were seen as very important mediators. Having said this, several interviewees noted that uneducated, ignorant or overcautious parents might lack the capacity or interest to understand brochures and information leaflets or distort information aiming to protect children against the harsh realities of criminal justice. General difficulties to inform children were mentioned when it comes to young children under the age of five years as they are usually not able to comprehend the different roles and responsibilities of the counterparts they meet throughout a proceeding.
- [87] Though simple generalisation should be avoided, many respondents deemed information about the hearing and the proceeding as important for both the child and the case in most instances. Information was considered as being important for children as it offers orientation and a feeling of security. Most children were described as curious, raising many questions of which some must not be answered. However, false expectations due to distorted portrayals of court proceedings in television can be corrected, and preliminary insights can be offered into the setting where a hearing will take place. On the other hand, the prosecutor and police officers reported that the mandatory information about their rights to refuse giving testimony can push children into difficult moral conflicts, or they become bothered – and silent – when they are informed that the accused can read their witness report. But usually the orientation and security which is provided by information about the hearing does significantly contribute to the quality of children’s testimony and thus to finding a decision in the case.

2.2.2 Right to be informed in the civil justice field

- [88] Although several interviewees referred to § 159(4) FamFG which states that children should be informed in an appropriate manner about the issues at stake and about the course and possible outcome of proceedings, most interviewees acknowledged that no clear rules exist who has to inform children and how. Only if legal counsels are appointed in high-conflict cases it is their task to inform children. In other cases, it seems to be left to the parents to inform children about the hearing, the proceeding in general and about the final decision, according

to several interviewees. In a few cases, judges reported to inform the children about the decision. However, other judges noted that this is not their job but the task of parents, legal counsels or youth welfare offices.

- [89] Hence, whether children are informed appropriately or not, was reported to happen on a random basis, except for cases when legal counsels are appointed. Many children are therefore at the mercy of their parents who can decide how to prepare children for a hearing and inform them about the outcome of the proceeding. A few family lawyers said to give advice to parents how to inform children but this seems to be an exception rather than the rule. Children over the age of 14 years might be informed when they attend the proceeding and demand access to court files. As a consequence the knowledge of children was reported to differ significantly according to their age and the actual circumstances.
- [90] Usually, professionals such as judges, counsels or psychological experts inform children about their own role. In addition, legal counsels inform the children about the hearing, about their rights and about the outcome of the proceeding. How counsels do this is not regulated or standardised but those counsels who are organised under the umbrella of the Federal Working Group for Legal Counselling (BAG) reported to follow guidelines and use leaflets developed by the BAG or to point children to the website of the BAG which provides information for children in a language deemed appropriate.⁸ Some of the social professionals use toys dolls or toy models of court rooms to prepare children for the hearing. Many reported to use language appropriate to the age of the children, trying to avoid difficult legal terms and rather explain the situation by using examples and by relating the information to the daily experiences of children. However, it was said that it is sometimes difficult to explain the issues or legal concepts at stake, for instance, when talking about “parental care” or when trying to explain the decision in custody cases which was felt to be more difficult than to explain visitation rights.
- [91] Whether children understand the provided information was not always clear to the responsible professionals. However, most experts believe that older children can understand the information though they often struggle emotionally when digesting the information. If younger children do understand the information was said to depend on their intellectual capacity. A legal counsel was convinced that children over the age of five years do understand explanations, provided that they are given in an appropriate manner. However, others believe that younger children do understand the parental conflict but not the proceeding. Thus, a judge recommended to document the outcome of a proceeding as precise as possible to allow younger children the reconstruction of the decision at a later stage.
- [92] Despite their ambiguous views on the capability of children to understand information provided about the proceeding most of the interviewees agreed that information is very important for children. They believe in an empowering role of information as it helps to still

⁸ <http://www.verfahrensbeistand-bag.de/infos-fuer-kinder-und-jugendliche.htm>

irrational fears and to correct wrong images about the role of courts. For instance, children were reported to believe that their parents might become imprisoned or penalised by court. In addition, information was said to provide orientation about children's options. Thus, it was not seen as crucial to inform children about all details of the course of the proceeding but to provide plain but straight information.

[93] In addition, it was seen as crucial how and who informs. In particular the partial views of parents and information not provided in a child-friendly way was reported having the potential to produce devastating effects. Though neutral persons were seen as much better sources of information, a few of the social professionals admitted that limited time can also pose a problem for themselves when struggling with the child-friendly provision of information.

[94] In contrast to the field of criminal justice, none of the interviewees thought that information is crucial for the outcome of the proceeding, or as one legal counsel put it: "Information affects the quality of life of the child but not the legal proceeding." (SP.37) This opinion was explained by the observation that children hardly change their minds in the course of proceedings due to new information.

2.2.3 Concluding assessments on right to information

[95] Most interviewed experts underlined the importance to inform children appropriately about the proceedings and the hearing either for the sake of the children or, in criminal justice, also for the sake of the quality of the testimony. However, in both areas of law it is not guaranteed in any case that adequate information is provided. To inform children is usually left to special services such as legal counsels or psycho-social lawsuit supporters who are not made available on a regular basis. Hence, often parents find themselves in the position to prepare children for hearings though they are not capable to do so in an adequate manner as they are, for example, party in the conflict themselves or lack a basic understanding of the justice system. Moreover, in the area of civil law the appointment of a legal counsel does not necessarily entail the professional provision of information as such services can also be offered by untrained laypersons.

2.3 Training and co-operation of professionals

[96] Three quarter of the interviewees have participated in some kind of additional training. Whereas almost all social professionals (20 out of 22) reported having participated in trainings only 18 of the 29 legal professionals did so (for details see table 3 in the annex). The number of trainings in which interviewees participated ranges from one to a few. A clear indication is not possible, as in most cases no specific numbers were mentioned. The duration of the trainings ranges from half a day to 15 months.

[97] Looking at the types of trainings, most interviewees participated in interdisciplinary trainings, here mainly trainings qualifying legal counsels and psycho-social lawsuit supporters, trainings

on procedures and methods, such as courses for judges and police officers how to conduct child hearings, and psychological trainings. These are followed by trainings on specific child related issues such as child victim support, children's rights, domestic violence or separation and divorce (see table 4 in the annex). Psychological trainings include trainings to become a family therapist or a trauma therapist and trainings in methods comprise courses for future mediators. The interdisciplinary long-term trainings (12-15 months) to become a legal counsel or psycho-social lawsuit supporter were nearly solely attended by social professionals, although the courses for legal counsels are also open to jurists.

- [98] With the exception of the region of Lower Saxony, where young judges and prosecutors have to participate in a professional training, all mentioned trainings are voluntarily. Trainings were said to be offered on an irregular basis and to not have fixed curricula, with the exception of the trainings qualifying legal counsel and psycho-social lawsuit supporters.
- [99] Most interviewees mentioned some kind of cooperation with other professionals involved in the proceedings. Named formats of cooperation were consultations, joint case reviews, working groups and round tables, annual or biannual conferences and formal cooperation models. However, cross-area cooperation involving professionals from civil law and criminal justice is rare. Therefore we do not distinguish between cooperation in the field of civil law and in criminal justice in the following, as reported models and formats do not differ significantly.

2.3.1 Training of professionals in the criminal justice field

- [100] Legal experts in the criminal justice field who were found having completed additional training were police officers. Although not compulsory, the police offer regular in-house trainings and courses at the police academy (*Polizeifachhochschule*) on how to conduct child hearings.
- [101] Interviewed lawyers did not report any trainings but their competence was positively acknowledged and confirmed by other respondents. Given the low numbers of judges and prosecutors who were interviewed in this area of law, it is impossible to make an assessment on the training experiences of these professional groups. One interviewee stated that junior prosecutors and judges are obliged to participate in further training in the state of Lower Saxony, but she added that aspects of victim and child protection are marginal in these courses.
- [102] Nearly all of the five social professionals interviewed in the criminal justice field participated in the interdisciplinary one year training, becoming a psycho-social lawsuit supporter with a focus on children and youth. However, this finding cannot be generalized, as the training is only offered by one institution in Germany, namely by the Institute for the Protection of Victims in Criminal Proceedings in Berlin (*Recht Würde Helfen – Institut für Opferschutz im Strafverfahren e.V.*) and the appointment of support services is not the norm in criminal proceedings.

2.3.2 Training of professionals in the civil justice field

[103] Nearly three quarters of the legal professionals in the area of civil law have received some sort of additional training. Trainings for family court judges in child hearings are not obligatory. However, several of the responding judges have attended trainings and reported that such courses are well visited. Some of the family law lawyers took part in trainings to become a legal counsel or mediator.

“A lot of things ... where I had the feeling that I’ve done it somehow intuitively right before, maybe, but of course it’s good once to hear how to do that right from a psychological view, and then be able to correct mistakes, and see to it that you also keep up with these guidelines a little bit. I would like to wish that there are much more further trainings, because there are absolutely none in the judicial education.”

[104] More than half of the social workers participated in interdisciplinary extra occupational courses taking around a year to become a certified legal counsel. Weekend modules include training on legal and psychological aspects and on specific child issues. Interviewees stated that the training has improved and that it is increasingly visited over the last decade. Interviewed psychologists reported to have trained other professionals in psychological aspects or in the conduction of child hearings.

2.3.3 Cooperation of professionals in the civil and criminal justice field

[105] In general, the cooperation of professionals in the civil and criminal justice field shows similarities. Participants from both fields mentioned personal consultations, case reviews, working groups and round tables on certain aspects (separation and divorce, domestic violence, victim protection etc.), annual or biannual conferences (of professional groups or on certain aspects) or specific formal models as formats of cooperation. Most of the reported fora for cooperation meet regularly but the frequency ranges from once a month to annual meetings. Respondents described cooperation as voluntarily and not formally established. Therefore, any form of cooperation seems to depend significantly on the engagement of the professionals in the region. Reported forms of cooperation mostly involve judges, lawyers, social workers, the youth welfare office, psychological consultation services etc. In Munich a seemingly unique cooperation exists between the areas of civil law and criminal justice.

[106] Cooperation takes place on two levels: firstly, there is cooperation regarding individual cases, where parents have to agree, for instance, on release of confidentiality (*Schweigepflichtentbindung*), and, secondly, cooperation addresses specific aspects of collaboration. The case-by-case cooperation is very difficult due to data protection issues. The police are, for example, not allowed to consult the psychologists. One of the few institutionalised exchanges with a legal basis is the exchange and cooperation between the family court and the youth welfare office.

[107] In order to strengthen interdisciplinary cooperation on the one hand and respect data protection on the other a couple of formal models have been established in some regions:

- **Munich Model (*Münchner Modell*):** Interdisciplinary working group of leading members of the different professions from the areas of civil law and criminal justice (since 2006) holding regular meetings including case conferences. The working group has issued formal guidelines for its work (see references in annex).
- **Cochem Model (*Cochemer Modell*):** Formalised interdisciplinary cooperation of professionals involved in family law proceedings in a region of Rhineland Palatine that was established in 1992 (see references in annex) and adopted and modified in other regions, for example, by the **Warendorfer Praxis** in a district in North Rhine Westphalia or the **Hannoversche Familienpraxis** in the region of Hannover.
- **Göttingen Model (*Göttinger Modell*):** Formalised interdisciplinary cooperation of professionals involved in criminal proceedings mainly in cases of sexual abuse (see references in annex). The working group meets regularly (at least twice a year) to discuss topics such as structures and case reviews. **Association for Juvenile Support and Justice Court Assistance (*Vereinigung für Jugendhilfe und Jugendgerichtshilfe e.V.*)** is a well connected network of legal experts, social workers, probation officers and other actors in the field of child victim protection.

[108] According to the respondents the first three models of cooperation have become best practice examples. In spite of those promising examples, several interviewees reported difficulties and problems with cooperation. For instance, interaction between social professionals and legal experts was described as sometimes difficult as these groups talk different languages in terms of terminology. If cooperation is too close this was also seen as problematic by several interviewees as it might cause dependencies and risks to threaten the judicial independence. Another problem mentioned by the interviewees was the fluctuation of staff in district courts where judges rotate every few years and at youth welfare office.

[109] Other examples of cooperation encountered during the field work are regional working groups on the general protection of children and youths that also cover issues of victims support, such as the *Landesarbeitsgemeinschaft Kinder- und Jugendschutz Thüringen*, a network of 30 organisations, among others the regional office of the nation-wide victims support organisation *Weißer Ring*, or the professional organisations of legal counsels (*Bundesarbeitsgemeinschaft Verfahrensbeistandschaft BAG*) and psycho-social lawsuit supporters (*Bundesverband Psychosoziale Prozessbegleitung bpp*). Both of the latter work, for example, on the development of standards for qualification.

2.3.4 Concluding observations on training and cooperation of professionals

[110] The overwhelming majority of the interviewees considered training in child hearings and cooperation among professionals as very important. Nonetheless, the training gap between social professionals and legal experts is significant although child hearing trainings are neither mandatory for one group nor for the other. Many interviewees noted that judges should be trained in how to hear children, given their important and decisive role. Social professionals

(and police officers) appear to attend voluntary trainings more often, in particular as the extra occupational training for certified legal counsels was established quite successfully over the last two decades. However, the problem of untrained support remains a problem in both areas of justice, and social professionals seem to lack in-depth knowledge in legal issues (see table 4 in the annex). Though three quarters of the interviewees had attended additional trainings on a voluntary basis many of them proposed compulsory trainings which might indicate that those who contributed to the research feel much more committed than the average professional in the field.

[111] Whereas (informal) local or regional cooperation seems to depend significantly on the level of commitment of the involved professionals, established models of formalised cooperation stabilise exchange and foster the building of trust and the revision of structural barriers. However, kicking-off such processes of formalising cooperation remains difficult. In particular, cooperation between the areas of civil law and criminal justice remains exceptional.

2.4 Horizontal issues

2.4.1 Discrimination

[112] Views on whether children in vulnerable situations receive special treatment tailored to their needs differed. As language interpretation is usually guaranteed in particular legal experts saw no major problems with informing and hearing migrant children. However, several voices questioned the intercultural competence of those who hear of counsel children from migrant families. Among others, such interviewees noted problems with interpretation as meanings are filtered and in particular younger children may not always be able to phrase emotions or experiences. It was also noted that the lack of intercultural competence is not only a problem when approaching migrant children but in general when children have other socio-cultural backgrounds than those who hear or support them:

"It is always difficult when the environments of these families and children are far away from that of the staff members of the child protection services/ I mean, we who are all sitting there/ all have a/ an academic education [...] who are deciding there [...] and one is far away from/ one also does not want [laughs] to know too much about it."

[113] Only few interviewees could report experiences with disabled children. Whereas some said that disabled children are likely to be positively discriminated as support services are more easily granted and accessible rooms are made available, others noted that hearing disabled children might pose a problem in case of communication barriers or that mentally impaired are not seen as credible. In effect, the opinion of disabled children might not be taken into account even when they are formally heard.

2.4.2 Best interest of the child

- [114] There was a broad consensus among the interviewees that it is difficult to define the best interest of the child (*Kindeswohl*). Though it is a fixed term in civil law, it was described as a vague legal concept which is most easily to define *ex negativo*, namely by the absence of factors that pose a risk of harm to children like parental drug addiction, domestic violence or neglect. Thus, many interviewees referred to a set of basic physical and psychological needs that have to be fulfilled necessarily to meet a child's best interest, e.g. food, sanitation, a certain degree of care and emotional support. Apart from these basics requirements, several respondents noted, the "best interest" can be only defined on an individual basis.
- [115] Experts working in criminal justice made clear that in their field the best interest of the child is not a normative issue with top priority. Though judges and police officers claimed to mitigate the burden when interrogating children, they noted that such hearings are never in the best interest of an affected child. One police officer even stated that minor offenders have "all rights of the world" whereas minor victims are limited in their most basic rights these are exercised by their parents, e.g. to initiate a criminal proceeding or to request financial compensation. However, several social workers emphasised that despite the burden posed by hearings it is also important for many victims to be heard as witness in criminal proceedings.
- [116] In contrast, *Kindeswohl* was described as "ultimate criterion" in the field of family law. However, several respondents, both legal experts and social experts, noted that parental rights are often, or even usually, prioritised over the child's best interest when courts decide family law proceedings, in particular in high-conflict cases solutions and compromises found were said being in the best interest of parents rather than children.

2.4.3 Differences and similarities in regional, national and international context

- [117] Regional differences were explicitly mentioned by social experts working as legal counsels when they talked about the practices of appointing counsels. Those who are able to compare as they work in more than one region reported that the frequency of appointing differs significantly. Determining factors seem to both the individual preferences of family judges and the available financial resources.
- [118] Several social workers and one lawyer compared the German situation with Austria and referred to established instruments in the neighbouring country as best practices. In particular they mentioned the obligation of special training and education for judges who work with children, the state-funded and regular access to victims support services, measures to avoid multiple hearings, and special units of youth welfare offices who provide advice and support.

2.5 CoE Guidelines

[119] Of the 49 interviewees who provided an answer to the question if they are familiar with the Council of Europe (CoE) Guidelines on Child-friendly Justice, only three reported that they heard of them before, namely one public prosecutor, one psychologist and one social worker. However, even these three experts admitted that they do not know the guidelines in detail.

3. RESEARCH

- [120] Most of the interviewed experts in both areas firmly supported the idea of research directly involving children. The experts stressed the importance to hear the voice of those who experience hearings themselves. Only one social worker from the field of civil law explicitly stated that the problem is not the lack of research but the lack of implementation of existing laws and recommendations.
- [121] However, views differed significantly when it came to the question on how to conduct such a research. Whereas some of the respondents recommended to do ethnographic research by attending and documenting hearings with children rather than to talk to children, others supported interviews with children but noted that these would have to be conducted by experienced researchers and with strict limitations to avoid any form of re-traumatisation. It was proposed to leave aside certain groups of children, e.g. young children under the age of 14 years, victims of sexual abuse or those who have already experienced multiple hearings as their case has reached the second instance. Other interviewees suggested to avoid re-traumatisation by focussing on the hearing and by strictly bypassing any talk about the crime itself. In addition, it was recommended only to talk to children whose cases are closed, or to talk to young adults to reflect on their past experience of a child hearing in retrospective.
- [122] Many respondents highlighted that children themselves might be very interested to contribute to such a research but noted that recruitments could become difficult as parents' consent is needed. As gatekeepers and facilitators the interviewees named social workers, counsels, lawyers, judges and schools. In difficult cases psychological experts should be consulted.
- [123] No particular research gaps were mentioned but findings from two volumes covering aspects of child hearings in criminal justice were mentioned by several respondents, namely:
- Friesa Fastie (ed.) (2008). *Opferschutz im Strafverfahren*. Opladen: Barbara Budrich Verlag.
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ANNEXES

Documentation

Quotes

“The law is rather no solution to come to a decision or reach a solution. That’s the, I believe, the crux of the family law: this transition and this cross-linking and this interweaving of psychology and emotions, all other feelings that join in, and a tiny, a very small part of law.”

“So the courtrooms are not worse than hospitals or schools, you only have to change the furniture. It depends on the persons who have to do with the children. ... I don’t find it that important to have toys in the courtroom. I motivate the children to bring stuff with them. ... It’s not crucial for me that there is a changing table for babies in the court, but how these people engage with the children.”

“My perception is that lots of judges are incredibly afraid of a decision ... and I’m always saying, folks, if, there are cases so muddled which can’t be reconciled - realize it eventually, and simply do your job. To do a juridical decision which is as good as possible and which doesn’t give you a miserable feeling, because you believe it would be completely terrible if a court ruled about such a case. They ... , somehow they don’t want to anymore ... They believe, separated families have to come to a mutual agreement. They can’t at all, they don’t see that it’s even harder with separated families to agree than with cohabiting families these days. They have such a rose-coloured world, such an infant view on the world, in my opinion.”

“A lot of things ... where I had the feeling that I’ve done it somehow intuitively right before, maybe, but of course it’s good once to hear how to do that right from a psychological view, and then be able to correct mistakes, and see to it that you also keep up with these guidelines a little bit. I would like to wish that there are much more further trainings, because there are absolutely none in the judicial education.”

“I’m thinking of a ten year old boy who then said: ‘I want to tell this to the judge myself, children also have a right, children also have rights.’ ... Well, for the elder ones this is an experience of self-efficacy.”

"As I began to work in the field I sometimes have experienced gruesome judicial hearings of children. (Laughs). That was not that nice. That has improved significantly, that also male judges know at all how to speak with children."

“I’m not a friend of these legal counsels, and I think ... it’s really unnecessary. It’s my opinion that it’s my original job anyway to consider the best interest of the child and to include it. And therefore I put emphasis on a detailed child hearing in advance, in a protected environment simply in private, just to start a conversation with the child and filter out its will as far as possible.”

"I always give effort to ensure that the children will be consulted a few days before the actual court hearing, but a lot of judges consult out of scheduling reasons, virtually at the same time. Then there are all. [...] and that's all quite stressful. If you do it a few days before, it is much more relaxed. So this is more relaxed for the child. So usually I try to apply for it, if the judge does not already do it himself. Does not always work out."

„I think the family courts should leave their buildings, they should become another unit. This structure should be revised. It should have a less intimidating character and instead have a supportive character indicating: ‘We help you to solve the problem which your parents cannot solve.’ I do not say that one should turn it into a kindergarten. But it would be nice, for example, if the judges take off their black robes when they go to a hearing. Just a minor example. And one could develop these things into a special unit called, for example, Family Legal Assistance Centre or another peppy name. [...] Well, I wish that family law could be liberated from the apparatus of justice because the word apparatus and children do not match.”

“Information affects the quality of life of the child but not the legal proceeding.”

"It is always difficult when the environments of these families and children are far away from that of the staff members of the child protection services/ I mean, we who are all sitting there/ all have a/ an academic education (...) who are deciding there (...) and one is far away from/ one also does not want (laughs) to know too much about it."

“One just *has to try to explain that appropriately* to the age but this is not predetermined, [it occurs] somehow intuitively. And one looks whether they understood it. I make it that way that I let them explain it to me again, in [their] own words, [checking] whether they actually can repeat it or not.”

“Jurists are resistant to further training and education.”

"So for the children it's great to be heard. And nobody really realizes that. But the adults think that it would be bad and the parents are more excited than the child. [...] They feel taken seriously. [...] So the adults always think that children would not notice that a judicial proceeding is under way. This is obviously wrong. They exactly notice what is going on and it is a real relief for them, if they can participate and say something.”

“The testimony of the child is often the only evidence. Therefore, children must be heard. Whether it's in the video-hearing conducted by the judge or at the police. Through the police they often also must see an independent expert. It is also not an exception that they need to be heard several times in court. No one is asked: ‘Would you like now or not?’”

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Information of models of cooperation

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- Cochem Modell:
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- Warendorfer Praxis (an adaptation of the Cochem Model):
http://liga-kind.de/fruehe/211_kaufhold.php
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- Hannoversche Familienpraxis (an adaptation of the Cochem Model):
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- State working group on child and youth protection Thuringia:
www.jugendschutz-thueringen.de
- Heidelberger Modell
www.heidelbergermodell.de

Tables

Table 1: Sample

Professional Group	Gender		Location		Age Group			Total
	Male	Female	Rural/small municipality	Urban/big cities	< 45	45-65	> 65	
Legal	6	23	8	21	8	21	0	29
Civil	4	15	5	14	2	17	0	19
Criminal	2	5	2	5	5	2	0	7
Both areas	0	3	1	2	1	2	0	3
Social	6	16	9	13	5	16	1	22
Civil	5	9	6	8	2	11	1	14
Criminal	0	5	1	4	3	2	0	5
Both areas	1	2	2	1	0	3	0	3
All professionals	12	39	17	34	13	37	1	51

Table 2: Council of Europe (CoE) guidelines

Profession	Familiarity with Guidelines				Total
	Familiar with CoE guidelines	Just heard of them/somehow familiar	Never heard/not familiar	N/A	
Legal	0	1	28	0	29
Civil	0	0	19	0	19
Criminal	0	1	6	0	7
Both areas	0	0	3	0	3
Social	0	2	18	2	22

Civil	0	1	12	1	14
Criminal	0	1	4	0	5
Both areas	0	0	2	1	3
All professionals	0	3	46	2	51

Table 3: Training participation

Profession	Training Participation		Total
	no	yes	
Legal	11	18	29
Civil	6	13	19
Criminal	4	3	7
Both areas	1	2	3
Social	2	20	22
Civil	1	13	14
Criminal	0	5	5
Both areas	1	2	3
All professionals	13	38	51

Table 4: Type of training*

Professional Group	Type of Training					
	Legal	Social/psychological	Specific justice issues	Specific child issues	Methods/procedures	Interdisciplinary (legal counsel, psycho-

						social lawsuit support)
Legal	-	7	-	4	10	1
Social	1	4	-	4	3	14
Mixed	-	-	-	-	-	-
All professiona ls	1	11	-	8	13	15

* Categorising the trainings completed by professional was difficult. General trainings, touching child issues, were counted as well. Trainings to become a family therapist or a trauma therapist were counted as 'psychological' trainings, and trainings in mediation were counted as trainings in 'methods'. Strict interdisciplinary trainings have been counted separately.